

1 TRANSCRIPT OF LISTENING TOUR TASK FORCE MEETING

2 MARCH 22, 2018

3  
4 L. LANDIS: My name is Larry Landis. I'm the executive director of the Indiana  
5 Public Defender Council. With me today is the most Honorable Vicki Carmichael from the  
6 Clark County Superior Court No. . . .

7 V. CARMICHAEL: Circuit Court 4.

8 L. LANDIS: And Steve Luce who is the Executive Director of the Indiana Sheriff's  
9 Association who has been an important ally contributor on the Public Defender Task Force  
10 and JRAC and many other things over the years. I'd like to go around the room and we can  
11 introduce ourselves starting right here.

12 ROLL TAKEN

13 V. CARMICHAEL: So, some of you who don't know me, some of you do, I was the  
14 Chief Public Defender in Clark County a hundred years ago, maybe not quite that long ago,  
15 but about thirty years ago. So, I was the first Chief Public Defender in Clark County when  
16 we unified our Public Defender Office and so, Public Defender work has been near and dear  
17 to my heart for a long time. But one of the things that we have struggled with over the years  
18 is the lack of resources, the lack of funding, the lack of outside service providers who are  
19 available. Some of that was resolved a little bit with the change in the statutes when  
20 Department of Child Services took over funding. Some of that was a nightmare for a while.  
21 It seems to have gone back and forth but it's better now. But, so we want to talk about some  
22 of the things that you all, as far as issues that have come up in what you're doing daily. I  
23 know Jackson County, I need to talk to you. You all just closed your juvenile detention  
24 center. And I understand, but boy we got a lot of calls from other counties.

1 UNKNOWN: I'm sure that's correct.

2 V. CARMICHAEL: So, but, so some of the things that you, and some of you signed  
3 up to talk about things and have some issues that you want to address. We also have some  
4 proposed questions as we go through this. But, Jeremy, one of the things that you wanted to  
5 talk about was tuition assistance. Tell us about that.

6 J. BRAUNSTEIN: Well, one thing, and I actually got this idea from when I was in  
7 Arizona. When I was out there, they had this program where you still made your tuition  
8 payments or your loan (inaudible) payments on time and you just had to show, I forget what  
9 her position was - - but you turn in receipts or copies of your payments and they would  
10 reimburse, I forget how much it was quarterly, but it ended up being after a year, it would be  
11 up to six thousand dollars and that was something that they kind of needed because people  
12 leaving, coming and going, they need something to keep people there to contract good  
13 attorneys, not so - - good attorneys but quality attorneys that can provide quality  
14 representation and that was something I thought was a really good idea because Mohave  
15 County is kind of a different world than out here, but it was something that I thought was  
16 very helpful and I know there were some other people in the office that took advantage of it  
17 because, let's say, after ten years, you stay for ten years, that equals out to about sixty  
18 thousand dollars and I'm still in six digits, but you know, I don't let that stress me out too  
19 much, but sixty thousand dollars is a lot, or any bit helps. I sometimes get excited when I  
20 see a quarter lying on the ground, so no, I wouldn't turn my nose up to anything like that.  
21 And I think that's something that I think would be a decent idea down the road, you know,  
22 Jackson County or whatever - - I also was in Marion County at the Public Defender's  
23 Office for four, four and a half years back in 2001 to 5 and I think, the last time I knew the,  
24 the pay was a little less than a lot of other places and I think if you had the program, you

1 could reimburse some tuition expenses or loan payments, that would be something to maybe  
2 help retain quality attorneys because obviously you don't want attorneys starting, getting  
3 their experience and then moving on to private practice or somewhere else where they can  
4 get more money. I think that's an idea that, you know, I'd like to see down the road.

5 L. LANDIS: Is that a County based program or - - every county in the State has it?

6 J. BRAUNSTEIN: Not every county in the State had it. It's - - I think it depends on  
7 the County - - - Mohave County - - it was a County system, the County paid it, not the  
8 State, but either way I think if you can, if there's something there like that, I think you could  
9 retain some quality attorneys, because I know there are a lot of people still like myself, that  
10 still have either six figures or just under that, that, you know, I don't want to be paying on  
11 my loan for the rest of my life. Like I said, I try not to stress about it sometimes, but you  
12 know it's something that I think could help down the road.

13 UNKNOWN: That county you worked at, did they have like a maximum or a  
14 minimum or . . .

15 J. BRAUNSTEIN: The maximum ended up being about six thousand dollars. I  
16 think it was fifteen hundred each quarter. You made your payments each month and then  
17 when you presented proof that you had made your payments, each quarter they would take  
18 that, they would cut a check for I believe fifteen hundred dollars and they would do that  
19 each quarter.

20 UNKNOWN: Was that specifically for like for reimbursement for just tuition?

21 J. BRAUNSTEIN: Yea, this was like for loan repayment assistance or what not. It's  
22 something I took advantage of for a few months before this guy drug me back here.

23 UNKNOWN: Was it both prosecutors and public defenders or just public defenders?

24 J. BRAUNSTEIN: I think prosecutors had it too, but I do not recall. But, it was. . .

1 UNKNOWN: It would be a lot easier to sale if we proposed. . .

2 J. BRAUNSTEIN: Yea, and it's something. Like I said, it's, it ends up being, when  
3 you look at how many years, like I say, ten years, that's a lot of money and people can pay  
4 their loans off a lot faster.

5 UNKNOWN: Let me ask again too, (inaudible), do you have - - is there a criteria set  
6 for, is there something you as a person to make sure you doing your work to make sure that  
7 there was a fairness. . .

8 J. BRAUNSTEIN: Yea, they, I think there was a, there was a certain, like a year and  
9 a half or two years where you had to be there before you could take advantage of this  
10 program. Because they, obviously they don't want people starting, taking advantage of the  
11 program and then just saying bye bye, I found something better, because they didn't require  
12 reimbursement if you left. I left and like I said I think I had about four or five months of that  
13 assistance and that wasn't required to be paid back but I had been there for just under three  
14 years.

15 UNKNOWN: Back twenty years ago, IU student loans, if you got them from IU,  
16 had a similar provision for State employment.

17 P. BIGGS: There is a federal loan forgiveness program. Like that, you have to be a,  
18 you had to be a PD for a certain number of years. It's been a long time since I looked at it.  
19 It's like two years or something and then you know, I don't remember all of the particulars  
20 but there is a loan forgiveness there.

21 J. BRAUNSTEIN: I think there was some question about the terms of the federal  
22 program, some question about how that was going to, if that was going to be kept or what  
23 they were going to do (inaudible) all the political stuff going on in D.C.

24 UNKNOWN: Well there's a federal forgiveness loans, there's criteria set and  
25

1 (inaudible).

2 J. BRAUNSTEIN: Yea, but that's - - I think, you know, like I said, any bit helps,  
3 especially us attorneys.

4 V. CARMICHAEL: Alright. Thank you. So, before I forget, if you're going to say  
5 something, say your name first and maybe spell your last name at least the first time.

6 J. BRAUNSTEIN: Jeremy Braunstein, B-R-A-U-N-S-T-E-I-N.

7 V. CARMICHAEL: Okay, Alan Marshall?

8 A. MARSHALL: Yes?

9 V. CARMICHAEL: Payment of Chiefs. Pay of chiefs?

10 A. MARSHALL: I think the system should be set up that the Chief Public Defender  
11 and a Chief Deputy should be paid by the State just like the Prosecutors are and then any  
12 other expenses for the office be reimbursed at fifty percent. That would sure help my sale  
13 when I go in front of the County Council because they compared my budget this last year  
14 and the prosecutor's budget and said well your's is higher, we can't have that. Well, your  
15 looking at apples and oranges. I said there's over three hundred grand that's not in the  
16 prosecutor's numbers because it's all paid by the State, benefits and the salaries. So, I think  
17 if possible, we ought to just be treated the same, and I think that would be a major, major  
18 enticement for those counties that are not participating.

19 UNKNOWN: That would be for the chief and deputy chief?

20 A. MARSHALL: Yea.

21 UNKNOWN: Okay.

22 V. CARMICHAEL: And you would envision both of those positions being full time  
23 income?

24 A. MARSHALL: Yes.

25

1 V. CARMICHAEL: And I think we've heard that from other folks around the State  
2 as well, something that we've talked about for a number of years, trying to get that done, but  
3 I think - - it's good to hear that that's still. . .

4 A. MARSHALL: Sure. I mean, that's, when I'm talking in front- - I've never been  
5 in front of a county council yet that I've really liked. So, you know, sometimes you just, you  
6 have to present numbers that are just overwhelming that, if they tell you know it's just cause  
7 they don't like your program. You know, you can get ninety percent reimbursement but  
8 some county council members, they'll thumb their nose at it, but it sure would make it a lot  
9 easier, plus I just think that those counties that have not participated or got on board, I think  
10 they would be much more liable to jump in at that point in time, if those kind of numbers  
11 were, if those, if there's three hundred grand in salary and benefits paid by the State right off  
12 the top and then, and then, and there's then a reimbursement of fifty percent for the rest of  
13 the expenses, why would they not partake in that? I mean that's . . .

14 L. LANDIS: Does it cause any problems - - because you have to be paid according to  
15 the commission standards, the same as the prosecutor which makes you probably the highest  
16 paid county employee.

17 A. MARSHALL: It does and they post all the salaries in the local paper every year.  
18 So. . .

19 L. LANDIS: Do they comment on that?

20 A. MARSHALL: Nobody said anything, but you know how that goes. That's not  
21 something that they walk up to your face and say. They say it behind your back. So. . . I've  
22 been doing this long enough. You just let it run off.

23 L. LANDIS: If any of the other chiefs encounter that issue, of whether it caused  
24 resentment or you know, push back or blow back, something, because you are by far the

1 highest paid County employee only other than Sheriffs of course.

2 P. BIGGS: I'm from Floyd. We have cops and fireman.

3 L. LANDIS: Wait a minute, if you're going to talk, just for the court reporter, could  
4 you. . .

5 P. BIGGS: I'm Pat Biggs.

6 L. LANDIS: Spell the last name please.

7 P. BIGGS: B-I-G-G-S.

8 L. LANDIS: Did we cut you off Alan?

9 A. MARSHALL: No, I'm good.

10 P. BIGGS: I would go a step beyond that. I would say ideally we should have a  
11 State system just like prosecutors. For one thing, just as a matter of fairness money-wise, but  
12 beyond that, I'd like to see standards enforced statewide. Someone or something over riding  
13 the entire system, that says you know, this is the way we ought to be operating, this is why  
14 we ought to be operating this way. You need to come in line with these standards. Now I  
15 know we have the ABA standards, but that's, that's not sufficient and it's - - -one of the  
16 things that a system like that could do, I would hope, is to come up with a way to monitor  
17 and evaluate PDs who are operating under the chief PD. I mean there are any number of  
18 things that a statewide system could accomplish that aren't being accomplished in this State  
19 now. The standards are very uneven from county to county. I hate to talk about pay unless  
20 if effects me directly, but pay is uneven from county to county and no matter what you say,  
21 in a capitalist society, how much you pay is determine the kind of representation that poor  
22 people get. In other words, if you pay for crap, you get crap. We need a statewide system  
23 and it should be equal with that of a prosecutors.

24 L. LANDIS: When you say the standards ought to be mandatory, I assume you're

1 talking about the public defender commission standards, mandatory that all counties have to  
2 comply, not voluntarily comply?

3 P. BIGGS: Well, maybe with a statewide system we wouldn't have a commission  
4 anymore. Maybe it would be absorbed into the State system. Maybe in the process of being  
5 absorbed it would elaborate on the standards maybe. It would have probably, it would carry  
6 more weight, it would be able to enforce standards. I would see a system.

7 L. LANDIS: Are you talking about a hundred percent state funding and state control  
8 of all of the appointments and of all public defenders would be under state authority?

9 P. BIGGS: It would be under state authority. I don't know how you would go about  
10 appointing the various county public defenders if that's what you're going to do. I don't  
11 know, maybe you would have one chief public defender for Floyd and Clark. Maybe you  
12 would have one chief public defender for Scott and Washington. I don't know. I'm not  
13 saying how it would be set up, but I would envision that we would have a statewide system  
14 that would make representation more effective uniformly.

15 V. CARMICHAEL: And so one of the things we heard in Indianapolis when we had  
16 a meeting there, the Task Force did, was that those, that the Commission standards should  
17 be mandatory perhaps, that every county should have to follow those standards so that you  
18 do have equal representation hopefully in each county. Did you have a comment that you  
19 wanted to add what Pat was saying?

20 J. PATTISON: Just to build on it, Jason Pattison. If you had pay parity, the  
21 economics would probably take care of itself and you would not need the standards  
22 anymore. I don't know that prosecutors have standards. They hire them, they pay them,  
23 people want those jobs for a reason, because they pay decently.

24 V. CARMICHAEL: Not in Clark County (inaudible).



1 J. CULOTTA: And, Jennifer Culotta.

2 L. LANDIS: Spell the last name please.

3 J. CULOTTA: C-U-L-O-T-T-A. Not pina, not spelled like pina, completely different  
4 although quite tasty. No, the problem that I see and I was a public defender when I was a  
5 real small person in Louisville back when I first started and it's completely different just  
6 across the bridge. And, you know, I'm not advocating full time public defenders in every  
7 county, but I'm also not, not advocating it because one of the things that I see, which makes  
8 me crazy, as the President of the Clark County PD Board, is, and it's not just Clark County,  
9 it's every where I go. I talk to P.D.s throughout the State and you know, they are part time  
10 for the most part, and I don't know how many true full time P.D.s we have, so they are part  
11 time, so they're juggling a part time calendar but they don't make enough to make ends  
12 meet, I mean I remember buying toilet paper with a credit card just so I could whatever.  
13 But, so the thing is, we do that and so you can't make ends meet so you have to take on  
14 these other cases and a lot of times they're not in your county, so you're out of county,  
15 running down the road to Jefferson and taking a case there then you're late for your  
16 appointment which makes the judges angry, you know, and, I mean it's just this vicious  
17 circle and a lot of people, God forbid, do it just for the insurance and that is the -- you got  
18 to do it cause you love it and if you don't love it, the insurance isn't going to make you  
19 happy. And that's the problem. So, when we're, and it's not a word, look in Websters,  
20 incentivizing, but we're incentivizing people to take the job, and we're (inaudible) insurance,  
21 but then they're just, here's your case, so good luck, and oh, by the way, if you want to  
22 really make money, you've got to do both. And it's just, I think it's just a really vicious,  
23 terrible cycle and I fear, and my biggest fear is, and I'm not saying I've ever heard anybody  
24 do this, so this is not -- but my biggest fear is that person A who is indigent, who has a Level

1 2 Felony gets Susie Q as her attorney and then Susie Q can't make ends meet, so she gets a  
2 private Level 2 and the private Level 2 is getting jail visits, the private Level 2 is getting the  
3 correspondence and going over the discovery and the PD Level 2 is like, let's get it done,  
4 let's get it done, let's get it done. That's all I've got to say.

5 J. PATTISON: I've been in PD in Southeastern Indiana for eighteen years. You get  
6 insurance because I've never seen insurance in Jefferson, Switzerland, Ripley, Jennings... .

7 J. CULOTTA: Come to Clark County.

8 J. PATTISON: . . . there is no insurance.

9 J. CULOTTA: You need to move.

10 V. CARMICHAEL: One of the incentives for Clark County Public Defenders is they  
11 get health insurance through the County, Floyd County does not for their part time public  
12 defenders.

13 P. BIGGS: No.

14 V. CARMICHAEL: And so we have, at least in the past, had people doing [public  
15 defender work in Floyd and Clark, again, to make ends meet, but to doing it in Clark to get  
16 the health insurance, but Floyd Count was paying better and I think that's the issue too, is  
17 back to pay parity. . .

18 J. PATTISON: And insurance and benefits and . . .

19 V. CARMICHAEL: Right.

20 J. CULOTTA: Well and I mean right now, I know that in, I know several people in  
21 Clark, Floyd and now Orange because Orange does contract work that are doing three PD  
22 gigs, and I don't even know how you do three part time PD gigs cause that's time and a half  
23 I think.

24 P. BIGGS: We're not aware of that if it's happening.

1 J. CULOTTA: I don't know that it's happening anymore Pat.

2 P. BIGGS: I put an end to that.

3 J. CULOTTA: I know you did. I don't know if everybody has.

4 L. LANDIS: Jennifer that was an excellent description of the problems with part  
5 time. So, how do you fix it? Suggestions?

6 J. CULOTTA: I truly think, and I would love to see it happen, but I do kind of, I  
7 think down there, there was a comment about full time. I truly - - when I did PD work, I  
8 was a full time PD and you know, I woke up everyday and worked my butt off just for my  
9 clients. I didn't worry about anything else. I knew exactly what I was going to make.  
10 When I was a prosecutor, the same thing, you know? And you're going to have - - - I truly  
11 think that the part time thing, and I know that all of the attorneys that do the part time work  
12 are going to be mad at me, but I don't think it's a good idea. I really don't, because I would  
13 hate for somebody to be so overworked and just grinding out the PD things to get pleas and  
14 then really focusing on their private work, I just, you've really got to have somebody who  
15 has the right ethical backbone to do it right, and I'm not saying we don't, but it's a slippery  
16 slope. You know? I mean I would go to the, I do private work, but I would go to the jail  
17 and I would talk to client A and they were like, oh, well my PD, which is probably a  
18 complete lie, but my PD said, well if you pay me, I'll work harder and I'm like, that was  
19 like, that was not said was it? But, I don't know. So, I just, I would really prefer a system,  
20 and I do think we get better employees. I'm not saying that we don't, we have excellent  
21 employees, but, I do think that you wouldn't have kids that are just trying to learn how to be  
22 a PD or be a lawyer, taking this job to make ends meet so they can pay their rent so they  
23 can. . . .

24 V. CARMICHAEL: I'm going to pick on you Abe.

1 A. NAVARRO: Absolutely.

2 V. CARMICHAEL: How many part time public defenders do you have?

3 A. NAVARRO: Twenty.

4 V. CARMICHAEL: Twenty. And if you had full time public defenders would you  
5 need ten or twelve or fifty?

6 A. NAVARRO: I don't know about that Judge. I mean I'd have to work on the  
7 numbers, especially with (inaudible) and Kathleen there (inaudible). Abe Navarro just for  
8 the record, but what Pat said earlier about a statewide system, actually (inaudible) in the  
9 terms of the appellate system. We all file our appeals and then farm them out just to  
10 accommodate to make sure some numbers are, we don't overwhelm ourselves in terms of  
11 case numbers. We had seventeen appeals this last year, incredibly expensive, incredibly  
12 expensive on our County dime so-to-speak. It is reimbursed, but not dollar for dollar. A  
13 statewide appellate system would be just like what the prosecutors are doing would actually  
14 help tremendously. Me, as a prosecutor for fourteen years never had to worry about that. I  
15 sent a note to Andrew (inaudible) or Cynthia (inaudible) and they dealt with it from that  
16 point forward. We don't have that luxury as public defenders, especially in a (inaudible).  
17 Part time public defenders who (inaudible) responsible, if, but for the facts we are trying to  
18 (inaudible) our resources to the best of our abilities to accommodate the rights of our clients  
19 that seek appeals. Now we have two already this year, two or three, no four of them this  
20 year, various dispos, full trials or juvenile dispositions or even CHINS appeals, our office is  
21 still responsible for that, is still responsible for that and a statewide appellate system for us  
22 would be incredibly helpful. It would leave the burden off (inaudible) task resources that a  
23 public defender has whether it's out of general fund or supplemental fund, whatever that  
24 may be, it would relieve that monetary obligation at that point. I know the prosecutors

1 don't worry about it and we still do. Yes, we know the cases best cause we tried them, but  
2 nothing, consultation with appellate attorneys. You know, we're trying to be the jack of all  
3 trades, we're trying to be what we call Swiss arm knives and since I've become a public  
4 defender (inaudible) but I got to tell you that after a while though, they didn't dull and tired  
5 especially underpaid, but they do it out of dedication, the ones I've known so far.

6 UNKNOWN: I agree with that. I have to farm out all our appeals. Usually go, I  
7 usually use one guy down in Madison who does really good work, but, I know he's taking  
8 them from multiple counties. So a statewide appellate division would be super. It would  
9 just be great. I've got, including myself, I've got four full time in Circuit Court and our  
10 numbers are just bulging at the seams and every quarter, just, and they're bulging at the  
11 seams. So . . .

12 P. BIGGS: That's why my original idea of a statewide system along the lines of  
13 prosecution would help alleviate a lot of these problems, that - - we got to it, but we didn't  
14 discuss it. You asked me, you know, about, I guess you were asking who is going to appoint  
15 these people, how that would work, but that's a problem. That's a problem that could be  
16 worked out and it would be a lot easier than the current system where you may, as I did in  
17 our county, having to fight not only the commissioners but also the council at every turn. I  
18 mean you're going to have somebody making the appointment, somebody that you're going  
19 to have to answer to, somebody's got to run the system.

20 L. LANDIS: I wasn't really asking, other than I was just trying to clarify because  
21 sometimes when people say a statewide system, they mean different things, so just trying to  
22 let you have. . . giving you an opportunity for the record to clarify what you meant. It's not  
23 always clear what people mean.

24 P. BIGGS: Well, a statewide system similar to that prosecutorial system.

1 L. LANDIS: That confuses me though because the prosecutorial system is really  
2 county based. They are elected countywide. The elected prosecutor and the Chief Deputy  
3 are state paid, everybody else is county paid. So, I don't - - I'm not sure I follow what you  
4 mean by like the prosecutorial. . .

5 P. BIGGS: Okay, lop off the election part of it.

6 L. LANDIS: Okay, you mean a county chief appointed by the State.

7 P. BIGGS: Because I don't want to see Chief P.D.s elected because they do the worst  
8 job as one of my council members refers to, those people.

9 L. LANDIS: We haven't heard anybody advocate elected public defenders yet.

10 J. PATTISON: I'll be first. Jason Pattison, P-A-T-T-I-S-O-N.

11 L. LANDIS: There are states that do that. There are counties in Nebraska and  
12 Tennessee, San Francisco County and all of Florida have elected public defenders. So, it's  
13 not that strange of an idea.

14 P. BIGGS: It is strange.

15 L. LANDIS: (inaudible) Indiana public defenders advocate that other than Jason  
16 Pattison.

17 L. LANDIS: What about CHINS and TPR cases? Do you have an  
18 recommendations of what to do about the significant increase? Should that still be a county  
19 function (inaudible)? Any suggestions how we deal with that tripling of the caseload in the  
20 last five years?

21 J. PATTISON: Get us some real treatment down here please. Every time I turn  
22 around I am trying to get people treatment. I've been doing it for twenty years and the  
23 prosecutors try to fight me on it and the toolbox that I have is very small, the tools in it are  
24 even smaller. If you've got to have in-patient treatment, I still have probation terms in my

1 probation contracts that say even if you have a prescription for methadone, suboxone, you  
2 may not take it. That's ridiculous.

3 UNKNOWN: It's in the probation contract over riding the medical. . .

4 J. PATTISON: Yes. I've even researched practicing medicine without a license. It  
5 doesn't fit. I had one T'd up to appeal just because I just argued public policy or I did it and  
6 they dismissed it on me the day before the fact finding. It was the only violation my client  
7 had was that he took his prescribed suboxone and in fact it was in the probation terms still as  
8 of this week in a plea agreement that I got and it's outrageous. We don't have tools and they  
9 want to take tools away from us and the fact is we are not going to arrest and lock people up  
10 and cure this problem.

11 L. LANDIS: So I think what you first started to say is there's not enough, is it  
12 treatment providers that you're talking about?

13 J. PATTISON: Right.

14 L. LANDIS: I just wanted to clarify that.

15 J. PATTISON: Yes, we have a couple community mental health treatment providers  
16 in there, so they offer some IOP programs and they are so overwhelmed with people that  
17 ought to be in in-patient treatment that they can't handle what's going on. We're rife with  
18 opiate, methamphetamine. You know back in the day I was getting possession of  
19 methamphetamine and I'd be looking at them like, look, you're going to jail or I'm going to  
20 have to get you in-patient treatment. I'm getting felony diversions on possessions on  
21 possession of methamphetamine because they can't handle it.

22 J. CULOTTA: Obviously that's in Jefferson County. Just for the record, that's not  
23 Clark County. I don't think it's Floyd either, definitely not Orange, but we're not going  
24 there.

1 UNKNOWN: (inaudible) juvenile, right?

2 J. PATTISON: We need treatment. We're dying for it down here. I mean, you  
3 know, we're getting grants and we get community corrections which is a whole other story  
4 that would take a really long time to talk about. You know, my Community Corrections  
5 Department went from two people to twenty people but I still can't get any treatment. It's  
6 crazy.

7 L. LANDIS: Where is the nearest in-patient treatment?

8 A. ADAMS: Department of Corrections.

9 J. PATTISON: Yea. Thank you Judge. That's what they want to do.

10 L. LANDIS: What is the nearest? Probably Louisville?

11 J. PATTISON: No, actually Jefferson County.

12 V. CARMICHAEL: We have thirty day. . . .

13 J. PATTISON: Clark County is the end of . . . I hear Healing Place is a wonderful  
14 place, but Jefferson County's not in their service area. So, my toolbox is usually Salvation  
15 Army, Turning Point, but thirty days is not enough, the halfway house, the Bliss House is  
16 great. I've gotten a lot of females through there. I'm starting to use a place called  
17 Lighthouse Recovery a little bit over in Washington, Indiana a couple of times, and that's  
18 about exhausted my toolbox. When I'm in Jackson County I often ask Alan's people who  
19 are you using? Any place I go somewhere, I go, hey is there anything, because I've been  
20 doing it, I've been getting people there a long time. I heard Richmond State Hospital  
21 opened back up.

22 V. CARMICHAEL: I hadn't heard that.

23 J. PATTISON: Someone told me that this week. Twenty some beds, that's not  
24 enough. Actually there is a female in-patient treatment facility in Lexington, Indiana that I..



1 . . . . .

2 UNKNOWN: Centerstone is running that.

3 J. PATTISON: . . . twenty beds. That's not enough.

4 UNKNOWN: And it's not long enough.

5 J. PATTISON: No, again, it's thirty days.

6 L. LANDIS: It's a little beyond the scope of the Public Defender Task Force.

7 J. PATTISON: Sorry.

8 L. LANDIS: It's fine because it's obviously a problem.

9 J. PATTISON: But that's how to deal with the tripling of the cases.

10 L. LANDIS: It's a real problem that you have.

11 UNKNOWN: Well (inaudible) consistent with what we all are facing in the criminal  
12 justice system, the outcrying that we have no resources.

13 J. PATTISON: We do though. We're spending an awful lot of money on  
14 supervision. We're spending a ton of money on community corrections and all of that stuff  
15 so that they can supervise them and not send them to in-patient and then violate them for  
16 failing a drug test.

17 V. CARMICHAEL: Well and Donnie, I know we've started some new programs in  
18 the jail (inaudible) those Community Corrections dollars. I have you down to maybe talk  
19 about jail overcrowding and things like that and how public defense works into that, but  
20 what about the treatment aspect? What are you seeing from that, if anything?

21 D. BOWYER: Not very much. I've seen some recently, most of the treatment I've  
22 seen is court ordered. For seeking, I think seeking treatment, now they've been ordering it  
23 per say, if that makes sense. I mean I'm seeing transport orders every day which is amazing.  
24 I mean it's overwhelming actually. But, I'm not seeing. . . .

25

1 V. CARMICHAEL: So, back to the original question,

2 J. PATTISON: Sorry.

3 V. CARMICHAEL: It's okay, it was a good diversion because we needed to talk  
4 about that too, but it's a separate topic. But, CHINS and TPR work. So, I know that cases  
5 increased twenty percent across the State, if not more last year. They seem to started going  
6 down this year and I'm not really sure why because I don't think we've solved the opioid  
7 crisis but maybe we have and I just don't know it. What do we do with CHINS and TPR  
8 cases? Would that make sense to have a statewide, like you would have a statewide  
9 appellate division for public defenders to do the appeals? Would it make sense to have  
10 statewide CHINS, TPR folks?

11 UNKNOWN: I think it certainly would if you're talking about the parents. I  
12 (inaudible) the business of representing the parents in those proceedings.

13 UNKNOWN: Kids in juvenile proceedings and maybe the CHINS proceedings,  
14 that's something different, but besides that, a lot of times you end up with conflicts  
15 everywhere (inaudible). Just seems like the CHINS TPR, the adults, the ought to be coming  
16 from somewhere else.

17 L. LANDIS: Could you explain that in a small office like yourself, where you have  
18 that conflict? I mean can you give an example just so, for the record?

19 UNKNOWN: Well we don't so much have it in our's because we, it's contracted out  
20 and the attorneys that are handling those are contracted out, but some of my colleagues that  
21 I've talked to at our meetings, it's a nightmare for them. I remember the first meeting I went  
22 to after I became a chief public defender, one of the guys in the group said he, said they  
23 finished court last night at 10:30 and it was all CHINS and parental right terminations and  
24 that, that they finished at 10:30. So, I mean it's just . . .

1 L. LANDIS: How about the other of you chiefs or public defenders? Do you think  
2 that CHINS and TPRs ought to stay within the public defender office or ought to be  
3 separated out?

4 J. PATTISON: Jason Pattison. If they are in the same office, I see conflicts. I don't  
5 see how the same office, one person represents mom, the other person represents dad and  
6 then I have one recently where I represented the guardians. So, now you've got three and if  
7 you're applying typical rules of a firm or an office, that can't happen because it's a conflict.

8 V. CARMICHAEL: Or mom or dad has criminal charges in addition to the CHINS  
9 case.

10 J. PATTISON: Right, sure, right.

11 V. CARMICHAEL: You've got a public defender representing the. . .

12 J. PATTISON: You've got the same office representing mom and dad who have  
13 different, you know, mom's a heroin meth user and dad is a perfectly fine, upstanding  
14 citizen. Now you've got. . .

15 L. LANDIS: How about when you represent a juvenile who is delinquency who is  
16 saying, you figure out the real problem is not the kid, but the parents have an addiction  
17 issue. .

18 J. PATTISON: Who are represented in the same office.

19 L. LANDIS: . . . and you can't use that information to help the kid (inaudible).

20 J. PATTISON: You've got it. That's exactly. . .yes. Now you've got to withdraw  
21 because you have that conflict.

22 UNKNOWN: I think it can become a real tangled web of conflicts because you get  
23 parents or you get other parties, it's, you know, maybe it's just me because I, professional  
24 responsibility, I studied hard on that, probably more than a lot of other things, but I think it

1 can become a really tangled web of mass conflicts and you know, then you have the attorney  
2 or attorneys or the office itself under possible professional responsibility issues because of  
3 these conflicts and I think it needs to stay with, out of the office, not within. . .

4 A. ADAMS: Adams. Couldn't you do like, couldn't you do like a district model  
5 (inaudible) for Division of Family and Children Services down here, they have someone that  
6 goes from Scott to Clark and to Floyd I think or they rotate around or they're jumping from  
7 job to job all the time, but could you do a district model, three counties, six people, I think  
8 we have four in your court that are part time or you could have two permanents, two  
9 permanents from Scott, two from Floyd and they could one day in Floyd, one day in Clark,  
10 one day in Scott and they could oversee the conflicts, but they primarily would have those  
11 three days, all of them available for those main three days for those courts and then two days  
12 to meet with clients in between different days. Because they are there all day, I agree, from  
13 the morning to the afternoon on dockets, so they can't even meet with those people in  
14 between the hearings or whatever. If you had six committed to that then you would have  
15 more, they would have more opportunity to talk to other people while they are there and  
16 address issues, more of a district model.

17 L. LANDIS: We had another judge that joined us I didn't see.

18 J. CODY: I snuck in.

19 L. LANDIS: Everybody else introduced themselves. If you would, just introduce  
20 yourself.

21 J. CODY: I'm Terrence Cody, Judge of the Floyd Circuit Court.

22 L. LANDIS: Thank you for coming by the way.

23 J. CODY: Didn't want to miss the opportunity to see you.

24 V. CARMICHAEL: So, compensation, let's go back to that because we talked about  
25

1 pay parity so I know that Floyd County pays different than Clark County and Jackson and  
2 Jefferson probably pay different as well. You have full time folks only?

3 UNKNOWN: In Circuit Court I have four full time, there's four full time attorneys.  
4 We're on parity with what the prosecutors make that. Our lowest salary is about sixty three  
5 thousand, thereabouts. I've got two attorneys that were ready to close up their practice and  
6 wanted to, said will you hire me, I'll close my practice, I said yes. So, they're happy as a  
7 clam. I mean, so my situation is a little different than some people because some people hire  
8 people right out of law school. If you totaled our years of experience then all of us would  
9 probably be in the top five in the state. I mean both of those guys have done public defender  
10 work for thirty years, so, but, they were happy with the sixty-two thousand. They said that's  
11 just great. I'll just shut my office and so, and we're making exactly what the prosecutor is  
12 making in the county.

13 V. CARMICHAEL: So, and I guess that's the difference too because our prosecutors  
14 don't make that in Clark County. I think our prosecutors start at forty-five? It's ridiculous.

15 A. ADAMS: They're overpaid.

16 V. CARMICHAEL: But, so I think there's, you know when we talk about pay parity,  
17 and if we're going to as for pay parity, we have to know what we're asking for because I  
18 think it's different county by county because you're making what your prosecutors make and  
19 I think Clark County, we're on parity with the prosecutor because your public defenders. . .

20 A. NAVARRO: At fifty percent, yes. They are at parity with what a prosecutor  
21 would make, so. . .

22 J. PATTISON: We do contracts and my understanding of the pay parity in Jefferson  
23 County is calculated by the Public Defender Commission, excludes both the prosecutor and  
24 the chief deputy.

1 V. CARMICHAEL: Okay, so just what the other deputy prosecutors make?

2 J. PATTISON: Right.

3 V. CARMICHAEL: Yea.

4 L. LANDIS: The County pays . . .

5 J. PATTISON: My understanding is the County paid deputies make in the sixties,  
6 the contracts pay in the seventies and that's not even close to pay parity since we have to pay  
7 secretaries, insurance, overhead, all that kind of stuff.

8 L. LANDIS: That is an issue that we are exploring. The contractors, because they  
9 don't get fringe benefits and they have to pay overhead, obviously fifty percent of what the  
10 deputy, full time prosecutor makes is not parity.

11 J. PATTISON: Still would be nice if they would, nicer. . .

12 P. BIGGS: Pat Biggs. We don't have investigators like the prosecutors do.

13 J. PATTISON: That was next. Investigator - - an army, army, law enforcement.

14 L. LANDIS: Just so you know, we are working on a joint effort with IPAC and the  
15 prosecutors to try to get a state salary schedule so there is uniformity for part time and full  
16 time prosecutors and public defenders.

17 J. PATTISON: Included that hundred and forty and hundred and ten it would sure  
18 get a little bit better.

19 L. LANDIS: Well, we're trying to get it up to a very reasonable amount, probably  
20 phase it in over time so that the State would kick in maybe ten percent of to help boost it up  
21 the first year and twenty percent the second year and so on. Everybody recognizes that the  
22 public sector, prosecutor, deputy prosecutors and public defenders are underpaid and if you  
23 want to create (inaudible) tracks, you've got to pay, you've got to increase the compensation  
24 so that people can afford to pay student loans, and keep those jobs more than a couple of

1 years.

2 J. BRAUNSTEIN: I agree with that. Jeremy Braunstein. When I was in  
3 Indianapolis or Marion County Public Defender's Office, it was tough, it was tough because  
4 the pay, as a deputy public defender in Marion County, compared to someone else, there  
5 was a big difference on. . . I don't know what it is now in Marion County, but I think I was  
6 left, when I left Marion County it was about thirty-nine or something I was making. Luckily  
7 my rent and I didn't have the kind of bills back then, but you know, compared to what other  
8 counties made, it's - - I don't know what the issue or what the status is with attorneys  
9 coming and going up there, it's been a while since I've been to that office, but I just know  
10 that pay is an important thing and I know that, and I'm glad I'm at where I'm at now  
11 compared to where I was in Indianapolis several years ago.

12 V. CARMICHAEL: And so it's not just pay, it's also other resources. So, you talked  
13 about an investigator and what other resources?

14 P. BIGGS: When I say investigators, it's like Jason said, prosecutors have several  
15 police departments within the county.

16 J. CULOTTA: In addition to somebody in house. I mean they have investigators,  
17 several investigators in house and the police departments. So, you know, they have an  
18 army.

19 A. NAVARRO: And I can't reiterate how important our recovery works social  
20 worker is. This resource takes a lot of social work burden off the attorneys who aren't  
21 normally trained in social work. So, finding resources connecting our clients to the  
22 resources like drug or mental health treatment is incredibly important and we have some  
23 way to do that. We are blessed with a grant funded one, but county resources is not enough  
24 right now to actually make her a part of our permanent payroll. We're dependent on grant

25

1 (inaudible) right now. We're blessed to have her and she's done wonders for our clients,  
2 wonders for our clients. And, like Pat said, without that, then the attorneys again, assume  
3 roles that may not necessarily be best suited for. But, because of our client, because of what  
4 we do, we're going to end up having to do it regardless, you know, because who else will.

5 L. LANDIS: What happens when you ask for funding for investigators for social  
6 workers? I mean, what's been the response of county councils?

7 P. BIGGS: They haven't funded. We ask for investigators all the time.

8 L. LANDIS: You have none on staff in Floyd County?

9 P. BIGGS: No.

10 L. LANDIS: Anybody else other than. . .

11 UNKNOWN: I've got a part time, twenty-nine hours a week and I, hired a retired  
12 State Trooper.

13 L. LANDIS: And that's for five lawyers?

14 UNKNOWN: Four.

15 L. LANDIS: You and four other ones?

16 UNKNOWN: Me and three others.

17 L. LANDIS: Oh, three others. Anybody else have investigators? Clark County has  
18 none?

19 J. CULOTTA: None.

20 J. PATTISON: We have contracts. We're not organized enough to even get in front  
21 of the council to ask for such a thing.

22 L. LANDIS: And obviously Clark County has no social workers either?

23 J. CULOTTA: We have the social, the grant funded social worker, but we don't have  
24 investigators.



1 A. MARSHALL: Jackson County has a social worker and that's through your office  
2 Larry.

3 J. CULOTTA: So you have an investigator and a social worker?

4 A. MARSHALL: Yea, we only have her for one to two days a week. We have to  
5 share her with Lawrence County and we're going to lose her as soon as Lawrence County's  
6 grant fund gets funded.

7 L. LANDIS: What about expert witnesses? How do you go about getting funding for  
8 expert witnesses?

9 A. MARSHALL: I have some in my budget.

10 L. LANDIS: How much?

11 A. MARSHALL: Not enough, less than five thousand dollars.

12 L. LANDIS: Five thousand for the year, for everybody?

13 A. MARSHALL: For the year, for the year. Now, I'll have to go back.

14 UNKNOWN: What do you typically ask for?

15 A. MARSHALL: I usually ask for fifteen. I got five.

16 L. LANDIS: Do you usually spend the five, or do you . . .

17 A. MARSHALL: It depends. You know, it just depends on what kind of cases I got  
18 coming. I will this year. I've got a murder case coming up, so, we are going to hire a couple  
19 experts. So, yea, it's going to go in no time and I'll be back in front of the council.

20 V. CARMICHAEL: Abe do you . . .

21 A. NAVARRO: Other than asking for an additional appropriation out of our  
22 supplemental fund. We do have contract services but they are pretty much (inaudible) for  
23 the attorneys we have. So, again, like you said, we're going to have to go in front of the  
24 council if necessary just to, I mean obviously (inaudible) they're not going to like it

1 (inaudible).

2 L. LANDIS: How much do you have, do you have a budget for experts?

3 A. NAVARRO: I don't think we do and if we did, I don't know it off hand, but it's

4 so. . .

5 J. CULOTTA: No, we don't.

6 L. LANDIS: So how much do you normally, do you - - if you have to go back and  
7 ask for funding, how much do you spend in a year for experts?

8 A. NAVARRO: 2017, I've only been here four quarters.

9 L. LANDIS: None?

10 A. NAVARRO: Not this year.

11 L. LANDIS: Did you try any cases?

12 A. NAVARRO: We do.

13 V. CARMICHAEL: Now I will say that. . .

14 A. ADAMS: The attorneys - - Adams. I've got two older, elder statesmen of the  
15 profession and they file motions for expert funds or for the Court to pay for experts. I grant  
16 them.

17 J. CULOTTA: When I was doing public defender work, I would file a motion asking  
18 the Court, on my PD cases, to fund it. I would always, when Jeff was, when Stonebraker  
19 was around, I'd go to Jeff first and he's like, ask the Court and that's also the same with  
20 depositions. I mean we try to minimize the amount of depositions because you have to pay  
21 the Court Reporter and that comes out of our budget as well and the way we would do it is  
22 you would have to ask before you did the deposition to see if there was funds available and  
23 then if there wasn't then you could either maybe ask the Court or go to the county.

24 A. NAVARRO: We do have funds though in our budget for transcripts and

25

1 depositions.

2 J. CULOTTA: Right, but we run out.

3 L. LANDIS: When you went to the Court, did you always get the money you  
4 needed for deposition or experts?

5 J. CULOTTA: I don't believe that I ever asked for deposition money personally.  
6 But, I've never had a court turn me down for an expert that I needed. Now, if I had an  
7 expert that I wanted, you know, I mean some experts are just not necessary - I mean let's be  
8 honest, some experts you don't need, you'd like, that's a luxury, but sometimes you just  
9 don't need them and I've never had a court turn me down for an expert.

10 L. LANDIS: How would a judge know whether you wanted or needed the expert  
11 you were requesting?

12 J. CULOTTA: Well, okay, I mean if it's. . .

13 A. ADAMS: If you're getting one out of Boston for twenty-five thousand dollars  
14 (inaudible) is not getting granted.

15 J. CULOTTA: I mean if it's a homicide and you need a ballistic expert, you're going  
16 to get it. But, if it's a homicide and you want to do a polygraph, you're probably not going  
17 to get that. I mean, you know, they say you can go through the State if you want like, cause  
18 sometimes you may want to do it Ex Parte, you don't want the other side to know that  
19 you're going to do this. I'm not going to get funding for something like that. I would - - -as  
20 a Judge I wouldn't give me funding for that. I'd be like, borrow it, figure it out.

21 P. BIGGS: We budget for experts.

22 L. LANDIS: How much?

23 P. BIGGS: I think we budget about sixty thousand and then we budget about twenty-  
24 five thousand for depositions. We move that stuff around and when push comes to shove, I

25

1 tell the council we need more money and I explain to them why they should give me more  
2 money, I tell them, you know, you can give me the money and get forty percent back or I  
3 can go to the Court and make a case that we need this and the Court will have to give it to  
4 us and you won't get forty percent back.

5 L. LANDIS: Why? Why is that not reimbursable if the Court approves the expense?

6 P. BIGGS: Because it's out of the Court's budget.

7 L. LANDIS: But it's still a county expenditure.

8 (INAUDIBLE)

9 P. BIGGS: We're talking about how it is in different counties. A statewide uniform  
10 system would cover all this.

11 UNKNOWN: Yes it would.

12 L. LANDIS: We haven't heard from the Sheriff on jail overcrowding and how public  
13 defenders can help with that.

14 D. BOWYER: And I don't know how this. . . we need more public defenders  
15 because of jail overcrowding and we talked a little bit before this and it's nothing against the  
16 current office because they're doing a great job, but we, being across the river from  
17 Louisville, Kentucky, we probably weekly pick up twenty-five to thirty inmates from the  
18 Louisville jail and that's not even normal arrests, that's just the Louisville Metro that picks  
19 up and says hey, we got some that's waived extradition, come get them. So that's twenty-  
20 five to thirty along with normal arrests, whatever that may be and I've seen an increase in  
21 courts as far as bringing them up for court and my goodness, and of course I can go back and  
22 say we don't have enough people to do that either, but then the Judge will say, you've got to  
23 have them up here, but getting back to the public defenders, if we have more, maybe we can  
24 do this process a little bit better where we can get them out. . . we've got to do what we've

1 got to do as far as the charges and everything, but when it comes to, we're right now, and I  
2 don't know what's going on with other counties, but right now we are over six hundred  
3 inmates which for Clark County, that's a lot of inmates.

4 UNKNOWN: How many are pre-trial?

5 D. BOWYER: I don't have. . . (inaudible).

6 V. CARMICHAEL: Eighty-five percent would be my guess.

7 L. LANDIS: So why is it so high in Clark County?

8 D. BOWYER: Probably, the overcrowding, probably because of Louisville. I hate to  
9 blame Louisville, but we're. . .

10 L. LANDIS: No, I mean pre-trial. Why is it eighty-five percent pre-trial being  
11 detained when they have the right to bail and - - - are they there just because they can't  
12 afford to make the bond schedule?

13 D. BOWYER: Probably most of them can't.

14 A. ADAMS: In Clark County, because they are out on bond and they've picked up  
15 another offense or a second offense and it's often times possession charges or syringes or - - -  
16 I mean, that's why, because there are three or four charges, but they are all out of pretty  
17 much the same Court, or it's their third DUI in three weeks. I mean, that's why. Once our  
18 prosecutors - - - if you've committed another offense, allegedly committed another offense,  
19 he's filing a motion to revoke bond on every case because they are just completely re-  
20 offending.

21 V. CARMICHAEL: And we're not part of the pre-trial pilot project with the State  
22 but we do have some pre-trial officers. We started that and they are only working in Circuit  
23 One and Circuit Four which are the higher level felony cases and most of ours have higher  
24 bonds because they are a higher level felony cases, so they are not really eligible for pre-trial

1 for the most part.

2 J. PATTISON: Don't do it. Don't be part of the pre-trial project. Don't do it. It  
3 hasn't helped my county. It's created more work and in the words of John Prime, it ain't  
4 worth all we had to kill to get. It violates the rights of the Fifth Amendment, violates the  
5 right to counsel, let's see and the IRAS is not evidence based. When we rolled out our  
6 program we had a nice lady who runs the Kentucky program, the head of the Kentucky  
7 program, and you know what she said? She said there's an inverse relationship between  
8 drug charges and showing up to Court. It means that they show up to court more. You  
9 know what they do with the IRAS? Give you two or three or four points for that. So, that  
10 makes your bond higher. When I asked the pre-trial director if she remembered that under  
11 oath, she didn't remember that statement. And, so, you got this very rudimentary IRAS  
12 scale that number one is not evidence based, it has about seven questions, two-thirds of  
13 which violate the Fifth Amendment because it asks about your drug use and your criminal  
14 history and then you have, that's one axis and then the other axis, when I asked about that,  
15 they said oh we got that from Marion County. They've since sat down and decided amongst  
16 themselves what the security risk levels are without any evidence and our jail population. . .  
17 well let's see, we built a jail in 1972 and it was ready for about fifty some people and it  
18 regularly had sixty or seventy. In 2007 we built a jail addition and it was rated for about  
19 ninety-five and then we renovated the third floor and it's rated for a hundred and five. As I  
20 said, we had about sixty, seventy, right? So that sounds about right. We regularly have  
21 about a hundred and forty to a hundred and fifty in our jail and that's the same number that  
22 we had before started the pre-trial project. Oh yea, and we only hold initial hearings on  
23 Mondays and Fridays now, so I had a Level 6 Felony, got arrested on a Monday, couldn't  
24 make bail until Friday because he didn't have a bail because he had to go to Court, for more

25

1 than a week. So, I had a little discussion with some folks about that. It is not helping, it's  
2 creating a lot of work and it's getting Community Corrections a lot more money.

3 L. LANDIS: Anything else you don't like about it.

4 J. CULOTTA: This is Culotta here. I've heard Jason talk about Community  
5 Corrections a lot over the last two years?

6 J. PATTISON: They've been around since 2010. Since we sued them in Federal  
7 Court because they thought they could arrest people.

8 J. CULOTTA: Just as a - - with the jail overcrowding and those issues with the  
9 people from Louisville coming over here and all, I agree that we need more P.D.s. Judge  
10 Adams and I were kind of doing a little bit of a sidebar here talking about the potential of  
11 say, a rocket docket or something like that, where we have, I mean because if you look at  
12 Circuit Court Three and Circuit Court Two in Clark County, where we have the designated  
13 drug court, so they are completely overworked because the prosecutor's office absolutely has  
14 no employment of discretion so every single arrest is charged at the highest level, thank you  
15 Jeff Sessions and so now we have every single case, every single arrest, it ends up a felony in  
16 Circuit Court 2 if it's a drug case or all these crazy cases in Circuit Court Three and if you  
17 have a plea agreement and you want to get that person on the docket, you're three months  
18 out in Circuit Three right now, to plea somebody, to get a case closed. I mean it's insane  
19 and you know, these are people, and I'm not saying rocket docket for people that want a  
20 trial or anything like that, but you know, if, when you meet the client and the client's like,  
21 look I'm guilty, get me a good deal, there should be a way that maybe we could funnel those  
22 cases so that the jail, those people if they are going to prison, they go to DOC. If they're  
23 going to, we should probably get the prosecutors office to actually really consider diversion  
24 again, considering that's gone in Clark County. So, I mean we've created this monster and I

1 don't think that these people in this room created it, I think it's that media likes the numbers,  
2 every camera rolls when somebody gets arrested but the cameras don't show up when that  
3 person pleads guilty or the case is resolved. So we get all this media because we're all, cause  
4 prosecutors have to be elected and that's why we don't want public defenders elected,  
5 because then we're just, it's a media frenzy to show how great you are, but you're not really  
6 doing anything, you're arresting somebody. I mean, hell, you go to Louisville, you don't  
7 even need to be a cop to do that. I could go file a citizen's arrest right now and arrest Jason  
8 Pattison.

9 L. LANDIS: Talk about initial hearings whether that has an impact on the jail  
10 population, how fast we process cases at initial hearing, get a lawyer in the case. So, starting  
11 with Clark County how do lawyers get in the case and when do they get into the case?

12 A. NAVARRO: Okay, you can correct me if I'm wrong Judge. Once the lawyers get  
13 in, specifically, at initial hearing after the finding of indigency and usually after that  
14 (inaudible) we get an order of appointment directly from the Court and at that point we'll  
15 assign it accordingly. However, as you have pointed out, there's a liberty interest involved  
16 at the initial hearing and there's no one there right now until we get appointed and we find  
17 out after the fact and usually the pre-trial and the case management dates have already been  
18 scheduled.

19 L. LANDIS: So how long after the initial hearing is the lawyer notified that they  
20 have a new case?

21 A. NAVARRO: Fairly quickly. When I get the order of appointment I'll do the  
22 assignments.

23 B. ABELL: I get files everyday. I don't know generally when the initial hearings  
24 were. It depends on the Court I think sometimes.



1 L. LANDIS: Bryan could you state your full name and spell your last name?

2 B. ABELL: Sure, Bryan Abell, A-B-E-L-L. I'm one of the public defenders here in  
3 Clark County.

4 L. LANDIS: And so is there any policy in your office about how soon they should  
5 see your client after they get notice of a new case?

6 A. NAVARRO: I usually leave it up to the attorneys. They (inaudible) every  
7 Wednesday and Fridays. We see a whole crowd of folks in the jail and all of us are kind of  
8 in there with them. It's hard to say because we do it so fairly frequently now. I do it, I'm  
9 very, I do like the fact that when I go there, there will be a small army of us in there too in  
10 this room a quarter of this size with our clients. I know it's not ideal, but at least it's there.

11 L. LANDIS: If a client says I want a bail reduction then what happens and how long  
12 does it take?

13 A. NAVARRO: In terms of?

14 L. LANDIS: Getting a motion filed and getting a hearing.

15 A. NAVARRO: Sure, usually I know when my clients do make that request I usually  
16 tend to e-file those quickly. However, there are attorneys who see their clients first or will  
17 discuss that with their clients first, then see if that's truly tactically what they want to do. So,  
18 again, we will leave that to them, but we do, when we file that I usually get hearings not too  
19 fairly long. The judges. . .

20 L. LANDIS: What's that mean in terms of days?

21 A. NAVARRO: A week or two.

22 A. ADAMS: The two attorneys assigned to my court file it with their appearance,  
23 motions for bail review. Sometimes they are already out, but they file for a bail review and  
24 we set it the following Monday.

1 L. LANDIS: And then what percentage of cases, when you file a motion for bail  
2 reduction, actually get reduced?

3 P. BIGGS: It depends on the defendant. A lot of people. . .

4 L. LANDIS: Just looking for a rough ballpark figure, countywide with all the courts,  
5 of course you don't have to talk about Judge Carmichael's Court, but. . . .

6 A. ADAMS: In my court probably seventy-five percent. There's some other factor  
7 that they've, not in the pre-trial services report and or the attorneys bringing something,  
8 they've got a job, they still have a job waiting, or they can make this amount of bond, but the  
9 bonds are pretty, I think pretty lenient on the bond scale that we have unless it's a seriously  
10 violent crime. Shooting a police officer is a high bond in my court, even though the State  
11 wanted to agree to release him.

12 L. LANDIS: Okay so it could take a week or two to get that reviewed, is that right?  
13 How about Floyd County?

14 P. BIGGS: About the same.

15 L. LANDIS: Do you staff initial hearings?

16 P. BIGGS: We don't staff initial hearings. We get appointed at the initial hearings.

17 L. LANDIS: Bond in both counties set by bail schedule or is it different than a bail  
18 schedule?

19 P. BIGGS: I don't know what their bail schedule is.

20 J. CODY: Judge Cody. In Floyd, all the misdemeanors have a bond schedule. The  
21 jail takes the money and they are out and Mr. Biggs and I don't have to deal with those type  
22 generally. If a bond has been set in a felony case, the jail can take the money and they're  
23 out. A lot of times, what I do, at the beginning, when I review the probable cause, maybe  
24 I'll set a high bond because I want to make sure they don't bond out before they see me.

1 And then, I'll adjust it down depending on things. But, I agree there are people who have  
2 got two or three charges against them and they've been OR'd or have had a low bond, they  
3 are going to be with us. They are not going to go anywhere.

4 A. ADAMS: I think Vicki and I did the same, we, I, they are up the following day. If  
5 they are arrested, if they get arrested tonight, they're going to be in Court tomorrow with at  
6 least an advisement and a bond to be set and then with an additional initial hearing if they  
7 are going to hire an attorney or for the initial hearing within seventy-two hours, or forty-  
8 eight hours, depending on when we can get the charges and depending if it's a Wednesday,  
9 they are going to be seen on Friday, if it's a Tuesday they will probably be seen on Thursday  
10 or Friday depending on the thing and then the bond is reviewed there based off of the  
11 probable cause that is tendered.

12 J. CODY: I don't know about you Drew and Vicki, but our prosecutor generally is  
13 pretty good about at least Tuesday through Friday, if somebody is arrested on Monday,  
14 there will be charges ready on Tuesday for the most part. Now the weekend is a different  
15 story, but I mean by the time that they've got the charges filed and we see it's a Level 6  
16 Felony for a second theft from Walmart, you know, if they've got a job, you know, they're  
17 going to, I'm going to OR them. Our jail population this morning was 315 and it's been, I  
18 know higher than 340 before and it's been in the high 200s but that's a fairly typical number  
19 and I think we have people from, Federal prisoners. I don't know if we still have those or  
20 not. I do my best to try to (inaudible) to keep them out, or get them out of jail unless they  
21 are violent (inaudible).

22 L. LANDIS: How many people in jail are pre-trial detainees that are there because  
23 they can't make the bond amount?

24 J. CODY: Again, at this point in time I'm not getting any other Level 6s because I've  
25

1 got all the CHINS cases but I would say the higher level offenses, probably a good number  
2 of those are unable to make bond and are pre-trial.

3 L. LANDIS: So are the public defenders challenging that situation where you've got,  
4 where they could be in jail for a couple of weeks before you've got a due process hearing to  
5 review bail in particular or rise that bail to defendant's ability to make bail?

6 P. BIGGS: We ask for and usually get pretty quickly, hearings for bond reduction,  
7 usually within (inaudible) but I know where you're coming from. We could head off a lot of  
8 this if we had public defenders at the initial hearings. A lot of times we're able to get  
9 information from our clients that would help them get a lower bond and I'd say, when we  
10 have bond reduction hearings, a good fifty percent of them will be drastically reduced just  
11 because the information we develop after we see and talk to them.

12 L. LANDIS: That's my question. In Indiana the right to counsel attaches at arrest.  
13 So why is there no counsel at this critical stage of the initial hearing?

14 J. CULOTTA: Well and I actually have a question for the people that have full time  
15 P.D.s, and I'm not saying this is a part time issue, but maybe it is. I mean, because, you  
16 know, if you show up to work on Monday morning and you know last night, seven people  
17 were arrested and you're a full time PD, it would seem to me that if I were the PD in charge,  
18 I would have somebody designated to make sure that those individuals when they come up,  
19 if there is a possibility that you could find out something to impress Judge Cody to say, you  
20 know what, I don't think that the probable cause is as strong as I thought it was, so I'm  
21 going to be willing to cut this guy a little bit of a break at the initial so then that the jail  
22 doesn't have that person sitting there for three or four days or possibly two weeks because  
23 the person who was appointed has a murder trial they are in and they can't physically go  
24 visit that person, you know, or whatever. But if you did at the PD's office, maybe a

1 designated person that could do that on a morning basis. I'm just, it's a thought.

2 V. CARMICHAEL: So, full time, are you covering initial hearings?

3 A. MARSHALL: No we are not. Sometimes we don't get appointed until actually  
4 the initial hearing is over. The Judge advises at the initial hearing to fill out the affidavit, to  
5 get it to his office immediately. I mean he appoints quickly and it's over to us generally the  
6 same day or maybe the next morning and then we enter an appearance. Now one of the  
7 problems we're going to run into is the, I'll call it the inability of the prosecutor to get you  
8 discovery before - - - when I was a prosecutor, when we had charges filed, we had discovery  
9 ready to go, but that is not the way it is in Jackson County. Sometimes we might not get  
10 discovery for two weeks after we've been appointed.

11 L. LANDIS: So back to my question. Chiefs, why are you not staffing initial  
12 hearings? I mean is it a matter of money, a matter of personnel?

13 A. MARSHALL: Right now, we're running, each one of us are just running full  
14 schedules, it's a matter of personnel. We won't be anymore equipped to handle, other than  
15 just taking our clients word for what kind of, what is your criminal history, well I have yet to  
16 find one that accurately described it.

17 A. NAVARRO: Personnel. Like madam president said, it is, we are literally without  
18 resources and. . .

19 L. LANDIS: Floyd County the same or different?

20 P. BIGGS: Pretty much.

21 V. CARMICHAEL: Okay but we do it in juvenile cases because that was the other  
22 question, is what about the juvenile docket. So, the juvenile docket, because there's a  
23 criminal rule that says you have to, so, we have public defenders at detention hearings, we  
24 have them at initial hearings in juvenile cases, so are other counties doing that?

1 J. CULOTTA: Vicki, let me ask you something. In juvenile cases, so you have, you  
2 know, Susie Q walks in there and she's however old she is and you have a designated  
3 counsel there for her for free. What if Susie Q is rich?

4 V. CARMICHAEL: She still gets a public defender because Susie Q isn't the one that  
5 is rich.

6 J. CULOTTA: Well that's true.

7 V. CARMICHAEL: Susie Q's parents are rich, generally, unless it's a trust fund and  
8 then. . . .

9 J. CULOTTA: But in adults, I mean if we could find the funding, it would be a, the  
10 right way to approach it that you would have a designated public defender because that  
11 would be who would be the person and they show up and there's ten people standing there  
12 in orange and the first guy goes, I hired so and so. Okay, good bye. Next one, I have hired  
13 someone, okay, good bye. I don't have an attorney, then I'll stand in today and then if the  
14 Judge appoints somebody, it may not be that attorney, but that attorney will at least protect  
15 that person's rights. It may not be the best of system, but we are not, we don't get discovery  
16 initially.

17 A. NAVARRO: You've mentioned this (inaudible) preparation, you know, whether  
18 they know about (inaudible). Again, it goes back to what you said. How much discovery  
19 will we get at an initial hearing or at (inaudible). So, I mean, then again, how effective is  
20 that. That's just something out there to be heard, you know, balancing, you know, at least  
21 having something there to an extent (inaudible) effectively do so.

22 L. LANDIS: I don't want to debate that, I just wanted to get that issue out there  
23 because you're not necessary challenging probable cause, you're trying to demonstrate to the  
24 judges, you've got ties to the community, a high risk of re-appearing, I mean that's the

1 information you want to get from the client. You don't need discovery to do that.

2 A. NAVARRO: But, it is relevant in terms of what the Judge (inaudible).

3 L. LANDIS: I put you guys on the spot and I'm now going to put the Judges on the  
4 spot. If initial hearing is a critical stage is a right to counsel, why are you proceeding with  
5 initial hearings without counsel and requiring the chiefs or the system that provide counsel  
6 at those initial hearings.

7 J. CODY: Because I know they don't have the funding to have someone there. Let  
8 me say this, we don't always get the deputy prosecutor there all the time either. So, but, if  
9 they, you know, we'll find out they don't have charges, but most of the time, if it's,  
10 depending on the circumstances, but the State will waive their appearance, I'll go through it  
11 and I'll go through it and I will do my own review of whether I can gauge whether this guy  
12 is likely going to be there, I mean, you know, they've got to pass the smell test so to speak,  
13 but I don't think Abe or Pat would disagree, I've released a lot of people on their own  
14 recognizance based upon what they have told me, and so I kind of look at it right off the bat,  
15 you know, does this person really need to be in jail if it's a first offense and it's a low level  
16 felony or (inaudible) just a minimal bond.

17 J. CULOTTA: Yea, but that's not really - -I mean that is your job, but. . .

18 J. CODY: I realize it's maybe not my job, but I know that, you know, the most they  
19 are going to get is the probable cause affidavit. Heaven forbid that there would be a police  
20 report there.

21 L. LANDIS: I understand. I know you have a very good history and reputation for  
22 releasing a lot of people but I'm just putting you on the spot because it sounds like what  
23 you're doing is actually having a conversation with the defendant who doesn't have a  
24 lawyer.

1 J. CODY: Yea, but I'm trying to gauge, I'm not, I'm trying to gauge bond.

2 L. LANDIS: I know, but you're having a conversation with an uncounseled  
3 defendant when he has a right to counsel and I'm asking why not, why not them ask you to  
4 appoint counsel or mandate funds to get counsel at a critical stage where they need to be  
5 there.

6 J. CODY: Shall we have that conversation tomorrow?

7 P. BIGGS: If you adopt my system. . . you've got full time public defenders, a  
8 couple of those full time public defenders will be in court every morning just to talk to the  
9 people who are there for initial hearings.

10 V. CARMICHAEL: And I think that's what it goes back to Pat. I think you're  
11 absolutely right. If you've got people there that are full time and that's their job and they  
12 know that that's their role, they are going to be there at those initial hearings. Jason, you  
13 had something to say?

14 J. PATTISON: So, one step forward, three steps back. So, we have public defenders  
15 who have contracts and all they do is initial hearings and CHINS and so they are there and  
16 they interview the people and they do similar to what Jennifer said, I'm hiring Jason, okay,  
17 he'll be here and I show up and they give me paperwork and I deal with them on my own.  
18 But the right to counsel attaches at arrest. Pre-trial services gets notified and those people  
19 get over there at 2 a.m. to talk to my client before I get a chance to even know that they've  
20 been arrested and it's a violation of the right to counsel and so then, but we used to have  
21 initial hearings every day. Now we only have initial hearings on Monday and Friday.

22 V. CARMICHAEL: So that's a different system too.

23 L. LANDIS: Even though there is a requirement according to the Supreme Court  
24 that you have to have that Initial hearing, or you have to have a probable cause



1 determination and a warrantless arrest. . .

2 J. PATTISON: Neither one of those cases have any remedy. All it says is you've got  
3 to do it. It doesn't say what happens if you don't do it. The County of Riverside and  
4 Gerstein verses Pew (sic). I gotcha. I sited them. I've looked through them. There's  
5 nothing in there about what happens if you don't do it. So, it' just. . . they have somebody  
6 now, it's nice, I agree that's a very good idea, but they've already rung the bell by talking to  
7 these people who are. . . can't tell whether they are law enforcement. . . .

8 UNKNOWN: I don't know if Marion County is still doing this, but I remember what  
9 we did was, we all took turns covering I think it was the APC. . .

10 UNKNOWN: They don't have that anymore.

11 UNKNOWN: They don't? . . . at that point, because I remember having to, crap,  
12 I've got to get up now and go cover these early in the morning, but obviously if they don't  
13 have that now, I'm not sure what they are doing now, but I just remember at that point, you  
14 know, you could flip a coin or something to see who's going to get the early morning and  
15 we'd be there and if they were appointed we talk to them and then the Judge would then  
16 determine or would form our, assign the cases to a specific court. Obviously I don't know  
17 what they are doing now, but. . .

18 V. CARMICHAEL: I'm going to go back to the juveniles just real quickly. So, in  
19 Clark County, we're following Criminal Rule 25 and I've got public defenders there  
20 Monday, Wednesday and Friday and they are there for a detention hearing, initial hearing  
21 or whatever it is and, but you're not doing that in Floyd. You don't have public defenders at  
22 the juvenile detention hearings or initial hearings?

23 P. BIGGS: Not always.

24 V. CARMICHAEL: Okay. What about Jackson?

25

1 A. MARSHALL: I don't know the answer to that.

2 V. CARMICHAEL: Okay.

3 A. MARSHALL: We hired contract to do it, so I don't know. . .

4 V. CARMICHAEL: Oh okay, so that's not through you?

5 A. MARSHALL: I think they are. I think they are.

6 L. LANDIS: It is his responsibility, they just contract it out.

7 V. CARMICHAEL: Okay, got it. Jefferson County, do they?

8 J. PATTISON: I couldn't tell you. I don't know that they are there. The juvenile  
9 system in Jefferson County doesn't resemble what the statute says it's supposed to process is  
10 supposed to be. I don't know that I've ever seen the, probation - -- what's the report the  
11 probation office is supposed to do?

12 V. CARMICHAEL: Yea, a preliminary report.

13 J. PATTISON: I don't know that I've ever seen one. It's a very loose system.

14 L. LANDIS: What about caseloads? Are there any caseload issues?

15 P. BIGGS: CHINS are out of control. That wonderful statute about possession of a  
16 syringe being a felony offense and all you get pulled over for OWI, they get you out of the  
17 car, they pat you down, and you've got a syringe. We're not talking about an A  
18 Misdemeanor anymore.

19 A. NAVARRO: Yea, we deal with that as well on a daily. (Inaudible) how much we  
20 can do Legislative Initiative but I'm all for public health in the statutes allowing counties to  
21 have exchanges for individuals to keep communicable diseases away or at least at bay or  
22 attempt to be so. But it's a trap. There is no safe haven for individuals who use that. We  
23 believe it's some sort of a defense under, for a felony, the first time is a six, the second time is  
24 a five. I'm not sure if it's decriminalization or if it's depowering the statute and I know you

1 have to enforce the laws that are written and I get it, but as it's written there is no safe haven,  
2 there is no safe harbor, there's ambush. And I told you this when I got here and I want the  
3 rest to hear and know, we frequently get, we get flatline, revive, and arrest, that's the vast  
4 majority of our possession issues. We get those almost on a daily basis. The major reason  
5 for our non-compliance, there's level six felonies, mostly possessions, the vast majority. Our  
6 six non compliant this quarter and last were based upon their defense of individuals who are  
7 possessing. Bryan deals with it all the time. Legislative fix would immediately create relief  
8 for our people. Absent funding, absent money, depowering, or decriminalization based  
9 upon that. Your staff saw one (inaudible) of our courthouse on the ground on Watt Street.  
10 It's real down here.

11 L. LANDIS: That's something the Task Force doesn't have the power to do. What  
12 I'm asking is that, so let's say that's driving your caseload up. What are you as chief, how  
13 do you react to, when the caseload gets excessive? What is it that you do?

14 A, NAVARRO: Work with Derrick and with Kathleen and try to get our best case  
15 assignments to the individuals. Our people who can take on full time caseloads adequately  
16 staffed, take on sixes, I take on sixes because that's the majority of possessions, keeping the  
17 major felonies off of the other attorneys who are now at or below certain levels of our twenty  
18 some attorneys, states are not compliant. A lot of (inaudible) who are trying to max their  
19 caseloads on sixes. It's reassignment to the best of our resources.

20 L. LANDIS: What I'm trying to ask is besides compliance with the caseload  
21 standard, do they ever get to the point where you say I think the caseloads are so excessive  
22 that I've got to stop and tell the Court no more appointments? We can't take anymore with  
23 the funding we have because we're going to be (inaudible).

24 A. NAVARRO: (inaudible) the Commission standards are what we go by

1 (inaudible).

2 V. CARMICHAEL: But I will tell you, Jeff Stonebraker did that. I mean Jeff  
3 Stonebraker came to me and said I'm not taking anymore cases. We're done, we are over  
4 compliant, we can't do it.

5 L. LANDIS: And?

6 V. CARMICHAEL: I said, okay. So I contracted them out until the commissioners  
7 figured out (inaudible) most cost effective and gave us more P.D.s.

8 L. LANDIS: So, have any, have either one of you. . . .

9 A. MARSHALL: Same with me. We're always dancing that line and you know, I'll  
10 call and talk to Derrick and run it by him and you know, he'll make some suggestions.  
11 Thank God I have not had to contract out yet. Generally, out of the seven hundred and  
12 some cases filed in felony court last year, four hundred and fifty of them were Level 6s. So, I  
13 fill up my two Level 6 attorneys and then if either one of us has room, then we start taking  
14 those Level 6s and there's been a couple quarters we have been, I mean our numbers have  
15 been .997, .999, 1.0, I mean it's - - but just adding the contract (inaudible) couple of cases,  
16 but I'm close.

17 L. LANDIS: It sounds like you are both, at least in Clark and Jackson, you're using  
18 yourself as a safety belt. That leads to my next question about should Chiefs carry, what  
19 should be the maximum caseload a full time chief should carry?

20 A. NAVARRO: Well right now I just go by the Commission standards.

21 L. LANDIS: So you carry a full caseload?

22 A. NAVARRO: I do.

23 P. BIGGS: I carry a full caseload. Now I would say that would depend on the size of  
24 your county. How many people you have, how much. . .

25

1 L. LANDIS: So if you're carrying a full caseload. . . Alan, how about in Jackson  
2 County?

3 A. MARSHALL: Right now, I checked yesterday, my last twelve months I'm at  
4 .8800, but I'm generally higher than that.

5 L. LANDIS: If you're carrying at or near a full caseload, how do you perform your  
6 management functions, oversight and supervision of all the attorneys and staff.

7 A. MARSHALL: It's very difficult.

8 P. BIGGS: Long days.

9 L. LANDIS: So what kind of supervision do you actually do of your, of the deputies,  
10 in terms of overseeing their caseload to make sure that they are performing at the level they  
11 are supposed to be?

12 A. NAVARRO: Again, it starts with good assignments. You know, assign them  
13 according to (inaudible).

14 L. LANDIS: Could you speak up a little bit? We can barely hear you.

15 A. NAVARRO: First you start with the case assignments, obviously we assign  
16 accordingly to their abilities, but a lot of it is, squeaky wheel. We'll start there, we'll start  
17 there, you know, it's like, how, if - - I'm very responsive to the Judges, I hope to be  
18 (inaudible) but it usually starts there. You know, how are they performing? I'd start with  
19 you know, the clients as well and I'm responsive to client feedback. I think everyone here  
20 has received (inaudible) but a lot of it is interaction with individually (inaudible) but it's  
21 tough on a part time basis when they are in and out so quickly. So, when I see them, I grab  
22 them. But, that aside, now usually it's, a lot of it's discussing what do you need, what's  
23 going on and how are your cases (inaudible). I had a conversation like that this morning  
24 with one of my attorneys and you know, what's going on and you know, usually it is

1 reactive in a lot of ways.

2 L. LANDIS: So you don't do any routine performance reviews or case reviews based  
3 on performance standards?

4 A. NAVARRO: Not with the part time (inaudible).

5 L. LANDIS: How about Floyd County? Performance reviews? Case Reviews?

6 P. BIGGS: I don't know if you'd call it performance review. It's a (inaudible)  
7 review. I sit down and talk with them about various cases, particularly, how they're  
8 handling more complex cases. We sit down, we talk about it quite a bit. I talk to Judges. I  
9 ask their opinion about how people are doing and after not too long in time, you learn who  
10 needs to be watched more carefully, who needs to be guided a little more. Sometimes you  
11 just have to say I'm tired of guiding you.

12 J. CODY: I've not been bashful about talking to Pat if I think somebody's not  
13 performing up to par.

14 V. CARMICHAEL: And I think most judges do that. I mean, I know I do and I  
15 know I'm not the only judge that tells you what's going on.

16 L. LANDIS: Jackson County, Alan?

17 A. MARSHALL: I frequently inquire of the judge, you know, of how all of my  
18 attorneys are doing. If he's pleased with what they're doing, anything, thinks they are falling  
19 short on, of course I'm in Court with them a lot myself since I carry the load that I do. But,  
20 we have, as far as conflicts, case assignments, you know, I bring up the computer and make  
21 my case assignments, try and make sure, of course you don't always know what is a conflict  
22 when I got this stack of appointments, but, you know, if the (inaudible) is on the same date,  
23 just kind of split them up and make sure they are going to the jail to see people. I think  
24 everyday they are going to the jail to see people which is real, which is one of the, that's a

25

1 big deal and of course responding to what we call fan mail at our office, but taking care of  
2 those things and sometimes you can and sometimes you can't. That's the way it goes. But,  
3 you know, I'm just trying to keep an eye on my attorneys and make sure they are doing  
4 what I think they need to be doing.

5 J. BRAUNSTEIN: I would agree. I think all four of us are constantly at the jail. I  
6 made a goal for myself a few weeks ago to get to the jail all of my in custody's and it's taken  
7 a while but I finally got it done. So, they cannot say, well you never came to see me or, you  
8 know, I need to see you again or whatnot and you know, all of us are always at the jail and I  
9 think it's been a big help also in keeping the numbers in the jail down because we're meeting  
10 with them, we're getting pleas signed if that's what they want to do, or we're preparing for  
11 trial and it's ..

12 UNKNOWN: Sometimes - - -we've just got two small meeting areas in the jail.  
13 Sometimes you can't get in. If one of these guys have beat me down there, I've got to come  
14 back later. Sometimes I go in on Sundays, Saturdays.

15 L. LANDIS: Jennifer, one of the issues that have come up from time to time is  
16 people, question whether the value and utility of these three member county public defender  
17 boards and you being board chairman and, you might be a good one to give us some insight.  
18 Although, I think your's is a little unique because you're a little more active. What do you  
19 think of the value of those boards, not just your's, but the other ones that you may know of  
20 in the surrounding counties?

21 J. CULOTTA: You know I do think, I will say it from my perspective, it's probably  
22 the only way I can truly discuss it. We've had, in Clark, when I became a board member, it  
23 was many, many years ago and Jeff was here and it was, it was much more, for lack of a  
24 better way of putting it, perfunctory. We would have our meetings, you know, our quarterly

1 meetings and it would be a lunch, chit chat, it wasn't, it really wasn't like it is now and that's  
2 because Jeff did everything. I mean, that's why Jeff is not with us is because he did  
3 everything. I mean he really - - talk about carrying your caseload and working yourself to  
4 death, that's what he did. And, that's not what we should be doing. I'm not advocating  
5 working ourselves to death. We are all too smart for that, but when Jeff passed, our board  
6 really did have to take the reign and we've kept it there and I like it that way mainly  
7 because, if there is an issue, Abe isn't at it alone. Abe has us to come to and I have run  
8 interference in getting Abe parody with Clark County prosecutor's office and run to get, you  
9 know, I can be the evil person at the board, or whatever the meetings are, because I don't  
10 really care. So, it's, I think it's a good idea. We're not paid, so it's not like anybody's losing  
11 anything, but it gives a buffer and is there as a source to the attorneys, plus if there is an  
12 issue, Abe can always and he doesn't do this, but he could hide behind us. You know, if  
13 there's, when you're - - and I'm assuming Pat goes through this with his people as well,  
14 when you're there - - - maybe Alan with your's, although you've got a smaller group, if  
15 you're there with these people everyday, you're going to build friendships and it's really  
16 difficult and I call them love letters, personally, it's really difficult to deal, you know, if you  
17 really like somebody and you know, the Judge is like, they're falling below and you, getting  
18 the love letters that say they are falling below and you're working with this person everyday,  
19 I'd love to say that everybody's strong enough to go, you know what, you're fired type of  
20 thing, but not everybody has that ability. So, I think boards are good in that the do provide  
21 a buffer that allows for some oversight and assistance. That's my thought.

22 L. LANDIS: How does your board provide the oversight in the evaluation of chiefs?

23 J. CULOTTA: Good question. We meet, well first off, Abe and I talk a lot. I get  
24 constant updates from Abe that I disseminate to the rest of the board. So, we are we're in a

25



1 constant dialogue. Not meetings, because if it's more than two of us, then there's a meeting  
2 and it had to have been posted and all that garbage, but, you know, I get updates and I'm in  
3 the courthouse a lot as well, unlike the other two board members who are not. But, I'm in  
4 the courthouses a lot as well and I do a lot of, from time to time I'll go talk to one of the  
5 judges and say, hey, how are things going and things of that nature, but that's just my  
6 personality. I don't know that other board members would do that, but I like the idea  
7 because it does help. I personally believe, back to your question a while back, about  
8 standards. When I did my brief little stint as the Chief, acting chief, I did create like little  
9 files for everybody because I am most organized at high school graduation. But I did, and I  
10 did have standards that I made everybody sign and review and would occasionally kind of  
11 come back. I don't know that that's necessarily fair to the part timers, especially people who  
12 are my age that are doing it because there are people that are in their fifties doing this, and  
13 they may take offense at it if somebody's younger and that's why if there is an issue, you  
14 have the board that can help out. That's all I got.

15 V. CARMICHAEL: Well, and I would say too that the board helps the judges not be  
16 the ones responsible for hiring public defenders either and the board does do some oversight  
17 of the Chief when there's an issue with the chief, which has happened in Clark County and  
18 the board took an active role in setting some specific goals and expectations and then took  
19 appropriate steps when. . .

20 J. CULOTTA: I mean we really, we were, like I was at the courthouse everyday I  
21 think during that period when I was still, when I wasn't acting anymore. I finished acting  
22 and then had to act again.

23 L. LANDIS: How about the other counties? Your relationship to your board, what  
24 oversight do they provide? What evaluation do they provide?

1 P. BIGGS: Not too much. I mean they're available to me and there's a member that  
2 checks in the office every week to see how things are going. They question some of the  
3 underlings. They just kind of generally keep an eye on things. They've never complained. I  
4 don't know if I'm doing that good of a job or if they're not doing that good of a job. There is  
5 no systematic approach. There are no set standards (inaudible).

6 L. LANDIS: How often do they meet?

7 P. BIGGS: Quarterly, and we hash things out pretty good for. . . .

8 L. LANDIS: Alan, Jackson County?

9 J. CODY: He's got three lawyer board members, right Pat? Your board is three  
10 lawyers?

11 P. BIGGS: Yea.

12 V. CARMICHAEL: Clark County is now too.

13 J. CULOTTA: Right, we're three lawyers in Clark, but I'm the only one that does  
14 criminal.

15 L. LANDIS: Alan?

16 A. MARSHALL: My board meets quarterly. We don't have any attorneys on the  
17 board. We've got a banker and a couple of real estate guys. But at our meetings, they  
18 always ask about you know, how the jail overcrowding is going. I always supply them with  
19 numbers as far as how many cases we have concluded either by plea, dismissal or trial.  
20 Generally, I have given the average, we're closing out an average of fifty cases a month. I  
21 just, you know, I'll show them the jail roster. Most of the people in there are F6s, flooded  
22 with F6's. I give them an update on any issues that's going, taking part with any of the  
23 employees. For instance, our investigator, about a month ago was attacked when he was  
24 out in the course of his duties and the police did a shitty investigation and the prosecutor's

1 aren't going to file anything. So, I have an investigator that's still walking around pissed off  
2 royally. But we have the meetings, they are pretty active. If anything comes up in between  
3 the meetings, I'll shoot an email out to the president just to let them know. I mean actually  
4 it's a really good board and really good individuals to work with.

5 L. LANDIS: Is this the board that hired you?

6 A. MARSHALL: It is.

7 L. LANDIS: What kind of criteria did they use for these non lawyers to select a  
8 chief?

9 A. MARSHALL: Well they had the county attorney involved at the time and they  
10 also had the director of HR involved. Of course I had sent a resume. In fact, I didn't know  
11 whether I would have a chance or not. I didn't know who all was applying and that kind of  
12 stuff. But they called me and wanted me to come back from Arizona to do an interview and  
13 then I know we sat down for a couple hour interview and talked about, wanted to know  
14 what the structure of the office was in Arizona and what my role there was. It was thorough  
15 questions, and I think there were eight or nine applicants which they sliced, they cut it down  
16 to two. So, I don't know what all went on with their discussions but I do know politics was  
17 not part of it. They were not hiring based on politics because I was selected, my political  
18 leaning was different than the Republican county chairman and she went crazy because I  
19 was. . . .and my board told me they had been getting calls. And they said, we didn't hire  
20 you based on politics, we hired you based on your experience. So, they stood up and I'm  
21 sure she's still pissed, but you know, they just, they totally backed me and I couldn't be  
22 happier with my board.

23 L. LANDIS: What role, if any, did the judges play in your hiring?

24 A. MARSHALL: None, none. They didn't, to my knowledge, they did not play any

1 role because I was told later by Judge Pointer, he said that's why I wanted a system set up  
2 because it takes all of the influence, he said if it's done right, our appointees, the board, it  
3 shields the judges and the commissioners. Said politics shouldn't come into it and we  
4 shouldn't come into it. Judge Pointer is the one that drove getting the public defender  
5 system just for that reason, because he saw, you know, it can certainly have, could have  
6 problems with the system they had. So, he pushed it through.

7 L. LANDIS: Jason, what about your board in Jefferson County?

8 J. PATTISON: Our's is fairly new. I'm the only lawyer on it. The commission tried  
9 to kick me off because I was a public defender at the time. So far they haven't managed to  
10 do that and I'm not a public defender anymore. So, mostly one of the judges staff runs all  
11 the numbers, keep track of it. We had to vote on the contracts and to approve the contracts,  
12 and the vote was two to one because one of the non lawyers didn't like how much money  
13 they were getting and so. . . .

14 L. LANDIS: Were you in the two or the one?

15 J. PATTISON: I was on the two, although I did have to, and I was trying to, we had  
16 a meeting with Derrick I think the meeting before that and was complaining about the fact  
17 that the way the pay parody was structured that it didn't include prosecutors and chief  
18 deputies and I was trying to explain that to the one member anyway, but it was two to one.  
19 But that's, there's really no oversight of their contracts quite honestly in our county the  
20 contracts are kind of hard to fill. I probably had the most experience, I was probably the  
21 most experienced PD at the time and I'm not that anymore. So. . .

22 L. LANDIS: Do you think that the board, the three member board system is a good  
23 way for counties to choose what kind of public defender delivery system they have?

24 J. PATTISON: Who appoints the board? Judges?

1 L. LANDIS: Appointed by agreement of th judges with felony and juvenile  
2 jurisdiction and one by the county commissioners.

3 J. PATTISON: I think it's a good idea to have the independent board. I do. I like  
4 the way Jackson County's works. I like the way Jennifer's works. But, our's is not where it  
5 needs to be. I think I have one judge who would kind of like to see an office, but he's  
6 probably not going to take the bull by the horns to get that done. The other one wants to get  
7 us up and rolling and get the reimbursement which is a good idea. The other two members  
8 are looking at, what does the money look like and I keep trying to say, look it's a really  
9 important function here, it's called freedom that we need to be focused on to try to make  
10 sure that that's preserved. I think it would be better if we had three lawyers quite honestly  
11 because they would all understand, because the system is so - -- all of them in my county  
12 would have at one point been a public defender and would understand what it is we're  
13 doing.

14 L. LANDIS: If we don't follow Pat Biggs' suggestion for a statewide system, and the  
15 system stays county based and county funded, do you have any suggestions for how to  
16 improve the function of the board in terms of the oversight of the county system. Anybody?

17 G. STRIEB: George Strieb. The first question, does every county have a board?

18 L. LANDIS: No, there's only sixty, well correct me if I'm wrong, sixty have opted  
19 into the public defender reimbursement system which requires a board, thirty-two do not.

20 G. STRIEB: So is most of the issues we're dealing with from the thirty counties or  
21 the sixty counties?

22 L. LANDIS: Well the commission doesn't deal with the thirty counties that have not  
23 opted in. The Task Force is looking at all ninety-two counties of the system including how  
24 to get these thirty counties that are not in the system under complying with the state

1 standards. So, just separating the commission function from the Task Force function.

2 J. PATTISON: So our's is limited because obviously we are appointed and we don't  
3 get paid and we don't have a budget. So we don't have any money, so we don't have any  
4 staff, so the judges staff keeps track of the numbers. The judges are still in charge of the  
5 system.

6 J. CULOTTA: I think that's the way it is in Orange County. I think Orange County,  
7 I think the judges have contracts with the public defenders, the individual attorneys and they  
8 go through their Rolodex, today it will be Susie and tomorrow, and it's that kind of thing  
9 and I don't think there's any, there's no cohesive group, which to me seems absolutely  
10 reckless.

11 J. PATTISON: Yea, the Judge is still appointing everybody and the judge is still  
12 assigning cases to whoever it is that's not going through a staff to. . .

13 J. CULOTTA: I think that's completely reckless.

14 J. PATTISON: . . . you know, they are not being assigned by an independent entity.  
15 The judges are still controlling it.

16 L. LANDIS: That's like the thirty counties. If there's no board, then it's still under  
17 the inherent authority of the trial courts.

18 J. CULOTTA: And so the Judge is picking. So if I don't like, and I'm not saying  
19 that a judge would do this, so if I'm a judge and I don't like Bob because Bob has been  
20 before me seventy-five times. Let's see who is the most incompetent lawyer, you get Bimbo.  
21 You know? I mean that's the thing. You're going to have that because we're all human. I  
22 mean there is a human element to that and I'm not saying that the judge would do it on  
23 purpose. I would not say that but I could see it happening because we're human. I mean  
24 there are people, believe it or not, I don't like.

25

1 L. LANDIS: Now, obviously the task force is looking at the whole structure and  
2 funding in the State of Indiana, recognizing some of those flaws, trying to figure out what's  
3 the solution for. . . .

4 J. CULOTTA: I'm in Biggs's corner. I like it. I really do. I think we need something  
5 like that. I don't think we should have contracts if you want my opinion. I mean when you  
6 think about it, that's, there's a huge flaw there.

7 J. PATTISON: I think it's problematic in delivering services and delivering good  
8 services.

9 J. CULOTTA: Well and I know in Orange County, one, Jessica Baunsbach had a  
10 contract over there and they owed her like twenty-four thousand dollars. Still, from like  
11 months and months. They ran out of money and so here she. . . what is she going to do at  
12 that point? I mean that's crazy.

13 L. LANDIS: Other suggestions on how to improve the public defender system in the  
14 State of Indiana.

15 J. PATTISON: Get us some investigators please. It's a huge gap.

16 P. BIGGS: Basically, you need more resources and you need uniformity. You know?

17 L. LANDIS: Would that mean a statewide system? We haven't heard that much  
18 from the Sheriff's representative. And I know that from talking to Steve Luce that he has  
19 helped educate me on the importance of getting lawyers into the jail to see clients because  
20 that helps maintain management of the population because they get frustrated, causes  
21 problems for you when they don't see their lawyers probably. So, are there things that the  
22 public defender system should be doing to help the Sheriffs, either reduce jail population or  
23 just. . .

24 D. BOWYER: And I don't know how long ago this was implemented where they  
25

1 started coming into that big room he was discussing earlier, but that, I think it's helped a lot  
2 because before it was like, I forgot who said something about coming in, trying to get in and  
3 another attorney was already in there and they couldn't get in, but with this system, we have  
4 a large room about like this and they let us know who we need to call out and they come in  
5 during those times and I think that's helped a lot with our end of it as well their end of it.  
6 Other than that. . . we don't have room for the inmates, let alone more room for these  
7 meetings outside of that big room. So, I don't. . .

8 V. CARMICHAEL: And Abe or Donnie explain that a little more because you were  
9 only going on Fridays and now there's two days a week that you can go down?

10 A. NAVARRO: The Sheriff has been real flexible. It's not been inflexible at all.  
11 They have been totally collaborative with our ability to want to meet with our clients. Now,  
12 there are certain times of day when they are short staffed so it's kind of hard to just get it to  
13 the pods, but this particular meeting days, Wednesday and Fridays actually. . . .but during  
14 those period of time, it's a vast amount of time for us to go see them and we can see quite a  
15 few. I mean, sometimes it's worst than a Monday morning in Circuit Three.

16 L. LANDIS: What percentage of people detained in jail, do you think, have mental  
17 illness or substance abuse issues?

18 J. CULOTTA: Eighty.

19 UNKNOWN: Put them both together and that's where most of your criminal acts  
20 are coming from.

21 L. LANDIS: Mental illness?

22 D. BOWYER: I don't know. The mental illness to me, would not be as high as the  
23 drug. . .

24 L. LANDIS: Combination of the two, one or the other?

25



1 P. BIGGS: They go hand and hand quite often.

2 L. LANDIS: What can public defenders do in terms of either screening or assessing  
3 and getting screening or assessment early so that we can help identify those people who  
4 should not be in the jail because it's either an addiction or a mental illness?

5 D. BOWYER: I think if we figure that out, we'll probably have half of the population  
6 in the jail. I don't know what that answer is.

7 A. MARSHALL: Having a social worker that you can send down to interview. I  
8 mean a lot of our bond reduction hearings in Jackson County are tied to. . . when we go in  
9 there we'll try and have them already a bed available to go to a treatment facility or in the  
10 process.

11 D. BOWYER: How do you do that? They're full just like the jails are. I mean we  
12 have a lot of orders.

13 UNKNOWN: Or we get them on the waiting list. We have a lot of luck in getting  
14 clients into Salvation Army at Fort Wayne. Generally there's not a big waiting list there for  
15 whatever reason, but we've had good luck.

16 L. LANDIS: If public defenders had more social workers and investigators who got  
17 in the jail fast, would that help your problem with jail population management?

18 D. BOWYER: I think it would.

19 J. PATTISON: So in my County I can't get, I've struggled with the mental health  
20 component forever. I can't get either one of the community mental health folks to go down  
21 there and evaluate anyone.

22 UNKNOWN: You have a community mental health. . .

23 J. PATTISON: We have Centerstone and LifeSprings. I was trying not to name  
24 them, but they will not go down there and when I do have clients who have those folks and

1 have been treated by those folks, and I subpoena those folks, they send me a letter saying we  
2 want money or we're not showing up.

3 L. LANDIS: So is that why they don't show up? Is it money or some other reason?

4 J. PATTISON: I call them and tell them they probably ought to show up. I'm going  
5 to ask for a warrant for you.

6 V. CARMICHAEL: Clark County has a contract with LifeSpring to provide mental  
7 health evaluations. I mean there's somebody down there daily from LifeSpring in our jail  
8 that can do those instant evaluations and say, okay there's an issue here. What about  
9 Jackson County's mental health and substance abuse evaluations? Are you getting those?

10 A. MARSHALL: Usually just from our lady.

11 V. CARMICHAEL: Your social worker?

12 A. MARSHALL: Yes, our social worker.

13 S. LUCE: I know some Sheriff (inaudible) contractor with medical services, most of  
14 them throughout the State and there are some of them that do ask for mental health services  
15 in their medical contract, but there's a lot more that don't. (Inaudible) but the P.D.'s and the  
16 Sheriffs talking together about maybe advocating together at a council meeting or whatever  
17 or with the commissioners, signing the contract to add those services to. . .

18 L. LANDIS: Is there anybody who hasn't told us what they think? Comments,  
19 observations, suggestions that we haven't heard from?

20 G. STRIEB: Most issues I've seen, I think you start with the appellate issue first, get  
21 a statewide appellate board and that would help a lot because I think one of the things  
22 you're asking for, what's the oversight that you have with public defenders and that sort of  
23 raises it above the county level because if you get somebody for the appellate issue first,  
24 remove it from the office, you get a, you know, that's one of the things we have, we have to

1 obey the Supreme Court laws coming down and that's one way we (inaudible) enforced, by  
2 having appellate, statewide. I think if you get that started first then maybe afterwards, start  
3 trying to incorporate the thirty counties. Because it's really not the counties that show up at  
4 these meetings or the counties that have the boards with the issue. It's the other counties  
5 where you have judges appointing it, you know, caseloads are ridiculous (inaudible) in  
6 compliance. That's where you're having the issues. I think the first thing you really need is  
7 a statewide appellate agency.

8 L. LANDIS: Thank you.

9 J. PATTISON: Very simple thing in my county that doesn't occur that could be  
10 cheap and help, we don't have access to JTS, the Court's computer system, the public  
11 records, to get a judgment of conviction, to get the charges. Why couldn't we clone Pacer  
12 and use it instead of using six or seven or eight different systems that are all over the place?

13 V. CARMICHAEL: Well I don't think the Supreme Court - - because Odyssey is the  
14 (inaudible) system.

15 J. PATTISON: Just simple access to the Court records because I've got to send  
16 somebody down to the courthouse or I go down to the courthouse and I got to copy them  
17 and my clerk wants to charge me a dollar a page.

18 L. LANDIS: That really is a local issue, right? Access is granted by the Judges  
19 (inaudible).

20 J. PATTISON: Okay. I'm hoping the Supreme Court would say we got electronic,  
21 now you guys get access, everybody gets access. Community Corrections has access. I  
22 don't have access.

23 L. LANDIS: Anybody else? Questions that haven't been asked? Steve, do you have  
24 any observations, comments?

1 S. LUCE: Comments. Just a little background for Larry and I. We are members of  
2 the (inaudible) which was set by Legislation a couple years ago (inaudible) at the table and  
3 we're the ones that will make these recommendations to the Legislatures. So early on, I  
4 have been involvement JRAC (inaudible) back in September. I mean, I couldn't understand  
5 -- I was trying to figure out why (inaudible) and to me it seems like an issue. I mean we  
6 have a sex offender statewide registry system. We have jail inspections that everyone has to  
7 be compliant to. There are just certain areas in the criminal justice system that need to be  
8 statewide systems to elevate people to the work we are supposed to all be doing and being  
9 coordinated. The biggest hurdle I see is (inaudible) the fact that we all create our own  
10 systems because have our own budgets and that's why we have so many multiple systems  
11 and everybody is doing everything different. What I'm trying to do is create more activity  
12 with the sheriffs (inaudible) to collect more jail data. The public defender system is most  
13 certainly part of what I value to help us collect jail data to help drive, because we're about  
14 five years into the justice, JRAC), House bill 1006 and to me, I don't think we're quite going  
15 in the right direction and we're at a crossroads and this is why this is so important to me just  
16 to make sure we're going to be pulling the right data. (Inaudible).

17 L. LANDIS: Anything else?

18 V. CARMICHAEL: Thank you all for coming.

19 L. LANDIS: I know there was a survey developed by Laura Linton over here, that  
20 was sent out to all of the public defenders. So, I hope you've participated in it. So  
21 everybody here should have gotten one. If you haven't responded, please do so. Thank you  
22 very much for coming and participating and spending time with us.

1 STATE OF INDIANA

2 COUNTY OF CLARK

3 STATE OF INDIANA

4 REPORTER'S CERTIFICATE

5 I, Lori Fleeman, Reporter for the County of Clark State of Indiana, do hereby certify  
6 that I am the Court Reporter in said County and State duly appointed and sworn to report  
7 the evidence of causes tried therein.

8 That upon a meeting of the Public Defender Listening Tour Task Force Meeting held  
9 on March 22, 2018, I transcribed, verbatim, the digital recording of said meeting.

10 I further certify that the foregoing transcript, as prepared, is full, true, correct and  
11 complete.

12 IN WITNESS THEREOF, I have hereunto set my hand and affixed my Seal this 11<sup>th</sup>  
13 day of April, 2018.

14  
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18 Lori Fleeman /s/

19 LORI FLEEMAN, COURT REPORTER  
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