

TASK FORCE ON PUBLIC DEFENSE

LISTENING TOUR - FORT WAYNE

FEBRUARY 15, 2018

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APPEARANCES

TASK FORCE MEMBERS:

Judge John Daniel Tinder (via telephone)

Larry Landis

David Bottorff

TASK FORCE STAFF:

Kim Tandy

Kathleen Casey

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1 February 15, 2018
2 Fort Wayne, Indiana

3 MR. LANDIS: Good evening. My name is Larry
4 Landis. I'm the executive director of the Indiana
5 Public Defender Council. With me this evening is?

6 MR. BOTTORFF: David Bottorff. I'm with the
7 Association of Indiana Counties.

8 MR. LANDIS: Executive director, to be more
9 precise. And also?

10 MS. TANDY: Kim Tandy, and I'm the technical
11 advisor for the task force. We are going to have
12 Judge John Tinder on the line.

13 Good evening, Judge Tinder. We are just
14 getting started.

15 MR. LANDIS: So this was scheduled before we
16 checked with the schedules of all the task force
17 members. So that's why we have a skeleton crew
18 here, with our chairman, John Tinder, on the line.

19 But also, for those of you who are not
20 familiar with the task force, it was formed in
21 response to the commission contacted the Sixth
22 Amendment Center, and they did a report on Indiana.
23 And when that was returned to the commission, they
24 decided they needed to appoint a task force to
25 study the issues identified and other issues

1 unidentified with indigent defense services of
2 Indiana.

3 So on the task force is Judge John Tinder,
4 retired federal circuit court judge, as chairman;
5 Roderick Bohannon, who is director of the Indiana
6 Legal Services; David Bottorff, executive director
7 of the Indiana Association of Counties; Senator Rod
8 Bray; Judge Vicki Carmichael from Clark County;
9 Judge Diekhoff from Monroe County; Monica Foster,
10 chief public defender of the Federal Community
11 Defenders program in Indianapolis; Supreme Court
12 Justice Chris Goff; general counsel for the
13 Governor, Joe Heerens; Jud McMillin, criminal
14 defense lawyer, former state representative; Jeff
15 Papa, who is a partner at Barnes & Thornburg,
16 former chief of staff for the senate pro tem;
17 Representative Greg porter; Professor Joel Schumm
18 from IU McKinney Law School; Judge Mary Willis;
19 Andrea Lyon, Dean of Valparaiso Law School; and
20 Steve Luce, the executive director of the Sheriff's
21 Association, and myself.

22 The purpose of this what we are calling a
23 speaking tour is to get suggestions, feedback,
24 opinions from people out in the counties who have
25 some familiarity, knowledge, experience with the

1 indigent defense system in the State of Indiana.
2 So we welcome any comments, observations about how
3 to improve services, anything that you think that
4 the public defender task force should know about
5 the present system.

6 And so let's open the floor. I think we have
7 a list of people who are signed up. That's not an
8 exhaustive list. So if the moment strikes you, and
9 you want to speak, even though you are not signed
10 up, you will not be foreclosed. But we will try to
11 manage time by, if you can try to confine or limit
12 your remarks to no more than five minutes, that
13 will make sure that we have an opportunity for
14 everybody to speak.

15 Let's start with Bob Lowden. Is Bob here?
16 Sorry. You didn't want to go first, I take it?

17 MR. LOWDEN: I'm almost warmed up.

18 MR. LANDIS: Could I ask you to stand and
19 speak into that microphone? That way it will be
20 picked up on our taping system, and so also Judge
21 John Tinder can hear.

22 Everything is being recorded, and it will be
23 transcribed, and it will be communicated and made
24 available to all of the other task force members.
25 This is actually the third speaking tour. We have

1 the transcript from the first one that has been
2 completed and is available. And other ones, they
3 will all be transcribed and made available.

4 I think they will be put online. Is that
5 right?

6 MS. TANDY: Eventually, yes.

7 MR. LANDIS: Eventually we'll put them online.
8 There is also a website for the Public Defender
9 Commission, and if you go to the Indiana Public
10 Defender Commission website, you'll see a link to
11 the task force. And so all of the information, all
12 of the materials that have been submitted to the
13 task force, all of the meetings that they've had,
14 the minutes of those meetings, and all of these
15 transcripts will be on that website.

16 MS. CASEY: Everyone who signed up through
17 Eventbrite will get an email after the event with
18 the direct link to the website.

19 MS. TANDY: Sometimes we realize that people
20 may not be comfortable speaking publicly for one of
21 many reasons. If you have a story, or you want to
22 give information and you are not comfortable
23 speaking before the group here, please let me know
24 or let Katie know, and we can make arrangements to
25 talk to you privately.

1 MR. LANDIS: Now, did we make you nervous
2 enough, Mr. Lowden?

3 MR. LOWDEN: We don't know yet. We'll find
4 out. I appreciate the opportunity to appear before
5 this task force, giving me the opportunity to give
6 you some of my observations that I've seen.

7 My name is Bob Lowden from Fort Wayne,
8 Indiana. I'm not a social worker. I'm not a
9 psychologist. I'm not an attorney. I'm a
10 concerned citizen, a grandfather that loves and
11 protects his six grandchildren, a taxpayer who
12 hates to see money wasted, and finally a person who
13 desperately wants to believe our justice system is
14 fair to the innocent and protects the weak from
15 evildoers wishing them harm.

16 In our case we've always recognized the
17 pressing need for the Department of Child Services
18 to exist and the necessity for the service they
19 provide. Unfortunately, the last three years have
20 caused us to question their methods and get an
21 immediate understanding of the need for legal
22 representation. I'm not a victim of the Department
23 of Child Services. Our family is.

24 I wouldn't have much to talk about today if in
25 March of 2015 my oldest daughter, with two adopted

1 children and her second husband, hadn't stumbled or
2 were pushed into the rabbit hole that leads to the
3 Indiana DCS wonderland. Like Lewis Carroll's
4 fictional Alice in Wonderland, Indiana's DCS
5 organization is a land unto itself, a labyrinth
6 more complex than Alice's dreamland, with rules and
7 terminology making as much sense to new arrivals as
8 Wonderland did to Alice.

9 The fear and trauma of being exposed to DCS
10 negates seemingly rational thought. You read forms
11 you don't comprehend due to the emotional confusion
12 of the situation, putting you at a disadvantage.
13 The parent, regardless of whether they jumped into
14 the rabbit hole by their actions or stumbled into
15 it, have been pushed into an abyss that's
16 immediately ex-spouse or child, that didn't provide
17 either a road map or guide to give them a fair
18 chance.

19 The fact that information deadlines are
20 intertwined into the documents of CPS or DCS really
21 doesn't matter because the confusion and trauma
22 that the person experiences going into that negates
23 any advantage in seeing the words. Adding to the
24 confusion is the meaning of words used by DCS.

25 A DCS supervisor stated that they only need to

1 speak to one parent to have investigated. An
2 ex-caseworker shared with me the caseworker's
3 phoning to advise parents of a court hearing date
4 may count that as an interview. They can
5 substantiate an individual with a 50.1 percent
6 chance that it happened, which is considered a
7 preponderance of evidence. Speculation through
8 their eyes or conjecture would appear to be the
9 more appropriate word. Unfortunately, people
10 outside the system assume these words have meanings
11 they were schooled to know.

12 A poor level of investigation can be
13 compounded by a caseworker that may not like you,
14 and that affects their decisions. It's difficult
15 for any assessment not to be as much a subjective
16 one as an objective one.

17 Tragically, misunderstanding meanings carries
18 over to the therapists, teachers, schools, and
19 others who wrongly respond to the accused by
20 accepting DCS determinations as correct without
21 fault or prejudice. Some wrongly take prejudiced
22 action against the accused innocent parent under
23 that assumption.

24 I'm compelled to ask how a person can survive
25 alone through this maze and its consequences

1 without proper representation. It's imperative
2 that people are helped through the trauma created
3 by this process.

4 MR. LANDIS: Thank you. Do you have any
5 suggestions for how public defenders can do a
6 better job representing those people in your
7 situation and your daughter's?

8 MR. LOWDEN: In our situation we had
9 attorneys. But in seeing what the experience is, I
10 have nothing but empathy for anyone that has to
11 stand there, a young woman going through this with
12 no help, no parents, no attorney, and reaching a
13 point -- I think in the newsletter it said CHINS.
14 Well, at the CHINS level you are already shafted.

15 And that happened with us even though we had
16 attorneys. They made a couple of poor decisions,
17 and one of them was they were led by a DCS
18 attorney, and we were put into CHINS and never had
19 the chance to do fact-finding. At this point I
20 haven't seen my grandchildren in my home for over a
21 thousand days.

22 MR. LANDIS: I'm sorry to hear that. Do you
23 have any questions, David?

24 MR. BOTTORFF: No.

25 MR. LANDIS: Thank you, sir.

1 Deanna Szyndrowski.

2 MS. SZYNDROWSKI: I'm Deanna Szyndrowski, and
3 I actually come from Lake County, Indiana. I
4 recently moved here to lead SCAN, Stop Child Abuse
5 and Neglect. That is an organization where we
6 actually partner with the Department of Child and
7 Family Services to provide services to those
8 families that have been involved in the DCS system
9 or are reunifying with their children and families.

10 I don't disagree with a lot of the comments
11 that the gentleman before me had indicated. And
12 being across a number of regions, I think it's
13 difficult. As you start to see from a service
14 provider's perspective, as well from a public
15 defender's perspective, as well from a guardian ad
16 litem's perspective, the time and the intensity it
17 takes sometimes to meet the children, to meet the
18 clients, to really do that, get to know the
19 internal investigation of all the information
20 that's given to them.

21 So as a therapist and as a supervisor and as
22 now a leader of an organization, I think it is
23 important to note that we might need to do
24 something different about when we are assigning
25 cases, putting some parameters in place on how many

1 times that somebody needs to meet with that family
2 or to meet with those children before we make
3 recommendations in court.

4 I get it, it's a timing issue, but sometimes
5 my clients have a court date, or we get a subpoena
6 24 hours before we're supposed to be in court.
7 Well, that's going to be really difficult for me to
8 get a staff member to that courtroom, if they have
9 other families that they need to be seeing. So I
10 think we need to maybe take a step back from the
11 crisis situation and put some very planful things
12 in place so that everyone involved gets the best
13 representation that they need to have from a
14 service provider's perspective, from a public
15 defender's perspective, and then certainly from the
16 GAL's.

17 We're making decisions on behalf of children,
18 and we want to make sure we are making the right
19 decisions. Even from a clinical perspective, if I
20 get a file about a client, it's my duty to look at
21 that file, but it's also my duty to speak with that
22 client before I make a recommendation to see if all
23 of that happened. And I think that from our
24 system, I think we can just do a better job of
25 that.

1 And so maybe, I don't know, I have had some
2 amazing experiences with public defenders and GALs,
3 and I've had some ugly experiences with them. And
4 I think what made them amazing experiences is the
5 time and intensity that they took to know the
6 clients and understand the issues in front of them
7 and help the client understand the positions that
8 they are in, and then from a children's
9 perspective, what's happening in their home.

10 So I think that, from my perspective I think
11 that I appreciate the opportunity to be here, but
12 to be thinking about what we can do to cap
13 caseloads for public defenders or time frames or,
14 you know, how many times do we need to meet with a
15 family before we make a recommendation and get the
16 understanding of what's really happening.

17 And time is of the essence, and I understand
18 that, but not when we're dealing with the lives of
19 children and families. We want to make sure we
20 have a solid understanding of that.

21 MR. LANDIS: Do you have any recommendations
22 about things like caseload standards or
23 requirements, performance requirements?

24 MS. SZYNDROWSKI: Yes. I mean, I think from a
25 clinical perspective, we can't have any more than

1 12 families on our caseloads in order to do a very
2 solid work with them in terms of what are the needs
3 from the Department of Child and Family Services in
4 helping the family get through the trauma and
5 understanding. So I think maybe somewhere in those
6 12 to 15 parameters.

7 MR. LANDIS: But are you talking about the
8 caseload for you as a GAL or CASA or a public
9 defender?

10 MS. SZYNDROWSKI: I'm thinking both. I think
11 you have to have a coordinated entry. You have to
12 have a coordinated service delivery. So when I sit
13 in team meetings, and we're making decisions, and
14 we're going to go into court and make that
15 recommendation from a service provider, I'm sitting
16 with a CASA, and I'm sitting with an attorney. So
17 I think that the smaller the caseload, the better
18 recommendation we're going to get for that child
19 and that family.

20 MR. LANDIS: Thank you. Did you come here
21 from Lake County for this purpose?

22 MS. SZYNDROWSKI: No. I actually just moved
23 here.

24 MS. TANDY: Can I ask a couple of questions
25 real quick before you go?

1 MS. SZYNDROWSKI: Sure.

2 MS. TANDY: Two questions, actually. One is
3 in the counties in which you work, how often do you
4 see parents that go unrepresented in CHINS or TPR
5 cases? And, also, what are your thoughts about the
6 need for lawyers to represent children in those
7 cases?

8 MS. SZYNDROWSKI: I think I would say about
9 90 percent of our families do not have
10 representation. One, because just as the
11 gentleman --

12 UNIDENTIFIED PERSON: Would you clarify what
13 county you are talking about, please.

14 MS. SZYNDROWSKI: Well, I would say
15 predominantly Lake County. I didn't mean to be
16 offensive by that.

17 UNIDENTIFIED PERSON: No offense taken.

18 MS. SZYNDROWSKI: I came from Lake County.
19 I'm not really sure about Allen.

20 About 90 percent of them do not have
21 representation. If they do -- well, one, they do
22 don't necessarily understand how to get
23 representation. And if they understand that that's
24 a right, sometimes it becomes an adversarial
25 relationship with their FCM or their family case

1 manager.

2 So our families are kind of in a tenuous
3 situation. They want to get the representation.
4 They are not quite sure how to go about that at
5 some point. And then just like anything else, if
6 someone is being represented, you know, then that
7 becomes that tenuous issue for them as between the
8 FCM and them and then the guardian ad litem. So I
9 think they just feel a little bit more on the
10 defensive aspect of that.

11 MS. TANDY: For children?

12 MS. SZYNDROWSKI: I think every child should
13 have a guardian ad litem. I think I've seen them
14 work amazing in cases. It's just an advocate for
15 them. They are often torn between their parents,
16 FCM, their foster parents. And so any
17 representation where they have a very solid, safe
18 place that can help them understand what they need
19 would be the best for them.

20 MS. TANDY: Thank you.

21 MR. LANDIS: Should they have a right to
22 counsel or just a guardian ad litem?

23 MS. SZYNDROWSKI: I think a guardian ad litem
24 would be just as good as counsel. I truly believe
25 that.

1 MR. LANDIS: Some attorneys here may disagree
2 with you.

3 MS. SZYNDROWSKI: Absolutely. I'm sure they
4 will. I think a child needs to have a voice that
5 understands that child, understands what that child
6 needs, and understands what that child wants.
7 Whether it be an attorney or guardian ad litem, I
8 think they need to be able to have that, I would
9 say, separate entity for them.

10 MR. LANDIS: I just wanted to verify, in Lake
11 County the CHINS cases are in the juvenile court
12 system, aren't they?

13 MS. SZYNDROWSKI: Yes, they are.

14 MR. LANDIS: Is it now in Crown Point?

15 MS. SZYNDROWSKI: It is in Crown Point. Judge
16 Stefaniak oversees them.

17 MR. LANDIS: Do you ever see or experience any
18 conflicts of interest between the public defenders
19 representing both the child in a delinquency case
20 and the parents in a CHINS case, same family?

21 MS. SZYNDROWSKI: It has not been my
22 experience. I think they do a very thorough job of
23 that, as best they can based upon what they have.
24 But I wouldn't probably be the best person you
25 should ask that.

1 MS. TANDY: Thank you.

2 MR. LANDIS: Okay. Micky Kraus.

3 MS. KRAUS: I've never been accused of being
4 soft spoken, so I don't know that I need this.

5 MR. LANDIS: For the record, I should have
6 said this with the other speakers, when you go to
7 the microphone could you say your name and spell
8 your last name for the court reporter.

9 MS. KRAUS: My name is Micky Kraus, K-R-A-U-S.
10 I am a public defender in Allen County. I do not
11 do any CHINS cases, so I'm not here to discuss
12 that. There are those who are here that have more
13 experience.

14 I just want to, I guess, for the commission
15 members who are not here, give an overview of the
16 way the public defender system works in Allen
17 County. And, again, I'm just talking the criminal
18 side of it, not CHINS/TPR.

19 We have approximately 30 lawyers. We are
20 considered part time. We get paid a flat salary.
21 Roughly \$45,000, roughly, is what we get paid. We
22 also get our insurance benefits, which quite
23 frankly is why the majority of us continue to be
24 public defenders.

25 I believe that the Allen County Public

1 Defender's office has the most experienced
2 attorneys in the county who are public defenders,
3 and most of us are there I think because not
4 necessarily for the love of the job, but because of
5 the benefits. They are good.

6 So we are considered part time. We do all
7 have private practices, or most of us do. So we
8 split our time between private practice and public
9 defender work.

10 We have divisions. We have a juvenile
11 division. There are those here who -- I've never
12 been out in juvenile court, so I don't know how
13 many lawyers we have out there. They do things
14 differently than we do.

15 We have Level 6 and drug cases are together in
16 one division. And then we have what we call A, B
17 and C felony are Level 5 above. And the Level 5
18 and above cases, there are six of us. Right, Tony?

19 MR. CHURCHWARD: Six, yes.

20 MS. KRAUS: Six public defenders. We've got
21 two judges who handle the old A, B and C felony,
22 Level 1 through 5. So we are divided with those
23 two judges, three with Judge Gull and three with
24 Judge Surbeck.

25 We do have a luxury that other public defender

1 offices do not. We do have a full-time public
2 defender staff, which includes investigators, I
3 don't know, eight or nine or ten investigators, who
4 are overworked. There's no question that the
5 amount of work that they have to do, we could use
6 more of them. But what that does is it allows us
7 public defenders, if I want to take a deposition, I
8 do a request to the PD's office. They prepare the
9 subpoena, they serve the subpoena on the witness.
10 Oftentimes, that means chasing down a witness, and
11 it takes multiple attempts to get a witness there.

12 If I have somebody at the jail who has an
13 alibi defense, I do a request to the public
14 defender investigator. That investigator then
15 investigates that alibi defense, finds those
16 witnesses, takes statements from those people, and
17 then provides me with that information so I can
18 follow up with, if it's appropriate, to file the
19 appropriate motions.

20 We do have, right now have one case manager,
21 who's come on full time, who is somebody who does
22 more social work for us, doing some sentencing
23 memorandums. Helping with mental health, we use
24 Recovery Works quite frequently, and so we're
25 fortunate to have Angie Grande.

1 And then we also have paralegals; although we
2 do our own motion preparation and filing and things
3 like that. But the paralegals over at the public
4 defender's office do prepare subpoenas, both for
5 depositions and trials, and get those served for
6 us.

7 So I say that's a luxury because I'm not aware
8 of, other than perhaps Marion County, that there
9 are any other counties that have a full-time staff
10 like that, that allows us to have, again, the
11 luxury of having somebody do street work for us.

12 And so that's, that's the way that generally
13 the Public Defender's Office works in Allen County.

14 MR. BOTTORFF: Are there minimum and maximum
15 caseloads?

16 MS. KRAUS: We are within the commission
17 guidelines, yes, so we do have those. And because
18 we have full-time staff, it's my understanding that
19 our numbers fall into whatever the numbers are
20 within the commission standards because of the
21 full-time staff that we have.

22 So, yes, we are in compliance except for
23 misdemeanors. We are not in compliance -- well,
24 there are no standards for misdemeanors right now.
25 I'm sure the commission is aware that Allen County

1 has litigation pending because of the issues that
2 have occurred in the misdemeanor division over in
3 Allen County. Allen County, our commissioners just
4 recently approved funding for six full-time
5 part-time public defenders in misdemeanor court.
6 None of those monies are being reimbursed by the
7 Public Defender Commission because obviously that
8 reimbursement is not there. But we just put six
9 public defenders on staff.

10 I want to say their salary is roughly \$30,000.
11 They are getting benefits as well is my
12 understanding, and that the number six is because
13 they are attempting to be in compliance with
14 perhaps the standard that the commission might
15 adopt, and then hopefully reimbursement follows
16 after that. So, yes, we are within the compliance
17 for our numbers.

18 We do not have an appellate division. We do
19 our own appeals. There are a limited number of us
20 who have chosen to do appeals. We get paid a flat
21 rate for that. Quite frankly, I think it's too
22 little. It's \$1800. It's been what we've been
23 paid for the last 20 years that I've been a public
24 defender, and that's regardless of whether or not
25 you are doing an appeal on a sentencing issue, or

1 you have a multi-day murder case.

2 I personally have stopped taking appeals
3 because I just don't feel the monies are justified
4 for the amount of work that I'm putting into
5 appeals. I think that's something that needs to be
6 addressed within our office.

7 MR. LANDIS: Any suggestions for what would
8 improve the quality of indigent defense services in
9 Allen County?

10 MS. KRAUS: You know, in complete disclosure,
11 I'm also on the Board of Directors for the Indiana
12 Public Defender Council, and I was part of the
13 working group that, with the Chief Public Defender
14 Association, came up with recommendations that were
15 given to the commission back in January.

16 I think that one of the things that Allen
17 County could benefit from, and hopefully that the
18 commission will adopt, as well, is some
19 standardized performance guidelines. We're all
20 good lawyers. We all do the best that we can. At
21 least I hope that we do. But there's nothing,
22 there are no standardized performance guidelines in
23 place. And I think that that ought to across the
24 state apply to us and apply to all the other
25 counties because, you know, everybody is going to

1 be doing things differently. But if you have a
2 standardized checklist about what you ought to be
3 looking for, there ought to be some oversight from,
4 you know, a supervisor or somebody.

5 We are very independent in Allen County. We
6 don't have anybody supervising us except ourselves.
7 And, you know, we make mistakes. And so I think we
8 would benefit from having something a little bit
9 more structured when it comes to performance
10 standards.

11 MR. LANDIS: If there were performance
12 standards, how do you see that being implemented in
13 terms of supervision? Who would evaluate
14 performance?

15 MS. KRAUS: Well, you know, in Allen County it
16 seems like we'd have to restructure our office
17 because, again, we're all comrades. We all get
18 along. We all have each other's back. When we
19 need to brainstorm a case, we are there to help
20 each other out.

21 But there's nothing standardized in place, and
22 so we would have to find a way to have a
23 supervisor. We don't have a supervisor at this
24 point in each of the divisions. But I think that
25 it would be appropriate for us to have that.

1 Again, based upon conversations that I was
2 privy to at the meeting in January, with the
3 recommendations made by the Chief Association and
4 the Public Defender Council, the Board of
5 Directors, I walked away from that meeting feeling
6 like if something is working, then the commission
7 is going to leave us alone and let us do things the
8 way that they are working.

9 For example, the appellate division in Marion
10 County seems like it's got the best of both worlds.
11 So in Allen County we would have to restructure to
12 make that happen because we don't have anything
13 like that in place right now. I think we can do
14 that on our own, without being told by somebody,
15 the commission, how to do that. But if we don't do
16 it on our own, we will be told how to do that.
17 And, you know, we're lawyers, and we're proud, and
18 we don't want people to tell us what to do.

19 MR. LANDIS: One of the issues in many
20 counties, not necessarily in Allen County, is lack
21 of independence from the judges. In at least 30
22 counties our public defenders are at-will employees
23 of the judge. And in the other 30 they might as
24 well be because they have boards that really don't
25 meet; and when they do meet, they hire whoever the

1 judge recommends.

2 How does that work in Allen County? If there
3 is a vacancy, how is that vacancy filled?

4 MS. KRAUS: I am not privy to how a vacancy is
5 filled. Randy Hammond is our chief public
6 defender; so I don't know who takes those
7 applications and those types of things.

8 I am of the opinion, my personal opinion is
9 that the judges have very little, if any, say in
10 that. I don't know if they are making
11 recommendations on behalf of people. I feel, and
12 again I'm one of the oldest with longevity in the
13 public defender's office, I feel like we have
14 independence from the judges when it comes to those
15 types of things. You know, we'll butt heads with
16 the judge as good as the next one. So I don't feel
17 like Allen County has any sort of interference or
18 problems with the judges interfering with our
19 representation of people.

20 MR. LANDIS: How about surrounding counties?
21 Because I know most of you practice outside of
22 Allen County. Have you seen problems in other
23 jurisdictions?

24 MS. KRAUS: Tony Churchward is in Whitley
25 County. I think he'd be better. I don't know.

1 When I go to other counties, I'm there for a single
2 case, and I butt heads with everybody. You know
3 that, Larry. So I don't know how it's run in other
4 counties.

5 Mark is here. So I would ask them that
6 question. You have Mark Olivero from DeKalb County
7 and Tony Churchward from Whitley County. That
8 would be a good question for them.

9 MR. LANDIS: But they didn't sign up.

10 MS. KRAUS: Yes, but I'm volunteering them.

11 MR. LANDIS: Thank you.

12 David Frank.

13 MR. FRANK: My name is David Frank. Last name
14 is spelled like the first name. I'm an attorney
15 here in Fort Wayne.

16 I just wanted to say thank you to Larry and
17 Kathleen for their work on this task force and also
18 their work otherwise on the public defense issue.
19 I think they've been instrumental in pushing
20 forward a, in presenting the urgency that's needed
21 in seeking the consensus around the need for an
22 urgent and drastic solution to a public defender
23 defense problem.

24 MR. LANDIS: Any suggestions for improving the
25 system?

1 MR. FRANK: A statewide system yesterday,
2 first of all.

3 MR. BOTTORFF: When you say a statewide
4 system, you mean the public defenders would become
5 state employees and paid by the state and insurance
6 with the state?

7 MR. FRANK: Yes.

8 MR. LANDIS: What else? I know you don't just
9 have some experience in Allen County, but you've
10 seen other counties. Any suggestions, if there is
11 not a statewide system, any suggestions for
12 improving the current system other than a statewide
13 system?

14 MR. FRANK: If you look at Michigan, they have
15 an appellate system, but that means that they have
16 a good appellate system. Particularly in the rural
17 counties, if you look at Michigan or any other
18 states that have an appellate system but not a
19 trial division, the appellate defense is abysmal.

20 I can speak from personal experience. For
21 instance, in St. Clair County you had a systematic
22 problem of poor people being jailed simply because
23 they were unable to pay court fines. That's
24 obviously something that cannot be done. It's been
25 ruled on for a long time by the Supreme Court. But

1 you had at least one judge routinely putting poor
2 people in jail simply because they were unable to
3 pay court costs and fines.

4 And that, it has nothing to do with the
5 quality of attorneys. It has to do with oversight,
6 both at a local and a state level, of the system.
7 And I think that there is a hesitancy for the
8 public, the public at large and public officials,
9 to act because the people being disserved are the
10 poor, and their grievances are viewed as
11 complacencies rather than legitimate grievances.

12 MR. LANDIS: The example, you mentioned about
13 a judge jailing a person for not paying a fine.
14 Was that in Indiana or Wisconsin?

15 MR. FRANK: I'm sorry. That was in Michigan,
16 St. Clair County. You know, hopefully you'll have,
17 you know, some agency like the ACLU sweep in and
18 file, you know, active litigation over that. But
19 that's not going to necessarily happen.

20 I think besides having a statewide public
21 defense system yesterday, I think that there is
22 something to be gained by combining both criminal
23 and civil legal aid into one agency. I think you
24 look at something like Bronx public defenders.

25 Obviously, people rightfully think about

1 access to counsel primarily in terms of a public
2 defender, and that's right. I have no reason to
3 disagree with that. But there's other essentials
4 of life when you are looking at issues like
5 housing, immigration, public benefits. Those
6 things are also extremely important. And,
7 obviously, when you are dealing with clients who
8 are in need of those services, a lot of those
9 issues that cause someone to need an attorney and
10 be in that situation are all wrapped up. And if
11 you had one agency who's examining those issues, I
12 think that would benefit everyone.

13 And, also, when you have kind of a broad-based
14 poverty law advocacy group, it's much easier to see
15 what are not only the issues in criminal law but
16 issues affecting poor people in general. And I
17 think that, you know, besides possibly combining
18 public defense and civil legal aid, having just an
19 outright public policy group within the agency
20 advocating. Because you could have the best
21 system, public defense system in the world; but if
22 you have oppressive criminal laws, whether it's the
23 number of offenses or the types of punishments in
24 place, it's hard to fight against that,
25 particularly with almost unlimited prosecutorial

1 discretion.

2 MR. LANDIS: Thank you. Any questions? Thank
3 you. Katie, you're up.

4 MS. BYROM: I'm Katie Byrom, B-Y-R-O-M, as in
5 Mickey Mouse. I am a full-time public defender in
6 Noble County. The majority of my caseload is CHINS
7 and TPR cases, so that's what I do all day every
8 day most of the time.

9 I have a few recommendations I've jotted down.
10 First on my list is caseload count. Near and dear
11 to my heart, I think if we could pull it off, CHINS
12 and TPR cases should be counted separately. They
13 are totally different beasts. They have different
14 issues, totally different discovery.

15 We're starting a brand new case. Clients are
16 scared out of their minds when they see that TPR
17 petition come in front of them, and so we're going
18 on a whole new journey. I think those should
19 certainly be counted separately.

20 I know in our office for a long time they were
21 just one case. If I had the CHINS case, and a TPR
22 was filed, it just continued to be one ongoing case
23 for years and years.

24 We need to count the cases by the cause
25 number, not whether you have mom or you have dad.

1 If I have mom, right now I have a mom with six
2 kiddos and four different dads. So those cases get
3 bifurcated. Sometimes I have hearings with mom and
4 one of the dads on one day, and then I have a
5 different dad on a different day. But right now
6 that's just one case on my caseload, not six. And
7 they have totally different lives for each one of
8 those children, placement issues, all kinds of
9 things. So that's another recommendation.

10 And count them as ongoing, not each new
11 quarter we get a new caseload count. Because these
12 cases, unfortunately, you know, 15 months is a very
13 scary time period because that's when we get our
14 TPR petitions, if the kids have been out of the
15 home that whole time. But they can drag on years
16 and years, if we can keep getting that TPR petition
17 dismissed and keep working on getting the kids back
18 in the home. They go on a long time. So if we're
19 looking at them quarterly, our caseloads can grow
20 and grow and grow.

21 Next, I would love to get into that courtroom
22 as soon as possible. I would love to get in there
23 at detention hearings. I think we could keep kids
24 out of care. I think we could get them out of
25 foster homes. In our county they get pickup

1 orders. They remove kids without the judge,
2 without talking to the judge. They do emergency
3 pickup orders all the time. So kids are in care
4 without a judge ever hearing anything.

5 And then they go into a detention hearing.
6 Still there is no attorney present to try and help
7 them. If we could be there at a detention hearing,
8 I think we could get kids home after just a couple
9 of days, 48 hours, or get them into relative
10 placement. A lot of times DCS will say, well, no,
11 we can't put them with that relative. They don't
12 have prior background check or meet our standards.
13 Well, we can talk to the judge about that and get
14 the judge to overrule what DCS is telling them, if
15 we were there. But we're not there right now. So
16 I think we could really help out a lot of families
17 if we could be there at detention.

18 Training, I would love more training. We have
19 one annual training statewide through the public
20 defender system, and it's just kind of a catch-all.
21 I've been doing this work for 13 years. So it's
22 great that we have that training, but a lot of
23 times it's kind of just one size fits all. So if
24 we could have it more than once a year and maybe
25 have something, a beginner track, been doing this

1 for a long time track. In the criminal world there
2 is training about once a month. But for the
3 CHINS/TPR folks, we don't have that. So that would
4 be awesome.

5 If we could get social workers, that would be
6 phenomenal. We hear about all the resources for
7 the criminal folks, investigators and things like
8 that. It would be great to be able to take my core
9 reports, the reports I get from the different
10 treatment providers and those by my own social
11 workers, and get ideas for how to argue different
12 recommendations and things like that, if I had
13 somebody kind of on our side.

14 So it's always them, their treatment team,
15 their recommended people with their contracts. I
16 understand they want to keep those contracts from
17 DCS; so if I could have somebody to bounce ideas
18 off of, that would be great.

19 In our county we're just appointed. The
20 public defender's office gets all the CHINS and TPR
21 cases assigned to us in the Noble County office.
22 So that's just how we work. It works really well.
23 We don't have any issues. The court tells, when
24 somebody asks for an attorney, they just appoint
25 the Noble County public defender's office. And

1 then notice gets sent over, and our staff then
2 appoints cases accordingly. And so far it's been
3 working really well. So that's how we handle CHINS
4 and TPR, just for your information.

5 MR. LANDIS: That's very helpful. Thank you.
6 I have a question about you said you wanted, would
7 like to see you get in the case sooner. So now the
8 appointment comes when within the process?

9 MS. BYROM: We get appointed at the detention
10 hearing.

11 MR. LANDIS: At. But you are not there
12 because you didn't get notice?

13 MS. BYROM: Correct. And the pretrial
14 conference is usually held about 30 days later; so
15 the kids have now been in care. Things are getting
16 entrenched in that 30 days, and it makes it easier
17 for the judge to say at the pretrial we'll leave
18 status quo for now.

19 MR. LANDIS: Do you have a suggestion for how
20 you could get in the case earlier? What would
21 trigger the appointment so you could be there at
22 the detention hearing?

23 MS. BYROM: When the clerk's office opens the
24 CHINS case, a notification gets sent to the public
25 defender's office that there is a detention hearing

1 set. Send an attorney over.

2 MR. LANDIS: That doesn't happen now?

3 MS. BYROM: No, it does not.

4 MS. TANDY: If you had all the things that you
5 just mentioned, what would a caseload number look
6 like for you that you think is manageable that
7 would allow you to do all those things and have a
8 social worker? What difference would that make in
9 terms of how you approached cases?

10 MS. BYROM: Realistically, if we were counting
11 by parent, I mean by cause numbers and not parents,
12 probably maybe up to 80 actual kids. There is a
13 lot of family team meetings that take a lot of
14 time. That would mean I wouldn't take work home
15 every night.

16 MR. LANDIS: You mean 80 at one time or 80 in
17 a year?

18 MS. BYROM: Just 80 at a time. And then as
19 cases close, new ones come on.

20 MS. TANDY: Thank you.

21 MR. LANDIS: If you would, since all the
22 standards are set on how many appointments you
23 could receive in a 12-month period, if you would,
24 not today, but think about how to translate 80 open
25 cases to a number of appointments in a year, that

1 would be helpful.

2 MS. BYROM: Thank you.

3 MR. LANDIS: That is all the people I had
4 signed up. So now that you now are inspired, come
5 forward and say something about how to improve
6 indigent defense service. What do you need to do
7 your job better?

8 MR. OLIVERO: Larry, can I go? Mark Olivero.
9 I'm a public defender in DeKalb County,
10 O-L-I-V-E-R-O.

11 We have eight attorneys besides myself. Three
12 other attorneys and I do felonies. We have two
13 CHINS attorneys, and we have one guy who does
14 juvenile court, and we have two attorneys that do
15 misdemeanor court.

16 We are similar to Allen County as far as the
17 salaries, but we don't get benefits. I think the
18 attorneys get, like the misdemeanor attorneys get
19 30,000, and the felony attorneys and everybody else
20 gets like 44,000, I think it is.

21 We do not have an appellate division, but
22 there's a couple of attorneys that are qualified to
23 do appeals. We do not have an investigator. That
24 would be helpful to us.

25 It was a big push to get DeKalb County into

1 the state program. Our caseload limits last year,
2 we were topped out on the felony level. We
3 actually had to do a little juggling around. The
4 CHINS people had less cases last year for some
5 reason; so they ended up having to take some felony
6 cases, lower level felony cases.

7 As far as the misdemeanors, I was trying to
8 figure out what the caseload limits were on that.
9 We got, I think, under the guidelines, even though,
10 as you know, it's not reimbursable, I think it's
11 400 for, Jim and I were just chatting about it, 400
12 if you were full time, 200 for part time, if that's
13 what it is.

14 Our misdemeanor people are a little bit above
15 that. I don't have the exact numbers because I
16 wasn't prepared for that. But it's not like Allen
17 County, where they had to go and get more people.

18 So it's a pretty good system. The judges, I
19 think, are pretty decent. If someone needs to be
20 hired or fired, that is in the comprehensive plan
21 that I can do that. The judges are involved.

22 You know, as far as it would be nice if they
23 had benefits. I mean, we lost a guy, a pretty
24 competent attorney to another county because of the
25 fact that the other counties had benefits. But the

1 way our plan was set up, it was because the
2 prosecutor's office in our county does not give
3 benefits to their part-time people, so then we were
4 not allowed to get it.

5 And I used to be a public defender here in
6 Fort Wayne. I used to be a public defender here
7 and DeKalb. I gave up that public defender
8 position here. And it was great, when Micky talked
9 about the investigators, it was super great to be
10 able to send requests and get that work done. Now
11 it's kind of on us and our staff.

12 We do have two full-time staff. We have a
13 paralegal and a receptionist, and the office runs
14 pretty smooth. But as far as assistance, it would
15 be nice, I'm going to try to see if I can talk to
16 the council, commissioners, about getting an
17 investigator. But just like anything, I'm sure
18 benefits would help us, too. But I don't think I'm
19 going to be able to get that, so.

20 MR. LANDIS: What impact would it have on your
21 office if we could get reimbursement for
22 misdemeanor cases, which would then mean the
23 commission could enforce the caseload standards?
24 Would that make a difference in your county?

25 MR. OLIVERO: It would make a big difference.

1 Actually, I didn't even mention we had another
2 attorney who was very qualified, who was in our
3 misdemeanor division when we switched. We had to
4 separate the divisions. He was qualified, but
5 because, you know, the caseloads that they have and
6 the amount of money they are getting paid. I see
7 it with the two misdemeanor people we've got now.
8 We lost a very qualified attorney. I had to hire
9 someone local that didn't have as much experience,
10 but he's trying to do the best he can.

11 But, yes, that would help out tremendously, I
12 think, for the misdemeanors because there are so
13 many of them. I wish I knew the number. I know
14 they are over the limits. I just can't recall
15 right now.

16 MR. LANDIS: Who does the appeals in your
17 county?

18 MR. OLIVERO: The judges, there is no appeals
19 division, when a case comes up, like right now I
20 had an arson case last year. I was going to do the
21 appeal, but the client after the trial sent me a
22 letter saying he wished maybe we did something
23 different. So I felt maybe there was a conflict
24 there. She might want to bring up ineffective or
25 something, so I passed it on to the state public

1 defender's office.

2 Right now, when appeals are coming up in these
3 other divisions, I have some people that are not
4 appellate qualified, and I'm trying to get them
5 appellate qualified by going to the course. So
6 they are appointing attorneys who have the
7 qualifications.

8 This just came up recently. Somebody did an
9 appeal. They farmed it out to some attorney in
10 Fort Wayne. He met the qualifications, but I've
11 got to pass that down to the state. So, anyway,
12 the judges pick a lawyer, basically.

13 MR. BOTTORFF: How many appeals do you think
14 you have?

15 MR. OLIVERO: We don't do the trials like
16 Allen County does. A year, are you talking about?

17 MR. BOTTORFF: Yes.

18 MR. OLIVERO: I'd say maybe four to six. It's
19 not that many.

20 MR. BOTTORFF: Because the commission has
21 discussed a more regional approach, either
22 full-time employees for the state for the appellate
23 side, or some kind of multicounty jurisdiction to
24 select attorneys who specialize in those types of
25 cases.

1 MR. OLIVERO: Well, I think we're going to
2 be -- I've noticed, I've talked to some attorneys
3 who do juvenile work here in Allen County. In our
4 county I've noticed the juvenile, I had to work to
5 get our office up and running, and I think our
6 attorneys are pretty decent. Just like Allen
7 County, I think they are pretty competent.

8 But the attorney that I have in the juvenile
9 division, I'm working with him to make sure that
10 the rights are given to the juvenile because he
11 handled a case where the kid was given a sentence
12 to the DOC. And then ultimately the kid went down
13 to the DOC and mentioned he wanted an appeal. So I
14 found out later that that wasn't really covered on
15 the record.

16 And I know that, you know, we've got people
17 talking to kids down at the DOC, making sure they
18 know their rights and stuff. And so there was an
19 appeal there recently, and there is another one. I
20 think we are probably going to have more juvenile
21 appeals because of this process. So, yes, our
22 numbers may go up, but anyway.

23 MR. LANDIS: John Tinder would like to know
24 why did DeKalb County join the public defender
25 reimbursement system?

1 MR. OLIVERO: We joined it basically to have
2 better representation, to have more attorneys.
3 Actually, I've noticed once we joined the program,
4 we used to have, it used to be just three
5 attorneys, maybe four at some point before we
6 joined. When we joined, now there's nine. So you
7 have obviously for the caseload limits.

8 And I've noticed that attorneys are spending
9 more time, we have more time to be effective for
10 our clients. We still deal with the issue with the
11 misdemeanors, of course. So, yes, it was basically
12 to make sure that, you know, there was basically
13 less caseload per attorney. And by doing the
14 numbers, the only way I got DeKalb County to join
15 was to let them know the CHINS numbers were
16 increasing every year.

17 And so I had to sit down and say, hey, look,
18 if we join the program with the reimbursement, the
19 county is not going to pay more. Actually, I think
20 it ended up saving the county a little bit of
21 money; so then I was able to convince the
22 commissioners that this was a good thing. The
23 judges were on board for this. They actually had
24 backing with me, and so it was approved.

25 We got more attorneys for the county, better

1 representation, and it's a good thing. Like I
2 said, we're not quite there where Allen County is
3 with the benefits and investigators, but overall
4 it's a big improvement from where we were.

5 MR. LANDIS: For the record, if there's a
6 vacancy, who does the hiring?

7 MR. OLIVERO: I do.

8 MR. LANDIS: Thank you.

9 MS. TANDY: If you have serious felony cases,
10 I know you said you don't have an investigator on
11 staff, but how would you access funds for an
12 investigator or for needed experts?

13 MR. OLIVERO: Well, we do have a line for an
14 investigator, basically a budget line, and we have
15 delved into that. But like I said, most of the
16 time we just have to do the stuff ourselves, have
17 the girls, the two full-time paralegal and
18 receptionist that we have, to handle most of the
19 caseload on that.

20 MS. TANDY: What about accessing fees for
21 experts?

22 MR. OLIVERO: Yes, we can go in and ask the
23 court for that, and they've done that in the past.
24 We'd be able to get that, and then we can request
25 the reimbursement from the state.

1 MR. BOTTORFF: Do you think public defenders
2 should become state employees, or do you like the
3 system where they are more local employees of the
4 local court versus being a state employee?

5 MR. OLIVERO: I haven't put a lot of thought
6 into it, but I don't like the state employee idea.
7 I like the local. I think it's working right now.
8 Like I said, I see a big improvement since we
9 joined, and so I'd prefer not to go state.

10 MR. LANDIS: Even if you got more money and
11 fringe benefits?

12 MR. OLIVERO: Maybe. I don't know.

13 MR. BOTTORFF: Honest man.

14 MR. OLIVERO: Like I said, it's a tough call.
15 I don't know. I just right now think it's a lot
16 better than it used to be. And now we're talking
17 about joining a state program. I don't know how
18 that's going to work.

19 MR. LANDIS: If there was a state public
20 defender for just appeals, how would that affect
21 your county?

22 MR. OLIVERO: Probably not by much. We would
23 be receptive to that, I think, because right now
24 the judge has always got to get a hold of me, find
25 out, making sure if they are going to get somebody,

1 that the person is qualified. I just went through
2 this with two different courts up there to make
3 sure they had appointed an appropriate attorney to
4 do the appeal because my person was not qualified.

5 MR. LANDIS: What do you think about if there
6 was a recommendation that CHINS and TPRs be passed
7 off to the state also, and that be removed from the
8 public defenders and a separate agency do CHINS and
9 TPR with a hundred percent state funding?

10 MR. OLIVERO: Well, A hundred percent state
11 funding would be great, I'm sure. The county would
12 love that. I don't know how that would work for
13 our employees. We have two attorneys doing that,
14 like I said, three, sometimes four, depending on
15 how many attorneys you need for a given case. I'm
16 sure the county wouldn't want to take funds, you're
17 taking funds from, I don't know, unless they use
18 the same attorneys, you know, from the state. If
19 they are going to end up using the same people,
20 then it wouldn't really be a big issue. We'd be
21 fine with that, I guess.

22 MR. LANDIS: Do you want to keep CHINS and
23 TPRs, or would be you be fine giving up having to
24 do CHINS and TPRs?

25 MR. OLIVERO: I haven't had a chance to talk

1 to my attorneys about that, what their position is,
2 and I don't know what to say. I don't know how to
3 answer that. I don't know whether we would want to
4 give it up or not; so I'd be hesitant to answer
5 that without knowing their position.

6 MR. LANDIS: Thank you. Any questions? I
7 think you were next.

8 MR. ARNOLD: Thank you. My name is Bart
9 Arnold, deputy public defender in Allen County on
10 drug cases. I wasn't planning on saying anything,
11 but I heard a few things that made me feel like I
12 ought to.

13 First of all, I want to say I really agree
14 with the investigators. I don't know what we would
15 do. We have a great investigator staff. I don't
16 know if I would feel like I could handle the state
17 numbers that I get as a drug PD without the
18 investigators. I mean, because I even have my
19 staff do some of that work, which never seems to be
20 figured into what we're paid, but I have my staff
21 work on it, too. But without our investigator
22 staff at the public defender office. I heard Micky
23 say they are overworked. I don't doubt that. I
24 don't know that either. But they are really good
25 at what they do, and I'm grateful for that. I

1 can't imagine that we wouldn't want to have that
2 for everybody.

3 What made me jump up was the idea of the state
4 system. I think that's a horrible idea. I'm sure
5 the gentleman who mentioned it, he and I probably
6 agree on just about everything, but on that I don't
7 agree. I don't like the idea. I don't know who
8 would want that job, honestly. I'll be frank. I
9 don't know who would want that job.

10 There may be people, and in a bigger city
11 maybe that's a thing that could happen, but I
12 doubt -- you said how much money. I can't imagine
13 that the government is going to pay what I would
14 want to do the job on a state level.

15 Now, that being said, this may not be popular,
16 but I don't like to do appeals. I don't want to do
17 them if I don't have to. I've told my bosses if
18 they make me, I'll do them, but I really don't want
19 to. And I don't really like the idea very much of
20 a public defender doing their own appeal because of
21 the things Mr. Olivero mentioned earlier.

22 So I like the idea, and I've had a couple of
23 cases go to the state public defender, I like the
24 idea of them calling me up and asking me about the
25 case and letting a fresh set of eyes look at it,

1 including at me. And I like the idea of there
2 being a state appellate office where maybe there
3 would be a lawyer or two assigned to your district
4 so you could develop a relationship with that
5 appellate lawyer over time.

6 The PD seminars have covered sometimes what we
7 trial lawyers can do better to preserve records for
8 appeal. That would be like a little built-in
9 seminar, if you had a state guy assigned to your
10 district who could say, hey, next time you are
11 making a record on this issue, do a better job at
12 this. I would love that. And to have that
13 communication I think would benefit both sides of
14 it. But then, again, I don't have a dog in the
15 fight on getting paid on appeals.

16 \$1800 to do an appeal is horrible. I don't
17 know anybody who does it. That's a lot of work to
18 research, to write, to follow the filing rules that
19 change way too often for me to keep track of to
20 want to do it.

21 And then the only other thing I wanted to add,
22 I don't know if it would be brought up by anybody
23 else, but I wish we had more ability to hold jails
24 accountable for access to our clients. I have a
25 hell of a time seeing my people. I want to see my

1 people more than I do, but I don't have the perhaps
2 two hours it might take to go wait to get to see
3 them and then find out they weren't brought down,
4 and I came down for nothing.

5 And to call and have the phone ring for an
6 hour. One time literally, you know how our phones
7 have those little timers on it, my staff were on
8 the phone 45 minutes, and the phone was ringing at
9 the jail. Now, I've learned some tricks to get
10 around that since then, and there are people that
11 you can call. I know that steps have been taken by
12 a lot of people in our county to fix this, but I
13 mean ultimately the sheriff decides what they are
14 going to do. And there are whole periods of the
15 day that we are not allowed to go see our clients.
16 We are not allowed to. I can't go between the
17 hours of eight and eleven, or something like that.

18 MS. KRAUS: No, you can't --

19 MR. ARNOLD: Or noon and three. There was a
20 period of time that it was eleven to three.

21 But I'm in court from eight to eleven. I
22 can't see my clients from eleven to three; so
23 basically I can see my clients from three to five a
24 day. That's it. And I can't always go three to
25 five. And, you know, you've got a bunch of people

1 you need to meet.

2 And I don't fault the public defenders for
3 this. I don't fault the judges for this. There
4 needs to be a way that we can hold jails
5 accountable for letting us get to our clients. If
6 we can't get to our clients, we can represent them
7 well. We can get a good result, perhaps. But we
8 can't give them that extra layer of communication
9 that I think we all want to do, and I think
10 everyone probably expects of us, if we can't get to
11 our clients at the jail.

12 That's all I have. Thanks.

13 MR. LANDIS: How about entry level? When do
14 you get in a case, and how do you get into the
15 case?

16 MR. ARNOLD: In my particular cases?

17 MR. LANDIS: Yes.

18 MR. ARNOLD: The public defender's office
19 investigators assign them to us because, as I
20 understand it, and I'm not in the office, I'm just
21 a deputy, but they keep our count. So they will, a
22 drug case comes in, and there are two of us doing
23 drug cases. They'll look at our numbers, and then
24 will assign me or the other, I think it's Tony now,
25 the other drug public defender. And then they'll

1 deliver a file to our office and tell us when the
2 attorney status court date is, which is usually the
3 next day, maybe two days later. And we go in, and
4 we set a trial right away.

5 At that point our investigators have already
6 talked with the person, and we have a good page
7 long, two-page document indicating their
8 background, whether they admit or deny the charges,
9 what kind of outcome they are hoping for. And
10 that's all done before we even get the file, which
11 is great.

12 And we go in, and we set a trial date right
13 away so that we don't get lost in Trial Rule 4
14 issues. So we literally have a court date set
15 within three months, typically, unless they request
16 a speedy, and my staff opens the file in our
17 office, and off we go.

18 MR. LANDIS: How long after the initial
19 hearing do you get notice of the case and then
20 first contact with the client on average?

21 MR. ARNOLD: Honestly, I think it's within a
22 few days. I think maybe a week at the most,
23 because I've had to move a couple where they'll set
24 it so quickly that I can't do it. Often I'll get,
25 it's kind of hard to say because I'll get a file,

1 and then I have court the next day, but I maybe
2 don't know, like I can't think that I can remember
3 that I looked to see when the initial hearing was.
4 But I think it's generally a week from the initial
5 that we get it.

6 And then we're told if they requested a speedy
7 at the initial, we are told by the investigators
8 and the court, so that we know to address that
9 issue when it's time to set the trial so that extra
10 week can be taken into account.

11 MR. LANDIS: Who represents them at initial
12 hearing, the clients?

13 MR. ARNOLD: To my knowledge no one represents
14 them at the initial hearing.

15 MR. LANDIS: Is that when the conditions of
16 release are set, at the initial hearing?

17 MR. ARNOLD: Now, I'm going to get confused.
18 There is a pilot program I know we're doing where
19 there is a public defender assigned to people at
20 initial hearings regarding bond. That I know is
21 happening.

22 MR. LANDIS: In your cases, drug cases, as I
23 understand your bond schedule is \$50,000 for drug
24 dealing.

25 MR. ARNOLD: There are bonds at 50,000, that's

1 correct. Now, I'm not probably the right person to
2 talk to about this project we are doing. I know a
3 lot more people are coming in OR now, and that's
4 probably because they are now having those hearings
5 over in misdemeanor court where they hold them, and
6 they are discussing the bond. I've done a few of
7 those hearings. But I don't know how many of those
8 people have gone through that process.

9 MR. LANDIS: I'm just talking about the drug
10 dealing cases. They are not going through that
11 initial hearing process; right?

12 MR. ARNOLD: I don't believe so.

13 MR. LANDIS: So how do you do bail review of
14 those when you've got a \$50,000 bond on a small
15 amount of drug dealing? Can you get bail reviewed
16 and reduced, or does it stay at 50,000?

17 MR. ARNOLD: You can file a motion, and you
18 can have a hearing, but it will be promptly denied.
19 If you have a serious, I've had some success where
20 a guy maybe has a really bad health problem, and
21 the jail wants him out. Then I might be
22 successful. But the refrain is, "We follow the
23 bail schedule."

24 MS. KRAUS: There is an issue that's going on
25 in Allen County; so we've seen occasions where the

1 state has filed a petition for an elevated bond.
2 It's a written order that gets filed sometimes
3 prior to the initial hearing, sometimes at the
4 initial hearing. And the court is addressing that
5 petition for an elevated bond and granting that
6 elevated bond all before a file ever hits our desk.

7 I happened to be in court one day a couple of
8 weeks ago where one was filed during the course of
9 an initial hearing, and there was a prosecutor
10 there who was arguing for the elevated bond, and
11 the magistrate, they were having a discussion. And
12 I kind of walked up and said "Is this guy being
13 represented right now?" And he wasn't. So the
14 magistrate took the matter under advisement and set
15 it out for a week. I don't know what happened to
16 the bond. I stopped paying attention at that
17 point.

18 But it appears to me in Allen County we don't
19 have anybody representing people at the initial
20 hearing. And there is this issue with elevated,
21 this petition for elevated bond either because
22 somebody made a phone call, you know, at the jail,
23 and they are threatening witnesses, or they have a
24 criminal record that supports the elevated bond.
25 But those motions are being granted before the

1 person even has an initial hearing, much less being
2 represented by somebody. So that's a problem in
3 Allen. I'm not being critical -- I am being
4 critical.

5 It seems to me that we need to have somebody
6 available at the initial hearing who can stop those
7 things from happening. In Allen County every felon
8 who comes in for an initial hearing, an automatic
9 plea of not guilty is entered on their behalf.
10 They are not given an opportunity to plead guilty.
11 So I think historically we felt like that was okay
12 to not have somebody represent people at the
13 initial hearing because we're not letting them say
14 anything that's going to incriminate themselves.
15 But the issue of bond is getting addressed without
16 representation, and we ought to address that.

17 MR. MCALEXANDER: I'd like to jump up on this.

18 MR. LANDIS: Point, counterpoint,
19 Mr. Prosecutor.

20 MR. MCALEXANDER: Mike McAlexander, chief
21 deputy prosecutor. Part of that, I think, is when
22 we say initial hearing, that first hearing is done
23 on a warrantless arrest. It's more of a detention
24 hearing at that stage or a probable cause review.
25 So the initial hearing they get once their case,

1 the formal charges are filed in felony is a little
2 bit different.

3 What we are talking about generally with the
4 elevated bonds are the situations where there is a
5 perception of usually flight or safety of the
6 community. So we're asking for a higher bond on an
7 individual, say, after a shooting or something like
8 that where it may turn into a murder case or very
9 serious voluntary manslaughter, something like
10 that. That is usually what's going on. So it's
11 generally part of a probable cause review, as well
12 as a request for an elevated bond at that point.

13 MR. LANDIS: You are doing that without
14 defense counsel being present?

15 MR. MCALEXANDER: Generally this is done, yes,
16 it's ex parte. No different than asking for a
17 warrant without defense counsel present. But this
18 is, as I said, at the stage where they are going
19 into a detention hearing or a probable cause review
20 hearing that is done within the initial 24, 48
21 hours after the arrest is made. Once they are
22 going into more of the formal, after the formal
23 charges are done, counsel is appointed at that
24 initial hearing.

25 UNIDENTIFIED PERSON: We are appointed, but

1 we're not there.

2 MR. MCALEXANDER: And then if they deem it
3 appropriate to ask for a bond reduction or
4 whatever, they'll file it as they would any other
5 motion.

6 MR. LANDIS: I'm just asking about right to
7 counsel in Indiana attaches upon arrest. So if
8 there is an adversarial hearing, and it's a
9 critical stage, because not only is bond being set,
10 but it's being elevated, how can you do that
11 without being a denial of right to counsel?

12 MR. MCALEXANDER: If counsel wants to start
13 coming in at three o'clock in the morning with our
14 staff, fine.

15 MR. LANDIS: Well, but as the prosecutor --

16 MR. MCALEXANDER: Well, I mean under that same
17 theory, then bond schedules are unconstitutional as
18 well.

19 UNIDENTIFIED PERSON: They are.

20 MR. LANDIS: That's another issue for another
21 day.

22 MR. MCALEXANDER: Well, they haven't ruled
23 that way yet.

24 MR. LANDIS: That is another issue for another
25 day. That's not really the subject at issue here.

1 Mr. Prosecutor, thank you for coming, today.
2 I appreciate it. We did the taping today for the
3 TV interview. So Judge Tinder wants to know what
4 do you think of the public defender system in Allen
5 County.

6 MR. MCALEXANDER: Well, as I said on the panel
7 that we were on this afternoon, I think we have a
8 very good system. I think there's some tweaking
9 that can be done to improve it. I'm concerned
10 about the sustainability. We have very veteran
11 lawyers here.

12 I think we kind of have something of a unique
13 system with people that are considered full-time
14 public defenders, even though almost all of them, I
15 think except maybe one, have private practices. I
16 think as a result of that we get some very high
17 quality litigators, and it becomes almost laughable
18 when we hear people say "I want a real lawyer. I
19 don't want a public defender," because the best
20 trial lawyers in this county are public defenders.
21 So I think we have a good system.

22 I think there are some things that should be
23 done on their compensation that should be adjusted
24 to reward those that are handling the more
25 difficult high profile cases, the murder cases, the

1 child molesting cases, the drug dealing cases. I
2 believe there should be, just as our office rewards
3 the attorneys that are handling the more difficult
4 cases, we pay them more. And I think the public
5 defenders should not be paid across the board the
6 same. I think there are levels of skill that
7 should be rewarded.

8 And I know the reasons I think why we have
9 done it that way. I think it goes back to a time
10 when we only provided felony public defenders, and
11 it was pretty much on a rotation basis. But now,
12 when we have different specialties, and we've
13 assigned deputy public defenders to different roles
14 and different degrees of difficulty, we need to
15 look at that and pay them accordingly.

16 I also think that some of the commission
17 standards, when it gets to misdemeanors and some of
18 the other cases, are probably artificial. And I
19 say that on the basis that on staffing levels, when
20 they just needed to add additional deputies, public
21 defenders in misdemeanor, and holding them to 400
22 cases, when we filed 6,000 cases roughly last year,
23 and we do it with a staff of one supervising
24 attorney and three or four relatively young
25 attorneys, usually with one or two years of

1 experience at most, and we're having to review all
2 the things, decide the charges, do plea agreements,
3 a lot of other work goes into that. So I think the
4 staffing issues are not really comparable with some
5 of the guidelines on the misdemeanors and some of
6 the lower level type offenses. But basically I
7 think Allen County has a really good system.

8 And when I talk about sustainability, I think
9 we need to do some things to maybe see if we can
10 get some younger folks coming in. Some of us are
11 getting a little bit older. We may not be here in
12 10, 15 years. And we don't have a real deep bench
13 for those public defenders.

14 MR. LANDIS: Thank you. I appreciate you
15 coming.

16 Is there someone who wants to speak?

17 MR. THOMA: Larry, my name is Mark Thoma. I'm
18 the chief deputy public defender in Allen County.
19 Thank you all for being here. Larry asked me at
20 the beginning of the program if I was going to
21 speak, and I said I was undecided.

22 I don't want to disappoint you, Larry. It
23 would probably be remiss of me not to speak as
24 well, so that you all know that we from the public
25 defender staff are here.

1 We're interested in what this task force is
2 doing, and we care about indigent defense in Allen
3 County and throughout the State of Indiana. It is
4 why we do in part what we do. Obviously, there are
5 others that are here that care.

6 Mike is here, Mr. McAlexander, from the
7 prosecutor's office, and I want to echo what Mike
8 has had to say about indigent defense here in Allen
9 County, Indiana. I think we have one of the finest
10 public defender staffs in the state. I'm biased.
11 I'll admit that.

12 Frankly, I think if you want to look at
13 improving indigent defense throughout the State of
14 Indiana, one could look to Allen County as a model
15 for improving those services.

16 We have a very robust integrated system here
17 with some of the best trial lawyers, if not in
18 Allen County, certainly in the state. And I think
19 those lawyers do this -- Micky accuses us of doing
20 it for the benefits. And, yes, the health
21 insurance is nice and PERF. I guess we don't get
22 PERF anymore, but retirement, those things are
23 nice. But I think there is a sense of a pride in
24 helping the defenseless and those who can't afford
25 a "real lawyer."

1 And those lawyers who do indigent defense I
2 believe do so also because it's a way to continue
3 to hone their skills and maybe parlay that into a
4 private case here and there. But I think those are
5 the reasons why we do what we do on the public
6 defender's staff.

7 I don't believe a statewide system would be
8 good. Again, I'm biased. I believe it's important
9 that localities maintain a degree of control over
10 the services that they provide to their
11 communities.

12 Indianapolis, so much has been centralized
13 throughout government in Indianapolis. I would be
14 afraid that we would lose enough control whereby it
15 would not be in the best interests of our citizens.
16 I think there needs to be more local control than
17 centralized control. Not that there shouldn't be
18 standards.

19 You know, I've heard from you, Larry, horror
20 stories of some of our smaller counties where the
21 judges are really ruling how criminal defense
22 works, and it probably isn't fair there. Those
23 things need to be changed for sure. But it ain't
24 broke in Allen County.

25 The gentleman who spoke -- what's your name,

1 sir, last name?

2 MR. LOWDEN: Bob Lowden.

3 MR.THOMA: Bob, I'm going to give you my
4 business card before you leave here. If there is
5 any concern that you have about a public defender
6 who may be involved in your family's case, I want
7 to address that with you.

8 MR. LOWDEN: There wasn't.

9 MR.THOMA: All right. Well, maybe you need to
10 see about getting a public defender.

11 MR. LOWDEN: You should have given me the card
12 earlier.

13 MR.THOMA: Okay. Well, very good.

14 We have, in addition to the 33 public
15 defenders that do misdemeanors and juvenile and
16 felony work, we have an additional 20 lawyers who
17 do Children in Need of Services work. And those
18 lawyers are all very qualified and have decades, if
19 not hundreds of years of experience in handling
20 CHINS cases.

21 There has been an explosion throughout the
22 state and in Allen County, also, of CHINS cases.
23 We had 250, roughly, CHINS cases with PD
24 appointments in 2015. We had close to 800 last
25 year with roughly the same number of lawyers and

1 the same amount of funding to pay those lawyers.
2 It's a system that's becoming overburdened, and
3 we're having to take a look at that.

4 I know, Micky, I saw your email to Randy. He
5 shared that with me. That's unacceptable that we
6 don't have lawyers at initial hearings. And we're
7 looking into it, figuring out a way of dealing with
8 that. Due process requires that we have legal
9 counsel throughout every stage of the process.

10 Criminal Rule 26 is going to help us change
11 that. That's part of the pilot project that Allen
12 County is involved in. Frankly, we're just getting
13 our big toe in the water on that project. But it's
14 simply we're going to have to jump all the way in.

15 Again, I'm very proud of our public defender
16 staff. Mr. Gevers is one of our public defenders.
17 In fact, he's just been appointed, along with
18 Micky, to a death penalty case that we have here in
19 Allen County. Bob is a former prosecutor here in
20 Allen County, and we're very pleased to have him on
21 our staff.

22 One word about appeals. I've been a public
23 defender since 1993, and I've been involved in
24 public defender work since about 1987. One of the
25 things that helped me become a trial lawyer, I

1 thought, was doing appellate work, reading
2 transcripts, learning from what I read the mistakes
3 that were made. My wife would say "Why are you
4 screaming?"

5 "It's because there was no objection lodged at
6 this critical point in the proceedings."

7 So I'd like to see all the young lawyers
8 continue to do appellate work, so that they can
9 learn, and I think it will make them become better
10 trial lawyers.

11 MR. BOTTORFF: If the state provided more
12 resources --

13 MR. THOMA: That would be wonderful.

14 MR. BOTTORFF: I mean, if they included
15 misdemeanors for those who participated in the
16 state program and a higher reimbursement rate at
17 50 percent rather than the 40 that's up there now,
18 how would your office use that additional revenue?

19 MR. THOMA: Well, that would be attractive to
20 the politicians because it would help offset the
21 cost of indigent defense. Right now misdemeanors
22 are not included in reimbursement. You know, you
23 are talking about a half a million dollars,
24 roughly, for just indigent defense for
25 misdemeanors. So 40 percent off of that, it would

1 allow perhaps for maybe an additional lawyer.

2 We right now meet commission standards with
3 the six lawyers that we have. It's still a big
4 caseload for any one of those particular public
5 defenders. Obviously, 50 percent would help.
6 Hopefully, we could parlay that into an additional
7 lawyer maybe here or there, an additional
8 investigator here or there.

9 Right now we really don't use investigators in
10 CHINS. Tony Churchward and I were just talking
11 about we never really think to do that because they
12 are all over here for the felonies. If we had our
13 own investigators in the CHINS arena, that would be
14 helpful.

15 MR. LANDIS: Thank you. I can see Jim Abbs.

16 MR. ABBS: If someone else wants to speak,
17 they surely can.

18 MR. HALLER: I signed up.

19 MR. LANDIS: Oh, I'm sorry. Jared had signed
20 up. I'm not going to forget you, Jim.

21 MR. HALLER: My name is Jared Haller. The
22 last name is spelled H-A-L-L-E-R. I'm a resident
23 of Fort Wayne. I am an attorney, licensed to
24 practice in the State of Indiana, and I'm a former
25 Marion County public defender.

1 There were three topics I wanted to talk about
2 briefly. The first is I wanted to encourage the
3 task force to speak to public defender clients. As
4 I look around the room, I recognize about half the
5 people in the room, and I dare say almost no one in
6 this room has ever been the client of a public
7 defender. So I would encourage you to make some
8 effort to listen to our clients. I say "our." I'm
9 no longer a public defender. But I would encourage
10 you to listen to the clients of public defenders
11 because I think you would get a different
12 perspective than you do talking to a bunch of
13 lawyers.

14 The second thing I wanted to talk to you about
15 is to look beyond just caseloads and think about
16 the number of people that go to trial
17 unrepresented. So when I was a Marion County
18 public defender, I almost never saw a pro se
19 litigant. Judges in Marion County would try to
20 talk them out of it. If they were a sovereign
21 citizen, you didn't see a pro se litigant down
22 there.

23 I walked into Allen County misdemeanor court,
24 and I saw in three hours more pro se litigants than
25 I saw in four years as a public defender in Marion

1 County. So I think when you look at the numbers,
2 you need to add in all those pro se litigants
3 because that's your true number of people per
4 caseload per public defender in Allen County.
5 There is just a ridiculous number of them.

6 When I was a Marion County public defender we
7 were in court whenever court was in session. I was
8 going to talk about initial hearings, but that's
9 already been addressed. But as a public defender
10 in Marion County, first and foremost we were there
11 to represent our clients. But we also thought that
12 we were there to protect the constitution. We
13 performed a court watch function, and that's
14 completely absent from what I've seen in Allen
15 County.

16 I guess lastly I would just talk about the
17 fact that I know many of the public defenders here.
18 I count at least a few of them as good friends.
19 And they are some of the best attorneys in the
20 county, some of the most experienced trial lawyers.
21 But they are at an inherent disadvantage because of
22 the cottage industry kind of approach that Allen
23 County has. They are all divided up, working for
24 different practices.

25 Bart talked about the fact that he can't go

1 see his clients in jail. When I was in Marion
2 County I was in court five days a week. I worked
3 six days a week, nights. And when I went to see my
4 clients was in the evenings. I saw my clients
5 every night after dinner during the week and on
6 Sundays.

7 Why do we get to do that? Because Marion
8 County has an agency model where we had parity with
9 the prosecutor. We had power. If there were four
10 prosecutors in the courtroom, there were four
11 public defenders. I got paid the same as every
12 prosecutor in the courtroom that was with me. We
13 had parity in pay. We had investigators. We had
14 an appellate division. We had counselors that were
15 there to talk to our clients. Certainly, we had
16 interpreters, even people who spoke Burmese. You
17 get all that just the same as you have an advantage
18 when you are a big firm versus the little
19 onesie-twosies. The same things happens. You can
20 put in the best possible attorneys, but if they are
21 divided, they are conquered.

22 That's all I want to say.

23 MR. LANDIS: Thank you. That's quite a bit.

24 MR. ARNOLD: I just want to make it clear on
25 that jail thing because this is really important to

1 me. I'm not talking about public defenders being
2 unwilling to go at night. I'm saying not having
3 the ability to, which I think what you're saying,
4 Jared --

5 MR. HALLER: I'm saying I had that ability.

6 MR. ARNOLD: Right. I will say in other
7 counties I haven't had as much trouble with that.
8 But to me that's something that should be
9 addressed. I think public defenders are willing to
10 go in at night like Jared did.

11 MR. HALLER: I think they're absolutely
12 willing. I think in Marion County we were able to
13 force that because we had a bigger agency. We had
14 more power.

15 MR. LANDIS: I think that's a good point. But
16 a sheriff giving jail access is probably something
17 in my opinion beyond the scope of the public
18 defender task force. We don't mind taking on
19 judges, but asking us to take on 92 sheriffs. Good
20 point.

21 MR. ABBS: Believe it or not, Larry, we are
22 able to go in pretty much anytime we want to go in
23 in Noble County. My name is Jim Abbs. I'm the
24 chief public defender in Noble County, a position
25 I've held now for seventeen years. I am also the

1 president of the Indiana Chief Public Defenders
2 Association, a position I've held for ten years.

3 I have had the opportunity to speak to the
4 committee before, but I do want to address some
5 issues. And I would tell this audience as a whole
6 the Chief's Association and the Public Defender
7 Council, which essentially represents all the
8 public defenders in this state, have taken
9 basically four positions.

10 No. 1, we want to remain in the reimbursement
11 program. We think it's the best way to provide
12 services in this state.

13 No. 2, there are only 57 counties right now
14 that are part of the reimbursement program. We
15 want it mandated statewide that all counties have
16 to comply with those standards.

17 The third thing is we agree there has got to
18 be an enforcement body, which we do have basically
19 in place with the Public Defender Commission.

20 And the fourth final position is very
21 important. We recognize this is a home state rule
22 state, and that the decisions of how public
23 defender services are presented in each county
24 needs to be made by the county itself. They know
25 what is unique, and every court system there is in

1 every county is different. I've had the unique
2 experience, I handled criminal cases in four states
3 and the federal courts of two different states.
4 Every court operates differently. And I think the
5 decision as to how public defender services are
6 done should be left at the county level.

7 And the ongoing thing, my good friend, Larry
8 Landis, we have a lot of things we've disagreed
9 about over the years, and this is one of them, and
10 I still take this position. I truly believe that
11 there needs to be a chief public defender, or at
12 least a supervising attorney in every county who is
13 accountable for the services being done in the
14 county.

15 We've talked about different counties and how
16 they present services. Noble County is unique.
17 We've been in complete compliance with all case
18 standards, including misdemeanors, since 1997. We
19 are fully staffed. We have three full-time
20 attorneys, four part-time attorneys. We have line
21 items for experts. We have everything to us.

22 A lot of that's been done because I have
23 judges and a county council and county
24 commissioners who are willing to work with us, and
25 we've been able to do that. And I truly think that

1 that is the best way to do the services at the
2 county level. And I think there has to be someone,
3 whether it's a chief, or whether we name a
4 supervising attorney, that needs to be ultimately
5 responsible in each county.

6 The problem I see, there's been some
7 discussions about regional public defenders within
8 the state, and I'm concerned about the thing that
9 we're going to create is just simply another
10 bureaucratic level. You create somebody who is
11 simply a public defender, having to serve a number
12 of counties, and we've created this new person that
13 is going to have to be paid. They are not going to
14 handle cases. They are going to have to have
15 staff. They are going to have to have a budget for
16 expenses that is not providing services to our
17 clients.

18 The fact of the matter is the reimbursement
19 program we have is excellent because if we mandate
20 countywide that it has to be followed, we will
21 ensure this, we will ensure that every public
22 defender in the state has an appropriate caseload,
23 is paid an appropriate salary, and has the
24 resources available to them to handle cases.

25 And that's why I get back to we want to make

1 sure that we get at the level where we're actually
2 providing money for individuals who are being
3 represented; that the client has an attorney who is
4 and does have the resources available to them.

5 The second thing I want to take up, and maybe
6 I misread this from our last meeting when I spoke,
7 we had an initial meeting with the Chief Public
8 Defenders and the Public Defender Council back at
9 the end of January at which I spoke. And maybe I
10 misread it, but I thought there were some questions
11 concerning the competency of the representation
12 throughout the State of Indiana. And I want to
13 address that because I think, if you look in the 57
14 counties that are part of the reimbursement
15 program, you are getting excellent representation,
16 as we've heard and seen in Allen County here. But
17 I'd also go so far as to say if you go in the
18 surrounding counties, you will find the exact same
19 thing.

20 Noble County, we assign attorneys to specific
21 cases, such as misdemeanors, F6 felonies. You've
22 heard from my CHINS attorney. But what we do is we
23 all have cross caseloads also. So we're not
24 handling just one specific area. We do handle
25 multiple ones.

1 Myself and my other major trial attorney on
2 Mondays are handling major felonies, but on
3 Wednesdays we're handling juvenile cases because we
4 can do that and not overrun our caseload limits
5 from there.

6 We have, in my misdemeanor court I have my
7 most experienced public defender handling cases in
8 there. He's an excellent litigator. He prefers
9 handling the misdemeanor cases because he likes to
10 get his cases done. Now, he also handles some
11 other felonies.

12 And I think if you go through the smaller
13 counties that are part of the program, you will see
14 highly experienced attorneys handling misdemeanors,
15 handling F6 felonies, which you don't always see in
16 our larger counties.

17 I think if we take the approach of allowing
18 the counties to determine how they provide public
19 defender services at the county level, we will get
20 the best possible systems.

21 Now, if a number of counties want to go
22 together for whatever reason and think that's the
23 best way to do it, then I am fine with that. But I
24 think that needs to be left to the counties.

25 I truly don't believe a statewide system is

1 good, my experience being I practiced in Minnesota.
2 I grew up in Noble County, but before I moved back
3 I practiced in Minnesota. They went to a statewide
4 system. It worked for a few years. But
5 immediately, when there is a shortcoming, when you
6 only have one governmental entity providing you
7 services, funds have got to be cut.

8 Under the reimbursement program, we have both
9 the counties and the state both invested in it, and
10 so we have a much greater chance of being fully
11 funded rather than taking the chance of putting it
12 all with one governmental body.

13 That is basically what I wanted to cover.
14 And, no, you cannot bribe me.

15 MR. LANDIS: Wouldn't even try.

16 MR. BOTTORFF: I do have a question for the
17 counties who aren't participating in the
18 reimbursement program. Why do you think they don't
19 participate in it? Is it the judges? Is it the
20 council, commissioners don't feel the reimbursement
21 is going to be there? What do you think the reason
22 is?

23 MR. ABBS: In my opinion the reason the
24 counties aren't initially coming into the program
25 is because most of the time it's going to require

1 them to put out more money than they are presently
2 expending. Some of these attorneys are handling
3 astronomical caseloads. If they have to come
4 within the program, they are all of a sudden going
5 to see an immediate increase in what the budget is.

6 Now, and I'll use Noble County as an example
7 because I know that, I truly believe that if they
8 got involved in the reimbursement program, that the
9 savings that they will get will decrease what
10 they're actually expending.

11 I'll give you an example. In Noble County,
12 when we became part of the reimbursement program,
13 up until that time it was taking approximately
14 eight months from the start of a case to get an
15 individual sentenced. When we went within our
16 present system to three people full time and part
17 time, we cut that time down to five months. That's
18 90 days each one of those clients were spending in
19 jail that the county was footing the bill for. It
20 turned out within the first couple of years, I
21 haven't kept those numbers recently, we were saving
22 the county over a hundred thousand dollars.

23 The same thing with detention hearings. We
24 were able to immediately become involved in
25 detention hearings. So rather than having

1 juveniles stay those extra two or three days, and
2 it adds up over a long period of time, you see
3 savings.

4 Over the long term, if you become involved in
5 the reimbursement program, you will see other
6 savings that will come. Sometimes it's not hard
7 dollars, and sometimes it's hard when the counties
8 don't see that it will actually decrease the cost.
9 I truly believe if each county got involved in the
10 reimbursement program, there would be savings.

11 There was a question I forgot to answer about
12 involvement of judges. I think if you go into the
13 outlying counties, our judges do not get involved
14 in the public defender process. And I have had
15 judges from other counties come and talk to me,
16 most all of them in the surrounding area. They are
17 not actively interfering with what we are doing.

18 MR. BOTTORFF: Do you think that's because you
19 are in the state program?

20 MR. ABBS: Yes.

21 MR. BOTTORFF: And if you weren't in the state
22 program, it might be different?

23 MR. ABBS: Yes, absolutely. And no doubt the
24 horror stories we hear, sometimes there are some
25 judges that do not want to give up that power.

1 That's why we, as Chief's Association, that's why
2 the council truly believes that we need to mandate
3 this statewide because that will address that issue
4 very, very quickly.

5 MR. CHURCHWARD: I don't know if it's
6 appropriate to ask a question, but is the money
7 there if every county got into the commission?

8 MR. ABBS: That is the major problem that
9 nobody has been able to answer yet from there.

10 MR. CHURCHWARD: Because if all of a sudden
11 all 92 counties jump in, then there's --

12 MR. ABBS: What did we estimate? Larry may
13 know. We have estimates of what those numbers are.
14 Larry knows those numbers.

15 MR. LANDIS: If all counties were in the
16 reimbursement system, it would be about 70 million
17 in expenditures that we can trace, and then we
18 would need a good \$15 million more.

19 But if you look at how the reimbursement
20 system started, it started back when the Public
21 Defender Commission was created in '89. It started
22 at \$650,000, reimbursing only death penalty cases.
23 So we've grown it to \$26 million. And that's based
24 on, as the number of counties have increased every
25 two years, the commission goes back for state

1 funding. And then depending on what the demand has
2 been, and how many counties have opted in, asks the
3 legislature to increase that amount.

4 So probably it would be an incremental
5 increase. I doubt that, unless legislation was
6 passed mandating it, then the legislature would
7 have to come up with roughly \$20 million, I think,
8 additional new money, and that would have to happen
9 at the same time it was mandated.

10 MR. ABBS: And I can tell you that's going to
11 be problematic, because right now the
12 prognostication is state revenue is supposed to be
13 down the next two years, if everyone has seen that.
14 And so that's part of the problem for us.

15 We've got to obtain funding, and that becomes
16 a major problem when we look at the CHINS cases
17 from that standpoint. And that's been one of the
18 things that's really hit hard all of the counties.
19 And because of those increasing numbers, and I
20 would say this, we attempted, the Chief's
21 Association, the Public Defender Council attempted
22 to address that issue for the past two, three
23 years, going to the legislators and saying to them,
24 if you're going to increase funding on one side,
25 you've got to give us some funds, because we are

1 going to see an increase in cases. And that's what
2 had happened. At the same time, they always fund
3 that.

4 And, again, a concern that I have always
5 expressed is, in dealing with this issue, when we
6 talk about CHINS cases, and we all understand we're
7 talking about children, it's a very sensitive
8 issue. From a legislative standpoint it's a good
9 issue to be dealing with children.

10 At the same time, we can't lose total focus
11 that we've got to look at the entire public
12 defender system and not get to where we just focus
13 in on the CHINS. And I'm very concerned that could
14 potentially happen. I'm not downplaying the CHINS
15 issue. It's a big one. But we've got to ensure
16 that we address all of the issues that we're trying
17 to.

18 Thank you, Judge Tinder. You said you weren't
19 going to be able to be here, but I greatly
20 appreciate you doing it by telephone. Thank you.

21 JUDGE TINDER: Mr. Abbs, it's a delight.

22 MR. ABBS: I don't know where you're at, Judge
23 Tinder, but hopefully it's a warm spot that you're
24 calling me from.

25 JUDGE TINDER: There is no ice and snow here.

1 That's all I can say.

2 MR. ABBS: We're catching up with you. It's
3 all melting up here.

4 MR. LANDIS: David Frank, is there any other
5 observation? I know you filed a lawsuit against
6 Allen County. Are there any observations that are
7 important for you to share with the task force?

8 MR. FRANK: Yes. Thank you. David Frank.

9 Larry is correct that in December 2015 we
10 filed a lawsuit, my firm, over issues of systematic
11 denial of counsel in Allen County on misdemeanor
12 cases. This case deals specifically with again
13 systematic constructive denial of counsel.

14 This has nothing to do with the quality and
15 competency of individual attorneys. No individual
16 attorneys were named. That was on purpose as,
17 again, very cognizant of sensitivity around these
18 issues, and rightfully so.

19 But there seems to be a broad-based agreement
20 that public defense can be handled at the county
21 level with just a little bit of tweaking, a little
22 bit of clapping one another on the back and
23 assuring that good will be done. In over two years
24 that we've investigated this issue, I see no
25 evidence for that. There is no evidence for that

1 in Indiana. There is no evidence for that in any
2 other state.

3 In 2003 the county wrote itself a contract
4 saying that, setting up all sorts of mechanisms for
5 ensuring quality of representation at the felony
6 and at the misdemeanor level. There were checks
7 and balances. There were certain actions that
8 people should take if there was ever an alarming
9 decline in resources that affect the quality of
10 representation.

11 Again, nothing to do with the skills of the
12 individual defenders. The county has never been in
13 compliance with its own standards, both at the
14 misdemeanor level and at the oversight and
15 supervision at the felony level. This has been
16 long known both by the county and supervisors of
17 the public defender system.

18 So to the proposition that what counties
19 really need to do is buckle down and lift
20 themselves up by their own bootstraps, that hasn't
21 worked in over 15 years in Allen County. And it's
22 certainly nice to see that there has been a
23 one-time distribution of funds to address
24 outrageous deficiencies in the level of
25 representation and the denial of people's

1 constitutional rights, but there's no reason to
2 think that's sustainable. I think most people
3 would share my skepticism about a county's
4 willingness to set funding and services for poor
5 people at a priority level. It's not going to
6 happen.

7 Jared brought up the fact that public defender
8 clients across the state need to be spoken with and
9 talked to. I would myself not welcome anyone
10 scrutinizing the opinions of my clients,
11 particularly former clients. This is not about
12 individual representation. But I would say that I
13 think that many people, including appellate
14 defender clients and families of poor people who
15 have been charged with a crime, would be horrified
16 to learn that the chief deputy public defender and
17 the chief deputy prosecutor are in agreement that
18 things are working fine. This is an adversarial
19 system.

20 MR. LANDIS: I'm going to just comment on the
21 state public defender system because I know that
22 term gets used, and people have reactions to that.
23 It means different things to different people, and
24 we probably ought to stop using it because I don't
25 know that anybody is really thinking that Indiana

1 is going to suddenly go to a statewide system like
2 a Minnesota one.

3 When we talk statewide system, I think it
4 means more like state oversight, more state
5 funding, some state structure to the system. Now
6 it's 92 different counties. There is no oversight
7 at the state level, even though the state has an
8 obligation to oversee the provision of the Sixth
9 Amendment services. That's been just delegated to
10 the counties. And we have some places where it is
11 great public defender services, and we have places
12 where it is horrible, and everything in between.

13 And the challenge, I think, that the task
14 force is facing, and this is where we really need
15 your help down the road, is how to design a system
16 so that you can have high quality delivery,
17 maintaining county autonomy, maintaining local
18 control, but with enough state oversight that you
19 can do intervention and correction if there is a
20 problem, if the system has gone wrong.

21 Or the other problem is we have rural counties
22 where there are so few attorneys, not only could
23 you not afford to have a chief public defender, but
24 you can't even find two or three attorneys, and you
25 can't find two or three attorneys to be on the

1 public defender board. So there really aren't
2 attorneys. And there already are probably a dozen
3 counties where the attorneys providing indigent
4 defender services live in other counties; that
5 there is nobody local that does public defender
6 work.

7 So we're not just here to say we are going to
8 fix Allen County because, quite frankly, that's not
9 one of the counties, or even Noble County. But
10 there are a number of counties where we've got
11 systems that need help. And all of us need to join
12 together to try to figure out, you know how public
13 defenders should be provided. You know what
14 quality looks like. How do we design a system
15 that's going to provide high quality representation
16 in all 92 counties? That is the challenge the
17 commission is looking at.

18 Not to say our system is horrible; we need to
19 blow it up and start over again. I don't think
20 anybody is advocating that. I know people get
21 defensive when they hear the words, state public
22 defender system. Get away from me.

23 But, really, I think we are more likely to be
24 looking at how can we figure out what is working
25 now and build on that, and then help the places

1 that are not working so well, and design a system
2 so that there is an ability to, through the
3 oversight, you can detect where systems are
4 failing, where they might need more resources,
5 where they need to be replaced, and do that
6 intervention.

7 If you don't have state oversight, I don't
8 know how else it's going to happen.

9 MR. ABBS: We don't object to state oversight
10 in the Chief's Association and the Public Defender
11 Council. The only thing I was saying, you were the
12 one who made the statement if the state paid you,
13 you got state benefits. That was your statement.

14 MR. LANDIS: I was just checking to see where
15 the money was.

16 MR. ABBS: I know what you were doing. But
17 you were the one that headed down that road, so I
18 went there with it from there.

19 The other thing I would say to you, Larry, is
20 most of the counties we are talking about aren't in
21 the state reimbursement program. And that's the
22 critical factor that we are really talking about.
23 If we can get all the counties involved in the
24 reimbursement program, I think we can address most
25 of these issues, because then you are going to

1 finally start paying attorneys the salaries that
2 they deserve to be. No doubt the benefits are a
3 great pull out in the smaller, especially in the
4 smaller counties. I know with my attorneys, my
5 part-time people who get full benefits, that is a
6 very, very big draw for them.

7 MR. LANDIS: Let me just throw another thought
8 out there. That if there was a legislature or the
9 Supreme Court mandated compliance with state
10 statutes, right now we have a carrot-and-stick
11 system. Small carrot, no stick. So let's say it
12 was a mandated compliance with state standards, and
13 the county was habitually out of compliance. What
14 is the enforcement mechanism that would compel that
15 county to get up to speed on the standards and
16 comply?

17 That's what we need to figure out is how do
18 you do an intervention? How do you do a takeover?
19 How do you do a correction? What do you do if a
20 county says we are not complying? We're not going
21 to comply. We can't afford to comply. What's the
22 sanction? What's the intervention? And who has
23 the authority to do something so that we have
24 adequate competent representation in all 92
25 counties?

1 MR. ABBS: I think if we put in that it's
2 mandated statewide, that no doubt the commission
3 would have the right, if they find a county out of
4 compliance, to go in and a potential takeover could
5 take place.

6 The big question then becomes funding. But
7 the state also sends a lot of tax dollars back to
8 the counties, and the state could say you are not
9 going to get all your money. I think we have that
10 in place, and that can be done simply by that
11 aspect.

12 If it's state mandated, if it is state
13 mandated, then no doubt we have to understand that
14 the commission is going to have authority to come
15 in and make sure we are in compliance. And if
16 there is failure of compliance, then no doubt state
17 takeover has to be a possibility from there.

18 And the big question always comes what about
19 funding and everything. And like I said, I think
20 the state funds enough dollars and cents to each of
21 the counties that they could withhold funding. And
22 I think, I truly believe that that will get the
23 county's attention.

24 MR. LANDIS: Other thoughts? Anybody want to
25 speak who hasn't spoken yet? New voices from the

1 wilderness or otherwise?

2 David, do you have any comments?

3 MR. BOTTORFF: I just want to say I appreciate
4 everybody coming out. I certainly appreciate the
5 passion that I see in the public defenders and
6 those who are from other agencies trying to protect
7 children. This has been a great meeting for me.
8 Again, it's a listening tour, so I try not to talk
9 too much when I'm on a listening tour, but I do
10 appreciate everybody's passion when it comes to
11 this.

12 We represent all 92 counties, so we try to
13 support local control as much as possible. We
14 often talk to counties who are not in the program
15 about why they are not in the program, and
16 sometimes it's fiscal issues, and sometimes it's an
17 issue beyond the council and commissioners'
18 control, I think, sometimes. Anyway, I appreciate
19 being a part of the commission and being at the
20 meeting tonight.

21 JUDGE TINDER: Larry, I want to thank you and
22 David for being there on site, and of course remind
23 everyone that the transcripts will be available so
24 that all task force members will have a chance to
25 see them. And, of course, anyone who spoken that

1 wants to supplement or add to their remarks or say
2 things in writing that they didn't want to say in
3 person, they are certainly welcome to add those to
4 our materials online or talk directly with staff
5 folks to convey that information.

6 But thank you all for participating. It was a
7 very helpful session. Have a great evening.

8 MR. LANDIS: Thank you, John. Thank you for
9 agreeing to be chairman. We appreciate it.

10 That concludes our meeting. Thank you all
11 very much.

12 *****