Listening Tour Transcript

**Ft. Wayne**

**February 15, 2018**

**Bob Lowden, concerned citizen and grandfather of six (Tr. P. 8)**

**(Tr. P. 8)**

* Lowden represented himself as a concerned citizen, a grandfather that loves and protects his six grandchildren, a taxpayer who hates to see money wasted, and finally a person who desperately wants to believe our justice system is fair to the innocent.
* He believes in the necessity of the Department of Child Services (DCS) and the services they provide, but in the last three years his family has fallen victim to DCS and caused them to question methods. They now understand the critical need for legal representation in these cases.

**(Tr. P. 9)**

* The fear and trauma of being exposed to DCS seemingly negates rational thought. Parents don’t necessarily comprehend forms they are given or the meaning of the words being used by DCS. There is no roadmap or guide to give them a fair chance.

**(Tr. P. 10-11)**

* Tragically, misunderstandings carry over to the therapists, teachers, schools, and others who wrongly respond to the accused by accepting DCS determinations as correct without question. It is very difficult to survive this without proper representation. It's imperative that people are helped through the trauma created by this process.

**Deanna Szyndrowski, Executive Director of SCAN, Stop Child Abuse and Neglect**.

(Tr. P. 12)

* SCAN is an organization that works with the Department of Child and Family Services to provide services to those families that have been involved in the DCS system or are reunifying with their children and families.
* The time and the intensity it sometimes takes to meet the children, to meet the clients, and get to know the internal investigation in these cases is significant.

**(Tr. P. 14)**

* She has had good and bad experiences with public defenders and GALs. What made them positive is when lawyers took the time to know the clients and understand the issues in front of them and help the client understand the positions that they are in, and then from the children's perspective, what's happening in their home.
* She believes there should be a cap on caseloads for public defenders and perhaps a certain time requirement for meeting with the family prior to making recommendations.

**(Tr. P. 16)**

* In Lake County, where she was from until recently, about 90 percent of parents do not have representation. They don't necessarily understand how to get representation, and if they understand that representation is a right, sometimes it becomes an adversarial relationship with their Family Case Manager (FCM) if they request counsel.

**(Tr. P. 18)**

* She believes every child should have a guardian ad litemand has seen them do amazing work on cases. It's just an advocate for them. Kids are often torn between their parents, FCM, and their foster parents; therefore, they need representation where they have a very solid, safe place that can help them understand their needs would be the best for them.

**Mickey Kraus, Public Defender in Allen County**

**(Tr. P. 19)**

* Ms. Kraus described the public defender system in Allen County. It has approximately 30 lawyers who are all considered part time. They get paid a flat salary of roughly $45,000 per year. They also get insurance benefits which, according to Kraus, is why the majority of them continue to be public defenders.

**(Tr. P. 20)**

* The public defender office has the most experienced attorneys in the county, and most are there because of the benefits rather than a love of the job. They are good.
* They are part time, and most have private practices. They work in different divisions including: juvenile, Level 6 and drug cases, and Level 5 and above.

**(Tr. P. 21)**

* They are fortunate to have 8 -10 full time investigative staff who do a lot of work for the lawyers investigating cases, serving subpoenas, and other tasks.

**(Tr. P. 22)**

* They are also fortunate to have full time paralegal staff, which most counties in the state do not. The paralegals supplement what the lawyers do by providing support.
* Other than misdemeanors for which there aren’t any standards, they comply with the caseload standards set by the Public Defender Commission.

**(Tr. P. 23)**

* After being sued over an issue with misdemeanors, the Allen County commissioners recently approved funding for and added six part-time public defenders in misdemeanor court, and she believes their salaries to be $30,000 each per year with benefits. While none of those monies are being reimbursed by the Public Defender Commission, Allen County chose the number of new part-time public defenders in an effort to be in compliance with a potential new standard that the Commission might adopt and are hopeful reimbursement will follow. Since there isn’t an appellate division, public defenders handle their own appeals. A limited number of them have chosen to do appeals and are paid a flat rate of $1800 per appeal. That figure is too low, and hasn’t changed for 20 years, applies regardless of the type of appeal.

**(Tr. P. 24)**

* She no longer does appeals because it isn’t profitable.
* She is on the Public Defender Council’s Board and supports the adoption of performance guidelines for public defenders.

**(Tr. P. 25)**

* As there is no real supervision of attorneys in Allen County, lawyers would benefit from having a supervisory structure in place.

**(Tr. P. 27)**

* Allen County does not appear to have any problems with independence from judges. She is not sure how vacancies get filled, but the judges have very little, if any, say in that.

**David Frank, Attorney, Ft. Wayne (Tr. P. 28)**

* There is an urgent need for a statewide system in Indiana.

**(Tr. P. 28)**

* States like Michigan have an appellate system at the state level. There is no guarantee of good appellate services, but you do have to have good trial practice too.

**(Tr. P. 29)**

* In St. Clair County, Michigan, people are routinely jailed because they are poor and unable to pay court fines, in spite of a ruling by our Supreme Court some time ago.

**(Tr. P. 30)**

* It has to do with oversight, both at a local and a state level, of the system. He thinks that there is a hesitancy for the public, the public at large and public officials, to act because the people being disserviced are the poor, and their grievances are viewed as complacencies rather than legitimate grievances.
* There is something to be gained by combining both criminal and civil legal aid into one agency, like the Bronx public defenders. People rightfully think about access to counsel primarily in terms of a public defender, and that's right. But there are other essentials of life when you are looking at issues like housing, immigration, and public benefits. It would be beneficial to have one agency examining those issues, as well as a broad-based poverty law advocacy group. The best public defense system in the world can still be hampered by oppressive criminal laws; whether it's the number of offenses or the types of punishments in place, it's hard to fight against that.

**Kathryn Byrom, Public Defender, Noble County, CHINS/TPR cases (Tr. P. 32)**

**(Tr. P. 32-33)**

* Ms. Byrom is a full-time public defender in Noble County handling mostly CHINS and TPR cases.
* Her first recommendation is relative to caseload count. CHINS and TPR cases should be counted separately as they are totally different from issues to discovery. Clients are scared when they see that TPR petition come in front of them, and the TPR should be a new case and a whole new journey rather than a continuation of the CHINS case.

**(Tr.P. 33)**

* Currently one parent can have multiple cause numbers due to multiple children and the possibility of multiple fathers. Recommendation would be that instead of being assigned the defending parent, cases should be assigned/counted by the cause number.The third recommendation is to be able to get into the case at the initial hearing, when critical decisions are being made and children are removed. She feels she could prevent more removals and get kids home quicker.

**(Tr. P. 34)**

* Her final recommendation is for more training for attorneys representing parents in CHINS/TPR cases. She has been doing this for 13 years and attends the annual training held by IPDC for CHINS/TPR lawyers, but it is a one size fits all. A refresher or introductory CLE would be good for new lawyers for the basics.

**(TR. P. 35)**

* Finally, Ms. Byrom believes it would be very beneficial for the lawyers to have social workers assisting them with CHINS/TPR cases. She would like to have someone review and provide recommendations based upon different treatment providers and DCS treatment teams.

**(TR. P. 36)**

* To clarify, she and others are appointed at the detention hearing but are not present for that hearing. There is a 30 day pre-trial conference, but it is easier then to just keep the children in care at that point.

**(Tr. P. 37)**

* When asked about a manageable caseload, she felt 80 children at one time would be manageable; meaning 80 cause numbers, not parents.

**Mark Olivero, Public Defender, Dekalb County (Tr. P. 38)**

**(Tr. P. 38)**

* Mr. Olivero is a public defender in DeKalb County. They have eight attorneys besides him. He and three other attorneys do felony cases. There are two CHINS attorneys, another attorney who does juvenile court, and two attorneys that do misdemeanor court.
* Dekalb County is similar to Allen County as far as the salaries, but they don't get benefits. The misdemeanor attorneys get $30,000/year, and the felony attorneys and everybody else get $44,000/year. While there isn’t an appellate division, there are a couple of attorneys who are qualified to do appeals. There also is no investigator.

**(Tr. P. 39**)

* Last year they topped out on caseloads for felonies and had to juggle with some CHINS lawyers picking up lower level felonies. The CHINS people had fewer cases last year. As far as the misdemeanors, he believes it is 400 for full time, 200 for part time.
* It would be helpful to have benefits. They lost a competent attorney to another county which had benefits. Their plan does not include benefits because the prosecutor's office in that county does not give benefits to their part-time people.

**(Tr. P. 40)**

* It would make a big difference to have reimbursement for misdemeanors and to have an investigator. They lost another very qualified attorney when they switched to the commission because of the caseloads and what they were being paid when they switched. He had to hire someone local that didn't have as much experience, but he's trying to do the best he can.

**(Tr. Pgs. 41-42)**

* We have no appellate division so the judges just pick. He was going to do an appeal last year on an arson case, but felt it was going to be a conflict with that client. So he passed it on to the state public defender. Right now, when appeals are coming up in these other divisions, he does not have appellate qualified lawyers. He is trying to get someone qualified by going to the 6 hour training.

**(Tr. P. 43)**

* He is working with the attorney handling juvenile cases because he just had a youth sent to DOC. The youth wanted an appeal, and it wasn’t really covered in the record. There are people now talking to youth at DOC to make sure the youth know their rights, so we will likely have more juvenile appeals. There have been 2 recently.

**(Tr. P 44)**

* Dekalb County joined the Public Defender Commission to have better representation and more attorneys. Once the county joined, the number of attorneys went from 3 or 4 up to the current number of nine. While there are caseload limits, the attorneys are spending more time and being more effective for the clients. They are also still dealing with the misdemeanor issue though. Joining the Commission ended up saving the county a little bit of money, so he was able to convince the commissioners that this was a good thing. The judges were on board for this.

**(Tr. P. 45)**

* They do not have a full time investigator, but they do have a line for an investigator (basically a budget line) that they have used at times. Usually they have to investigate their own cases. They do have two full time paralegals and a receptionist. They also can ask for expert fees in cases and then seek reimbursement from the state.

**(Tr. P. 46-47)**

* Things are much better than they used to be. He is not sure if a state system with benefits would be a good thing, but having a state appellate office would probably be helpful since it’s difficult to find qualified people. Having the state take over the cost of CHINS/TPR would probably make the county happy, but he’s not sure how that would work for the people now doing those cases.

**Bart Allen, Deputy Defender, Allen County (Tr. P. 48)**

**Tr. P. 48**

* Investigators in their office are really good. He could not handle the state numbers he gets as a PD who handles drug cases without them. I don’t doubt they are overworked.

**Tr. P. 49**

* He thinks the idea of a state system is a terrible idea, wouldn’t want a job in that system, and does not know anyone who would. He cannot imagine that the government could pay what he would want to do the job on a state level.

**Tr. P. 50**

* He believes a state appellate could be a good idea by providing a fresh set of eyes on cases. The PD seminars at times cover how to preserve records better. He likes the idea of having a couple of appellate attorneys in a region who could help make sure they are setting up cases properly for appeal.
* Allen County only pays $1800 for appeals, which is a terrible rate. He doesn’t know anyone who does them for that price; it should be higher.

**Tr. Pgs. 50-51**

* They have issues with the local jail when they try to get in to see clients. Sometimes there is no answer there at the jail, or they have to wait long periods to see people. He wishes something could be done about this.

**Tr. Pgs. 52-54**

* They get cases assigned to them by the investigators, who have already spoken to the client and done a write up for them about the case and what the client wants.
* They usually get the case within a couple of days, maybe a week. There is a pilot project to provide representation at initial hearings to deal with bond, but he is not the best person to speak about that.

# Mickey Kraus

**Tr. P. 55 – 56**

* There are issues with the court not wanting to do bail reviews once bail is set. She witnessed one the other day and asked if the person was represented, and he was not. There do not appear to be lawyers at initial hearings for the most part in Allen County. Some people get an elevated bond because someone made a call about them, and the person has no one to contest that or represent them.

# Tr. P. 57

* She believes they need to have someone available at the initial hearings to stop things like this. Every felony case that comes in for an initial hearing has a not guilty plea entered on their behalf, and they cannot plead guilty. Historically they felt it was ok not to have someone represented at the initial hearing because they’re not letting them say anything incriminating, but bond is getting addressed without representation. She feels this needs to be addressed.

# Mike McAlexander, Chief Deputy Prosecutor

# Tr. P. 58-59

# Initial hearings are done on a warrantless arrest and are more of a detention hearing or probable cause review. Elevated reviews are done when there is a safety risk or risk of flight. It’s no different than asking for a warrant without defense counsel being present.

* Defense counsel can come in at 2:00 a.m. like we do.

# Tr. P. 60

* There is a good system here even it if needs some tweaking. He is concerned about sustainability because there are many veteran lawyers in the system. They are mostly full time although they almost all have private practices. WE get very high quality litigators. It is laughable when people say, “I want a real lawyer.”

# Tr. Pgs. 60-61

* Compensation should be adjusted. In his office, lawyers handling more high profile and difficult cases get paid more. The public defenders should work that way as well.
* Some of the Commission standards are somewhat artificial, like misdemeanors. They just hired lawyers and are holding them to 400 cases. We prosecute 6000 with one more experienced lawyer and 3-4 younger attorneys.

**Mark Thoma, Chief Deputy Public Defender, Allen County**

**Tr. Pgs. 63-64**

* Thoma said they have one of the best systems in the state and could be a model for others. Their lawyers are excellent. He agreed with Mickey in that many do it for the insurance and benefits and also in hopes of getting some private cases.
* There should be standards, but a statewide system would be a mistake. We should not have Indianapolis taking control over what happens locally.

**Tr. P. 64**

* If there are smaller counties where judges are controlling indigent defense, changes need to be made, but that is not happening in Allen County.

**Tr. Pg. 65**

* In addition to the 33 public defenders that do misdemeanors, juveniles and felony work, they have an additional 20 lawyers who do CHINS. Those lawyers also have a lot of experience. There has been an explosion in Allen County on CHINS cases. In 2015, we had about 250 CHINS cases with PD appointments. Last year is was 800 with the same number of lawyers.
* It’s unacceptable that they don’t have lawyers at initial hearings. He believes Rule 26 will help them with that. They need to figure out a way to make that happen.

# Tr. Pgs. 65-66

* He did appeals as a younger attorney and it made him a better trial lawyer. He believes that younger attorneys should be handling appeals so they can learn from them.

**T.R. pgs. 67-68**

* It would be a relief to the county if there was a 50% reimbursement rate and misdemeanors were covered by reimbursement. It would also help to be able to use investigators in the CHINS cases.

**Jared Haller, Indiana Legal Services**

**TR. pg. 69-70**

* It’s important for the Task Force to hear from those who have been involved in the system as recipients of public defender services. He hopes the group will do that.
* The Task Force should also be cognizant of the fact that there are many people who do not get lawyers assigned. He worked previously for the Marion County Public Defender Office, where this was rare. In one 3 hour period in Allen County, he saw more people not represented than he saw in Marion County in the 4 years he worked there. In Marion County, lawyers in court when defendants are in court, and they viewed their jobs as being all about serving the clients and protecting the Constitution.
* He knows many of the Allen County attorneys and believes they are good lawyers. But they are part of a cottage industry. They are divided up, and working in different practices. Unlike Marion County, they do not have the same power with other lawyers to impact practice.

# Tr. P. 72

* There was mention of having difficulty getting in the jail in Allen County to see clients. In Marion County, we had power in numbers. We could force change because we are bigger and more united.

**Jim Abbs, Chief Defender, Noble County**

**Tr. P. 72**

* He has been Chief Defender in Noble County for 17 years, and is also head of the Indiana Chief Defender’s Association.

**Tr. P. 73.**

* The Chiefs Association and Public Defender Council have four important recommendations they agree upon: 1) there should remain the existing Commission reimbursement program; 2) all counties should have to participate in the program; 3) there must be an enforcement body through the Commission, and 4) most importantly, local counties should be able to decide how services get delivered.

**Tr. P. 74**

* There should be a chief public defender or supervising attorney in every county who is accountable for the services being done in that county. Noble County is unique. They have been in complete compliance with all case standards, including misdemeanors since 1997. There are 3 full time attorneys, and four part time attorneys, and a line item for experts.

**Tr. P. 75**

* There has been discussion about regional public defenders within the state. He fears this will create another bureaucratic level. They won’t be handling cases and will have to have staff. They will have a budget for expenses that is not money going to serve clients.

**Tr. P. 76**

* In Commission counties, there is excellent representation. Even in surrounding counties, this is likely the case

**Tr. P. 77-78**

* He feels it is important to keep services at the local level, unless counties want to combine efforts in an office. He does not favor a state office. He worked in one in Minnesota, and after a while, their budget was strained and the caseloads went up.

**Tr. P. 78-79**

* Some counties do not want to participate because they think their outlay of funds are going to increase, even with Commission reimbursement. They will eventually see savings, even it if it isn’t all hard dollars.

**Tr. P. 80**

* He believes he does not have any interference from judges in his county because they are in the Commission program. In non-Commission counties, they have heard horror stories about judges not wanting to give up power. That is why mandatory participation is necessary.

**Larry Landis, Executive Director, Indiana Public Defender Council**

**Tr. P. 81-82**

* If all counties were in the Commission reimbursement program, it would cost about 70 million that can be traced, and then we would need another 15 million. The amount started at $650,000 and has gone up incrementally as counties have become involved. Depending on the demand and how many counties have opted in, the legislature has increased that amount. New counties would likely bring incremental increases, unless the legislature required participation. It would take roughly 20 million if all counties were mandated now to participate.

**Jim Abbs**

**Tr. P. 82**

* There must be new funding. CHINS cases have created a major problem which has hit all counties hard financially. The Chiefs Association and IPDC attempted to address this issue over the past 2 – 3 years going to legislators to say that since they are increasing funding on one side, we need funding to keep up with the increased demand.

# Tr. P. 83

* CHINS is a sensitive issue because, from a legislative standpoint, it deals with children. But we cannot just focus on CHINS and lose focus on the entire public defense system. We must ensure we address all of the issues.

**David Frank**

**Tr. P. 84**

* In December of 2015 his office filed a lawsuit over systematic denial of counsel in Allen County. It has nothing to do with the competency and quality of the lawyers, and no individual lawyers were named. There seems to be a broad based agreement that public defense can be handled at the county level with a little bit of tweaking.

**Tr. P. 85-86**

* In 2003, the county wrote itself a contract setting up mechanisms to ensure quality of representation at the felony and misdemeanor level. There were checks and balances. There were actions to be taken if there was ever an alarming decline in resources that impact quality. The county has never been in compliance with its own standards, both at the misdemeanor level and for oversight and supervision of felonies. This has long been known by the county and supervisors of the public defender system.
* So to the idea that counties just need to buckle down and lift themselves up by their own bootstraps, that has not happened in Allen County. It’s good to see a one-time distribution of funding to address outrageous deficiencies in the denial of people’s constitutional rights, but there is nothing to ensure this is sustainable.
* Many clients, including appellate clients and poor families, would be horrified to know that the chief deputy public defender and the chief deputy prosecutor of this county were in agreement that things are just fine in terms of representation.

# Jim Abbs

# Tr. P. 89-90

* Many of the problems are in counties not in the Commission. If we have mandatory participation, that might solve a number of problems for the attorneys. It would mean there would be a salary and benefits, and that is a big draw. It is a big draw for my staff.

**Tr. P. 92**

* If all counties have to comply, then the Commission would have to have enforcement mechanisms when counties are not in compliance, even if that means withholding funds from the county. The State might have to take over the services.