

LISTENING SESSION WITH INDIANA CHIEF PUBLIC DEFENDERS

**Retired Judge John D. Tinder, Chairman
7th Circuit Court of Appeals**

**Indiana Government Center South
302 W. Washington Street
Indianapolis, Indiana 46204**

Hearing Commenced at 11:35 a.m.

January 26, 2018

1 **MR. J. TINDER:** The start here. Welcome.
2 My name's John Tinder. I want to just say a
3 couple of things in the beginning, and we're
4 really here to listen more than talk. So this
5 will be your opportunity to cut off a former
6 federal Judge, talk to me. We'll have you do
7 that.

8 So as I'm sure you have some background in
9 our task force that is almost completely
10 assembled here today, originates from appointment
11 by the Public Defense Commission in response to
12 several critical reports that were issued in
13 recent years about indigency public defense in
14 Indiana.

15 In August of 2017 the Commission appointed
16 the 17 of us. Actually, my predecessor, Larry
17 McKinney, was appointed along with 16 others to
18 study concerns that were raised in those various
19 reports.

20 We're here today from the task force. We
21 have Judge Vickie Carmichael, Justice Christopher
22 Goff, Joe Heerens from the Governor's Office,
23 Larry Landis is, you all know, in and out
24 carrying chairs as a good Public Defender does
25 from time to time. Steve Luce, Executive

1 Director of the Indiana Sheriff's Association,
2 Andrea Lyon is here by phone. Hello. Dean Lyon,
3 can you hear us?

4 **MS. A. LYON:** Hello, everybody.

5 **MR. J. TINDER:** Great. And Jeff Papa from
6 Barnes & Thornburg, Professor Schumm from the Law
7 School and Judge Mary Willis. If I've overlooked
8 any of the task force members that were here, I
9 apologize, but there are a few other folks as
10 well.

11 In appointing the task force, the Public
12 Defender Commission gave us a relatively
13 unstructured, but a pretty clear mission. In the
14 announcing release it indicated that the task
15 force will be an independent body comprised of
16 individuals with current or past experience from
17 all three branches of government, law school, the
18 private bar, public defense agencies, sheriffs,
19 Prosecutors and other stakeholder groups.

20 It will also include a team of local and
21 national advisers to provide consultation on
22 potential solutions no improve Indiana's system
23 of defense. The process will be transparent and
24 seek contributions of multiple stakeholder groups
25 who can provide valuable insight into current

1 policies and practices.

2 The task force's goal will be to complete
3 its work and provide a report recommendation by
4 August 2018.

5 So with you mission we have been in the
6 process since the early part of September. We
7 have had a handful of meetings so far and more to
8 come. You're gonna hear a little bit more about
9 a series of listening sessions we're gonna have
10 throughout the State.

11 We are in the information gathering mode.
12 And I want to say -- and I think I can speak on
13 behalf of each of the 17 members of the task
14 force -- we all come to this with a great
15 appreciate of what you folks on the ground have
16 done as Public Defenders.

17 You are doing the impossible daily for the
18 ungrateful often, but you have been working hard
19 and providing very good services in many, many
20 forums. On misdemeanors, on felonies, on other
21 matters that you're drafted into, termination of
22 parental rights, CHINS matters, all kinds of
23 proceedings. And we have great respect for what
24 you've done with what's been made available to
25 you.

1 Our objective is to help improve indigent
2 public defense and to try to find ways to correct
3 or improve these areas where there have been
4 criticism.

5 So, believe me we have great respect for
6 what you have done and what you're going to
7 continue to do.

8 And we're looking at the broad spectrum.
9 We're looking at everything from misdemeanor
10 representation through death penalty
11 representation in the criminal courts. We're
12 looking at mental health commitment
13 representation. We're looking at TPR and CHINS
14 representation.

15 You name it. If there is someone who would
16 be entitled to an effective defense, they ought
17 to have it. Our Constitution, both at the
18 federal and state level, we're entitled to it.
19 So we take it seriously.

20 And we also have task force member, Monica
21 Foster, who of loves to make an appearance and
22 now here she is.

23 So we get it, but we need to hear from, you
24 know, critical stakeholders, and you are
25 certainly in that category. So that's why we're

1 here today.

2 And we're hoping that is a continuing
3 dialogue with you all. And we are -- this is not
4 a one-time tell us now and forever -- forever
5 keep the peace or what have you. We hope this is
6 a continuing dialogue and we're willing to hear
7 what you've got to say. We're willing to read
8 what you have to write.

9 As you know, our website has the ability to
10 submit written materials. You can hand it to us.
11 You could throw it over the transom. However you
12 get it to us. We're happy -- happy to hear it,
13 and we're all ears. We really want to know what
14 you've got to say.

15 We do have a court reporter here today
16 actually a couple of reasons. One, I'm a
17 terrible note-taker, and I can confess to that
18 now since I'm not trying cases anymore. But also
19 for the members who weren't able to be here
20 today --

21 **MS. M. FOSTER:** Is that why you got all of
22 those facts wrong on my appeals?

23 **MR. J. TINDER:** Uh, you know -- there have
24 been so many reasons I got them wrong and that's
25 just part of it. But, also so that we can go

1 back and -- and see what was said and -- and
2 maybe pull things out of that that we can use
3 to -- to boost up our findings and our
4 recommendations and so forth.

5 Now, some things you might want to say even
6 today or later. You might want to say
7 anonymously if you want to do -- be critical
8 about something that you didn't want to have
9 directly attributed to you, that's fine. Feel
10 free to do that and just -- just let us know that
11 you want this to be a -- a nonattributed type of
12 comment. We can do that.

13 We don't have to -- and we're not here for
14 literally making a record so if you feel
15 anonymity would be better, that's just fine as
16 well, but if you -- if you want the comment
17 attributed, be sure you identify yourself to the
18 court reporter, Felesa, who is so helpful to us
19 because otherwise, I -- I couldn't remember
20 tomorrow what I did today so we -- we appreciate
21 that.

22 Just one other initial event -- or two other
23 comments. If you haven't signed in yet make sure
24 you sign in because we want to know who was here
25 so that we can get back in touch with you,

1 perhaps, if you want to follow-up on something
2 that said or what have you.

3 And, secondly, if you parked in the state
4 garage, your parking can be validated and you'll
5 want to see Paula. Where is Paula? Paula can
6 get your parking validated, and that's kind of
7 important so... And, Representative Porter is
8 also with us today. I'm sorry. You must have
9 snuck in when I wasn't -- when I wasn't looking.

10 **MR. G. PORTER:** Stealth.

11 **MR. J. TINDER:** Great. But, as you can
12 imagine, folks have lots of other obligations and
13 commitments so if you see people coming and going
14 that's understood.

15 So welcome. Thank you for coming. Thank
16 you for what you do, and we'd be more than happy
17 to hear whatever you've got to say. I know --
18 we've been informed several people do want to
19 make presentations; Jim Abbs, Ruth Johnson, Bob
20 Hill, Neil Weisman; that we have been informed
21 of. And I don't know if you guys have order in
22 mind.

23 **MR. B. HILL:** Jim Abbs.

24 **MR. J. TINDER:** Okay. I think I'm going to
25 begin -- alphabetically, we'll start with Jim

1 Abbs.

2 **MR. J. ABBS:** Alphabetically. No one go
3 first from there, but... And good afternoon
4 everybody. My name is Jim Abbs. I am presently
5 a Chief Public Defender in Noble County, Indiana,
6 a position that I've been serving now for 17
7 years.

8 Prior to that, I actually avoided public
9 defender work. I did, for Judge Lee, a panel
10 attorney doing federal work. For the past ten
11 years I have also been president of the Chiefs'
12 Association.

13 I am beginning our presentation because I
14 need to address some, what I would say, overall
15 major issues and also some concerns that we have.

16 And I begin by stating to all of you that we
17 presently support -- and when I say 'we', I'm
18 talking about the Chiefs' Association which is
19 made up of the approximately 30 Chiefs that we
20 have in this state, and also the second
21 organization, the Public Defender Council which
22 is the representative body of all the Public
23 Defenders in this state just a council made up of
24 individuals elected by that body.

25 And we as a group support the present

1 reimbursement program that we are all operating
2 under. We believe that that honors our state
3 home rule. We believe that it gives flexibility
4 because of the uniqueness of the size of our
5 counties.

6 Now, to say that we support that, but we do
7 have a concern with the task force that I have to
8 bring up. And first and foremost let me say it
9 doesn't have to do with the makeup of the
10 individuals on it, and we greatly appreciate
11 everybody being on it, and who's working on it;
12 quite impressive with the group we have, but what
13 we are concerned about is the fact that there is
14 not a Public Defender -- an active Indiana Public
15 Defender -- no Chief that is part of this
16 process.

17 And we think that's important. Because if
18 you look in this room here, you've got hundreds,
19 if not, a thousand years of Public Defender
20 experience. And as Judge Tinder said, we are out
21 there every day working within the system.

22 And we think it would be important to have
23 an individual who can interact with you, develop
24 a relationship because this group is going to
25 meet to address those issues.

1 When I put -- when this task force came
2 up -- when I put a committee together of chiefs
3 to deal with this issue, I put the following
4 individuals on it: I put on the Marion County
5 Chief; it makes up about 19 percent of -- or,
6 excuse me, 18 percent of the population of this
7 state. I put on the Vigo and Tippecanoe Chiefs.
8 They are a part of the 16 states with a hundred
9 thousand people that make up about 41 percent of
10 our population. And I put on the Lawrence County
11 Chief. It has a population of 50,000, and Rush
12 County, 16,000 that makes up the other 75
13 counties in the state which make up 41 percent of
14 the population.

15 We think it's important to get all of those
16 voices being heard -- that's what I wanted within
17 that committee so they can address all of those
18 issues.

19 Now, I don't want to belabor this point, but
20 I would ask you this. We understand we may not
21 get a seat up there. But I would ask you this;
22 that you listen very closely -- which I know you
23 will do -- but also that you give deference to
24 what we are presenting since we're not there with
25 you all the time when you're making the decisions

1 that you're gonna go forward with.

2 The second point, and a major point I want
3 to get to is we do believe that those counties
4 that are active in the reimbursement program
5 should be allowed to continue as they are
6 operating. And I think one thing that we always
7 focus on the problems within the system -- I
8 understand that -- and we would tell you there
9 are deficiencies.

10 And I will tell all of you there was not a
11 single thing that the Public Defender Council nor
12 the Chiefs, when that report came out that
13 surprised any of us. I think if you'd been to
14 our meetings the past ten years, all of those
15 topics would have been discussed.

16 And, in fact, we have proposed standard
17 changes to Commission, we have proposed rules to
18 the judiciary, we have proposed legislation to
19 the legislators trying to make the changes. And
20 we've had -- in a lot of the hard work that Larry
21 and his staff -- some successes doing that.

22 But I think it's very important that you
23 recognize also there are a lot of good things
24 going on in our counties throughout this state
25 that are a part of the reimbursement program.

1 And I will tell you the successes and the good
2 things greatly exceed those deficiencies that
3 they are talking about. There are programs
4 within Marion County, Tippecanoe County, all
5 throughout this state that are positive.

6 And I want to give you -- I'm talking
7 generalities, I'm gonna give you one specific
8 example, and I'm gonna use my own county, because
9 then if there's any questions, or someone has to
10 answer to it, I am the one to do it.

11 There's a great concern about reimbursement
12 and -- and problems with misdemeanor cases. And
13 that how out of compliance every county is.

14 The fact of the matter is no county has been
15 in compliance with state workload requirements,
16 caseload requirements for felonies, juveniles,
17 CHIN cases, which we receive reimbursement money,
18 and misdemeanors for over 20 years now, and there
19 are other success stories like this. So the
20 reimbursement program that we have in place does
21 work, and there are counties who operating under
22 it doing very positive things.

23 And my point is we don't have to reinvent
24 the wheel. And we understand there's some
25 adjustments and changes that have got to be made.

1 And one of those is the third major point I want
2 to give to you.

3 And that is we believe that those standards
4 set forth for the Public Defender Commission
5 should be mandated throughout the entire state.

6 **MR. J. TINDER:** Even without reimbursement?

7 **MR. J. ABBS:** We want reimbursement, but I
8 would say to yes, even without reimbursement.

9 I spoke to a legislative committee in August
10 and I told them I truly believe that there's two
11 things that you can do that could resolve most of
12 the problems that we presently have within our
13 system.

14 First, and most importantly, mandate that
15 all counties must come into compliance with those
16 standards. That single act will ensure that
17 every Public Defender in this state will have
18 appropriate caseloads, will be paid an
19 appropriate salary, and will have available to
20 them the resources that they need.

21 **MR. J. TINDER:** But, how would that be
22 enforced without reimbursement?

23 **MR. J. ABBS:** We have to have -- we have to
24 have a reimbursement program -- and I -- and
25 you're -- I'm getting into my fourth -- we've got

1 to have a compliance force in place. And we
2 will -- we will ask that -- there's got to be
3 state-mandated compliance, and then behind it,
4 there has to be state-mandated enforcement. We
5 recognize this.

6 **MR. J. TINDER:** Okay.

7 **MR. J. ABBS:** 'Cause I -- I -- I tell you
8 when we look at these big issues that we're
9 dealing with -- but the single most important
10 thing to me, and I think the single important --
11 most important thing we're trying to do is to
12 ensure every individual that's appointed a Public
13 Defender in this state receives effective
14 representation.

15 And that can only be accomplished if
16 attorneys have appropriate caseloads or paid
17 appropriate salaries to do that.

18 And there -- now I did tell you -- I said
19 two things that we had to do, and the other one
20 gets into what -- somewhat what you were saying
21 is we do need reimbursement money for misdemeanor
22 cases.

23 To me that's a travesty. That's gotta be
24 included in the overall program to assure it
25 happens. Which gets then, Judge, to your main

1 point. And we would agree with this, and the
2 fourth main point I want to make is that we do
3 need an enforcement mechanism to make sure this
4 takes place.

5 And we would like to see increased staffing
6 to the Commission, and give the Commission the
7 authority to enforce the standards upon the
8 counties. And if the state -- if the counties
9 fall out of compliance, the Commission could
10 intervene, and, if necessary, take over the
11 Public Defender system in that county, and that
12 county would still remain responsible for their
13 portion of the funding. There's no doubt -- I
14 mean exactly the point -- we have to have an
15 enforcement mechanism.

16 To conclude what I wanted to say is really
17 four points; we have a system in place, it that
18 can work; we don't have to reinvent the wheel.
19 We've got counties complying with that that are
20 doing positive things; we need to allow them to
21 continue.

22 We do recognize there has to be mandated
23 compliance rules 'cause otherwise there will be
24 counties that will not come into compliance with
25 them, and to do that we understand there's got to

1 be an enforcement mechanism and that mechanism
2 should be through Commission having the power if
3 absolutely necessary to take over a Public
4 Defender system and to force it into compliance
5 from there.

6 Now, what we're talking about is a major
7 overhaul to the system, and we understand that.
8 We also understand that's gonna take some period
9 of time to do, and, I think that would be another
10 factor that would be have to be put into this
11 whole process. We can't next year say,
12 everyone's gotta be in compliance within a month.
13 It's gonna take some time to do that and that's
14 gotta be part of the process.

15 And I also know when doing this for 17
16 years, I -- I tell them when I first became Chief
17 I came to a conference and Mr. Larry Landis comes
18 up to me and puts out his hands and says,
19 "Congratulations James" as he always calls me,
20 "and I need to get ahold of Senator Meeks right
21 away."

22 And you all know -- and know that and you
23 recognize Senator Meeks was our Senator at that
24 time. Also during that period of time chairman
25 of the Appropriations Committee which I did for

1 the next seven years. We understand things take
2 time.

3 The one thing we really need right this very
4 moment is reimbursement money for misdemeanor
5 cases. That is a complete travesty going on in
6 this state right now.

7 And if you can at least get us -- because we
8 know we aren't gonna get everything -- but, if
9 you could at least give us that much this coming
10 year, it would be greatly appreciated by us.

11 Conclude by thanking all of you for putting
12 in your time and doing this and listening to us.
13 I know this is -- won't be the easiest process.
14 And, again, like I said, we have concerns at the
15 ta -- at the same time, I want to say to you --
16 we greatly appreciate all of you putting in your
17 time and assisting us with this manner. Thank
18 you.

19 **MR. J. TINDER:** Thank you, Jim. And let me
20 say -- I forgot to introduce Joe Heerens from --
21 Counsel from the Governor's Office who -- it is
22 an honor and (indiscernible) as well, and I -- I
23 -- I -- we un -- we hear your point about wanting
24 seats at the table. Understood.

25 But, keep in mind this task force is not

1 self-selected; we were appointed. We didn't make
2 those choices and I'm guessing you'd love to have
3 a Public Defender on every jury you try as well,
4 right? Just to have a vote -- a vote.

5 **MR. J. ABBS:** We do our best to get somebody
6 leaning in that direction at least. How is that?

7 **MR. J. TINDER:** But you -- but you -- but
8 you can -- you can be assured that we -- we do
9 hear you. And, while you don't have a seat at
10 the table, you've certainly got a voice that's
11 going to be heard, a Public Defender, so be that
12 as it may.

13 **MR. J. ABBS:** I -- I appreciate those
14 comments, Judge.

15 **MS. M. FOSTER:** Can I follow-up on that?

16 **MR. J. ABBS:** Yeah, yeah. Go ahead.

17 **MS. M. FOSTER:** I don't think we've ever
18 met. I'm Monica Foster.

19 **MR. J. ABBS:** We have met before. You just
20 don't remember.

21 **MS. M. FOSTER:** Okay. Well, I'm the Chief
22 Federal Defender for the Southern District of
23 Indiana. I cover the entire southern part of
24 state from Terre Haute to Richmond and south.

25 Before I became the Chief Federal Defender,

1 I practiced -- we called it a private practice --
2 for about 30 years, but mostly -- I would say
3 95 percent of my work was appointed work from
4 Public Defender Offices from Marion County to
5 Lake County to Evansville really throughout the
6 state.

7 I was on the original Public Defender
8 Commission where I probably served for over 20
9 years. I was on the initial Board of Directors
10 that created Bob Hill's office, and probably
11 served there for probably ten or 15 years. I
12 understand the state court system having worked
13 in the federal court system. I can also see
14 where you guys need help.

15 But Judge Tinder is right; your voice is
16 going to be heard and I have the heart of a
17 Public Defender because I am a Public Defender.

18 **MR. J. ABBS:** And -- and -- and you being on
19 the -- no doubt you being on the task force does
20 give us comfort, Monica from there. We just
21 would like to have -- felt that maybe a few
22 more members --

23 **MS. M. FOSTER:** Men -- you want some men?

24 **MR. J. ABBS:** Yeah, right. So I was a
25 Prosecutor so you can persuade (indiscernible).

1 **MR. J. TINDER:** And a little add-on to that,
2 you may not know this, Justice Goff spent a few
3 -- a good number of years as a Public Defender,
4 and, believe it or not, even I was a Public
5 Defender for two years in Marion County Criminal
6 Court Three as a conflict Public Defender. And
7 before -- and be --

8 **MS. V. CARMICHAEL:** If we're throwing it out
9 there, and I was the Chief for Six.

10 **MR. J. TINDER:** All of these -- all of these
11 confessions.

12 *(Several parties talking over each other.)*

13 **MR. J. TINDER:** And now you're seeing -- we
14 have pasts, but it's even on my resume so...
15 But, yes.

16 **MR. J. ABBS:** And, again, appreciate what
17 you're doing. I'm just relating to you somewhat
18 --

19 **MR. J. TINDER:** Sure.

20 **MR. J. ABBS:** -- so that you know what our
21 group as a whole feels from there.

22 **MR. J. TINDER:** Heard and understood.

23 **MR. J. ABBS:** Thank you.

24 **MR. J. TINDER:** Okay.

25 **MR. J. ABBS:** However, other --

1 **MR. J. TINDER:** Now, here let's get to the
2 substance and questions. Well, let -- I tell you
3 what, let's -- let's hold our questions until the
4 predesignated presentations are made and then
5 we'll -- we'll go back. Neil, are you next?

6 **MR. N. WEISMAN:** Yes.

7 **MR. B. HILL:** No, I'm next.

8 **MR. J. TINDER:** I'm sorry.

9 **MR. B. HILL:** I'm next.

10 **MR. J. TINDER:** Bob, you want to go?

11 **MR. B. HILL:** Yeah.

12 **MR. J. TINDER:** Bob Hill.

13 **MR. B. HILL:** Um, --

14 **MR. J. TINDER:** You dropped something.

15 **MR. B. HILL:** -- that's alphabetical. Oh, I
16 need that.

17 **MR. J. TINDER:** That's what I thought. It
18 didn't well go to Ruth.

19 **MR. B. HILL:** Because when it's time, I'm
20 gonna tell you about Greg Moiser (phonetic) who's
21 a defender that moved to Indianapolis from
22 Missouri. And I'm gonna tell you -- tell you
23 about Carolyn Brown who's a defender who moved
24 from Kentucky to Indiana. And I'm gonna tell you
25 about their experiences in their states.

1 And my point I want to make first and
2 foremost is we need -- don't need to look at this
3 as the glass being many half empty. I think this
4 glass is three-quarters full.

5 We have a great thing going here with the
6 Commission standards and Commission caseload
7 limitations that Public Defenders have. And I
8 will use these folks and my experiences and
9 meeting with defenders from around the country to
10 explain why I say that.

11 I agree with Jim, and I hear what you're
12 saying. But there are a lot of qualities people
13 here in this room. There are a lot of quality
14 people that been working on these problems for
15 years. And it's a perception problem if they're
16 not sitting up here with you.

17 And its perception problem hard to explain
18 to our lawyers in -- in the trenches. And we
19 need to be --

20 **MS. M. FOSTER:** Well, what's --

21 **MR. B. HILL:** -- hey, it's gotta be --

22 **MS. M. FOSTER:** -- what is -- what is the
23 perception? I am a Public Defender.

24 **MR. B. HILL:** The perception is that State
25 Public Defenders are not part of the table. Not

1 part of the -- they don't get to sit at the
2 dining room table at Thanksgiving; they're put
3 off to the kids' table. That's the perception.

4 And, it is something that is going to be
5 hard for us all to deal with. If we want
6 'buy-in' as Ann Sutton, my Chief Counsel says,
7 you have to include people to get their buy-in.
8 And, I appreciate being able to come here, but
9 that is the issue, and I think that we need to be
10 cognizant of, it's perception.

11 You and I have worked together -- we've
12 worked cases together. We've been Public
13 Defender together. I worked for John Tinder my
14 first job out of law school. And I used to do a
15 -- a hellacious imitation of John Tinder. I
16 won't do that anymore. But, that was usually --

17 **MR. J. TINDER:** That's -- that's before I
18 had gray hair.

19 **MS. M. FOSTER:** Maybe that's what caused
20 your gray hair.

21 **MR. B. HILL:** Well, it was probably before I
22 gained so much weight. But, I would never do it
23 to his face but we would always do it drinking
24 beer.

25 **MR. J. TINDER:** I heard that.

1 **MR. B. HILL:** Complained (indiscernible).
2 And that's why my career in the Prosecutor's
3 Office (indiscernible). But, shortly after
4 leaving the Prosecutor's Office, I became a
5 Public Defender. I paid -- my first day on the
6 job, I worked for Judge Mercuri. He hired he
7 fired me if he wanted to. He did not; I took
8 another job.

9 I walked into that courtroom as a Public
10 Defender had to defend somebody on cocaine -- my
11 first day -- never met him before -- cocaine
12 possession case, and it was an innocent client.

13 Randy Faranow (phonetic), a buddy of mine
14 from the Prosecutor's Office, and Mark Stoner,
15 another buddy from the Prosecutor's all said --
16 came -- came down and watched my defense of this
17 person, and I moved for a continuance, denied;
18 you're a Public Defender go, go, go.

19 Guess what happened? The guy was innocent.
20 He was the only guy that couldn't run away from
21 the people standing in a straight corner 'cause
22 he's on crutches, and they put the cocaine on
23 him. Convicted.

24 Judge Mercuri didn't put him in jail. Judge
25 Mercuri was very kind, but that was what was

1 wrong with a system where Judges appoint Public
2 Defenders. There has to be boundaries and
3 insulation.

4 I then became a Public Defender in Juvenile
5 Court working for Val Boring (phonetic) -- Val
6 Boring and Judge Payne. I lost a job with Judge
7 Payne when I told him his Commissioner wouldn't
8 let me put on a defense because he convicted my
9 guys at the close of the State's case before he
10 heard my alibi defense.

11 I said this should be appealed and I'm
12 asking that we appeal this. He said, "We don't
13 have money for an appeal" and that was the last
14 appointment I received as a Pub -- Juvenile
15 Public Defender.

16 I then was hired by Judge Gifford. I became
17 a Public Defender in major felony court. Judge
18 Gifford's an excellent trial Judge; one of the
19 best I've ever appeared in front of.

20 We had no resources; we had only us. We
21 had -- it was -- it was hard to get extra money
22 to do anything. I remember when Arnie Baratz and
23 I did my first death penalty case, he had to come
24 back to court Monday after the Satur -- or
25 Saturday trial ended -- you'll remember this --

1 and had to do -- defend -- uh, defend -- a
2 robbery case -- Public Defender robbery case.
3 There were no protections; no controls.

4 The agency was founded. I became the first
5 Chief Trial Deputy of that agency in Marion
6 County. And things started to improve because of
7 Commission standards and because of funding. I
8 believe the reimbursement was originally 25
9 percent, now it's up to 40 percent.

10 That is the key -- the increasing
11 reimbursement. That's the key to -- that's the
12 engine that runs progress from the Public
13 Defender systems.

14 I then -- and after becoming Chief Trial
15 Deputy of the agency, left and started doing
16 panel work with the Federal Defenders Office, and
17 I started doing federal death penalty cases as
18 well as state death penalty cases; all publicly
19 appointed, all publicly funded except for one.

20 And I saw the difference between the federal
21 system and the state system. The federal system
22 has the opportunity to pay people hourly. I
23 think that's an important thing we should look at
24 here.

25 The federal system has the opportunity to

1 fund your defense. That's an important thing for
2 us to look at here. The federal system has
3 insulation from the Judge. Because if I have to
4 argument something that -- that the Judge doesn't
5 like, I'm hired by someone else. These are
6 important elements of what a good Public Defender
7 system looks like.

8 I became Chief Trial Deputy ten years ago --
9 of Chief Public Defender ten years ago. We
10 have -- we constantly get reimbursement from the
11 state. We are up to eight million dollars
12 reimbursement -- just shy of eight million
13 dollars a year now.

14 I can tell you this, my budget would not be
15 where it is now if not for that reimbursement.
16 My budget will not grow because there's -- as
17 John Keeler told me once when he was in the
18 legislature when I was doing a project for him --
19 that the Cocaine Dealers Association's not a big
20 lobby group in the legislature.

21 Public Defenders don't have a good voice in
22 the legislature. That's our fault. But that's
23 what we need. We need a -- a presence there, and
24 we need a bigger presence than we've been able to
25 do in -- in the past.

1 Now, our problems in public defense in
2 Marion County and statewide to me have revolved
3 around funding. Always funding.

4 The Prosecutor's Office as a comparison and
5 contrast it -- their local government's always
6 willing to bend over backwards to fund their
7 projects, to fund their witness assistance
8 people, to fund their social workers. I have to
9 pay dearly to get one social worker added a year
10 that would help improve the cases and help
11 improve sentencings.

12 When I started ten years ago we had zero
13 social workers; now we've have 18. And it's had
14 to come in trips and drabs through grants and
15 this, but it shouldn't be that difficult. It
16 should be something that the Public Defender
17 Commission helps us with through reimbursement.

18 So I've learned over the years that if the
19 reimbursement system goes away, my budget is
20 going to collapse. I've learned over the years
21 that as a -- a -- a budget like the DCS budget
22 explodes and CHINS cases explode because that's
23 what we've hired all of the DCS caseworkers to do
24 is to file CHINS cases and they're doing a good
25 job of it. It's a crisis.

1 But it's hard for my budget to keep pace at
2 40 percent. So many things that happen statewide
3 or on the state side impact us dearly in -- in
4 the counties. CHINS is the big one right now.

5 We have -- we have experienced two-fold, at
6 least, growth in our CHINS Division because of
7 the inequity in funding be -- between DCS
8 prosecutions, and -- and that -- and that's all
9 good. I -- I didn't begrudge that. I'm all in
10 favor of that, but CHINS defense has to keep pace
11 and it hasn't. It just hasn't.

12 These are some of the issues that Public
13 Defenders like me, like Jim and everybody else
14 will experience on a daily basis, on a daily
15 basis.

16 Now, I think saying those things
17 preliminarily -- a little bit about me, a little
18 bit about what I've learned in my experiences, I
19 want to go through a couple of points that I -- I
20 want to make here.

21 I want to reiterate, this glass is
22 three-quarters full, not half empty. We've done
23 an excellent job with what we have. I'm very
24 proud of the lawyers that work for me. In fact,
25 we're going to hear from Ruth Johnson here in a

1 minute who -- who's head of my Appellate
2 Division. I'm very proud of what they've
3 accomplished, I'm proud of what I have
4 accomplished, and I think we have the basis to do
5 something really great in terms of client
6 representation.

7 I talked -- I told you I was gonna talk to
8 you and share stories about people in -- in my
9 office. Gregg Mosier came to us from Missouri
10 after the Missouri reforms.

11 Gregg Mosier is -- had -- right out of law
12 school, goes to work for Missouri in the reform
13 system and had a caseload of 300 to 500 cases;
14 60 percent of which were felonies. That's after
15 the reform in Missouri. That won't happen in --
16 under the Public Defender Commission system.
17 That cannot happen and stay in compliance because
18 of caseload standards and because of experience
19 requirements. He started at \$38,000 when we were
20 paying forty-five in Marion County starting pay.

21 Our lawyers went into a misdemeanor court
22 where they had what came because there are no
23 state caseload standards or requirements. He
24 went into a system where he received 60 percent
25 of his caseload as felony cases.

1 Now, albeit not crimes against the person --
2 crime -- property crime felonies; felonies
3 nonetheless.

4 He moves here -- because his family wants to
5 relocate -- and he can -- he -- and I hope he
6 comes on February 9th -- and he can tell you that
7 what we do here is much better than what's
8 happening in Missouri where they have a statewide
9 system where they have reform without funding --
10 without adequate funding.

11 Carolyn Brown from Kentucky -- she started
12 in the Louisville office which is separate from
13 the rest of the State of Kentucky. She went into
14 what she described as a caseload of -- the first
15 day sworn in -- she went to her swearing in and
16 came back and in and her mailbox there were
17 felony cases already.

18 She had no clue what she was doing. That
19 won't happen in Indiana because of the Commission
20 guideline. She then realized that her caseload
21 was gonna be upwards in the three to 400, 500
22 range. And because she thinks the -- the numbers
23 are jimmied around in the Louisville office, she
24 feels like it was closer to 600.

25 She quit the Louisville office which is

1 separate from PDA -- Public Defender -- Public
2 Advo -- what is it? -- Public Advocate -- their
3 statewide Public Defender System is separate from
4 the Louisville system -- she quit Louisville and
5 went to PDA where the caseloads were a little bit
6 better and worked for seven years and moves to
7 Indianapolis 'cause she wants to relocate.

8 We were able to pay her starting as a
9 misdemeanor lawyer -- she was doing major felony
10 work -- and we were able to pay her more money
11 than she was getting from major felony work, and
12 reduce her caseload.

13 And ask her this question, is the Indiana
14 system better or worse than Kentucky? And she'll
15 tell you much, much better. Like a breath of
16 fresh air. There are caseload controls and
17 caseload limitations.

18 I go to Public Defender meetings around the
19 country meeting other chief defenders. In
20 meeting these chief defenders one universal
21 message comes out, they don't have adequate
22 caseload controls like we do through the Public
23 Defender Commission's system.

24 They don't have adequate funding and they
25 don't have adequate training. We have a really

1 good system here based on the Commission's system
2 if -- if it is funded adequately; if it is funded
3 adequately.

4 Now, here's what the board of directors of
5 the Public Defender Council has been recommending
6 for a number of years, and here's what chiefs
7 have recommended, and here's what I believe is
8 the right thing to do.

9 Prosecutors are funded by the state one
10 hundred percent, one hundred percent. Chief
11 trial deputies in the Prosecutor's Office is
12 funded by the state one hundred percent. I
13 believe Public Defenders should also have one
14 hundred percent reimbursement by the Commission
15 to the counties for chiefs that perform their
16 duties in compliance. And I'll talk about that
17 in a minute. And that should apply to not only
18 chiefs, but also deputy chiefs; the top two
19 positions.

20 Now, some counties in Indiana have -- their
21 population's too small perhaps to justify funding
22 a chief public defender per county. But we've
23 been in favor of organizing regional offices so
24 maybe a group of four, smaller county public
25 defender offices would get together to pick a

1 board. You need a board to insulate from -- from
2 the Judges -- insulate the public defender so
3 there's a barrier there.

4 But that board should be comprised
5 appointees from each of the counties. Each
6 county should pro rata share based on the number
7 of clients they have in the system, and they
8 could group together -- excuse me -- and probably
9 do their job more efficiently and more
10 effectively.

11 Now, that person that is a chief defender
12 should, in my opinion, do certain things. And
13 we've talked about this. We had a meeting with
14 Dave Schircliff, and -- and Amy and -- we were --
15 how many of us were there; four or five, and we
16 talked -- Jim Abbs was on the phone.

17 One of the problems we have with the Public
18 Defender Commission -- one of the -- um, deficits
19 in the Commission's system is that they don't
20 have guidelines what a chief's suppose to do.

21 Okay. Okay. So some chiefs are one hundred
22 percent of the time in court. They can't train,
23 they can't do HR, they can't do personnel, they
24 can't discipline, or it's hard to do the policy
25 stuff, but they're always in court. That's not

1 what a chief defender should do.

2 A chief defender should be doing things like
3 recruiting making certain we're getting good
4 lawyers into the system. Quality control.
5 Making certain that the work they're doing is
6 client-focused, client-centered, and giving the
7 citizens of this State what they deserve from our
8 Constitution; zealous representation.

9 Chief defenders should make certain that
10 the -- policies that are adopted by that agency
11 are conducive to a client-centered,
12 client-focused representation. They should make
13 certain that the people that are hired are
14 trained not just with -- locally here in Indiana,
15 but get nationwide training.

16 Because there's so much going on out there
17 that we don't know about in Indiana that you
18 don't get -- and I'm sure Monica Foster would
19 agree with this in a split second that you have
20 to go to national trainings to be aware of what's
21 new and what's going on. Chief defenders should
22 be administrators. They should set the bar.

23 Now, we've come up with some guidelines
24 about what we would propose as guidelines and
25 lift the caseload limitations for chief

1 defenders.

2 The specifics of that's not so important
3 today -- unless you want to get into it -- but
4 what is important is that a chief defender should
5 have time to do things are important; quality
6 control, human resources, personnel, recruiting,
7 training the politics, with a small 'P', working
8 the county -- I mean you want to have a -- a -- a
9 experience that will cut your heart out, take
10 your PD budget to the County Council and ask for
11 more money. Do it. It's hard.

12 But the chief defender has to do that.
13 There's no one else that's going to; there's no
14 one else that's going to.

15 Now, we also believe, and -- and -- and --
16 and -- and it's a consensus that all misdemeanors
17 -- all misdemeanors should be reimbursed
18 statewide. We've already talked about chiefs and
19 chief trial deputies, we've talked about regional
20 offices, and we've talked about one hundred
21 percent reimbursement for that sort of chief.

22 But we should also talk about 50 percent
23 reimbursement -- not 40, not 25 -- 50 percent
24 reimbursement for all services that we deliver in
25 compliance with Commission standards for the

1 benefit of our citizens, for the benefit of our
2 client.

3 And, you know, this is not just saying, I'm
4 gonna go out and -- and represent a -- a
5 criminal, or -- or someone that might be a member
6 of the Cocaine Dealer's Association, but you're
7 talking about our citizens that are accused;
8 you're talking about our citizens that have
9 rights; you're talking about our way of
10 delivering justice, and it's very important. It
11 is in -- it's in fact vital that we do that
12 appropriately.

13 Now, people said, well, you know, we don't
14 want to just go in and ask for more money, but my
15 perspective is we're doing a lot of things right.
16 We're doing a lot of things that are good. The
17 problem is we don't have the money to do it.

18 Fifty percent reimbursement would set up a
19 state local partnership and would help take the
20 edge off things like, for example, the CHINS
21 crisis which counties have no control over.
22 They're just being drug along for the ride, but
23 we have to defend -- or represent the cases.

24 While I'm talking about CHINS, let me
25 mention this, we have discussed, repeatedly, a

1 major problem in an office -- the Public
2 Defender's Office representing -- defending the
3 parents in a CHINS termination case, and
4 representing clients in a juvenile delinquency
5 matter.

6 Frequently, my JD lawyers are in a conflict
7 with my CHINS lawyers because sometimes the
8 parents defend the case saying it's all of the
9 kids' fault. Sometimes the disposition that a --
10 a JD lawyer would want is not the same as what a
11 -- a CHINS court is going to do, or what -- what
12 a CHINS lawyer would think would be a great
13 success.

14 This is such an inherent conflict that I
15 don't see how a public defender's office like
16 mine can do both.

17 Our corp mission is criminal defense not
18 civil CHINS. This was an add-on. Uh, Larry, how
19 many years ago?

20 **MR. L. LANDIS:** Ten, maybe 15.

21 **MR. B. HILL:** Yeah. That we had to really
22 dig in and start taking these cases on as part of
23 our obligation as public defense. And what
24 changed our ability to hire lawyers to do that
25 was when the Commission started reimbursing

1 CHINS. It's just a simple fact. But out of that
2 is only dilemma as to how you resolve this
3 conflict.

4 And if I consult my ethics people they do
5 recognize that. It's one firm. It's one
6 organization. And it's one firm that has to
7 defend all of these clients.

8 In fact, if there's one mom and three dads,
9 they could all be at odds with each other. I'm
10 suppose to represent all of them.

11 **MS. M. FOSTER:** Do you have a suggestion how
12 we --

13 **MR. B. HILL:** I --

14 **MS. M. FOSTER:** I think there's no question
15 that that's a conflict.

16 **MR. B. HILL:** Huge conflict. Okay. My
17 suggestion, I think, No. 1, I think there has to
18 be more funding. And -- and I'm gonna say that
19 all day long.

20 **MS. M. FOSTER:** That doesn't --

21 **MR. B. HILL:** No. 2, --

22 **MR. D. BOTTORFF:** -- that doesn't solve --

23 **MR. J. TINDER:** Yeah.

24 **MS. M. FOSTER:** -- the conflict.

25 **MR. B. HILL:** No.

1 **MR. J. TINDER:** So.

2 **MR. B. HILL:** It does this way.

3 **MS. M. FOSTER:** Okay.

4 **MR. B. HILL:** It does this way. Because you
5 have to hire more and separate lawyers. One way
6 we're dealing with conflicts in my office is I've
7 set up separate full-time conflict independent
8 teams that our office -- separately from the rest
9 of us, have their own independent locked door and
10 file system, have their own independence from
11 everything but me asking for their budget.

12 I guess I could fire them if some of them
13 were committing crimes in the office or something
14 like that, but they supervise themselves.

15 That's, basically, what you're going to
16 need. You're going to need separate CHINS
17 divisions to do that, in my opinion. That's
18 money because you have to buy different offices,
19 you have to buy different lawyers, you have to
20 buy different supervisors.

21 I think another solution that we've
22 advocated all along was that the State should
23 have a bigger role to play in setting up and --
24 and handling the defense of the CHINS matters.

25 The DCS budget is approaching a billion

1 dollars now; just a -- a -- a little bit under a
2 billion dollars, and -- and that's shown enormous
3 growth over their last five years. But funding
4 for our defense hasn't kept pace.

5 The other thing you can do --

6 **MS. M. FOSTER:** In pace for --

7 **MR. J. TINDER:** Monica, if you don't mind,
8 let's -- let's get through the presentation --

9 **MS. M. FOSTER:** Okay.

10 **MR. J. TINDER:** -- and then we'll come
11 out -- there are lots of points we want to drill
12 down on --

13 **MR. B. HILL:** Yeah.

14 **MR. J. TINDER:** -- but just for expediency,
15 we'll get -- we'll get to the questioning in --
16 in just a little bit.

17 **MS. M. FOSTER:** Okay.

18 **MR. B. HILL:** That's Judge Tinder's way of
19 saying I'm talking too much.

20 **MS. M. FOSTER:** No. It's his way of saying
21 that I should shut up.

22 **MR. J. TINDER:** It's actually both.

23 **MR. B. HILL:** Monica and I can say this to
24 each when we're having a drink, but, --

25 **MR. J. TINDER:** We will come back.

1 **MR. B. HILL:** Okay.

2 **MR. J. TINDER:** Just proceed.

3 **MR. B. HILL:** But there -- there's a third
4 point I want to make here that's inter-related.
5 I think the State should have a bigger role. I
6 think there needs to be more money to set up
7 separate silos in this.

8 I think my main mission when it comes to
9 stuff in -- in juvenile sections -- CHINS, TPR
10 and JD -- my main mission traditionally, and
11 always has been juvenile delinquency defense. We
12 should be representing the kids. We should be
13 representing the kids as advocates in the CHINS
14 matter; not the parents.

15 Now, that's still gonna leave conflicts if
16 you have one organization doing it. And maybe
17 the only way to resolve that would be to do it
18 with -- with all independent contractors. I
19 don't know.

20 But I do know it's an ongoing conflict for
21 every Public Defender running an office that has
22 to do both in this room, and in the -- and in the
23 Public Defender Association. The --

24 **MR. J. TINDER:** And which is, of course,
25 enhanced in the smaller offices.

1 **MR. B. HILL:** It would be totally enhanced
2 in --

3 **MR. J. TINDER:** You -- but -- but we will --
4 we're going to come back to this.

5 **MR. B. HILL:** Because frequently you have
6 someone that does CHINS matters, but also handles
7 criminal matters, but also handles JD matters
8 because you have to be the -- you have to wear
9 many hats in a smaller office.

10 My office is organized not vertically like
11 that, but horizontally so that I have people
12 doing only CHINS and TPRs, people doing JD housed
13 in the same building, but on separate floors,
14 separate supervi -- supervision. That's the, I
15 guess, luxury or the curse of size, depending on
16 how you look at it.

17 But that is a huge problem. I see -- I see
18 the greater need for contractors, I see greater
19 need for funding, I see greater need for State
20 control.

21 And -- and I think I need to be in charge,
22 responsible as a Defender to represent the
23 children, those that are accused of offenses that
24 would be crimes if they were committed by an
25 adult.

1 A couple of other points I want to make
2 quickly. The -- I can't underscore enough how
3 public defense has grown in this State over my --
4 I -- I guess I started doing public defense work
5 in 1983 since that time to now. And it has made
6 -- we have made great strides, great strides.

7 I mean you can recall the horror stories in
8 Marion County of poor effort, poor performance,
9 poor defense, miscarriage of justice. But we
10 need to focus on what we've done to accomplish
11 some of the goals that the Public Defender
12 Commission has put on us.

13 My argument is the Commission needs to put
14 more guidelines out there, especially for what
15 chiefs should be doing, the -- and we should
16 reimburse misdemeanors 50 percent -- 50 percent
17 across the board other than chiefs and deputy
18 chiefs; that should be a hundred.

19 And that's -- that's my take on the state --
20 state of public defense in the State of Indiana
21 now.

22 I do now want to take a second and go
23 through -- I'm on the Board of Directors of the
24 Public Defender Council, and I want to take a
25 second to just briefly outline some of the

1 positions we've taken. And I think we -- did you
2 -- hand -- hand that.

3 **MR. J. TINDER:** That -- the hand-out?

4 **MR. B. HILL:** Yes.

5 **MR. J. TINDER:** I -- I -- DC recommendations
6 which, I think we certainly -- the -- we will
7 have.

8 **MR. L. LANDIS:** Bob, just so you know,
9 Neil's going to cover that.

10 **MR. N. WEISMAN:** I'm going to -- I'll be
11 covering that.

12 **MR. B. HILL:** Okay.

13 **MR. J. TINDER:** And -- and, by the way,
14 Felesa, the 'JD' he's referring to is juvenile
15 delinquency.

16 **COURT REPORTER:** Thank you.

17 **MR. B. HILL:** Yes. I'm sorry. And, the
18 Chiefs have taken -- and I do want to add this --
19 we have taken up the beginning steps of
20 organizing what a chief should do; what the
21 Commission should require chiefs to do.

22 I think home rule is a big issue in the
23 State of Indiana. You should -- you're -- you're
24 not going anywhere without paying attention to
25 the idea that communities want to run their own

1 business, right?

2 One of the things we could do is to have a
3 standardized requirement for what chiefs should
4 do in this regard. And I think the carrot and
5 stick are very important. The reimbursement
6 works very effectively, I think, to keep counties
7 that are in the system in compliance.

8 There're going to be times, though, when you
9 need to up the pressure. And, at some point,
10 somehow, some way, I could foresee a situation
11 where things really go down the wrong path and
12 never improve where the State, maybe through the
13 Commission should step in to remove a Chief
14 Defender that is not doing his or her job. I can
15 get that, and I understand that.

16 But I think first steps are first. We need
17 to require chiefs to do a good job, and we need
18 to actually set those guidelines and tie it to
19 the reimbursement program.

20 I've covered everything I -- I -- I do want
21 to say a couple of things about what the Public
22 Defender Council has been doing making
23 recommendations to improve indigent defense.

24 We have for a long period of time we thought
25 mandatory compliance by all counties with

1 Commission standards is a must. We think there
2 should be Public Defender boards that insulate a
3 Chief Defender from Judges.

4 I think -- we'll -- we'll talk about the
5 mechanism. You can talk about specifics that --
6 I do want to -- I do want to talk about something
7 else. Pay is a big issue.

8 Monica Foster and I have had this debate.
9 The reason we have this debate is because I have
10 good people that she steals from me because she
11 can pay them \$30,000 more --

12 **MS. M. FOSTER:** More than that, actually.

13 **MR. B. HILL:** Don't say that. Ruth's going
14 to (indiscernible). But -- but, okay. But,
15 40,000 more, 50,000 more?

16 **MS. M. FOSTER:** Some of your people I've
17 paid double.

18 **MR. B. HILL:** See. I can't compete. So I
19 could have a lawyer who has done good work for
20 us, or a social worker who -- Jackie Guy -- one
21 of the first social workers I hired to work with
22 our clients, and she -- and -- and Monica can pay
23 her a lot more than we can.

24 Our lawyers are going through law school
25 after four years of college -- that's seven years

1 of post high school education -- and they're
2 coming out with a hundred to twen -- a hundred
3 and twenty-five, a hundred fifty thousand dollars
4 debt, and we can start them at \$47,000 a year in
5 Marion County.

6 **MR. D. SCHIRCLIFF:** Yeah. Marion County.

7 **MR. B. HILL:** In Marion County.

8 **MR. D. SCHIRCLIFF:** And that's important
9 because he sure as hell ain't gonna start that
10 in -- in Lawrence County.

11 **MR. B. HILL:** Well, I don't know what you
12 start --

13 **MR. D. SCHIRCLIFF:** About \$8,000 less.

14 **MR. B. HILL:** But that's why all of your
15 people should come work for me. But I play the
16 Monica Foster cards.

17 But, I -- I get it, you know. I get it that
18 someone needs to make money. We all have loans
19 we have to pay off. We have families we want to
20 feed, and we also have children we'd want to send
21 to college. We all have the same concerns.

22 But we are -- even though much better than
23 Missouri, much better than Kentucky, much better
24 than the separate agency in Louisville, we are
25 much better, but we're not good enough.

1 We need to take care of the people that
2 dedicate because they have the heart of a Public
3 Defender, dedicate their time and effort to
4 defending the accused, to defending people who
5 are otherwise defenseless against the system.

6 And our lawyers do an excellent job. We
7 need to encourage people that have the right
8 attitude through pay and through security and
9 through having a -- a respectful work environment
10 where -- where they are perceived to be important
11 and appreciated for what they do.

12 And I think these things are all -- and what
13 I'm talking about now probably overarches the
14 whole -- the rest of it. If you don't treat
15 people right, you're not gonna get good results.
16 And I think it starts with money showing we're
17 sincere about this. Payroll is very important.

18 Holding people to standards is very
19 important. Requiring that they meet the mission
20 statement of the agency, very important. That
21 comes from Chief, that comes from organization,
22 that comes from better funding and pay.

23 Okay. So that's all I wanted to say. I
24 appreciate your time, I appreciate your effort,
25 and that's it.

1 **MR. J. TINDER:** All right. Many -- many
2 points we're going to come back to, but it must
3 be horrible for Public Defenders to have to sit
4 on their hands and have someone else make their
5 argument for them. I appreciate it. There will
6 -- there will be overtime.

7 And one little known fact. This goes in
8 Monica's presence. The reason federal Public
9 Defenders are paid more, and well more is because
10 they have to put up with horrible federal Judges.

11 **MR. B. HILL:** I -- I -- I practiced -- I've
12 practiced there; I've practice in front of you,
13 and I'm not going to comment.

14 **MR. J. TINDER:** Okay. Now, alphabetically,
15 we're with Ruth. So if you could just, you know,
16 --

17 **RESPONDENT:** Oh, we're going alphabetically?

18 **MR. J. TINDER:** Or -- or -- yeah. Let's --
19 let's just get -- Ruth -- and Ruth is talking
20 about, I assume, the appellate aspect of public
21 defending.

22 **MS. R. JOHNSON:** Right.

23 **MR. J. TINDER:** All right. So can you fire
24 it at us --

25 **MS. R. JOHNSON:** Yes.

1 **MR. J. TINDER:** -- in a -- in a quick
2 fashion?

3 **MS. R. JOHNSON:** In a quick fashion. Oh, I
4 don't know about that. Okay. So there is
5 nothing I like to do better than talk about
6 money, Appellate Division. Our Appellate
7 Division --

8 **MR. C. SHEMA:** Could -- could you stand in
9 either one side of the room so we can hear you
10 too?

11 **MS. R. JOHNSON:** Sure. So just to tell you
12 -- those of you who don't know me, my name is
13 Ruth Johnson. I've been the Appellate Division
14 Chief in Marion County since 2008. And I'm gonna
15 start with some stats about our Appellate
16 Division, and then I'm gonna talk about it -- I
17 will talk about it briefly and --

18 **MR. J. TINDER:** Are there -- are they stats
19 you could give us in writing or -- or, you know,
20 submit later so I can --

21 **MS. R. JOHNSON:** Yes.

22 **MR. J. TINDER:** -- get to your point?

23 **MS. R. JOHNSON:** Sure.

24 **MR. J. TINDER:** Okay.

25 **MS. R. JOHNSON:** So the reason -- of the

1 things I want to talk about today -- well, first,
2 let me just say that our Appellate Division --
3 we've been a partner statewide -- well, with the
4 Office of Judicial Administration, we've been
5 involved in pilot projects, we're involved in the
6 e-filing pilot project right now, so we have been
7 a partner statewide as well as what we do for our
8 clients day in and day out.

9 But my focus today, I'm gonna drill down and
10 focus into the Sixth Amendment. I want -- so
11 what I -- when I read your reports that are
12 public and online, I've been reading that you
13 want an Appellate Division to be a tool to maybe
14 assist what you see as the errors in the -- in
15 the trial court, the Sixth Amendment right,
16 things that aren't happening that are in the
17 report. So I want to talk to you about that tool
18 and what I think that tool might look like.
19 Because I do have some concerns --

20 **MR. J. TINDER:** Your report you're talking
21 about, is that the Sixth Amendment --

22 **MS. R. JOHNSON:** The Sixth Amendment report,
23 right.

24 **MR. J. TINDER:** Okay. Fine. Because we
25 haven't issued no reports.

1 **MS. R. JOHNSON:** Right. But, I'm talking
2 about the report that brought this --

3 **MR. J. TINDER:** Okay.

4 **MS. R. JOHNSON:** -- group --

5 **MR. J. TINDER:** All right.

6 **MS. R. JOHNSON:** -- together.

7 **MR. J. TINDER:** Okay.

8 **MS. R. JOHNSON:** And then when I read what
9 comes out of this, I -- I have been reading about
10 a statewide appellate office may be something
11 that you're considering.

12 **MR. J. TINDER:** That was a recommendation of
13 the Sixth Amendment Center --

14 **MS. R. JOHNSON:** Right.

15 **MR. J. TINDER:** -- (indiscernible).

16 **MS. R. JOHNSON:** Correct.

17 **MR. J. TINDER:** Something we want to get to.

18 **MS. R. JOHNSON:** Correct. So that's what I
19 want to address today; is I want to -- I just
20 want to talk to you about what our office, I
21 think, does right so that as you go forward you
22 can think about how could you implement this if
23 -- if truly they are things that we do right --
24 which I think they are -- how -- how are you
25 gonna implement this on a state basis?

1 And so because of time constraints, I'm
2 gonna narrow it down --

3 **MR. J. TINDER:** Right.

4 **MS. R. JOHNSON:** -- and I'm going to talk
5 about two things that I think we do really well
6 that if there's gonna be a statewide appellate,
7 this would be a good thing.

8 And that is that in our office in each
9 division has an appellate attorney that's a
10 liaison to each division in the office. So
11 there's an appellate attorney that's a liaison to
12 TPR, CHINS, Juve, DV, misdemeanor, major felony.

13 The major felonies have separate courts --
14 separate major felony courts; there's an
15 appellate attorney who's specifically assigned as
16 a liaison. So when those divisions meet, and
17 like when the -- when a specific criminal court
18 team meets -- an appellate attorney is there.
19 And when they brainstorm their cases, an
20 appellate attorney is there.

21 They are there from the very beginning where
22 they're talking about what's this trial gonna
23 look like? What's the theme and theory of the
24 case? What are the evidentiary problems gonna
25 be? They help with motions practice.

1 The appellate attorney isn't something that
2 happens later after everything's been done.
3 We're embedded with the trial attorneys. And we
4 do this because it improves the practice, and
5 improves what happens in the trial courts.

6 A separate -- a -- another thing that we're
7 able to do that I'm really proud of is we -- we
8 are really embedded with the misdemeanor division
9 with the brand new attorneys that come in. And
10 we have this program where it's called -- and you
11 can follow your case on appeal.

12 So if an attorney -- a misdemeanor attorney
13 has a case he feels strongly about and may lose,
14 they let me know, and then when that case comes
15 up on appeal, they're assigned to the appellate
16 attorney who's working it on appeal, and there's
17 nothing -- as some of you may know -- there's
18 nothing more -- well, it brings a different
19 perspective to read a transcript of what you said
20 in court versus what you think you said in court.

21 For instance, --

22 **MS. M. FOSTER:** It's horrifying.

23 **MS. R. JOHNSON:** If I have to later read
24 that Felesa is typing and we would be like, 'Oh,
25 I said that?' So anyway -- we always tell them

1 even if you don't want to be a trial attorney, or
2 an appellate attorney, this is gonna make you a
3 better trial attorney because you're gonna read
4 it, and you're gonna see -- and we also sit down
5 with them and we brainstorm. And we were like,
6 you know, you could have said this, or maybe you
7 should have object -- objected here.

8 But the other thing is we meet 'em when
9 they're -- when they first come in, and we build
10 relationships with them. And so as they move up
11 in their career, we're mentors. For me, that's
12 the best part of my job. But we can be
13 professional mentors. We can help them develop
14 their bases.

15 There's attorneys here who have -- have done
16 that; Ashley, Pete. And I can tell you when Dave
17 Schircliff worked in our office he would come up
18 -- all of the doors would shut --

19 *(Verbal sound of shutting doors made.)*

20 **MS. R. JOHNSON:** -- because Dave had an
21 issue that he wanted to discuss. I'm actually
22 joking. We would help Dave. But -- but that's
23 what a good Appellate Division could do.

24 And so when I read that you guys are
25 thinking of using a statewide Appellate Division

1 as a tool, it concerns me to have something that
2 would be seen more as a arm-chair Monday, you
3 know, Monday morning quarterback.

4 Because the only way the trial attorneys
5 come up and talk to us about their cases is
6 because they know and they trust us. And they
7 know us and they trust because we have a day-in,
8 day-out rapport with them that we've built.

9 So because of time, those are the two main
10 things that we'd go over. One thing I will so,
11 though, just separately is if we do -- if -- if
12 the statewide goes -- starts to -- we start to go
13 down that path, please talk to me about the
14 infrastructure of that would look like in Marion
15 County.

16 It's different from the Attorney General
17 because they -- they're on the other side.
18 They're not having to get the transcripts and
19 make sure everything is right. In Marion County
20 we have 62 court reporters, and that's -- that
21 can be a challenge to make sure that all of the
22 appellate deadlines are on time.

23 Like I said, the Attorney General is
24 responsive so they don't have that. So if that
25 would go forward, please talk to me about

1 infrastructure because I think that's a separate
2 issue, but I don't want to talk about that today.

3 **MR. J. TINDER:** And -- and we'd be delighted
4 if you wanted to revise and supplement your
5 remarks --

6 **MS. R. JOHNSON:** Okay.

7 **MR. J. TINDER:** -- in writing following --
8 like everybody today as well.

9 **MS. R. JOHNSON:** Okay.

10 **MR. J. TINDER:** Thank you -- thank you,
11 Ruth. Neil.

12 **MR. N. WEISMAN:** You know, 'W' is
13 (indiscernible) --

14 **MR. J. TINDER:** And -- and we --

15 **MR. N. WEISMAN:** -- all of my life.

16 **MR. J. TINDER:** Right. It -- that it does.
17 I was a 'T.' And we do have the I -- IPDC
18 recommendations.

19 **MR. N. WEISMAN:** Correct. Judge, again,
20 thanks for -- for allowing us all to present
21 here. For those of you who don't know me, I'm
22 Neil Weisman. I'm currently the Chair of the
23 Indiana Public Defender Council.

24 **MR. J. TINDER:** Neil, could you keep your
25 voice up. I don't know about you, Felesa, I'm

1 having a little bit of trouble --

2 **COURT REPORTER:** Yes, sir.

3 **MR. J. TINDER:** -- hearing you.

4 **MR. C. SHEMA:** Yeah. Neil, could you stand
5 over there and sort of face --

6 **MR. N. WEISMAN:** All right.

7 **MR. C. SHEMA:** -- the middle of the room so
8 that we can hear you.

9 **MR. J. TINDER:** Or maybe even better if you
10 stood near Felesa.

11 **MR. N. WEISMAN:** All right. Okay. Again,
12 I'm Neil Weisman and I'm currently the Chair of
13 the Indiana Public Defender Council. I'm also
14 the Deputy Chief for St. Joseph County Public
15 Defender.

16 The purpose here today is to present the
17 Council's position in coordination with the
18 Chiefs of -- as to what we think this task force
19 outta be looking at.

20 Now, not to totally rehash an issue that's
21 already been brought up, but we did send a letter
22 to Chairman Rutherford regarding our desire to
23 have --

24 **MR. J. TINDER:** Okay. I've -- I've seen --
25 I've seen that letter and I've seen his response.

1 **MR. N. WEISMAN:** And -- and -- yeah, --

2 **MR. J. TINDER:** And the reason -- again, we
3 are not self-selected and we appreciate it.

4 **MR. N. WEISMAN:** Yeah.

5 **MR. J. TINDER:** That is -- that has been
6 delivered to the Public Defender Commission.

7 **MR. N. WEISMAN:** Okay.

8 **MR. J. TINDER:** It's been heard and we
9 understand.

10 **MR. N. WEISMAN:** Right.

11 **MR. J. TINDER:** But we didn't make those
12 decisions.

13 **MR. N. WEISMAN:** Yeah. I understand. And
14 -- and even if we don't have that type of -- of
15 relationship with -- with the task force, as --
16 as a counsel, we think that, if nothing else,
17 there should be some selective members of
18 different delivery services, different sized
19 counties around the state, to form an active
20 advisory council to the task force.

21 **MR. J. TINDER:** We are open to that. We --
22 we -- I'm sure you've met Kim. I'm sure you --
23 I'm sure you know Katie. We want to hear from
24 you about those things.

25 **MR. N. WEISMAN:** Okay.

1 **MR. J. TINDER:** We do.

2 **MR. N. WEISMAN:** One of things that's
3 important is -- is the Indiana Public Defender
4 Council -- different than the Chiefs' Association
5 -- is that the Council's made up of 11 members.
6 One is a State Public Defender which is mandated
7 by -- by statute. The others are all elected at
8 large from the entire membership of the Public
9 Defenders.

10 So even though we hail from different
11 counties, and have our own self-interests in
12 those counties, our purpose is to represent the
13 Public Defenders as a whole. And we have
14 currently on the board, I think, a pretty good
15 cross-section from around the state from people
16 who are, you know, contractual and she's in rural
17 communities, and she's traveling to three or four
18 different counties to do Public Defender work
19 because they don't have Public Defenders within
20 their own counties, or a Public Defender Chief,
21 or any kind of a system.

22 So we understand the -- the purpose and the
23 nature of the task force. And like, I think, Jim
24 and -- and Bob said, is we don't believe as a
25 council that we need to recreate the Public

1 Defender System.

2 We think we have a good start. We have over
3 30 plus counties in the state in the -- in the
4 program, and we need to build and -- and beef up
5 those areas where we are deficient.

6 And -- and, again, we have some folks out
7 there that are doing great jobs, and some
8 counties that are doing real -- real good jobs
9 with the resources they have. And -- and that,
10 again, is -- is going by what -- some of the
11 positions that -- that we've taken.

12 We'll go over the -- the -- the points just
13 briefly that the Council has taken just to maybe
14 give a little background, Judge Tinder.

15 Back in -- when was that? -- 1991, I was in
16 Criminal Court Two as a contract attorney with
17 Judge Gifford. I was there about four or five
18 years 'til I moved up to South Bend. So I've got
19 experience in -- in both contractual work and
20 under-paid, over-worked Public Defender in St.
21 Joseph County.

22 We didn't get the in the system of
23 St. Joseph County until 2007. Because the one
24 thing I learned from moving from Indianapolis out
25 to the counties and doing some work in the

1 counties around St. Jo is there's a big aversion
2 to taking and have Indianapolis take control in
3 local counties.

4 And it wasn't until funding before a Public
5 Defender program became stabilized at the 40
6 percent that you could count on it, budget year,
7 budget year, budget year that our folks up in
8 St. Jo even acquiesced to look into getting in
9 the program.

10 We didn't get into it 'til 2007. And we had
11 to build a program that essentially wouldn't cost
12 them anymore than they're already paying as long
13 as we built it so that we could into compliance.

14 So we built a good system, and it's bare
15 bones; no support staff, no investigators, no
16 paralegals, no secretaries and a part-time
17 employee system. So that's the difference we
18 have, every where from Marion County who has
19 resources but still needs assistance to people
20 working in rural counties who have nothing.

21 The systems and the delivery, and -- and the
22 way we provide services are totally inconsistent
23 around the state. And maybe that's not a bad
24 thing in some ways.

25 Our main overarching goal, I think that we

1 suggest to this task force is the number one
2 issue that's been brought up is that standards --
3 workload standards, education standards,
4 experience standards, how you do your job
5 standards, be mandated throughout the state.

6 That's -- that's number one. That's --
7 that's where it's gotta start. And -- and I -- I
8 think to everyone on the -- on the board,
9 including -- we worked -- I've worked with the
10 Chiefs' Task Force -- agree that that's where it
11 has to start.

12 Next, is the county Public Defender boards.
13 We had long discusses. In fact, I don't know if
14 you recall, several years ago and we talked about
15 changing the system before the money dried up,
16 and we had many discussions. And a lot of
17 discussions were raised around home rule, local
18 control, getting buy-in from the counties.

19 Okay. And for that reason we believe that
20 some form of a -- a county Public Defender board
21 should stay in tact so that it gives them some
22 ownership into the -- into the system. And they
23 should have -- are to appoint the Chief Public
24 Defender and -- and work with the Commission on
25 that.

1 The enforcement mechanism has been touched
2 upon. And -- and these are -- what we prepared
3 was a -- sort of a -- an outline that would hope
4 the task force might look at and work from. The
5 Public Defender Commission is at the heart of --
6 of the money, at the heart of the standards.
7 They've got to be able to, and have the resources
8 to -- to enforce the -- the standards.

9 If necessary, -- I think Bob alluded to it
10 -- even a -- a ma -- if -- if after many, many
11 attempts to -- to rectify problems within a
12 certain county have failed, then the state -- or
13 the Commission needs to have the authority to
14 essentially take in.

15 How that's gonna work, we don't know. But
16 there -- there has to be that. They've got to be
17 -- we've talked about the money -- and there's
18 got to be the carrot -- because that's what get
19 the counties into the program. Most of the
20 counties are facing major budget deficits.

21 St. Jo has got that circuit breaker. Every
22 time we go to the county council they say, where
23 can you cut, not where can we add. So the
24 money's gotta be there; the carrot's gotta be
25 there, but the stick has also gotta be there so

1 that there's some compliance standards and -- and
2 authority to -- to enforce those standards.

3 Even to the point I think as Bob had
4 mentioned that the Council voted on and agreed,
5 even to the point if necessary to remove the
6 Chief if the Chief is not doing the right job.

7 And along with that we decided that there
8 needs to be vary specific standards as to what
9 the Chief's duties and responsibilities are.

10 Going down to state-provided services, we
11 are pretty much all in agreement that the CHINS
12 issue, the TPR issue um, essentially, is a civil
13 issue and we're criminal lawyers. There's one
14 other conflict that Bob mentioned, there's a
15 super conflict between Juvenile Public Defenders
16 and the CHINS Public Defenders.

17 But many of these CHINS cases are driven
18 because one, or both of the parents have been
19 arrested and charged with a crime. So then we
20 have the criminal side of our agency who,
21 basically, is keeping that person involved in a
22 CHINS case from even starting their CHINS
23 programming because of the fact that they make
24 admissions in CHINS that -- that affects their
25 criminal case. So that's -- it's an area that --

1 that needs to be addressed. It probably only be
2 handled if there's a separate agency that -- that
3 does the CHINS work.

4 And we've talked about the possibility that
5 there's a state agency that does CHINS TPR iss --
6 TPRs -- they could, if a county is willing to
7 contract with that county to provide those
8 services. I don't know how that system would
9 look, and I don't think anybody has the
10 mechanisms or the logistics of how that would
11 actually work, but there -- the -- that whole
12 system is so fraught with conflict and problems,
13 and out of the realm of what most of us do as
14 criminal defense lawyers 'cause it gets into
15 family law; it gets in all kinds of other things.

16 The next point under the state-provided
17 services would be some form of a -- a state-wide
18 Appellate Division with the ability also again to
19 contract. Marion County has the luxury of -- of
20 having an actual Appellate Division.

21 I think only one other county within the
22 state -- I think it's Lake County -- has an
23 Appellate Division. Every other county contracts
24 out, or assigns appeals to working -- to working
25 Public Defenders.

1 And there is no oversight, there is no
2 mechanism, and there is no group of -- of
3 appellate attorneys that you can go to and say
4 read my brief and how does it work out?
5 Everybody's functioning on their own.

6 So that is an issue. And -- and in some
7 areas of the state there are no people to do
8 appeals. They contact the Public Defender
9 Council and -- and ask who they could recommend
10 to handle an appeal from their county.

11 So depending upon where you are within the
12 state, issues are different. And, again, that
13 goes to the reason why this -- this back and
14 forth between the people that are doing the work
15 is very, very important. Because you can go down
16 to southern Indiana, central Indiana up to north
17 and -- and everybody's got similar problems,
18 different issues.

19 We talked about -- especially in some of the
20 rural areas -- it may not warrant a full staff in
21 one county to -- or the Commission to be able to
22 have the authority to create multi-district
23 counties.

24 Again, there are some counties where they
25 don't -- they -- number one, because of pay, two,

1 because they don't have lawyer -- enough lawyers
2 around to do the work -- they're contracting with
3 counties that live two, three counties away to
4 come to their county to do Public Defender work.

5 State reimbursement. Again, this whole
6 system is driven by money, okay. Again, in
7 St. Jo once we could promise the -- the county
8 council and Commissioners that we can set up a
9 system that will comply with standards and get 40
10 percent reimbursement, and that 40 percent would
11 pay for our expansion, they would buy into as
12 long as they didn't have to kick in anymore
13 money.

14 That was the deal we had to do. I put that
15 program together. It had to be bare bones or it
16 wasn't gonna get passed. So money is a big
17 issue.

18 If we were talking to the Council, if an
19 agency like -- like St. Jo County didn't have to
20 fund CHINS, didn't have to fund appeals, then we
21 could go to the Council and say, hey, that
22 money's freed up now, and we can hire some folks,
23 and we can get into compliance with misdemeanors.
24 We can provide, maybe, a couple of paralegals,
25 and some investigators on staff.

1 So it's -- it's -- it's about the money.
2 It's about the money to do it. We've got some
3 great work we're doing. You know, I've looked at
4 -- Larry sent out some of these pilot programs
5 from other -- other states. I think we're
6 light-years ahead of most of them.

7 We have -- at least in some of the counties
8 that are working -- we have a Public Defender
9 Council that provides excellent training for our
10 folks. There are resource for research, you
11 know; they're a go-to, and we have it, and most
12 other states don't have that. So we've got stuff
13 that -- that needs to be built on.

14 The position of the -- the board is that
15 we're currently getting 40 percent at the
16 reimbursement. It needs to be raised to a -- a
17 minimum of 50 percent. That extra 10 percent we
18 think we can do some things. We believe Chief
19 Public Defenders should be a hundred percent
20 funded.

21 Going on to just some other points, we
22 addressed the Public Defender Commission itself.
23 I'm not gonna go through that, but there's some
24 recommendations on -- on an enhanced make-up of
25 -- of the Public Defender Commission.

1 Community, Commission Point No. 8, Chief
2 Public Defenders. This is a big issue, and this
3 is (indiscernible). Adopt new standards and
4 guidelines regarding the -- the responsibilities
5 of the Chief Public Defender.

6 Adopt a standard requiring full-time Chief
7 Public Defenders in each county region be paid
8 the same as Prosecutors and subject to oversight.
9 And then look at the caseloads.

10 Some of these counties hire a Chief Public
11 Defender and the Chief Public Defender has --
12 carries the full caseload because they're payin'
13 'em so much. But that Chief Public Defender then
14 doesn't haven't to do -- have -- have the time to
15 do the administrative duties, and the oversight
16 duties that that chief should be doing. So those
17 issues have to be taken on.

18 Like the -- like the foreman standards for
19 -- for Juvenile, IPDC. The Council has put out
20 performance standards. They're published. We
21 have them. We believe that they should be
22 required statewide as one of the standards. So
23 the PD Council can provide the -- the copies of
24 -- of those things.

25 And then the other -- the other issue -- and

1 this goes back, again, to the Public Defender
2 Commission -- they're a big help, but they don't
3 have the funds, the staffing, or the availability
4 to audit. They can't come out to the counties
5 and say this is what you need to be doing, or
6 say, hey, you're doing great here, but we need
7 some help here, and this is what we can do.
8 Here's where your deficiencies are. We'll be
9 back in whatever and see how you've improved your
10 deficiencies.

11 It's almost like the State Board of Accounts
12 goes to a county and -- and does an audit on --
13 on their financial statements. The Commission
14 needs that ability, and they need the teeth and
15 -- and the enforcement ability to -- to make
16 order.

17 So I guess that's pretty much it from a
18 board standpoint. I think that's...

19 **MR. J. TINDER:** Well, all right. Thank you,
20 Neil. And I -- I want to give the task force
21 members a chance to ask questions on the
22 presentation so far before I open it up to a more
23 general discussion. And perhaps in answering
24 these questions it will also open up the more
25 general discussion.

1 Monica, I cut you off. I'll let you go
2 first. Did you have particular questions you
3 wanted to...

4 **MS. M. FOSTER:** Well, yeah. First of all,
5 I'd like to say that I think that where we have
6 come in public defense in Indiana, we've made
7 huge strides. And so I don't think that you all
8 should look at the um, that this trashing your
9 systems.

10 I think there's no question -- but that
11 you've done amazing -- you've made amazing
12 improvements with very little money. I think
13 there's question about that.

14 But I think the fact remains that you're
15 still hamstrung. Bob, I would like to ask you --

16 **MR. B. HILL:** Sure.

17 **MS. M. FOSTER:** -- you were talking about
18 both home rule and sort of a continued --
19 continuing with the reimbursement system. I'm
20 wondering a -- if either IPDC or the Chiefs
21 Association gave any thought or consideration to
22 a statewide system that was fully funded by the
23 state, but that could incorporate home rule
24 either by having counties appoint Public
25 Defenders from those counties, or a regional

1 system?

2 And one of the things I didn't hear you
3 talking about was a statewide system. I'm
4 wondering if you gave that consideration --

5 **MR. B. HILL:** Um-huh.

6 **MS. M. FOSTER:** -- and rejected it, and, if
7 so, why?

8 **MR. B. HILL:** Well, I think we do have a
9 statewide system, I think, when it comes to the
10 Commission. And the system we've chosen is one
11 that pays heed to home rule.

12 It's my understanding from talking to other
13 people from around the state that if we don't --
14 we're not gonna have buy-in if -- if we say this
15 is going to be an Indianapolis-directed, driven
16 program.

17 And so I think that -- home rule and the
18 current system -- the current system is
19 statewide.

20 **MR. J. TINDER:** But -- but -- if --

21 **MR. B. HILL:** But --

22 **MR. J. TINDER:** -- if they don't participate
23 in reimbursement they're not subject to meeting
24 the standard, --

25 **MR. B. HILL:** Right.

1 **MR. J. TINDER:** -- right?

2 **MR. B. HILL:** And, that's absolutely
3 correct. And there are some counties that -- for
4 the life of me -- I don't understand why you
5 wouldn't want 40 percent of your money back. I
6 don't get it.

7 **MR. J. TINDER:** That's --

8 **MR. B. HILL:** And uh, Larry's a persuasive
9 guy, and I don't know why he's not been able to
10 talk 'em into it. But, I don't understand that.

11 **MR. J. TINDER:** Does -- does that change --
12 well, and maybe this is not so much to you, but
13 to a nonparticipating county -- does that change
14 if -- if it gets up to 50 percent?

15 **MR. B. HILL:** I think --

16 **MR. J. TINDER:** Can -- can you -- you --
17 maybe you can refuse 40, but 50...

18 **MR. B. HILL:** I think 50 sweetens the pot.
19 I think 100 percent for chiefs would certainly
20 encourage. Why wouldn't you hire a chief if it's
21 not gonna cost you anything?

22 Because as a Judge you've got enough to do.
23 Do you want to also administer Public Defenders?
24 I don't think you do for the most part. I mean
25 most Judges in Marion County were happy when the

1 agency came around, but a little grumbling at
2 first, but I think they said, you know, I'm glad
3 I'm outta this business.

4 **MR. J. TINDER:** Or --

5 **MR. B. HILL:** So I think those issues are
6 very important.

7 **MR. J. TINDER:** Okay.

8 **MR. B. HILL:** But I think you should sweeten
9 the pot, and why wouldn't you want to do it?

10 **MR. J. TINDER:** Let's hear for Lawrence
11 County.

12 **MR. D. SCHIRCLIFF:** Yeah. My name is David
13 Schircliff and I'm the Chief Public Defender in
14 Lawrence County. And I would just suggest that
15 there is a lot of pushback on control from
16 Indianapolis even with reimbursement. I mean I
17 -- I wrestle with that all of the time.

18 And, Ashley and I over here kinda had the
19 same reaction; why wouldn't they do it? And we
20 can tell you why they wouldn't do it. 'Cause
21 they don't want Indianapolis tellin' either by
22 reimbursement or any other persuasive way how
23 they're gonna run their county.

24 I came from Marion County. I moved to
25 Lawrence County to be the chief there, and I have

1 seen all kinds of pushback on the system
2 regardless of how much money they would give
3 back. So that's --

4 **MR. J. TINDER:** I -- I --

5 **MR. D. SCHIRCLIFF:** -- that was my response.

6 **MR. J. TINDER:** -- I grew up working in the
7 federal executive side, and I know that's saying,
8 hey, I'm here from the federal government, and
9 here -- here -- and this is where I very well
10 (indiscernible).

11 **MS. A. LYON:** Sometimes I can't hear you.

12 **MR. J. TINDER:** Sorry. Neil.

13 **MR. N. WEISMAN:** We can get that whole issue
14 on -- of the statewide system has been discussed,
15 and discussed, and discussed, and -- and at one
16 point in time, we thought maybe we should go to
17 regional PD Administrators and -- and whatever.
18 And then the consensus of -- of the board was
19 that, hey, we have a good framework out there.

20 And if we create a whole regional system of
21 administrators we're gonna create a costly
22 administrative bureaucratic layer that maybe take
23 money away from actually delivering the services
24 in the county.

25 **MS. M. FOSTER:** But yet you are recommending

1 a statewide appellate system. So I'm wondering
2 what the --

3 **MR. N. WEISMAN:** Those are special --

4 **MS. M. FOSTER:** -- where are the thoughts --
5 what are your thoughts?

6 **MR. N. WEISMAN:** -- those are specialized
7 services that -- other than the daily getting to
8 court and do the job kinda stuff. So that's why
9 we kinda separated those out.

10 **MR. J. ABBS:** Monica, when we look at
11 statewide -- I practiced since seven -- and grew
12 up in Owen County and practiced seven years and
13 then (indiscernible) the area and they adopted
14 during the early 2000s a statewide system. Well,
15 that -- they practiced; they had a lot of friends
16 there and -- and had an opportunity to talk to
17 them.

18 The problem -- they ran -- they said when
19 the state system started it was really good;
20 things ran really well. Then, all of a sudden,
21 there were shortcomings financially.

22 And the attorneys told me their caseloads
23 just skyrocketed because money has to come from
24 some place. Quite frankly, my decision is -- is
25 I've got leverage on the state and the county

1 both being invested in this system.

2 And so if there's financial hardships in
3 either direction they've got to be part of this.
4 And that's why 'em both involved in that
5 statement. I -- I just think it gives us some
6 leverage from there.

7 And just like David would say, my county was
8 in compliance for four years before they would
9 agree to go into the reimbursement system because
10 they knew we're gonna get in it, and they're
11 gonna get that funding there, and we had to show
12 'em period of time it was gonna last. But I
13 really believe --

14 **MS. M. FOSTER:** Well, we know this is doing
15 -- heard that constantly.

16 **MR. J. ABBS:** Yeah. But I think the real
17 strength actually is in the fact that we have
18 both the state and the county -- both have money
19 in this pool. And neither one -- if either one
20 pulls, we've got compliance standards, and it's
21 gonna obligate the other to become involved.

22 As soon as we are fully funded by one group,
23 if somethin' goes wrong we're at their mercy.
24 And -- and I think we all can see and hear in all
25 the Public Defenders what potentially can happen.

1 And that's my real concern about a statewide
2 system.

3 **MS. M. FOSTER:** I just have one other
4 question. What do you start your full-time
5 Public Defenders salary-wise?

6 **MR. J. ABBS:** What do -- what do my --

7 **MS. M. FOSTER:** Yes.

8 **MR. J. ABBS:** -- in Noble County?

9 **MS. M. FOSTER:** Yes.

10 **MR. J. ABBS:** My full-time Public Defenders
11 -- partly based on um, experience -- 'cause we
12 have a matrix -- my two full-time people make
13 over 70,000 and my part-time people make 49,000 a
14 year. Plus, my -- my part-time people are making
15 enough hours that they're considered full-time
16 and they get full benefits.

17 **MS. M. FOSTER:** And, Mr. Schircliff, can --

18 **MR. J. TINDER:** I thought you said one more
19 question. Oh, I...

20 **MS. M. FOSTER:** No. I -- I want to ask
21 Schircliff the same question.

22 **MR. J. TINDER:** Oh, okay.

23 **MR. D. SCHIRCLIFF:** Uh, and the question is
24 what do they start at?

25 **MS. M. FOSTER:** Yeah.

1 **MR. D. SCHIRCLIFF:** About thirty-nine. I --
2 I have three attorneys on staff who don't make
3 \$49,000 and they have a full caseload.

4 **MR. B. HILL:** We start at forty-seven.

5 **MR. J. TINDER:** All right. We're gonna
6 start at my left with Justice Goff. Would you
7 have particular questions?

8 **MR. C. GOFF:** You know -- thank you, Judge
9 Tinder. I'm -- I'm here primarily to listen to
10 -- to the concerns that -- that you have. And,
11 the thing that I would say about not having a
12 voice at the table is I -- I'm really sorry about
13 that. I -- I -- I really am sorry about that
14 because I recognize that there is a problem in
15 getting buy-in from more constituents.

16 The other thing that I -- I really regret
17 about you not having a voice at the table is that
18 had you been -- been at some of these meetings, I
19 think that you would feel better about the
20 discussions that have been had to date.

21 The -- the concept that we -- we -- we kept
22 talking about at our prior meetings was building
23 on Indiana's good bones. That -- that -- that
24 was a recurring theme. And what I think that the
25 goal of the task force has been is to primarily

1 listen to the stakeholders to collaborate and
2 come up with a workable means to improve upon
3 those bare bones.

4 I -- I don't have a crystal ball, obviously,
5 and I -- I can't speak for the entire court, but
6 that -- that is what we're concerned with is
7 we're -- we're concerned about practical
8 solutions.

9 Lots of -- lots of discussions about the
10 very same things that you all have voiced
11 concerns about. And so I -- I would, rather than
12 pose a question, just let you know that I -- I
13 greatly appreciate what you do. I speak for the
14 Chief Justice in that regard as well.

15 And we're committed to making your job
16 easier and improving upon those things that
17 you've already seen. (Indiscernible) earlier so
18 I just want to say thank you.

19 **MS. M. FOSTER:** Judge Tinder asked me to
20 keep things moving. So I wanted to ask if you
21 have any questions?

22 **MR. S. LUCE:** Yeah. Steve Luce with the
23 Indiana Sheriffs' Association. First of all, I
24 feel your pain when talking about the local
25 struggles you have. Being a two-term sheriff and

1 not being able to keep qualified people because
2 the pays are so low.

3 And -- and then being a elected sheriff and
4 having to deal with the inmates, it was kinda
5 like being in the military; if you get your lunch
6 and meals on time, and your mail, you're great.
7 But in the jail, if you can get those two things
8 and your Public Defender to work and show up,
9 that's a huge control thing for the sheriff's job
10 (indiscernible) and how people are inside when
11 they're away from their families.

12 I -- I have look at the -- the
13 recommendations and I like a lot of 'em. Um,
14 I've definitely, since I've come on this, I have
15 always wondered why everybody Commissioned to
16 count them yet today.

17 Indiana has gone into a justice reinvestment
18 (indiscernible), and to me, I thought this is
19 actually part of Channel 6 too; it's a whole
20 process I've been tryin' to figure out. And if
21 you don't get it right, we're gonna pay them
22 dearly down the road five, ten years from now.

23 And, along with that comes recruitment of
24 people -- of good people paying them good
25 benefits. So I totally will get what you're

1 saying.

2 Um, I kinda -- it's a new role me being here
3 -- but I do have experience, and I can tell them
4 what goes on at the local level. And there's a
5 lot of pain there. And -- and what I see here is
6 -- and, it's the same thing you have with the
7 JRAC Committee that was committed -- that was
8 created through legislation a few years ago -- we
9 have state and local partnership.

10 And, the sheriff's offenders they have in
11 jail, some of them are gonna be state offenders,
12 so how can we partner together to make sure they
13 have a successful incarceration? I see that as
14 the same kind of concept you're talking about is
15 needing each other.

16 So I appreciate the time and listening. At
17 any time we will take questions or anything, or
18 comments. Feel free to reach out to me, and I
19 appreciate the opportunity to talk.

20 **MR. J. SCHUMM:** A couple of things. First
21 of all, the public defense -- the county Public
22 Defender boards -- does everyone love your county
23 Public Defender board? Does everyone think that
24 these are three people that are incredible
25 knowledgeable and vested in public defense in

1 your counties?

2 **MR. N. WEISMAN:** I think it varies in the
3 county you govern.

4 **MR. J. SCHUMM:** Okay.

5 **RESPONDENT:** Okay. 'Cause I see that as one
6 of the recommendations, and I've had the
7 impression that that's not necessarily a great
8 thing everywhere, but that's something that's one
9 of the recommendations is there...

10 **MR. J. ABBS:** I guess in general -- can you
11 speak (indiscernible) --

12 *(Several people speaking over each other.)*

13 **RESPONDENT:** In -- in general, I think we
14 can.

15 **MR. J. ABBS:** Again, I'm gonna tell 'ya,
16 I've -- I've got a -- I've got a board that's
17 invested, okay?

18 **RESPONDENT:** Okay.

19 **MR. J. ABBS:** We've -- we've -- we've done a
20 lot of work, and it's not an easy -- part of the
21 problem is is going out and getting individuals
22 that truly care about Public Defender service.
23 And we recognize that's a hard thing to do from
24 there.

25 The one thing I hear from the chiefs -- and

1 I -- and we've got other here they can speak to
2 -- is a concern that two of these board members
3 are appointed by the Judges, and one by the
4 Commission.

5 There are Judges out there (indiscernible)
6 that want to still control things. And that's a
7 major problem for us when the appointment process
8 of who these members are. I'm -- I'm fortunate
9 --

10 **MR. J. TINDER:** And -- and wouldn't --
11 wouldn't there be some separation if -- if it
12 were done on more of a regional basis so that an
13 individual Judge would not have so much
14 influence?

15 **MR. J. ABBS:** It -- it -- it really -- it
16 really comes down to the actual point, if we
17 could have an appointment process that did not
18 involve the Judges which is gonna be a hard
19 process -- I don't have a complete answer for
20 that -- that's where the problem -- because those
21 people feel -- and sometimes it did to the
22 Judges.

23 I'm in the process -- my Judge would say go
24 find these people, and then I've gotta bring 'em
25 back for their approval, and -- and, I think that

1 intervenes in that process 'cause they're not
2 trying to dictate who these individuals are, and
3 they're not trying to control what's being done.

4 It's somehow maintaining the independence of
5 the board. It's -- it's a hard process to do.
6 We -- it's -- it's -- I think there's individuals
7 in all of the counties that we could do it. It's
8 a matter of the selection process, truthfully.

9 **MR. B. HILL:** Well, I would like to say -- I
10 -- I think the Commission may hold the key to
11 this because the Commission approves county plans
12 for -- for the board.

13 My board is made up of a -- the equal number
14 of appointments by republican and democrat
15 Judges, equal number of appointments by
16 republican and democrat City County Councilors,
17 and then one appointment by the mayor.

18 And, I think I have a very supportive board.
19 There have been some people in there occasionally
20 that weren't, but, for the most part, it's been
21 very supportive. But I think the Commission
22 could -- they have to approve every county's plan
23 as they come in.

24 If we're gonna have a three -- a -- a
25 three-person board, the Commission can change the

1 rules of appointment if they don't want to
2 approve that. They could say that the Judges
3 shouldn't appoint the majority of the members,
4 but it should be dispersed amongst other
5 entities.

6 **MR. J. TINDER:** That's not -- is that
7 statutory?

8 **MR. L. LANDIS:** It's statutory. The
9 Commission doesn't have the power to change the
10 composition without statute.

11 **MR. B. HILL:** I thought you had to approve
12 the plans.

13 **MR. L. LANDIS:** They do, but the -- the
14 composition of the board itself --

15 **MR. B. HILL:** Well, then that -- I think
16 that should be addressed then. Because I do
17 think the Commission needs to have the ability to
18 address that issue.

19 I think a lot of the boards though are gonna
20 provide a valuable function, if done properly, of
21 a buffer between Judges and the Public Defender.

22 **MR. N. WEISMAN:** Yeah. I would -- would say
23 in terms of --

24 **MR. J. TINDER:** Weisman.

25 **MR. N. WEISMAN:** -- the boards, um, like in

1 our board we have -- at least of one of our
2 members is appointed by the uh, -- uh, county
3 council. That member's very vested in our
4 program, and acts as our conduit back to the
5 county when we need something. So -- and those
6 types of things are important.

7 The one thing I have noticed, and -- and I
8 think that (indiscernible) 'cause I've -- I've --
9 I've worked with a other board out -- outside of
10 this -- is that there's no -- and this maybe
11 comes from -- each come from the Commission to be
12 done without any change -- but there needs to be
13 some training of these boards and how to be
14 working there.

15 Because they're just put on a board, and,
16 pretty much, they come to a meeting and listen to
17 the Chief report what's going on for the -- uh,
18 for the -- for the quarter, and that's pretty
19 much it unless we need something. So maybe there
20 needs to be some -- some kind of standards and --
21 and things that -- what the board's suppose to
22 do, and how they're suppose to do it.

23 **MR. S. LUCE:** Could you write their -- or
24 maybe 40 hours could be standard on the board for
25 training and education?

1 **RESPONDENT:** Minimal. (Indiscernible.)

2 *(Several unidentified speakers speaking*
3 *among themselves.)*

4 **MR. J. TINDER:** Chris -- Chris Shema, Vigo
5 County?

6 **MR. C. SHEMA:** Yes.

7 **MR. J. TINDER:** Or is it Veego (phonetic)?
8 I used to ask -- I used to ask juries over there.

9 **MR. C. SHEMA:** I was -- and I -- I was only
10 about 6'6". I only -- when I first moved there
11 -- when I pronounced it Vigo that the person that
12 it was named after pronounced it Veego (phonetic)
13 --

14 **MR. J. TINDER:** Sure.

15 **MR. C. SHEMA:** -- and I said the poor man
16 didn't even know how to pronounce his own name.
17 So Vigo is the preferred pronunciation for those
18 who are from there.

19 Thank you, first of all, for being here. I
20 tell you, just briefly, I've been doin' indigent
21 defense for 28 years of my 30-year career.

22 Some of it I had the privilege of -- of
23 appearing in front of Your Honor. I don't know
24 Monica personally, but we've had a few arguments
25 on the defendant. And I think she said she was

1 gonna rip my head off and use it as a -- a --

2 **MR. J. TINDER:** Uh, -- uh, --

3 **MR. C. SHEMA:** -- a device.

4 **MR. J. TINDER:** Well, that's actually kind
5 of a compliment. Usually, she threatens to pull
6 your heart out --

7 **MR. C. SHEMA:** Yeah.

8 **MR. J. TINDER:** -- and then she goes lower.

9 **MR. C. SHEMA:** But then, in fairness, when
10 she was on the cover of Lawyer Mag -- Indiana
11 Lawyer magazine, I called her up to ask for a
12 recommendation for an investigator, but I told
13 her it was really a ruse; that I had fallen in
14 love with her and wanted her to run away with me.

15 But, I'm like everybody that's a Public in
16 here; I'm at a loss. Um, I'm the rank and file
17 Public Defender. I'm blessed that I have a
18 wonderful boss who lets me do my job that's
19 sitting right next to me.

20 But, I think Professor Schumm brings up a
21 point and it -- it gets to a bigger point which
22 is professional independence. And, I'm not gonna
23 belabor the issue of none of us being at the --
24 at the adults' table. But I will tell you that
25 if it -- if practicing law has taught me

1 anything, it's that everybody's perception's a
2 run in reality.

3 And the perception of the rank and file
4 Public Defenders out there is -- it is a travesty
5 that this is a task force that's being put
6 together to study something, or we don't have a
7 voice at the table.

8 And I'm not gonna belabor the point --

9 **MR. J. TINDER:** You're -- you're -- you're
10 --

11 **MR. C. SHEMA:** -- 'cause you made it well --

12 **MR. J. TINDER:** -- you're not going to, but
13 you do and you continue here -- and I -- and I've
14 --

15 **MR. C. SHEMA:** Right.

16 **MR. J. TINDER:** -- told you this that we
17 have heard your complaints. We are not
18 self-selected, and you do us a disservice to
19 suggest that we don't have good faith and
20 integrity. And we don't --

21 **MR. C. SHEMA:** Oh, I don't mean that.

22 **MR. J. TINDER:** -- I -- I did not walk out
23 off the golf --

24 **MR. C. SHEMA:** Right.

25 **MR. J. TINDER:** -- course and the fun

1 travels I get to take --

2 **MR. C. SHEMA:** And -- and that -- that --

3 **MR. J. TINDER:** -- to do this --

4 **MR. C. SHEMA:** -- wasn't --

5 **MR. J. TINDER:** -- because I -- I did --

6 **MR. C. SHEMA:** Right.

7 **MR. J. TINDER:** -- not care about the
8 defense --

9 **MR. C. SHEMA:** Right.

10 **MR. J. TINDER:** -- bar.

11 **MR. C. SHEMA:** And --

12 **MR. J. TINDER:** I did not care about uh,
13 effective representation. Yes, point made.
14 Can't we move to substance? We --

15 **MR. C. SHEMA:** Yes, sir.

16 **MR. J. TINDER:** -- understand.

17 **MR. C. SHEMA:** Yes, sir. And, the point
18 being that many of these men and woman who do
19 this work feel embattled. They -- they practice
20 in a state of fear.

21 I think one thing we didn't discuss that the
22 board decided is we need to get rid of -- is the
23 counties -- particularly the ones who seem to be
24 noncompliance, but even some who are in
25 compliance -- use flat-fee contracts where

1 they'll say, we'll pay you 'X' amount of dollars
2 -- \$20,000 -- and you handle whatever cases we
3 throw your way.

4 The next thing, they're handling CHINS,
5 they're handling juvenile cases, and they -- they
6 are answerable to the Judge. And that is just
7 not a situation conducive to effective assistance
8 of counsel, certainly in the long-run, and
9 probably not in the short, but they feel
10 embattled.

11 And, I certainly didn't mean to impugn, but
12 what I would invite you to do, Your Honor, is
13 take a very proactive approach to correct the
14 misperception; can I say it that way, okay?

15 Because, again, there is a perception that
16 has to be addressed. Because the men and women
17 who do this stuff -- I mean here's the things
18 that people say to me as a board member who's not
19 a boss -- it's like, "Why is it in my county
20 police officers have merit board protection that
21 insulates them, to some degree, from the vagaries
22 and the ebb and flow of politics?" "Why is it
23 that firefighters have merit board protection and
24 we don't?"

25 And, you know, managers have their concerns,

1 but they're still thinking from the perspective
2 of management. And sometimes you're in a
3 situation where they're not -- some of these
4 people aren't blessed with as good a boss as I
5 have.

6 Sometimes the pressure is this is how the
7 Judge wants things done. Quit asking for
8 experts. Quit doing so many depositions. We
9 have a budget to work with. Get on with it.

10 And until that is addressed, I don't care
11 what kind of over -- overarching system you have,
12 you're going to have people who are just
13 embattled. And they -- it's -- uh, when I'm just
14 working in the field is dealing with battered
15 women, I heard this term called 'learntellicense'
16 (phonetic), and I have seen it in the eyes of all
17 too many Public Defenders where they just feel
18 like it's not worth fighting anymore 'cause it
19 doesn't -- it doesn't matter, and they have no
20 voice; there is no (indiscernible).

21 There is no independent person they can go
22 to and say, "I feel like I've been punished for
23 doing my job." Everybody expects to be
24 reprimanded when they mess up. But when you feel
25 like you've been punished for actually doing the

1 job that you've entrusted to do, that's a
2 problem.

3 And I don't hear -- and we -- we really
4 never address that. And I think that's somethin'
5 that this task force is uniquely situated to do.

6 **MR. J. TINDER:** Yeah. Which certainly stays
7 within the point addressed by Professor Schumm;
8 in (indiscernible) is a critical aspect of
9 defense motion. Did you have other areas --

10 **MR. J. SCHUMM:** We're -- right -- I'm not --
11 not gonna come back to it. I did request about
12 appeals, but I'll pass for now.

13 **MR. J. TINDER:** All right. Monica?

14 **MS. M. FOSTER:** No; I have nothing else.

15 **MR. J. TINDER:** Jeff?

16 **MR. J. PAPA:** Yeah. Just really quickly;
17 two things. Since I'm working with the CHINS and
18 TPR Committee, I was really glad to hear all of
19 the discussion about that, and I would love to
20 hear more input from you or meet with anybody
21 individually to get -- to find out what the ideas
22 there are on that as (indiscernible).

23 And then, secondly, just in general,
24 everybody or almost everybody that talked, there
25 were suggestions that -- many of them revolved

1 around either more funding, or maybe mandatory
2 requirements which could indirectly lead to the
3 need for more funding at the county level.

4 So other than just saying more funding, are
5 there -- because we've -- we've talked about this
6 issue too. So are there suggestions for where
7 that comes from? I mean is -- is there a source
8 out there of... I mean it's eas -- it's easy to
9 say increase funding which -- which we say too,
10 but -- but you -- at the end of the -- at the end
11 of the day, those dollars have to come from
12 somewhere so has -- has there been discussion
13 about that?

14 **MR. N. WEISMAN:** I -- I think the thing that
15 -- that stabilize the -- the reimbursement -- did
16 they increase the court costs and -- and that
17 funnels into the PD Reimbursement Fund?

18 **MR. J. PAPA:** Well, but -- so you're saying
19 increase that further?

20 **MR. N. WEISMAN:** Well, there's -- there's
21 gotta be some way to get the funds, and I
22 understand that. Our position is we don't
23 essentially know. But I think where funds can
24 come -- a source like that where it's not really
25 felt good -- good work. But, I -- I think the --

1 the thing from the conference standpoint is that
2 standards are mandatory and enough funding to do
3 the job. I mean that's what we hear.

4 **MR. J. PAPA:** Well, no -- right. And -- and
5 -- and I'm not -- I'm not arguing to you.

6 **MR. N. WEISMAN:** Yeah.

7 **MR. J. PAPA:** I'm just saying so at the end
8 of the day if we have to go to the legislature
9 and say here are the changes we want, I was -- I
10 was -- probably nobody here know -- I was the
11 Chief of Staff for the -- for the Senate for ten
12 years. So I'm just saying from that perspective,
13 to me, our first question would have been, okay,
14 how are we gonna pay for this?

15 And so just to say with this thing -- just
16 put a line out in the budget is not probably
17 going to be very popular and -- across the
18 street.

19 **MR. N. WEISMAN:** Right.

20 **MR. J. PAPA:** So...

21 **MR. B. HILL:** Well, I mean you're right.
22 And that's -- that is the problem. It's -- and
23 so I think the really valuable thing about this
24 committee that you're on is you're -- I think you
25 want to draw focus to these issues. And -- and

1 -- and, you know, system change is fine, but if
2 you don't have change in attitude, a system
3 change isn't gonna mean anything. And the
4 attitude has to change that this is an important
5 governmental function to fund.

6 And that -- and -- and -- and, I think -- I
7 don't know how you get people who don't want to
8 fund defense to the point where they would fund
9 defense. I don't know. We just have to keep
10 making the case, I suppose.

11 And, hopefully, the luminaries on this board
12 would be able to make that case for us, or help
13 us make that case and -- and underscore the need
14 that -- that we have to -- to increase
15 reimbursement -- to mandate that all counties get
16 involved in the system.

17 **MR. J. TINDER:** You know this -- this
18 touches back a little bit on something I want to
19 raise. You mentioned earlier the lonely feeling
20 the PD has when it goes to county council --

21 **MR. B. HILL:** Right.

22 **MR. J. TINDER:** -- for an increase. Within
23 the federal system the champions for defense
24 lawyers are the Judges. And there's a little bit
25 of friction going on right now with respect to

1 whether the -- the PD system want -- will become
2 independent from the Judges, but, --

3 **MR. B. HILL:** Um-huh.

4 **MR. J. TINDER:** -- historically, it's the
5 Judges that really made a difference. Why isn't
6 that happening with the PD budgets?

7 **MR. B. HILL:** I can't address --

8 **RESPONDENT:** Our -- our Judges aren't
9 life-time (indiscernible).

10 **RESPONDENT:** There you go. There you go.

11 **MR. B. HILL:** And -- and I can't address
12 other counties. I can talk about Marion County,
13 but you'll get Judges say a standard response,
14 yeah, but that's gotta be a case you make. And
15 I'm trying to make the case.

16 Well, that ultimately, yeah, I'm here, and
17 I'm funded, and I've gotta ensure that we have
18 adequate defense, but, ultimately and legally,
19 it's on you, Judge. It's on you if -- if this
20 case isn't adequately defended, or adequately
21 funded.

22 And -- but there's been just a political
23 reluctance to have Judges champion that cause for
24 us.

25 **MR. J. TINDER:** Okay.

1 **MR. B. HILL:** It's been a 'we' versus 'they'
2 competing for the limited county money.

3 **MR. J. TINDER:** And -- and I will confess,
4 there -- there are some of my brothers and
5 sisters out there in federal judiciary who do try
6 to reduce the deficit on the backs of -- of -- of
7 criminal defense.

8 Be -- be that as it may, the -- the -- the
9 majority of Judges are great champions in the
10 federal system. Right. Probably finish.

11 And, by the way, we're gonna have to take a
12 break here shortly for our able court reporter,
13 Miss Averitte. But, so within about five minutes
14 we're going to be taking a break.

15 I'm willing to stay as long as anybody wants
16 to stay, but we were committed to two hours, and
17 I -- so we're definitely going to give her a
18 break.

19 **MR. N. WEISMAN:** Can I just --

20 **MR. J. TINDER:** Sure.

21 **MR. J. PAPA:** -- I want to touch...

22 **MR. J. TINDER:** Yeah.

23 **MR. J. PAPA:** Just -- again, I'm not being
24 critical, but nobody answered my question, and I
25 don't have an answer for it either. I'm on board

1 with advocating, but, at the end of the day when
2 you meet with the legislators you're still going
3 to have to say here's -- or, you know, or -- or,
4 you know, put it on them, but, I -- I don't think
5 it's likely to say we're going to get a giant new
6 general fund appropriation just out -- out --

7 **MR. B. HILL:** I agree --

8 **MR. J. PAPA:** -- of general fund.

9 **MR. B. HILL:** -- with you one hundred
10 percent.

11 **MR. J. PAPA:** Okay. So --

12 **MR. B. HILL:** I think this is like erosion;
13 it's drop by drop. I think that's what's going
14 to happen here. Larry's been asking for increase
15 -- for Public Defender Commission monies, I
16 think, every year when there's a -- a -- a --
17 that I can remember being on your board for 20
18 years now.

19 And, you know, it -- it just comes in drips
20 and drabs. And -- and that's my point about
21 attitude. The attitude is this is not number
22 one. It needs to go up, maybe, from zero to 50.
23 I'm -- that's my opinion.

24 **MR. J. ABBS:** And -- and -- and I think
25 you're absolutely -- I -- I -- and one of the

1 concerns I see is they're projecting state
2 revenue's gonna be down for the next ten years.
3 And now we're going in and asking for money --
4 for more money, and I think it's gonna be a much
5 more difficult process from them unless we can
6 find a funding source.

7 And that's part of the reason. I think we
8 have to look -- really big picture -- we're not
9 gonna go in next year and make major, major
10 changes from there. It's gotta be a step-by-step
11 process. And I think, we as a group, understand
12 that this is not going to be happening overnight.

13 And that's why we -- like what we say, we --
14 we want to get, at least, we need in that
15 direction. And I don't have the answer where the
16 funding source is from there.

17 I know this much -- and it's -- it's one
18 concern is CHINS has really been a big issue.
19 And, from my standpoint, I always get concerned
20 all focus is gonna go that direction; all the
21 funding's going that way.

22 And we have all of these other issues that
23 we as defense attorneys have to deal with -- that
24 we're gonna get lost. That's know about --
25 that's dealing with children. That is a solid

1 issue for everyone to deal with from a political
2 standpoint, regretfully.

3 That I -- and I'm gonna say that. And
4 they're not gonna pull it back, and I think we
5 all understand that, but our concern is is that
6 ultimate focus goes all in that direction.

7 **MR. J. PAPA:** Just -- my last -- my last --
8 no, and just real quick for context; it's not
9 just declining or -- or flat with the news -- but
10 they agreed last year to move the remaining
11 portions of the sales tax on gas over to funding
12 transportation from the general funds.

13 Said an existing pie is get -- gonna get
14 smaller over the next four years.

15 **MR. J. TINDER:** Let's give Miss Averitte ten
16 minutes?

17 **COURT REPORTER:** Sure. I'm okay, Judge.

18 **MR. J. TINDER:** Let's just take -- we'll
19 take a -- we'll take a ten-minute break, and if
20 you can stay, great; if you can't, I'll
21 understand. But, do keep the cards, letters, and
22 phone calls coming.

23 We -- we talked about having maybe a
24 (indiscernible) support. Kim and Kay are
25 definitely available to talk anytime. I am as

1 well, you know. Our -- our ears are open. So
2 ten minutes.

3 *(A short break was taken.)*

4 **COURT REPORTER:** Yes, sir. We're on.

5 **MR. J. TINDER:** Okay. All right. That was
6 ten minutes by my watch. So real quickly. On
7 the front in here. I want to make sure you're
8 all aware of our listening tour that I referred
9 to earlier. And, Katie, if you could kind of
10 give us what the dates are and where they're
11 going to be.

12 **MS. K. CASEY:** Sure. We have listening
13 tours scheduled. The format's going to be very
14 similar to this; kind of an open format.

15 **MR. J. TINDER:** And, by the way, this is
16 Kathleen Casey for the...

17 **MS. K. CASEY:** Thank you. Just -- I'll just
18 go ahead and give you the dates. They're all
19 available at in.gov/publicdefender -- in case you
20 aren't -- you'll want to write these down.
21 February 9th will be our Indianapolis listening
22 tour from 2:30 to 4:30 here at the Government
23 Center.

24 February 15th, we'll be in Ft. Wayne.
25 That's gonna be an evening event from 5:30 to

1 7:00.

2 **RESPONDENT:** Can I just say that we register
3 for that? The registration says 5:00 to 7:30.
4 So there's some confusion --

5 **MS. K. CASEY:** Thank you. I'll have that
6 fixed.

7 **RESPONDENT:** -- yeah -- about the start time
8 there.

9 **MS. K. CASEY:** Thank you very much. And
10 that's actually a great point. We're -- you're
11 able to register through Eventbrite. It's just
12 is the next way to give you a reminder email, and
13 then we know how many folks are -- will be there.

14 March 20th is Evansville. March 22nd we'll
15 be down in Clark County at the Purdue extension
16 office. And then at the end of the month,
17 March 27th, we'll be up at Valparaiso Law School.
18 So I --

19 **MR. J. TINDER:** And the format will be very
20 similar to this; an -- an open forum for any
21 other comments anyone would like to make. And,
22 all --

23 **RESPONDENT:** Can I just ask? They're gonna
24 -- and we've all received an email that says that
25 -- is that gonna be published locally like would

1 -- will my newspaper get it?

2 **MS. K. CASEY:** Sure. Yeah.

3 **RESPONDENT:** Should I forward that to -- for
4 the newspaper or?

5 **MR. J. TINDER:** We -- we'd have a fresh --

6 **MS. K. CASEY:** All of you just spread the
7 word.

8 **RESPONDENT:** Okay.

9 **MR. J. TINDER:** Yeah. We've put out a press
10 release.

11 **MS. K. CASEY:** Yeah.

12 **MR. J. TINDER:** I've already seen it in the
13 Indiana Lawyer and it's been --

14 **RESPONDENT:** Okay.

15 **MR. J. TINDER:** -- handled. We have a media
16 list.

17 **MS. K. CASEY:** Yes.

18 **RESPONDENT:** What newspaper has picked it
19 up?

20 **MS. K. CASEY:** Oh, --

21 **MR. J. TINDER:** We've -- we've toyed with
22 the idea of placing an add, but money is tight on
23 our end as well so...

24 **RESPONDENT:** I mean feel free to send it up
25 with (indiscernible).

1 **MS. K. CASEY:** Okay.

2 **MR. N. WEISMAN:** Yeah, yeah. And what's the
3 Valpo date?

4 **MR. J. TINDER:** Let -- let --

5 **MS. K. CASEY:** Valparaiso?

6 **MR. J. TINDER:** Valpo is --

7 **MS. K. CASEY:** It's March 27th --

8 **MR. N. WEISMAN:** Okay.

9 **MS. K. CASEY:** -- in Valpo.

10 **MR. J. TINDER:** Plus, the upcoming task
11 force meetings are going to be on April -- or I'm
12 sorry -- February 9th, 10:00 to noon, April 20th,
13 I've got 1:00 to 3:00 o'clock. May 11th, 10:00
14 to noon. July 20th, 10:00 to noon, and
15 August 10th, 10:00 to noon. And they're all at
16 the Public Defender Commission Office, the Fifth
17 Floor of -- I can't remember the name of the
18 building, but it's at 309 West Washington Street?

19 *(Several speakers speaking at the same*
20 *time.)*

21 **MR. J. TINDER:** Old Trails. Okay.

22 **RESPONDENT:** Is the 9th -- is the 9th
23 February 9th?

24 **MR. J. TINDER:** You're all welcome;
25 everyone's welcome to serve at those meetings.

1 And, so we're returning. Jeff, did you have
2 additional questions?

3 **MR. J. PAPA:** No. But we have our next
4 CHINS/TPR committee meeting, it's February 27th,
5 --

6 **RESPONDENT:** Yes.

7 **MR. J. PAPA:** -- at 1:00 p.m. So if
8 anyone's interested in that as well, that's at --
9 at Barnes & Thornburg (indiscernible).

10 **MR. J. TINDER:** And we have two other
11 subcommittees on -- on appellate and
12 postconviction matters; Professor Schumm chairs.
13 And the other subcommittee is --

14 **RESPONDENT:** Juvenile defense. And that's
15 Judge Carmichael chairs.

16 **MR. J. TINDER:** -- Carmichael chairs.
17 (Indiscernible.) Did you have particular
18 questions?

19 **MR. L. LANDIS:** No.

20 **MR. J. TINDER:** Okay. So let me return to a
21 couple of follow-ups I had. Okay. So Bob Hill
22 you -- you talked about the two-fold increase in
23 CHINS affecting your office. Over what time
24 period has that doubling -- doubling occurred?

25 **MR. B. HILL:** When did we go -- four years.

1 **MR. J. TINDER:** Okay.

2 **MR. B. HILL:** Four years. We were required
3 to take it on and then started getting
4 reimbursement. It was four years ago; is that
5 right?

6 **MR. L. LANDIS:** No; I mean the doubling was
7 four years ago.

8 **MR. B. HILL:** Yeah.

9 **MR. L. LANDIS:** Andrea, do you remember when
10 CHINS became --

11 **MR. B. HILL:** When were we first reimbursed?

12 **MS. A. LYON:** Do you mean when they -- oh,
13 when --

14 **MR. J. TINDER:** Right to counsel.

15 **MS. A. LYON:** -- the Commission started
16 reimbursing?

17 **MR. L. LANDIS:** No. When -- when the right
18 to counsel --

19 **MR. B. HILL:** It's always come -- it -- it
20 -- it was a -- it was existent prior to my taking
21 over as Chief; there was the past ten years.

22 **MR. L. LANDIS:** It was your case, wasn't it,
23 that created the right to counsel in CHINS?

24 **MS. A. LYON:** No. I mean that was already
25 --

1 **MR. B. HILL:** Yeah.

2 **MS. A. LYON:** -- and Marion County was
3 already appointing me for that case.

4 **MR. L. LANDIS:** But statewide -- statewide;
5 when did -- when did --

6 **MS. A. LYON:** Um, --

7 **MR. L. LANDIS:** -- CHINS start?

8 **MS. A. LYON:** -- 2014 was my case of...

9 **MR. L. LANDIS:** Pardon?

10 **MR. B. HILL:** And then there -- the
11 reimbursement has been what has kept us
12 consistent with caseloads.

13 **MR. J. TINDER:** So -- so that's -- it's over
14 about a five-year period.

15 **MR. B. HILL:** That reimbursement.

16 **MR. J. TINDER:** Yeah.

17 **MR. N. WEISMAN:** Our -- our cases, four to
18 five years ago we went from two people handling
19 CHINS to four people. And, currently, they are
20 right at the cusp for being out of compliance.

21 **MR. J. TINDER:** All right. And the notion
22 of guidelines for what chiefs should do; have --
23 have those been reduced into a written form, into
24 the --

25 **MR. B. HILL:** We'd --

1 **MR. J. TINDER:** -- talking stage; where are
2 we on it?

3 **MR. B. HILL:** -- we have an out -- I've met
4 with Don Murphy and Public Defender Council and
5 -- and started talking about that. I think it
6 was about a year ago, if I remember correctly.

7 And then a subcommittee of the chiefs
8 started talking about things that -- in outline
9 form -- what a chief should be doing to run the
10 office, and what they have to do as part of
11 day-to-day activities. I could submit -- send
12 that to you what that outline looks like.

13 **MR. J. TINDER:** We'd love to see that.

14 **MR. B. HILL:** Yeah.

15 **MR. J. TINDER:** Love to see that.

16 **MR. B. HILL:** But it's human resources,
17 personnel, training, recruitment, politics, with
18 a small 'P' (indiscernible) and that kinda stuff.

19 **MR. J. TINDER:** So the idea of say,
20 multi-county offices, is there -- is there an
21 ideal or unit size? Looking at Indiana you've --
22 you've got a couple of counties that have very
23 large violations; Marion and Lake, you've got
24 mid-sized; --

25 **MR. B. HILL:** Right.

1 **MR. J. TINDER:** -- perhaps a smaller sized
2 count.

3 **MR. B. HILL:** Right.

4 **MR. J. TINDER:** What -- what's the ideal
5 unit?

6 **MR. B. HILL:** Well, so assuming you would
7 have a localized office; some -- somewhere and
8 one -- a grouping of four county -- one of the
9 problems the lawyers that I referenced earlier
10 that I named specifically like Carolyn Brown and
11 Mosier, when they were in their jobs, they had to
12 drive to multiple jurisdictions.

13 And they talked about how time-consuming
14 that was, and if you're behind the wheel of the
15 car, you're not doing depositions, you're not
16 working with your client, you're not going over
17 your file. And they talk about how
18 time-consuming that is.

19 The think the counties need to be adjacent
20 and -- and in smaller, not larger, groupings to
21 make -- to eliminate that as a -- a -- a
22 detriment to, you know, time-consumption
23 detriment.

24 **MS. M. FOSTER:** But have you thought about
25 what that size would be?

1 **MR. B. HILL:** Four, three.

2 **MS. M. FOSTER:** No; the size of the county
3 that would cause the regional offices at first?

4 **MR. B. HILL:** Oh, I think that's -- should
5 -- I -- I asked Kathleen Casey for data on Public
6 Defender assignments by county. I'm concerned
7 that just sitting here and pulling out of the
8 thin blue sky would be not productive. I think
9 it should be based on the amount of Public
10 Defender assignments in those counties. And I
11 think it should be based on counties that have
12 similar interests in terms of the number of
13 Public Defender assignments.

14 **MR. J. TINDER:** Are you familiar with the re
15 -- the regional -- that was 26 regions of the
16 Supreme Court and judicial conference devised for
17 -- that began with, what, pro bono requirements
18 or what's...

19 **MR. C. GOFF:** That's -- that's slightly
20 different than about 2010 when the white paper or
21 new wave forward came out in the administrative
22 districts where you divide it up into 26
23 counties, and that -- I was just intrigued about
24 your -- your regionalization discussion because
25 that's something that we've -- we've talked about

1 before. And I -- I just -- I really feel as
2 though it has a lot of merit.

3 The -- the practical challenge is that, you
4 know, in those regions on -- or districts are
5 setup, and they're setup for one purpose. I -- I
6 just came from a promise home and court meeting
7 before I came here, and we were talking about
8 very similar concepts, but community mental
9 health providers are oftentimes outside of those
10 regions.

11 And so if you have a drug court, for
12 instance, you're monopolizing all of the
13 community mental health providers counselors.
14 The economy to scale might dictate if you have
15 three or four counties that were trying to get
16 those folks available for a drug court, or
17 regional drug court, or something like that, then
18 the community mental health provider might be
19 more receptive.

20 And what I really liked about the
21 regionalization concept, I came from Wabash
22 County. I -- I was a Public Defender in
23 Huntington County. We weren't participating in
24 state reimbursement in Huntington and so what the
25 court immediately did when it came to Wabash, but

1 it is a challenge when you're a small county
2 trying to piece together resources to make a
3 system come into compliance.

4 If you had -- in -- in Wabash we drew from
5 attorneys from surrounding counties in order to
6 meet the -- the compliance requirements. I would
7 love to be able to do that and offer more
8 educational opportunities, a deeper pool of
9 qualified applicants to serve on, you know, your
10 -- your Commissions so that you would have that
11 insulation that you guys have been talking about.

12 So I'd -- I really -- I really like that
13 idea and it has a great deal of merit and would
14 be very valuable to the smaller counties.

15 **MR. J. ABBS:** And -- and -- and it -- and we
16 have never truly defined what we mean by a small
17 county. And -- and I get back to the home rule
18 thing on that the -- the counties, I -- I just --
19 it was either -- there could be some kickback
20 from just saying, we're gonna form all of these
21 regions.

22 I think we have to have the counties invest
23 in it from there, and try to find a number that
24 dictates the necessity of it, you know.

25 'Cause as soon as you have -- let's just say

1 you put a chief in -- and I'll just use my Judge
2 'cause I've -- I've gone and had discussions with
3 them -- and -- and when I say, well, they're
4 talkin' about regions, the first thing is we want
5 to hear, is there a problem, we want to call you
6 and we want you to be able to respond right away.
7 When we start settin' up these regions, whoever
8 the chief's gonna be has got travel time from
9 (indiscernible).

10 Now, let me say, I -- I think there's some
11 counties that are just so small it's gonna
12 dictate that's going to happen from there.

13 **MR. N. WEISMAN:** 'Cause we already -- we
14 already have some counties that are pulling
15 Public Defenders from two, three counties away.

16 **MR. C. GOFF:** Well, you know, as -- as I sit
17 here, one of the things that I thought about a
18 lot was I -- I was more hands-on than I wanted to
19 be just because I had to be to make sure we were
20 in compliance. And I -- I -- I took down these
21 are the appointments and my court reporter knew
22 we were coming out.

23 But one of the things that dictated for us
24 -- and I think would be important to this
25 discussion is -- you're gonna have a known number

1 of attorneys who are willing to participate and
2 you're gonna pretty quickly know whether or not
3 you're gonna have to get outside of your county.

4 And it -- it should be adjacent, as you've
5 talked about, or time constraints, being
6 courteous to the sheriff, and figuring out when
7 we're gonna serve the meals. But that -- that
8 would -- I -- I think you're not gonna know until
9 you look at what the need is.

10 What -- and -- and we do have those numbers.
11 I mean we know what the -- what the case --
12 whether it's ours, and -- and whatever attorney
13 that's being reimbursed -- what to get -- get it
14 rolling, you know, 12 -- 12 months on.

15 So I -- I -- I think that it would -- the --
16 the answer to that is gonna be very -- it -- it's
17 gonna be data-driven. I -- I mean I really think
18 that it would have to be data-driven.

19 **MR. B. HILL:** All right. Great.

20 **MR. L. LANDIS:** Um, just --

21 **MR. J. TINDER:** Go ahead. Go ahead.

22 **MR. L. LANDIS:** -- do you -- do you have a
23 list, and I'll give it to the -- to the members
24 of the task force, but it's about 20 -- 30
25 counties that have a total indigent caseload of

1 under 400. And that -- half of those are at
2 least misdemeanors --

3 **MR. J. TINDER:** Those are -- those are
4 law-abiding counties.

5 **MR. L. LANDIS:** -- so... You've -- you've
6 got -- you've got counties that -- that barely
7 enough of a caseload for one full-time attorney.
8 So I mean that's why, you know, having a chief in
9 every county doesn't make a lot of sense.

10 But, -- but these counties would be ideal
11 for the -- for the region because they also don't
12 have any support services. So a regional office
13 can provide you social workers, and -- and
14 investigators to be assigned on a case-by-case
15 basis where the counties of, you know, that 30
16 county populations they're never gonna have
17 support staff in that Public Defender system.

18 But, a regional system would enable those
19 support services to be provided --

20 **MR. B. HILL:** I think that's --

21 **MR. L. LANDIS:** -- and that's critical, I
22 think, quality.

23 **MR. B. HILL:** Another number as Ruth points
24 out that needs to be added to that is the
25 TPR/CHINS numbers in those counties where -- that

1 the Public Defender has to likewise defend those.

2 *(A cell phone rings into the record.)*

3 **MR. J. TINDER:** Oh, I -- I wish I had the
4 contempt power back. So -- so, you know, and I'm
5 -- I'm very intrigued by this -- this whole idea
6 of criminal defense lawyers being thrown into
7 CHINS/TPR proceedings simply because they're the
8 Judge's Public Defender and defense is needed.

9 I don't know that the person who is drawn to
10 criminal defense necessarily has the kinds of
11 traits and characteristics that you want to see
12 in a -- a TPR/CHINS lawyer. I don't know. What
13 do you think about that?

14 **MR. C. SHEMA:** It's just a different animal,
15 Judge.

16 **MR. D. SCHIRCLIFF:** Right. And you have
17 good sense --

18 **MR. J. TINDER:** And good lawyers are -- you
19 can -- can adapt to -- to anything.

20 **MR. C. SHEMA:** Right.

21 **MR. J. TINDER:** But, I mean when you're
22 drawn in certain directions, it's tou -- it's
23 really tough to make that change.

24 **MR. N. WEISMAN:** But, when -- when -- when
25 they -- we started to get that big increase in --

1 in cases in St. Jo, I switched off for a very
2 short of time about a year -- a little over a
3 year and did nothing but CHINS, and it was a
4 totally different animal. It -- it borders on
5 the family law issues, which most of us as
6 criminal lawyers often don't get involved in.

7 **MR. J. TINDER:** And the goal --

8 **MR. N. WEISMAN:** And it's out of our field.

9 **MR. J. TINDER:** -- the goal of a CHINS
10 proceeding may be quite different --

11 **MR. N. WEISMAN:** Right.

12 **MR. J. TINDER:** -- than a criminal
13 proceeding may be -- a proceeding and what have
14 you. And you think about your training, keeping
15 current; you know, if you have -- if you have to
16 read in four areas; if you have to go to four
17 different types of CLE programs; it -- it really
18 is a pretty big demand.

19 **MR. C. SHEMA:** And -- and so are the
20 appellate attorneys because the appellate
21 attorneys, they're -- most of the best appellate
22 attorneys in the state don't want to do CHINS
23 appeals anymore because they're so complex. Is
24 Ruth -- am I speaking out of turn, or am I
25 correct?

1 They're so complex you have, you know, all
2 of these findings of fact that the appellate
3 attorney has to go and review the record, and all
4 of these findings -- well, you know, it's just
5 much more complex to do a CHINS/TPR appeal than
6 it is a criminal appeal.

7 **MS. R. JOHNSON:** Well, for -- and for one
8 thing, you cannot get an extension in a TPR, and
9 so whatever else you have going on, you have to
10 make that, you know, a drop-dead deadline. And,
11 just for numbers sake, in 2011 we had 24
12 TPR/CHINS appeals. Last year we did 47, and this
13 month alone, I assigned 12 TPR cases to attorneys
14 to be briefed; 12 in -- in January so you
15 multiply that by the rest of the year, we're
16 gonna be having a lot of TPR/CHINS appeals this
17 year. So our numbers of TPR/CHINS appeals are
18 skyrocketing as well.

19 The thing about those cases is the clerk's
20 portions are often very large and dense. There
21 is always service provider reports and
22 single-spaced reports that you have to read
23 through. So, yes, that can be extremely
24 time-consuming with a very short deadline, and
25 you kinda have to move everything off -- else off

1 your calendar to make sure you file your brief on
2 time.

3 **MR. J. TINDER:** And, I hear a lot of
4 pushback against the idea of a -- say a statewide
5 trial level Public Defender system. Are there
6 parts of -- of the areas that -- that might be
7 suited to that like CHINS/TPR, or like the
8 appellate function, or are there -- are there --
9 are there pieces that -- that could function that
10 are -- as a statewide system than they do as a
11 home rule bottom up system?

12 **MR. J. ABBS:** I -- I think no doubt and --
13 and recognizing that we do have two counties in
14 Lake and Marion County that have excellent --
15 excellent Appellate Division so I wouldn't want
16 to do away with those.

17 But, for most level we -- everything goes
18 out of our office appeals-wide, conflict reasons
19 and otherwise; we just don't handle any of them.
20 So I think most of the other counties would have
21 no objection to that from there.

22 I -- I still think, though, that those
23 counties that have, and that are operating
24 offices -- and that was one other point I made is
25 -- they've got an office out there they're

1 operating and doing the job they're doing because
2 they're doing great things in Marion County.
3 They're doing solid things up in Lake, and we
4 should remain those -- allow them to remain in
5 effect for just reimbursement money.

6 **MR. N. WEISMAN:** Well, I think --

7 **MR. J. ABBS:** So --

8 **MR. N. WEISMAN:** -- and keep in mind, I
9 think the -- with the appellate being -- and Ruth
10 brought up, is that if there is some sort of a
11 statewide appellate operation, it should be
12 designed so that there are certain people
13 developed with certain counties or certain
14 regions so they could develop a relationship with
15 the trial attorneys 'cause that seems to -- to --

16 **MR. J. TINDER:** Yeah.

17 **MR. N. WEISMAN:** -- to work over just random
18 people comin' in to do appeals.

19 **MR. J. TINDER:** And Ruth -- Ruth made that
20 --

21 **MR. N. WEISMAN:** Right.

22 **MR. J. TINDER:** -- point that the -- it --
23 it doesn't start -- it -- it's not just -- they
24 used to refer trial Judges -- as -- as a federal
25 trial Judge, I always referred to appellate

1 Judges that hid up in the hills until the battle
2 was over, then they went down and shot the
3 wounded.

4 Appellate -- the appellate lawyers' utility
5 is -- is great even at the start end of a case,
6 and so I get that. But it -- what a great
7 resource that would be for someone in say, Noble
8 County to be able to reach out to an appellate
9 lawyer just when that case comes into the office
10 to kind of focus on issues at that point.

11 Is there a harm to existing appellate
12 sections like in -- in Lake County and Marion
13 County if -- if a statewide system is devised
14 that does allow the -- it retains the ability to
15 have interaction at -- at the trial level?

16 **MS. R. JOHNSON:** It's -- no; as long as it
17 wouldn't dismantle what we have in place, and
18 even better funding flowed to us.

19 **MR. J. TINDER:** Direct -- directly so you --

20 **MS. R. JOHNSON:** Well, what --

21 **MR. J. TINDER:** -- don't have to screened
22 off by Bob Hill.

23 **MR. B. HILL:** Right.

24 **MR. N. WEISMAN:** And here's -- Marion could
25 be used as a model for developing a statewide

1 system. You've got a good handle on your -- on
2 --

3 **MS. M. FOSTER:** What about Juvenile? Would
4 Juvenile be something that could be a statewide
5 system with regional offices in a...

6 **MR. B. HILL:** I think it's the same issue as
7 -- as the appellate. And we -- and -- and you're
8 more versed in this -- I'm not certain that
9 there's an a -- really a Juv -- well, there is in
10 Lake County, a Ju -- but there is one in Marion
11 County -- a Juvenile Division where that's all
12 our lawyers do in that division at least.

13 **MS. M. FOSTER:** What, and you guys keep a
14 report, but then out in the hinter rants they --

15 **MR. B. HILL:** I know.

16 **MS. M. FOSTER:** -- they take those cases --

17 **MR. B. HILL:** That's a problem.

18 **MS. M. FOSTER:** -- and they screw 'em up.

19 **MR. B. HILL:** That's a problem. And -- and
20 so it -- it's the same issue as the appellate
21 issue I -- as I see it. And so, is there a need?
22 I think there probably is. But is there a risk
23 to the clients in Marion County if it -- it's
24 diluted in Marion County, that is a risk, and
25 that's something I don't want to see. Um, very

1 --

2 **MS. M. FOSTER:** Well, but if you setup
3 regional offices, right, well, it would make
4 sense for there to be a regional office in
5 Indianapolis.

6 **MR. B. HILL:** It would make sense.

7 **MS. M. FOSTER:** Because there's just not
8 enough Juvenile cases out there, but when there
9 are, they're frequently very serious and people
10 just don't know how to handle them.

11 **MR. B. HILL:** Uh, well, as your case would
12 underscore. The -- but -- but I do think there
13 would be a -- a -- an advantage to having
14 regionalized offices handling juvenile stuff.

15 But, see -- I mean it should be done um, not
16 in a silo, but I think it should be done in a
17 system of regional offices. I -- I agree with
18 that. I don't disagree with that.

19 Funding's the key. Regional having some way
20 to do -- I agree with that in -- in Juvenile and
21 appeals, CHINS would be areas for those things
22 would be very helpful.

23 **MR. J. SCHUMM:** Can I follow-up about that?
24 I see Juvenile and appeals a little different;
25 'cause Juveniles you need layers of a board,

1 appeals you don't.

2 **MR. J. TINDER:** Right.

3 **MR. J. SCHUMM:** So would you guys be happy
4 if there were a statewide appellate officer -- if
5 everyone were in Indianapolis where you have
6 someone you can communicate with, or would it be
7 better if there were a regional appeal office in
8 your part of the state where you had someone who
9 sort of knew about the courts there and the
10 issues that were coming up there?

11 **MR. J. ABBS:** I -- I would not have a
12 problem either way because it's a communication
13 thing. And -- and a lot of times we use -- a lot
14 of the appointments we do are attorneys out of
15 Indianapolis and -- and we refer to them when we
16 have issues that even pretrial issues, trials
17 from there, we interact with those individuals.

18 So and I don't think from that standpoint it
19 would be a problem. No doubt if we have
20 attorneys local, we like to use local attorneys
21 from there. There's a preference in our counties
22 to use local attorneys if -- if they're
23 available, but a lot of times, that's just not an
24 option. We're very limited with appellate
25 attorneys and individuals willing to take --

1 **MS. M. FOSTER:** And is that why --

2 **MR. J. ABBS:** -- 'cause it --

3 **MS. M. FOSTER:** -- there would not be the
4 home rule problem because there's nobody in the
5 county to handle it so you're not gonna have
6 these home rule politics going on?

7 **MR. N. WEISMAN:** No. I -- I don't know that
8 you have -- at -- at least with us -- we contract
9 out our -- our -- our appeals. I don't know that
10 we would have a home rule issue with appeals.

11 Uh, I think we do with attorneys that are in
12 court every day. Juvenile attorneys --

13 **MS. M. FOSTER:** What about Juvenile?

14 **MR. N. WEISMAN:** -- you know, Juvenile
15 attorneys need to understand the county and where
16 these kids are comin' from, and their school
17 system, and stuff like that. So as close as they
18 are to their -- to where these kids are from, the
19 better off the understanding to represent those
20 kids.

21 With appeals, I think it could be done from
22 a statewide system, again, as long as you had
23 some dedicated people that consistently work with
24 people in your county. And then they could also
25 provide feedback and say, hey, we're gettin'

1 these cases in, and look, we need to make more
2 trial court motions on this, or we need to make
3 trial court motions on that.

4 Right now we don't have that because
5 everybody's independent out doing their appeals.
6 So that part would be very helpful, and that --
7 that could be done from anyplace as long as the
8 -- the report or issues are (indiscernible).

9 **RESPONDENT:** I disagree with that. I -- I
10 -- I think the appellate -- a statewide appellate
11 is um, an important part of this, but, you know,
12 from somebody who used to be in Indianapolis and
13 now I'm not, there's always this pushback about
14 people in Indianapolis telling us what to do.

15 They don't always tell us what to do, but we
16 always feel like they're telling us what to do.
17 And, -- and, particularly, if you're gonna have
18 everybody housed in Indianapolis, or someplace
19 else, and they're gonna call you up as the trial
20 attorney and say, you know, why'd you ask this
21 question, or why'd you do that, you're just not
22 gonna build -- I just don't think you build a
23 relationship.

24 I think if you have a statewide office, and
25 then you have regional offices, so you have

1 people that you know, and that you're comfortable
2 communicating with, and they -- they setup a
3 program like Marion County where if I have, you
4 know, a big suppression issue and I want to make
5 sure that I'm not gonna screw this up for
6 appellate purposes, that they can come and sit
7 with me at my hearing, or -- or do whatever.

8 I think a regional office is more -- much
9 more conducive to trial attorneys and appellate
10 attorneys working together as --

11 **MR. N. WEISMAN:** Uh, what -- what makes --

12 **MR. J. TINDER:** What you're saying doesn't,
13 to me, relate as much to where that appellate is
14 -- is physically located, but that you have the
15 ongoing contact -- the ongoing relationship which
16 really can be done from anywhere.

17 **RESPONDENT:** You know, I -- I think so.
18 But, again, you know, I've -- I've been on the
19 Public Defender Council Board for a long time,
20 and there is an us against them feeling. And --
21 and -- and even though it may not really be
22 there, we perceive it as that.

23 So I think if everybody's located in
24 Indianapolis, even if we have as much access to
25 them as we were if they were 50 miles down the

1 road, I just don't think that that relationship
2 would develop the same way.

3 **MR. J. TINDER:** Right.

4 **MR. J. ABBS:** And -- and to go -- and to
5 build on her -- when you talk about this, just
6 like when you talked about the Juvenile -- we can
7 do it better over here -- I do Juvenile cases in
8 Noble County, and I do that, but I think they are
9 very, very important.

10 I do not carry a full caseload. I don't
11 think any Chief should -- I carry about 50
12 percent -- there would hitback, just what she's
13 talking about and that -- that it -- oh, we can
14 do it better over here than what we can do.

15 And it's very important Juvenile cases;
16 relationships we build, the Prosecutors,
17 Probation, and those things and getting matters
18 resolved; I truly think in the best interests of
19 the juveniles. I -- I consider those, as you
20 saying, very, very important cases and I really
21 think --

22 **MS. M. FOSTER:** The problem though --

23 **MR. J. ABBS:** -- that meets --

24 **MS. M. FOSTER:** -- the problem that I
25 perceive, though, is that many counties don't

1 have a lot of juvenile cases. And then -- and
2 then when they do; when it's a big important --
3 you know, a 12-year-old goes out and commits
4 murder -- there's nobody in that county that
5 knows what to do.

6 Now, I get what you're saying is you know
7 what to do. Um, --

8 **MR. J. ABBS:** And -- and -- and I think that
9 the big murder case you're talking about happened
10 in the county next to us from there, and -- and
11 -- and you may have -- I -- I don't know the
12 parti -- I don't know the particulars for what
13 occurred, but, in -- in dealing with that
14 situation there aren't -- there aren't --

15 **MS. M. FOSTER:** Well, it wasn't handled
16 properly, all right? And I don't think anybody
17 would think it was handled properly. And I'm not
18 here to blame the lawyer, all right?

19 **MR. J. ABBS:** Right.

20 **MS. M. FOSTER:** I don't think that -- they
21 don't get cases like that. So if you
22 regionalized it, and then you've got more
23 counties feeding into it --

24 **MR. J. ABBS:** But then -- it -- the problem
25 is if you -- the regionalize -- I don't know if

1 really increase the number of cases that these
2 attorneys are doing, 'cause now you're gonna have
3 to have -- if -- if you're gonna -- these
4 attorneys are gonna have to be in court, after
5 court, after court.

6 With most respect to our courts, they tend
7 to like to control their calendars as they run
8 it, and they may put 'em all on the same day and
9 -- and now you got a problem 'cause now you have
10 to dictate to the Courts this day's gotta be a
11 juvenile day. And, in my county, Wednesday is
12 Juvenile Day.

13 **RESPONDENT:** You can have offices.

14 **RESPONDENT:** Every -- in every county?
15 Because these people have to meet --

16 **MS. M. FOSTER:** No; I'm saying -- it --

17 **RESPONDENT:** -- the --

18 **MS. M. FOSTER:** -- you could not have
19 offices on -- on -- on juveniles.

20 **RESPONDENT:** How are you gonna have the
21 families that meet with them? How are you gonna
22 meet with the juveniles?

23 **MS. M. FOSTER:** Go to their home.

24 **RESPONDENT:** How are you gonna -- yeah --
25 have -- have -- go to the home?

1 **MS. M. FOSTER:** Yeah.

2 **RESPONDENT:** And then you have like your
3 psychologist and all of those people go to their
4 homes as well?

5 **MS. M. FOSTER:** Have the people go to the
6 psychologist.

7 **RESPONDENT:** Well, if you're -- you're --

8 **MS. M. FOSTER:** And I'm just -- I'm asking,
9 right?

10 **MR. J. TINDER:** Right.

11 **MS. M. FOSTER:** Not trying to get into
12 caseloads --

13 **MR. J. TINDER:** Our caseloads ahead -- it --

14 **MS. M. FOSTER:** I think that there's a --
15 that there's a lot of serious juvenile cases that
16 happen randomly that are not handled well,
17 frankly, because people don't have a lot of those
18 cases.

19 **RESPONDENT:** That's true.

20 **MS. M. FOSTER:** And so when they arise,
21 people don't know how to do 'em. It's different
22 in Marion County.

23 **MR. J. ABBS:** And, that's --

24 **MS. M. FOSTER:** You guys do a great job --

25 **MR. N. WEISMAN:** Well, but there -- it's --

1 it can't -- it can't be like a one size fits all
2 for the entire state because every --

3 **MS. M. FOSTER:** No. I think that's right.

4 **MR. N. WEISMAN:** -- everybody's different.
5 We've got, you know, in -- in Jim's county, don't
6 you have some people -- is anybody else doin'
7 juvenile other than you?

8 **MR. J. ABBS:** Yeah, we -- we have one other
9 individual (indiscernible).

10 **MR. N. WEISMAN:** I mean we've got this
11 juvenile court so you don't do anything else but
12 juvenile. In some places uh, the Public
13 Defenders do felonies, misdemeanors and juvenile;
14 they do everything uh, because of resources.

15 Uh, so yeah, where it makes -- might make
16 sense in -- to have a regional operation in some
17 of the counties that don't have the caseloads,
18 they'll deal with uh, with certain types of
19 serious offenses.

20 In some of the larger counties when we were
21 there, they do have people who have dealt with
22 all of that and so it's gonna be a little bit
23 different. And -- and that's why I -- I think
24 part of the recommendations of -- of -- of it
25 being a council was that uh, we look at different

1 counties, different circumstances and see what
2 the delivery is, and see if it works, if it can
3 be improved on, uh, what the resources are needed
4 uh, and -- and that's what, I think we need to
5 look at.

6 You know, it's just -- that the State's so
7 diverse, and the delivery of services are so
8 diversified that uh, it's -- it's hard to do a -- a
9 system that fits everybody and every place.

10 **MR. S. LUCE:** You have to do a -- you have
11 to find out where your resources are. The two
12 primary reasons because some counties will have
13 juvenile detention center, and the other for
14 this. That's where the regionalization for the
15 kids would help.

16 **MS. A. SPOLARICH:** Thank you. I'm standing
17 behind Bob Hill so I think whatever I say --

18 **MR. J. TINDER:** Right. That's -- that's a
19 big walk right there.

20 **MS. A. SPOLARICH:** No. I was just thinking
21 -- and he raised his hand a lot here. I'm --

22 **MR. J. TINDER:** And your name for the...

23 **MS. A. SPOLARICH:** -- I am Ashley Spolarich.
24 I -- I practice now --

25 **MR. J. TINDER:** You might want to give the

1 spelling of that last name.

2 **MS. A. SPOLARICH:** It's S-P, as in Paul,
3 O-L-A-R-I-C-H. I worked in Marion County; that's
4 where I started. I then went to -- I now work in
5 Tippecanoe County with Amy, and I live in
6 Montgomery County so -- and I'm married to a
7 Prosecutor.

8 So I have a -- a -- a very different opinion
9 -- or I've seen a lot of different systems. I
10 think un -- unless you regionalize these -- these
11 systems, and you special -- you have specialized
12 people in those regions to handle those cases, I
13 think that alleviates a lot of the problems.

14 I don't think if we have it in Indianapolis
15 -- I don't think the smaller counties -- like
16 Montgomery County -- I don't think they're gonna
17 use it, honestly. I just don't think they will.

18 I think when you have something -- what Amy
19 was talking about -- when you have someone who's
20 in the area that you know, and that you have --
21 and I think he was saying -- like when you have
22 someone that you know, and that you can go to for
23 advice and help, that is where you make attorneys
24 better.

25 Unfortunately, when you feel like it's far

1 away, it's -- it's a lot harder, especially for
2 other -- other attorneys that haven't been
3 brought up in a system like Marion County, a
4 collaborative system, I don't think they'll reach
5 out. I don't think they'll be used nearly on the
6 level. You'll have some, but not everyone.

7 I think small counties like Montgomery
8 County, it's struggling to create an office right
9 now, but it's facing very different problems in a
10 lot of counties that we've heard of today because
11 these very small counties are there in the system
12 of we don't want Indianapolis telling us what to
13 do.

14 And they have fought thinking the
15 reimbursement program they were in, and then
16 they're out. They have fought it, and fought it,
17 and fought it. It has to be mandatory. It has
18 to be imposed. And -- and it has to be done on a
19 local type of level, otherwise, you're just gonna
20 have them saying, well, this is Indianapolis
21 telling us what to do, and they're not gonna
22 listen and they're gonna fight --

23 **MR. J. TINDER:** It's -- it's a --

24 **MS. A. SPOLARICH:** -- and they're gonna
25 fight the entire way.

1 **MR. J. TINDER:** -- there's a little conflict
2 in what you're saying. Now, mandatory
3 requirements come -- come from a central --

4 **MS. A. SPOLARICH:** Sure.

5 **MR. J. TINDER:** -- source and -- and -- and
6 local control --

7 **MS. A. SPOLARICH:** Sure. Of course, and --
8 and I -- and it's -- it's -- this is not an easy
9 question, and you guys have a heck of a job ahead
10 of you, honestly. But, in order to impose the
11 over-arching standards and making those
12 mandatory, you are forcing the county councils to
13 actually do their jobs inappropriate one day
14 because it's just not happening. And it's not
15 happening nearly on the level that it has to
16 especially in Montgomery County that is drowning
17 in heroin right now. It's just not happening.

18 So, yes, I understand there is a conflict,
19 and it's not going to be an easy one to solve.
20 But having the standards be required forces them
21 to take actions that are necessary in some of
22 these smaller counties that aren't wanting to do
23 it, honestly.

24 **MR. N. WEISMAN:** Well, you know, you can
25 look at Criminal Rule 24 and how that changes the

1 face of death penalty representation with the
2 State, and that was mandated.

3 **MR. C. GOFF:** And it's Tinder. Can I...

4 **MR. J. TINDER:** Yes, sir.

5 **MR. C. GOFF:** I -- I'm -- and I'm sorry. I
6 knew -- I wanted to say something. I -- I hear
7 that -- I just want to make sure I'm hearing
8 that, but, well, I think that this idea -- the
9 concept of regionalization is really talking
10 about an infrastructure that would allow the
11 locals to connect the people that needed the
12 resources with the resources; is that fair to
13 say? And --

14 **MS. A. SPOLARICH:** I think so, yes.

15 **MR. C. GOFF:** One of the things that -- when
16 -- when Monica's asking about that question, I --
17 what I -- I envision is that if you'd have the
18 need -- because you're gonna have juvenile
19 delinquency on the dai -- daily basis, but if you
20 really had that big case, I think sometimes the
21 regionalization concept of providing more
22 efficient means to connect that client with the
23 -- with the resource -- with the really
24 experienced specialist, and that -- that is what
25 I envisioned you -- you all say would be

1 important and -- and necessary to make the
2 delivery system better.

3 **MS. A. SPOLARICH:** Perfect, yeah. Exactly.

4 **MS. G. ETLING:** If I could --

5 **MR. J. TINDER:** The back row.

6 **MS. G. ETLING:** -- give an introduction at
7 me from Vigo County. I just want to touch on a
8 little bit unusual --

9 **MR. J. TINDER:** And, if we could get the
10 name for the record?

11 **MS. G. ETLING:** Gretchen Etling,
12 E-T-L-I-N-G. It's a little easier spelling.

13 **MR. J. TINDER:** Vigo County.

14 **MS. G. ETLING:** Vigo County. I moved there
15 from Indianapolis and I said Vigo for years, now
16 I'm Veego (phonetic), and they're wrong with
17 that. And I think that one of the -- the things
18 that we're gonna supply to you is the job
19 description of a Chief Public Defender.

20 And one of the things that when we were on
21 the task force that we dealt with was that -- the
22 training. That there has to be part of the
23 description of the Chief Public Defender is that
24 they implement the training.

25 And I think in the Juvenile area, I think

1 that might address some of those that -- the
2 people that are handed the juvenile delinquency
3 cases are gonna have to go to mandated training
4 as part of our job description that we enforce as
5 administrators.

6 On the CHINS level, I feel that that's where
7 our crisis is in Vigo County. It is -- I've been
8 the Chief for 18 years, and it has dramatically
9 increased the number of CHINS. When I first met
10 with the staff attorney in 1999, he said make
11 your CHINS compliant, and we did.

12 So we have always been compliance on CHINS
13 that had to continually stack it as it's
14 dramatically increased, and I seen my Public
15 Defenders getting worn out. They're getting
16 beaten down.

17 They need -- we're having team meetings now
18 about cases where we feel like it's the State
19 against us. DCS is this power person here, and
20 then it's these -- these little counties. So I
21 think we can really benefit by a State system
22 that would employ still, you know, some of the
23 county attorneys that have their heart in it;
24 that they feel that they've fought the fought.

25 But they need -- we need more money. We're

1 thinkin' of tryin' to hire experts now to refute
2 these 'cause these terminations are coming so
3 quickly, and they're just doubling, tripling.
4 And that's where I feel that if we're gonna do
5 regional offices, I see CHINS being the main
6 focus, and maybe increase training as -- that'll
7 be implemented by a Chief job description that
8 will -- will force that and mandate that.

9 From -- at least from our county, the
10 juvenile delinquency -- we have great attorneys
11 like Chris that help out --

12 **MR. C. SHEMA:** My fees are comin'.

13 **MS. G. ETLING:** -- that can help out and
14 have great trial experience to be appointed
15 delinquency, but, obviously, like you're saying,
16 the number of delinquencies is nothing compared
17 to the number of CHINS. But we do need so more
18 training there that, I think, as -- we have all
19 -- I think a hundred percent during the Chief
20 meeting -- and we all agreed we wanted job
21 descriptions.

22 So we want direction, and that would be one
23 of the areas to have that training.

24 **MR. J. TINDER:** Thank you. Thank you. By
25 the way, give -- please give Joe my regards and

1 --

2 **MS. G. ETLING:** I will.

3 **MR. J. TINDER:** -- I just want to give you
4 all this little history of Vigo County. It's
5 named after George Vigo. And the reason is if he
6 agreed to donate a bell to the courthouse if they
7 would name the County after him, and the County
8 required the bell named and the County after him,
9 but he never paid for the bell.

10 **MR. C. SHEMA:** And -- and -- Judge, Vi --
11 Vigo, I think your point highlights the inherent
12 conflict with having the same attorneys asking to
13 deal with the juvenile and the CHINS. 'Cause I
14 mean at -- at -- at the most simplistic level,
15 what -- what happens when they find drugs in the
16 house, and there's a CHINS case, and the -- and
17 the kid's like, "Well, that's not my drugs.
18 That's mom's drugs" you know?

19 Where do you go with that? It is just an
20 inherent conflict. CHINS are a totally different
21 animal, and we're not particularly well-equipped
22 to go against an agency that's funded by almost a
23 billion dollar budget.

24 I mean it's im -- there's no budget crisis
25 with DCS. They're hirin' people left and right,

1 but we haven't had any kind of comprehensible
2 increase in budgets.

3 **MS. G. ETLING:** And the case managers change
4 all of the time. So you're not dealing with
5 someone who's locally-based at the juvenile case
6 where you can go talk to the Prosecutor. And,
7 you know, that -- that seems -- stays there.
8 But, at a State level you're dealing with
9 different -- Terre Haute especially -- we had
10 rotated case managers, and it was really bad for
11 a long time.

12 We never knew who was gonna show up. So
13 you're dealing with people on a state level,
14 different caseloads all of the time, um, not
15 people that are locally-based.

16 **MR. J. TINDER:** Okay. Okay.

17 **RESPONDENT:** Can I just ask a follow-up
18 question to that? What are some of the
19 challenges that you have with that representation
20 in terms of what resources you lack,
21 specifically? Like, if -- if you had your ideal
22 situation doing CHINS and TPR, what do you need
23 to do that to effectively balance the scales?

24 **MS. G. ETLING:** Well, I think that more
25 attorneys, I think, to lessen the caseload maybe.

1 **RESPONDENT:** What are your caseloads?

2 **MS. G. ETLING:** Right now the -- all of the
3 Juvenile -- there are -- all of our attorneys,
4 except for one, are appointed, and all of the
5 juvenile attorneys are added, you know, by a
6 court-appointing operate -- 'cause the CHINS is
7 weighed, you know, to get so many of 'em.

8 And, you know, experts. You know, they --
9 you know, having a resource of experts available
10 to us 'cause we -- it's hard to battle DCS, you
11 know, attorneys and doctors that are gonna come
12 in and, you know, have a list of people that the
13 State has used, resources that we could have come
14 in that we could put somethin' out there trying
15 to get them.

16 We were talking about this. We were
17 team-meeting last week about a case that we've
18 got that is absolutely an injustice of them about
19 to take these peoples' children away. And we
20 feel like we are trying to defend it, but there
21 is the -- like when they come in and they get
22 ordered drug screens, and they have all -- no --
23 negative drug screens; nothing comes back
24 positive -- but they still wanting -- it's so
25 subjective.

1 They're still saying no, you know, why --
2 that they -- we just don't think they're doin' a
3 good job. I mean how do you -- either we need
4 more -- I don't know how you respond to that.
5 They have an expert come in. And we're tryin' to
6 get a former caseworker to come into DCS. Maybe
7 a disgruntled DCS caseworker to come in and spot
8 'em because we don't know, you know, what you do
9 in those situations.

10 It's all -- it -- it used to be that the
11 Judge would, you know, it depends on your Judge
12 and your Magistrate, but now there's just such a
13 volume of cases that they -- it just kinda
14 gettin' pushed through.

15 The timeframe in which you've got to push
16 through these cases, there's not a lot of time to
17 -- to prove them wrong. And, that's just several
18 -- several things. I mean I would like get
19 together.

20 I know that there's -- was the meeting the
21 28th? I was gonna double-check for the next
22 meeting the 28th or the 27th on the CHINS; is
23 that right?

24 **RESPONDENT:** The 27th, right.

25 **MS. G. ETLING:** The 27th. I mean I'd like

1 to bring my, you know, Juvenile and -- and my
2 CHINS attorneys together to try to get a list of
3 what they would need. But, I don't know -- if
4 anybody else -- what you think you would need at
5 the -- the CHINS level?

6 **MR. J. ABBS:** The -- the -- the thing that
7 one of my attorneys is -- Katie Byram's on it --
8 and what she always says to me is, "You don't
9 realize how long these cases are. They are the
10 everlasting thing."

11 And she would argue the case numbers we have
12 are just astronomically too high for attorneys to
13 handle because of the work. And -- and they are
14 labor-intensive cases.

15 **MR. N. WEISMAN:** And court -- and court
16 time.

17 **MR. J. ABBS:** Yes. Yeah, you're in court
18 constantly, and -- and constant reports. And --
19 and we have run into the problem, and there --
20 there's great concern in my county is -- and --
21 and all due respect to DCS, and the attorneys
22 they are sending to us, in my -- and I'm giving
23 my opinion -- are not competent to be doing the
24 job.

25 We have attorneys come in; they don't have

1 authority to do anything. And I went to the
2 Judge and said, why am I sending attorneys over
3 there when they're sayin' they can't -- these are
4 the rules and hard and fast -- we can't adjust to
5 'em, so there's no discussions taking place.

6 And there's concern that if we adopt a
7 statewide system -- this is what I always hear
8 from my Judge is what I'm talking -- we're -- are
9 we gonna get the same type attorneys now on both
10 sides? And it's just going to make it a greater
11 mess than what it is.

12 Now, what we're saying is, hopefully, we can
13 use the people we have in place 'cause we do have
14 good people across the State to do that.

15 **MR. J. TINDER:** The -- the DCS Council are
16 not county-based.

17 **MR. J. ABBS:** Excuse me?

18 **RESPONDENT:** No. Ours don't. No.

19 **RESPONDENT:** They're State.

20 **MR. J. TINDER:** They're State. They're
21 State.

22 **RESPONDENT:** I think it depends on whether
23 the jurisdiction --

24 *(Several parties talking over each other.)*

25 **MR. N. WEISMAN:** They have like five.

1 They're housed just in St. Jo County, but in some
2 of the smaller counties they come from --

3 **MR. J. TINDER:** I see.

4 **MR. N. WEISMAN:** -- (indiscernible).

5 **MR. J. ABBS:** Ours all come from -- ours all
6 come from Allen County from Ft. Wayne.

7 **RESPONDENT:** I don't do any CHINS so I have
8 no idea.

9 *(Several parties talking over each other.)*

10 **MR. C. SHEMA:** (Indiscernible) a revolving
11 door. They -- they --

12 **RESPONDENT:** Yes, and high turnover, and
13 it's -- it's (indiscernible).

14 **RESPONDENT:** One of these subcommittees
15 talked a lot about with -- with other states that
16 we've -- models that we've looked at and the ABA
17 standards is the importance of working with the
18 clients outside of the courtroom, you know. That
19 -- that you can do more off and outside of the
20 court and that that's equally as important as
21 what you do in court.

22 Do you know the luxury of being able to do
23 any of that, or is this just sort of --

24 **RESPONDENT:** Define 'outside of court.'
25 What do you -- what sources?

1 **RESPONDENT:** Um, wait 'til the DCS treatment
2 planning meetings, ultimate resources, digging up
3 resources, working with social workers in -- that
4 -- in your office that might...

5 **MS. G. ETLING:** Yeah, it's -- it's -- you're
6 -- you're on a need-to-know basis, and you don't
7 need to know anything until you get. And you
8 try, and you try to email, but it's overwhelming;
9 you don't get any replies to your emails.

10 **MR. J. ABBS:** My -- my attorneys has handled
11 those -- those meetings because -- it -- Katie
12 Byram from our office oversees that, and she
13 believes that we can intervene at that time and
14 address a lot of these issues, and they do that.

15 It -- truthfully, it's a good thing to do.
16 I -- I just -- you know, I look at it all of the
17 time, and say, "Look at all of the time you're
18 putting --

19 **RESPONDENT:** Right.

20 **MR. J. ABBS:** -- into this" but I can't
21 argue against it when she is getting the results
22 that she is; getting in and getting things taken
23 even sometimes before they go to court.

24 **RESPONDENT:** And that's important for us to
25 know those --

1 **MR. J. TINDER:** Right, right.

2 **RESPONDENT:** -- results because that's --
3 that's what the standard --

4 **MR. J. TINDER:** Bob, I haven't been ignoring
5 you.

6 **MR. B. HILL:** I -- I don't feel... The --
7 the uh, -- one -- one point I wanted to make
8 that, I think, advantage we have in my office is
9 the same advantage we have with the Appellate
10 Division.

11 When we have a -- a kid who's waived over to
12 adult jurisdiction, that JD lawyer can follow and
13 help litigate that case, or at least, follow and
14 help bring the attorney litigating the case up to
15 speed and talk about the history.

16 Where there's direct filing, sometimes we
17 would have had that client before, so we would
18 have had social workers working on the case, as
19 well as attorneys who can then communicate. And
20 that's a real advantage; it's resources again.

21 And I see that's the point I think you're
22 trying to make that if you have a regional
23 office, they can house social workers, they could
24 house resources, connections to various
25 communities for that psychologist that would help

1 do the work, as well as provide legal expertise.

2 I -- I see it as an advantage if we could do
3 regional stuff.

4 **MR. J. TINDER:** But can it --

5 **MR. B. HILL:** And in areas where -- where
6 there's a -- a -- a real deficit now.

7 **MR. J. TINDER:** Yeah. There can be
8 economies and scale. Okay.

9 **MR. J. MEREDITH:** I'm -- my name is Jason
10 Meredith. I'm from Monroe County. I'm a Deputy
11 there. And, we're in charge of a medium-sized
12 county; it'd probably have a hundred and fifty
13 thousand people for nine months out the year, but
14 we lose those students.

15 **MR. J. TINDER:** But probably the most
16 over-lawyered county in the State.

17 **MR. J. MEREDITH:** Well, and our Public
18 Defender's Office, we're at 13 -- we have 13
19 attorneys in our office, and we were one of the
20 counties that we all knew of the cases; the DVs,
21 the CHINS, the criminal.

22 Over the last year our CHINS have pretty
23 much doubled as far as things go. And, I'm --
24 I'm confident that all of the attorneys in our
25 office could handle a juvenile -- a big juvenile

1 case because we're all -- they're all handling
2 those felonies as well. So I -- I think that
3 will translate well.

4 The CHINS cases and -- and just the amount
5 of time that needs to be spent on those and the
6 amount we're getting, I mean we'd have to need an
7 increase in the number of attorneys
8 (indiscernible) to get with our -- our, you know,
9 from our county and from our local, you know, our
10 local funding opportunities there.

11 But, I mean I think we need more money to be
12 able to get more attorneys, and that's a very
13 difficult thing. I don't think the county is
14 aware yet of how bad the situation is with the
15 CHINS cases. It's literally -- you're talking
16 about making assistance for four or five years,
17 but the last year those -- those cases have
18 doubled, and, you know, those 13 attorneys are
19 pretty strained at this point.

20 And in -- in a medium-sized county, that's
21 kinda what we're looking at.

22 **MR. J. TINDER:** But, by the way, don't get
23 me wrong. I think over-lawyered is a very good
24 thing. I -- I'm somebody who went to law school
25 in Bloomington and never wanted youth, but I had

1 to (indiscernible) reasons so...

2 **MR. J. MEREDITH:** Sure.

3 **MR. J. TINDER:** Yeah. The -- the explosion
4 in CHINS/TPR is -- is um, just a pheno -- a
5 phenomenal thing, but it doesn't seem to be -- it
6 doesn't seem to be a blip; it seems to be a
7 permanent condition.

8 **MR. J. MEREDITH:** Sure. Yeah.

9 **MR. C. SHEMA:** And, Judge, they're all cases
10 kinda like the custody case from hell, you know,
11 where they just -- that somebody said there's no
12 end to it.

13 I mean the worst criminal cases you've ever
14 had in your court had a beginning, and a middle,
15 and an end, and then they went up to the Seventh
16 Circuit. These things just -- they -- they just
17 won't go away.

18 And, you have to have the resources to hang
19 with DCS, and we're just out-matched. I mean we
20 can't compete.

21 **MR. J. TINDER:** All right. So let's see.
22 Joel, did you want to drill them further on the
23 appellate?

24 **MR. J. SCHUMM:** (Indiscernible.)

25 **MR. J. TINDER:** I kinda think we're -- I

1 know my partner's about to run out again.

2 (Indiscernible.)

3 **RESPONDENT:** 3:00 -- 3:44 that you're --

4 **MR. J. TINDER:** Okay. Okay.

5 **RESPONDENT:** -- reaching.

6 **MR. J. TINDER:** So I -- I will repeat. I
7 want this to be a continuing dialogue, and I hope
8 this will give you the perception that we are
9 open to hearing what you've got to say. We have
10 a -- a number of things that we want to follow-up
11 on just from today.

12 We go forward, please stay with us. Please
13 stay in touch. Our object -- or my objective
14 will be to get the task force to get to a -- a
15 draft of its -- of -- of findings and
16 recommendations sometime in maybe the June
17 timeframe or so so that we can make them
18 available for your critique and evaluation before
19 we get to -- to finally conclude this.

20 So off we go. Anyone want to say anything
21 or ask anything else before we break for now?
22 It's sort of like an extended recess 'til we meet
23 again.

24 **MR. C. SHEMA:** Judge, I've heard one idea up
25 there the panel --

1 **MR. J. TINDER:** Yes.

2 **MR. C. SHEMA:** -- and we've talked about
3 compliance, and the numbers, but nobody's talked
4 about how those numbers are composed. I think
5 the number of people who are in the rank and file
6 believe that there's a mis-weighting; that
7 misdemeanors are over-weighted, and serious
8 felonies are under-weighted.

9 *(Parties have conversation among themselves*
10 *off record.)*

11 **RESPONDENT:** There is a caseload study going
12 on right now.

13 **MR. C. SHEMA:** So --

14 **MR. J. TINDER:** And -- and it's
15 over-weighted because the misdemeanor can be
16 resolved more quickly than it might be thought or
17 um, ...

18 **MR. C. SHEMA:** Yeah. I mean when you to --
19 you look at attorneys' caseload maximum, this
20 came to light a few years ago when Gretchen was
21 telling me, well, the attorney's down in Division
22 4 and 5 which are predominantly -- well, at least
23 half, misdemeanor courts; DUIs and domestic
24 batteries; they're all maxed out.

25 And the attorneys who were in the -- the

1 major felony courts were having to go down and
2 cover cases. And we're like we're like, handling
3 rape, robbery, murder, and we -- you know, most
4 of those attorneys sometimes had that deer in the
5 headlight look when they're being told, the guys
6 downstairs who were doin' the -- the DUI work are
7 maxed out, but you're not.

8 So -- and I think we were talkin' about this
9 earlier that, you know, when you're handling
10 those more serious cases, you know, like Monica
11 was talkin' about, they are very, very
12 time-intensive. Not that a misdemeanor can't be,
13 the more serious misdemeanors, at the end of the
14 day, it's not the same as rape, robbery, and
15 murder, and they're just not.

16 So when I see people sayin', well, we're in
17 compliance, or somebody's maxed out, or not maxed
18 out, I sometimes wonder, you know, where do these
19 weights come from? Because the -- most of the
20 people I talk to share that observation for what
21 it's worth.

22 **MR. N. WEISMAN:** On -- on the other hand,
23 you have some of the newer felonies based on the
24 revision of the code as it finally came out where
25 you essentially have a misdemeanor battery that

1 isn't really a misdemeanor case because kids are
2 present, it's a felony.

3 We're -- we're -- we're dealin' with those
4 too. So even on a felony level, you have a mixed
5 bag of time-intensive and not quite so
6 time-intensive cases.

7 **MR. J. ABBS:** Judge, and I just want to say
8 we truly do appreciate all of you putting in the
9 time, and -- and we think it's a very positive
10 thing that could come out of this because we've
11 got a group of individuals who I know -- when
12 they go over to the capitol will be respected in
13 -- in what we're doing.

14 And we just want to be part it, and you
15 clearly have shown you're making us part of that
16 whole process, and I just want to thank everybody
17 on the task force.

18 *(The task force thanks the parties present*
19 *at the hearing.)*

20 **MR. J. TINDER:** Thank you all. We're
21 wrapping up for today. Let's continue.

22 *(The hearing concluded on January 26, 2018*
23 *at 3:21:00 p.m.)*

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CERTIFICATE OF REPORTER

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

I, Felesa N. Averitte, stenographer, in and for said county and state do hereby certify that the foregoing Listening Session with the Indiana Chief Public Defenders was taken on behalf of the Public Defense Commission, that said hearing was taken at the time and place heretofore mentioned;

That said hearing was taken down by stenographic means and was reduced to typewritten form by Felesa N. Averitte, stenographer; and that the transcript is a true and accurate record of the comments given by said parties;

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal on this 12th day of February, 2018.

Felesa N. Averitte, AAS
Residing in Marion County,
Indiana

My Commission Expires:
Date: 12-31-18