TRANSCRIPT OF LISTENING TOUR TASK FORCE MEETING

MARCH 22, 2018

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

V. CARMICHAEL: Circuit Court 4.

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

ROLL TAKEN

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

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

J. BRAUNSTEIN: Well, one thing, and I actually got this idea from when I was in Arizona. When I was out there, they had this program where you still made your tuition payments or your loan (inaudible) payments on time and you just had to show, I forget what her position was - - but you turn in receipts or copies of your payments and they would reimburse, I forget how much it was quarterly, but it ended up being after a year, it would be up to six thousand dollars and that was something that they kind of needed because people leaving, coming and going, they need something to keep people there to contract good attorneys, not so - -good attorneys but quality attorneys that can provide quality representation and that was something I thought was a really good idea because Mohave County is kind of a different world than out here, but it was something that I thought was very helpful and I know there were some other people in the office that took advantage of it because, let’s say, after ten years, you stay for ten years, that equals out to about sixty thousand dollars and I’m still in six digits, but you know, I don’t let that stress me out too much, but sixty thousand dollars is a lot, or any bit helps. I sometimes get excited when I see a quarter lying on the ground, so no, I wouldn’t turn my nose up to anything like that. And I think that’s something that I think would be a decent idea down the road, you know, Jackson County or whatever - - I also was in Marion County at the Public Defender’s Office for four, four and a half years back in 2001 to 5 and I think, the last time I knew the, the pay was a little less than a lot of other places and I think if you had the program, you
could reimburse some tuition expenses or loan payments, that would be something to maybe help retain quality attorneys because obviously you don’t want attorneys starting, getting their experience and then moving on to private practice or somewhere else where they can get more money. I think that’s an idea that, you know, I’d like to see down the road.

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

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

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

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

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

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

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

J. BRAUNSTEIN: I think prosecutors had it too, but I do not recall. But, it was . . .
UNKNOWN: It would be a lot easier to sale if we proposed. . .

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

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

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

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

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

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

UNKNOWN: Well there’s a federal forgiveness loans, there’s criteria set and
J. BRAUNSTEIN: Yea, but that's - - I think, you know, like I said, any bit helps, especially us attorneys.

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


V. CARMICHAEL: Okay, Alan Marshall?

A. MARSHALL: Yes?

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

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

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

A. MARSHALL: Yea.

UNKNOWN: Okay.

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

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

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

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

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

So . . .

L. LANDIS: Do they comment on that?

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

L. LANDIS: If any of the other chiefs encounter that issue, of whether it caused resentment or you know, push back or blow back, something, because you are by far the
highest paid County employee only other than Sheriffs of course.

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

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

P. BIGGS: I’m Pat Biggs.

L. LANDIS: Spell the last name please.

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

L. LANDIS: Did we cut you off Alan?

A. MARSHALL: No, I’m good.

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

L. LANDIS: When you say the standards ought to be mandatory, I assume you’re
talking about the public defender commission standards, mandatory that all counties have to comply, not voluntarily comply?

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

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

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

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

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

V. CARMICHAEL: Not in Clark County (inaudible).
J. CULOTTA: And, Jennifer Culotta.

L. LANDIS: Spell the last name please.

J. CULOTTA: C-U-L-O-T-T-A. Not pina, not spelled like pina, completely different although quite tasty. No, the problem that I see and I was a public defender when I was a real small person in Louisville back when I first started and it’s completely different just across the bridge. And, you know, I’m not advocating full time public defenders in every county, but I’m also not, not advocating it because one of the things that I see, which makes me crazy, as the President of the Clark County PD Board, is, and it’s not just Clark County, it’s every where I go. I talk to P.D.s throughout the State and you know, they are part time for the most part, and I don’t know how many true full time P.D.s we have, so they are part time, so they’re juggling a part time calendar but they don’t make enough to make ends meet, I mean I remember buying toilet paper with a credit card just so I could whatever. But, so the thing is, we do that and so you can’t make ends meet so you have to take on these other cases and a lot of times they’re not in your county, so you’re out of county, running down the road to Jefferson and taking a case there then you’re late for your appointment which makes the judges angry, you know, and, I mean it’s just this vicious circle and a lot of people, God forbid, do it just for the insurance and that is the - -- you got to do it cause you love it and if you don’t love it, the insurance isn’t going to make you happy. And that’s the problem. So, when we’re, and it’s not a word, look in Websters, incentivizing, but we’re incentivizing people to take the job, and we’re (inaudible) insurance, but then they’re just, here’s your case, so good luck, and oh, by the way, if you want to really make money, you’ve got to do both. And it’s just, I think it’s just a really vicious, terrible cycle and I fear, and my biggest fear is, and I’m not saying I’ve ever heard anybody do this, so this is not - - but my biggest fear is that person A who is indigent, who has a Level
Felony gets Susie Q as her attorney and then Susie Q can't make ends meet, so she gets a private Level 2 and the private Level 2 is getting jail visits, the private Level 2 is getting the correspondence and going over the discovery and the PD Level 2 is like, let's get it done, let's get it done, let's get it done. That's all I've got to say.

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

J. CULOTTA: Come to Clark County.

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

J. CULOTTA: You need to move.

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

P. BIGGS: No.

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

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

V. CARMICHAEL: Right.

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

P. BIGGS: We're not aware of that if it's happening.
J. CULOTTA: I don't know that it's happening anymore Pat.

P. BIGGS: I put an end to that.

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

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

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

V. CARMICHAEL: I'm going to pick on you Abe.
A. NAVARRO: Absolutely.

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

A. NAVARRO: Twenty.

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

A. NAVARRO: I don’t know about that Judge. I mean I’d have to work on the numbers, especially with (inaudible) and Kathleen there (inaudible). Abe Navarro just for the record, but what Pat said earlier about a statewide system, actually (inaudible) in the terms of the appellate system. We all file our appeals and then farm them out just to accommodate to make sure some numbers are, we don’t overwhelm ourselves in terms of case numbers. We had seventeen appeals this last year, incredibly expensive, incredibly expensive on our County dime so-to-speak. It is reimbursed, but not dollar for dollar. A statewide appellate system would be just like what the prosecutors are doing would actually help tremendously. Me, as a prosecutor for fourteen years never had to worry about that. I sent a note to Andrew (inaudible) or Cynthia (inaudible) and they dealt with it from that point forward. We don’t have that luxury as public defenders, especially in a (inaudible). Part time public defenders who (inaudible) responsible, if, but for the facts we are trying to (inaudible) our resources to the best of our abilities to accommodate the rights of our clients that seek appeals. Now we have two already this year, two or three, no four of them this year, various dispos, full trials or juvenile dispositions or even CHINS appeals, our office is still responsible for that, is still responsible for that and a statewide appellate system for us would be incredibly helpful. It would leave the burden off (inaudible) task resources that a public defender has whether it’s out of general fund or supplemental fund, whatever that may be, it would relieve that monetary obligation at that point. I know the prosecutors
don’t worry about it and we still do. Yes, we know the cases best cause we tried them, but nothing, consultation with appellate attorneys. You know, we’re trying to be the jack of all trades, we’re trying to be what we call Swiss arm knives and since I’ve become a public defender (inaudible) but I got to tell you that after a while though, they didn’t dull and tired especially underpaid, but they do it out of dedication, the ones I’ve known so far.

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

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

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

P. BIGGS: Well, a statewide system similar to that prosecutorial system.
L. LANDIS: That confuses me though because the prosecutorial system is really county based. They are elected countywide. The elected prosecutor and the Chief Deputy are state paid, everybody else is county paid. So, I don’t - - I’m not sure I follow what you mean by like the prosecutorial. . .

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

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

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

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


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

P. BIGGS: It is strange.

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

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

J. PATTISON: Get us some real treatment down here please. Every time I turn around I am trying to get people treatment. I’ve been doing it for twenty years and the prosecutors try to fight me on it and the toolbox that I have is very small, the tools in it are even smaller. If you’ve got to have in-patient treatment, I still have probation terms in my
probation contracts that say even if you have a prescription for methadone, suboxone, you
may not take it. That’s ridiculous.

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

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

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

J. PATTISON: Right.

L. LANDIS: I just wanted to clarify that.

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

J. CULOTTA: Obviously that’s in Jefferson County. Just for the record, that’s not
Clark County. I don’t think it’s Floyd either, definitely not Orange, but we’re not going
there.
UNKNOWN: (inaudible) juvenile, right?

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

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

A. ADAMS: Department of Corrections.

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

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

J. PATTISON: No, actually Jefferson County.

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

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

V. CARMICHAEL: I hadn't heard that.

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

J. PATTISON: . . . twenty beds. That’s not enough.

UNKNOWN: And it’s not long enough.

J. PATTISON: No, again, it’s thirty days.

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

J. PATTISON: Sorry.

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

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

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

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

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

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

D. BOWYER: Not very much. I’ve seen some recently, most of the treatment I’ve seen is court ordered. For seeking, I think seeking treatment, now they’ve been ordering it per say, if that makes sense. I mean I’m seeing transport orders every day which is amazing. I mean it’s overwhelming actually. But, I’m not seeing . . .
V. CARMICHAEL: So, back to the original question,

J. PATTISON: Sorry.

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

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

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

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

UNKNOWN: Well we don’t so much have it in our’s because we, it’s contracted out
and the attorneys that are handling those are contracted out, but some of my colleagues that
I’ve talked to at our meetings, it’s a nightmare for them. I remember the first meeting I went
to after I became a chief public defender, one of the guys in the group said he, said they
finished court last night at 10:30 and it was all CHINS and parental right terminations and
that, that they finished at 10:30. So, I mean it’s just . . .
L. LANDIS: How about the other of you chiefs or public defenders? Do you think that CHINS and TPRs ought to stay within the public defender office or ought to be separated out?

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

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

J. PATTISON: Right, sure, right.

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

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

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

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

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

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

UNKNOWN: I think it can become a real tangled web of conflicts because you get parents or you get other parties, it’s, you know, maybe it’s just me because I, professional responsibility, I studied hard on that, probably more than a lot of other things, but I think it
can become a really tangled web of mass conflicts and you know, then you have the attorney
or attorneys or the office itself under possible professional responsibility issues because of
these conflicts and I think it needs to stay with, out of the office, not within. . .

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

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

J. CODY: I snuck in.

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

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

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

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

V. CARMICHAEL: So, compensation, let’s go back to that because we talked about
pay parity so I know that Floyd County pays different than Clark County and Jackson and
Jefferson probably pay different as well. You have full time folks only?

UNKNOWN: In Circuit Court I have four full time, there’s four full time attorneys.

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

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

A. ADAMS: They’re overpaid.

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

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

J. PATTISON: We do contracts and my understanding of the pay parity in Jefferson
County is calculated by the Public Defender Commission, excludes both the prosecutor and
the chief deputy.
V. CARMICHAEL: Okay, so just what the other deputy prosecutors make?

J. PATTISON: Right.

V. CARMICHAEL: Yea.

L. LANDIS: The County pays . . .

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

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

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

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

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

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

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

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

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

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

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

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

A. NAVARRO: And I can't reiterate how important our recovery works social worker is. This resource takes a lot of social work burden off the attorneys who aren't normally trained in social work. So, finding resources connecting our clients to the resources like drug or mental health treatment is incredibly important and we have some way to do that. We are blessed with a grant funded one, but county resources is not enough right now to actually make her a part of our permanent payroll. We’re dependent on grant
inaudible) right now. We’re blessed to have her and she’s done wonders for our clients, wonders for our clients. And, like Pat said, without that, then the attorneys again, assume roles that may not necessarily be best suited for. But, because of our client, because of what we do, we’re going to end up having to do it regardless, you know, because who else will.

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

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

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

P. BIGGS: No.

L. LANDIS: Anybody else other than. . .

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

L. LANDIS: And that’s for five lawyers?

UNKNOWN: Four.

L. LANDIS: You and four other ones?

UNKNOWN: Me and three others.

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

J. CULOTTA: None.

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

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

J. CULOTTA: We have the social, the grant funded social worker, but we don’t have investigators.
A. MARSHALL: Jackson County has a social worker and that’s through your office Larry.

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

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

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

A. MARSHALL: I have some in my budget.

L. LANDIS: How much?

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

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

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

UNKNOWN: What do you typically ask for?

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

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

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

V. CARMICHAEL: Abe do you . . .

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

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

J. CULOTTA: No, we don’t.

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

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

L. LANDIS: None?

A. NAVARRO: Not this year.

L. LANDIS: Did you try any cases?

A. NAVARRO: We do.

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

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

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

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

J. CULOTTA: Right, but we run out.

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

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

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

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

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

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

P. BIGGS: We budget for experts.

L. LANDIS: How much?

P. BIGGS: I think we budget about sixty thousand and then we budget about twenty-five thousand for depositions. We move that stuff around and when push comes to shove, I
tell the council we need more money and I explain to them why they should give me more
money, I tell them, you know, you can give me the money and get forty percent back or I
can go to the Court and make a case that we need this and the Court will have to give it to
us and you won’t get forty percent back.

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

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

L. LANDIS: But it’s still a county expenditure.

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

UNKNOWN: Yes it would.

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

D. BOWYER: And I don’t know how this... we need more public defenders
because of jail overcrowding and we talked a little bit before this and it’s nothing against the
current office because they’re doing a great job, but we, being across the river from
Louisville, Kentucky, we probably weekly pick up twenty-five to thirty inmates from the
Louisville jail and that’s not even normal arrests, that’s just the Louisville Metro that picks
up and says hey, we got some that’s waived extradition, come get them. So that’s twenty-
five to thirty along with normal arrests, whatever that may be and I’ve seen an increase in
courts as far as bringing them up for court and my goodness, and of course I can go back and
say we don’t have enough people to do that either, but then the Judge will say, you’ve got to
have them up here, but getting back to the public defenders, if we have more, maybe we can
do this process a little bit better where we can get them out... we’ve got to do what we’ve
got to do as far as the charges and everything, but when it comes to, we’re right now, and I
don’t know what’s going on with other counties, but right now we are over six hundred
inmates which for Clark County, that’s a lot of inmates.

UNKNOWN: How many are pre-trial?

D. BOWYER: I don’t have. . . (inaudible).

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

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

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

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

D. BOWYER: Probably most of them can’t.

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

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

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

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

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

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

J. CULOTTA: Just as a - - with the jail overcrowding and those issues with the people from Louisville coming over here and all, I agree that we need more P.D.s. Judge Adams and I were kind of doing a little bit of a sidebar here talking about the potential of say, a rocket docket or something like that, where we have, I mean because if you look at Circuit Court Three and Circuit Court Two in Clark County, where we have the designated drug court, so they are completely overworked because the prosecutor’s office absolutely has no employment of discretion so every single arrest is charged at the highest level, thank you Jeff Sessions and so now we have every single case, every single arrest, it ends up a felony in Circuit Court 2 if it’s a drug case or all these crazy cases in Circuit Court Three and if you have a plea agreement and you want to get that person on the docket, you’re three months out in Circuit Three right now, to plea somebody, to get a case closed. I mean it’s insane and you know, these are people, and I’m not saying rocket docket for people that want a trial or anything like that, but you know, if, when you meet the client and the client’s like, look I’m guilty, get me a good deal, there should be a way that maybe we could funnel those cases so that the jail, those people if they are going to prison, they go to DOC. If they’re going to, we should probably get the prosecutors office to actually really consider diversion again, considering that’s gone in Clark County. So, I mean we’ve created this monster and I
I don’t think that these people in this room created it, I think it’s that media likes the numbers, every camera rolls when somebody gets arrested but the cameras don’t show up when that person pleads guilty or the case is resolved. So we get all this media because we’re all, cause prosecutors have to be elected and that’s why we don’t want public defenders elected, because then we’re just, it’s a media frenzy to show how great you are, but you’re not really doing anything, you’re arresting somebody. I mean, hell, you go to Louisville, you don’t even need to be a cop to do that. I could go file a citizen’s arrest right now and arrest Jason Pattison.

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

A. NAVARRO: Okay, you can correct me if I’m wrong Judge. Once the lawyers get in, specifically, at initial hearing after the finding of indigency and usually after that (inaudible) we get an order of appointment directly from the Court and at that point we’ll assign it accordingly. However, as you have pointed out, there’s a liberty interest involved at the initial hearing and there’s noone there right now until we get appointed and we find out after the fact and usually the pre-trial and the case management dates have already been scheduled.

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

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

B. ABELL: I get files everyday. I don’t know generally when the initial hearings were. It depends on the Court I think sometimes.
L. LANDIS: Bryan could you state your full name and spell your last name?

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

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

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

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

A. NAVARRO: In terms of?

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

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

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

A. NAVARRO: A week or two.

A. ADAMS: The two attorneys assigned to my court file it with their appearance, motions for bail review. Sometimes they are already out, but they file for a bail review and we set it the following Monday.
L. LANDIS: And then what percentage of cases, when you file a motion for bail reduction, actually get reduced?

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

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

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

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

P. BIGGS: About the same.

L. LANDIS: Do you staff initial hearings?

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

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

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

J. CODY: Judge Cody. In Floyd, all the misdemeanors have a bond schedule. The jail takes the money and they are out and Mr. Biggs and I don’t have to deal with those type generally. If a bond has been set in a felony case, the jail can take the money and they’re out. A lot of times, what I do, at the beginning, when I review the probable cause, maybe I’ll set a high bond because I want to make sure they don’t bond out before they see me.
And then, I’ll adjust it down depending on things. But, I agree there are people who have
got two or three charges against them and they’ve been OR’d or have had a low bond, they
are going to be with us. They are not going to go anywhere.

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

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

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

J. CODY: Again, at this point in time I’m not getting any other Level 6s because I’ve
got all the CHINS cases but I would say the higher level offenses, probably a good number of those are unable to make bond and are pre-trial.

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

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

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

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

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

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

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

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

L. LANDIS: Floyd County the same or different?

P. BIGGS: Pretty much.

V. CARMICHAEL: Okay but we do it in juvenile cases because that was the other question, is what about the juvenile docket. So, the juvenile docket, because there’s a criminal rule that says you have to, so, we have public defenders at detention hearings, we have them at initial hearings in juvenile cases, so are other counties doing that?
J. CULOTTA: Vicki, let me ask you something. In juvenile cases, so you have, you know, Susie Q walks in there and she's however old she is and you have a designated counsel there for her for free. What if Susie Q is rich?

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

J. CULOTTA: Well that’s true.

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

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

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

L. LANDIS: I don’t want to debate that, I just wanted to get that issue out there because you’re not necessary challenging probable cause, you’re trying to demonstrate to the judges, you’ve got ties to the community, a high risk of re-appearing, I mean that’s the
information you want to get from the client. You don’t need discovery to do that.

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

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

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

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

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

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

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

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

J. CODY: Shall we have that conversation tomorrow?

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

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

J. PATTISON: So, one step forward, three steps back. So, we have public defenders who have contracts and all they do is initial hearings and CHINS and so they are there and they interview the people and they do similar to what Jennifer said, I’m hiring Jason, okay, he’ll be here and I show up and they give me paperwork and I deal with them on my own.

But the right to counsel attaches at arrest. Pre-trial services gets notified and those people get over there at 2 a.m. to talk to my client before I get a chance to even know that they’ve been arrested and it’s a violation of the right to counsel and so then, but we used to have initial hearings every day. Now we only have initial hearings on Monday and Friday.

V. CARMICHAEL: So that’s a different system too.

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

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

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

UNKNOWN: They don’t have that anymore.

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

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

P. BIGGS: Not always.

V. CARMICHAEL: Okay. What about Jackson?
A. MARSHALL: I don’t know the answer to that.

V. CARMICHAEL: Okay.

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

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

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

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

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

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

V. CARMICHAEL: Yea, a preliminary report.

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

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

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

A. NAVARRO: Yea, we deal with that as well on a daily. (Inaudible) how much we can do Legislative Initiative but I’m all for public health in the statutes allowing counties to have exchanges for individuals to keep communicable diseases away or at least at bay or attempt to be so. But it’s a trap. There is no safe haven for individuals who use that. We believe it’s some sort of a defense under, for a felony, the first time is a six, the second time is a five. I’m not sure if it’s decriminalization or if it’s depowering the statute and I know you
have to enforce the laws that are written and I get it, but as it’s written there is no safe haven, there is no safe harbor, there’s ambush. And I told you this when I got here and I want the rest to hear and know, we frequently get, we get flatline, revive, and arrest, that’s the vast majority of our possession issues. We get those almost on a daily basis. The major reason for our non-compliance, there’s level six felonies, mostly possessions, the vast majority. Our six non compliant this quarter and last were based upon their defense of individuals who are possessing. Bryan deals with it all the time. Legislative fix would immediately create relief for our people. Absent funding, absent money, depowering, or decriminalization based upon that. Your staff saw one (inaudible) of our courthouse on the ground on Watt Street. It’s real down here.

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

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

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

A. NAVARRO: (inaudible) the Commission standards are what we go by
V. CARMICHAEL: But I will tell you, Jeff Stonebraker did that. I mean Jeff Stonebraker came to me and said I’m not taking anymore cases. We’re done, we are over compliant, we can’t do it.

L. LANDIS: And?

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

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

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

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

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

L. LANDIS: So you carry a full caseload?

A. NAVARRO: I do.

P. BIGGS: I carry a full caseload. Now I would say that would depend on the size of your county. How many people you have, how much . .
L. LANDIS: So if you’re carrying a full caseload... Alan, how about in Jackson County?

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

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

A. MARSHALL: It’s very difficult.

P. BIGGS: Long days.

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

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

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

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

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

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

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

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

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

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

L. LANDIS: Jackson County, Alan?

A. MARSHALL: I frequently inquire of the judge, you know, of how all of my attorneys are doing. If he’s pleased with what they’re doing, anything, thinks they are falling short on, of course I’m in Court with them a lot myself since I carry the load that I do. But, we have, as far as conflicts, case assignments, you know, I bring up the computer and make my case assignments, try and make sure, of course you don’t always know what is a conflict when I got this stack of appointments, but, you know, if the (inaudible) is on the same date, just kind of split them up and make sure they are going to the jail to see people. I think everyday they are going to the jail to see people which is real, which is one of the, that’s a
big deal and of course responding to what we call fan mail at our office, but taking care of
those things and sometimes you can and sometimes you can’t. That’s the way it goes. But,
you know, I’m just trying to keep an eye on my attorneys and make sure they are doing
what I think they need to be doing.

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

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

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

J. CULOTTA: You know I do think, I will say it from my perspective, it’s probably
the only way I can truly discuss it. We’ve had, in Clark, when I became a board member, it
was many, many years ago and Jeff was here and it was, it was much more, for lack of a
better way of putting it, perfunctory. We would have our meetings, you know, our quarterly
meetings and it would be a lunch, chit chat, it wasn’t, it really wasn’t like it is now and that’s because Jeff did everything. I mean, that’s why Jeff is not with us is because he did everything. I mean he really -- talk about carrying your caseload and working yourself to death, that’s what he did. And, that’s not what we should be doing. I’m not advocating working ourselves to death. We are all too smart for that, but when Jeff passed, our board really did have to take the reign and we’ve kept it there and I like it that way mainly because, if there is an issue, Abe isn’t at it alone. Abe has us to come to and I have run interference in getting Abe parody with Clark County prosecutor’s office and run to get, you know, I can be the evil person at the board, or whatever the meetings are, because I don’t really care. So, it’s, I think it’s a good idea. We’re not paid, so it’s not like anybody’s losing anything, but it gives a buffer and is there as a source to the attorneys, plus if there is an issue, Abe can always and he doesn’t do this, but he could hide behind us. You know, if there’s, when you’re -- and I’m assuming Pat goes through this with his people as well, when you’re there -- maybe Alan with your’s, although you’ve got a smaller group, if you’re there with these people everyday, you’re going to build friendships and it’s really difficult and I call them love letters, personally, it’s really difficult to deal, you know, if you really like somebody and you know, the Judge is like, they’re falling below and you, getting the love letters that say they are falling below and you’re working with this person everyday, I’d love to say that everybody’s strong enough to go, you know what, you’re fired type of thing, but not everybody has that ability. So, I think boards are good in that the do provide a buffer that allows for some oversight and assistance. That’s my thought.

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

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

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

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

L. LANDIS: How about the other counties? Your relationship to your board, what oversight do they provide? What evaluation do they provide?
P. BIGGS: Not too much. I mean they’re available to me and there’s a member that checks in the office every week to see how things are going. They question some of the underlings. They just kind of generally keep an eye on things. They’ve never complained. I 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 no systematic approach. There are no set standards (inaudible).

L. LANDIS: How often do they meet?

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

L. LANDIS: Alan, Jackson County?

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

P. BIGGS: Yea.

V. CARMICHAEL: Clark County is now too.

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

L. LANDIS: Alan?

A. MARSHALL: My board meets quarterly. We don’t have any attorneys on the board. We’ve got a banker and a couple of real estate guys. But at our meetings, they always ask about you know, how the jail overcrowding is going. I always supply them with numbers as far as how many cases we have concluded either by plea, dismissal or trial. Generally, I have given the average, we’re closing out an average of fifty cases a month. I just, you know, I’ll show them the jail roster. Most of the people in there are F6s, flooded with F6’s. I give them an update on any issues that’s going, taking part with any of the employees. For instance, our investigator, about a month ago was attacked when he was out in the course of his duties and the police did a shitty investigation and the prosecutor's
aren’t going to file anything. So, I have an investigator that’s still walking around pissed off royally. But we have the meetings, they are pretty active. If anything comes up in between the meetings, I’ll shoot an email out to the president just to let them know. I mean actually it’s a really good board and really good individuals to work with.

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

A. MARSHALL: It is.

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

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

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

A. MARSHALL: None, none. They didn’t, to my knowledge, they did not play any
role because I was told later by Judge Pointer, he said that’s why I wanted a system set up
because it takes all of the influence, he said if it’s done right, our appointees, the board, it
shields the judges and the commissioners. Said politics shouldn’t come into it and we
shouldn’t come into it. Judge Pointer is the one that drove getting the public defender
system just for that reason, because he saw, you know, it can certainly have, could have
problems with the system they had. So, he pushed it through.

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

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

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

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

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

J. PATTISON: Who appoints the board? Judges?
L. LANDIS: Appointed by agreement of the judges with felony and juvenile jurisdiction and one by the county commissioners.

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

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

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

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

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

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

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

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

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

J. CULOTTA: I think that’s completely reckless.

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

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

J. CULOTTA: And so the Judge is picking. So if I don’t like, and I’m not saying that a judge would do this, so if I’m a judge and I don’t like Bob because Bob has been before me seventy-five times. Let’s see who is the most incompetent lawyer, you get Bimbo. You know? I mean that’s the thing. You’re going to have that because we’re all human. I mean there is a human element to that and I’m not saying that the judge would do it on purpose. I would not say that but I could see it happening because we’re human. I mean there are people, believe it or not, I don’t like.
L. LANDIS: Now, obviously the task force is looking at the whole structure and funding in the State of Indiana, recognizing some of those flaws, trying to figure out what's the solution for . . .

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

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

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

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

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

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

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

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

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

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

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

J. CULOTTA: Eighty.

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

L. LANDIS: Mental illness?

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

L. LANDIS: Combination of the two, one or the other?
P. BIGGS: They go hand and hand quite often.

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

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

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

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

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

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

D. BOWYER: I think it would.

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

UNKNOWN: You have a community mental health. . .

J. PATTISON: We have Centerstone and LifeSprings. I was trying not to name them, but they will not go down there and when I do have clients who have those folks and
have been treated by those folks, and I subpoena those folks, they send me a letter saying we
want money or we’re not showing up.

L. LANDIS: So is that why they don’t show up? Is it money or some other reason?
J. PATTISON: I call them and tell them they probably ought to show up. I’m going
to ask for a warrant for you.

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

A. MARSHALL: Usually just from our lady.

V. CARMICHAEL: Your social worker?

A. MARSHALL: Yes, our social worker.

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

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

G. STRIEB: Most issues I’ve seen, I think you start with the appellate issue first, get
a statewide appellate board and that would help a lot because I think one of the things
you’re asking for, what’s the oversight that you have with public defenders and that sort of
raises it above the county level because if you get somebody for the appellate issue first,
remove it from the office, you get a, you know, that’s one of the things we have, we have to
obey the Supreme Court laws coming down and that’s one way we (inaudible) enforced, by
having appellate, statewide. I think if you get that started first then maybe afterwards, start
trying to incorporate the thirty counties. Because it’s really not the counties that show up at
these meetings or the counties that have the boards with the issue. It’s the other counties
where you have judges appointing it, you know, caseloads are ridiculous (inaudible) in
compliance. That’s where you’re having the issues. I think the first thing you really need is
a statewide appellate agency.

L. LANDIS: Thank you.

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

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

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

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

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

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

L. LANDIS: Anything else?

V. CARMICHAEL: Thank you all for coming.

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

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

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

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

IN WITNESS THEREOF, I have hereunto set my hand and affixed my Seal this 11th day of April, 2018.

Lori Fleeman /s/ LORI FLEEMAN, COURT REPORTER