

**MINUTES OF THE 2017-2018 INTERIM  
NEVADA RIGHT TO COUNSEL COMMISSION**

**February 20, 2018**

The meeting of the Nevada Right to Counsel Commission was called to order by Justice Michael Cherry at 9:01 a.m. at the Legislative Building, 401 South Carson Street, Room 4100, Carson City, Nevada, and via videoconference at the Grant Sawyer Building, Room 4412, 555 East Washington Avenue, Las Vegas, Nevada.

Exhibit A is the Agenda, and Exhibit B is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

**COMMITTEE MEMBERS PRESENT (CARSON CITY):**

Justice Michael Cherry, Nevada Supreme Court; Chair  
Robert Crowell, Representative of the Nevada Association of Counties  
Joni Eastley, Representative of the Nevada Association of Counties  
Laura Fitzsimmons, Representative of the State Bar of Nevada  
Tom Grady, Representative of the Nevada Association of Counties  
John Slaughter, Representative of the Board of County Commissioners of Washoe County  
Jerri Tipton, Representative of the Nevada Association of Counties

**COMMITTEE MEMBERS PRESENT (LAS VEGAS):**

Drew Christensen, Representative of the Board of County Commissioners of Clark County; Vice Chair  
Erika Ballou, Representative of the State Bar of Nevada  
Phil Kohn, Representative of the Board of County Commissioners of Clark County  
Anne Traum, Representative of the State Bar of Nevada

**COMMITTEE MEMBERS PRESENT (TELECONFERENCE):**

Justice A. William (Bill) Maupin (Retired), Nevada Supreme Court

**COMMITTEE MEMBERS ABSENT:**

Senator Tick Segerblom, Senatorial District No. 3  
Assemblywoman Teresa Benitez-Thompson, Assembly District No. 27

**STAFF MEMBERS:**

Risa Lang, Chief Deputy Legislative Counsel, Legal Division, Legislative Counsel Bureau

Joi Davis, Senior Program Analyst, Fiscal Analysis Division, Legislative Counsel Bureau

Angela Hartzler, Secretary, Legal Division, Legislative Counsel Bureau

Jordan Haas, Secretary, Legal Division, Legislative Counsel Bureau

**OTHERS PRESENT:**

David Carroll, Executive Director, Sixth Amendment Center

**Justice Michael Cherry (Nevada Supreme Court; Chair):**

I will now open the second meeting of the Nevada Right to Counsel Commission.

I will now open public comment. Seeing none, I will close public comment.

At the last meeting of the Commission, we selected the Sixth Amendment Center to be our consultant to assist with the study of indigent defense in Nevada. Since then, the Center has entered into an agreement with the Legislative Counsel Bureau (LCB) and has begun the work. Today, we're going to hear about other models of providing indigent defense, and we will receive an update from the Sixth Amendment Center. Unfortunately, due to some travel difficulties, David Carroll is not here. He will be attending and presenting by phone. Also, Senior Justice Maupin is on the phone.

I will now open agenda item IV, approval of the minutes of the previous meeting (Exhibit C).

COMMISSIONER TIPTON MOVED TO APPROVE THE MINUTES OF THE JANUARY 28, 2018 MEETING.

COMMISSIONER BALLOU SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

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**Chair Cherry:**

Next on the agenda is a presentation by David Carroll from the Sixth Amendment Center who will provide us with some background about indigent defense in other

states. Also, Mr. Carroll, you sent me two separate emails that I've got with me. Rather than read them into the record, since they were actually between you and me and I'm not sure actually if anybody else saw them, as to some changes you wanted to make in the county visitations and what you're going to be doing. Why don't you summarize the two emails, and I think Commissioner Eastley will have something to say about that. We'll have that presentation first, have questions and answers concerning the visitation of the counties, and then we'll go into the models in other states.

**David Carroll (Executive Director, Sixth Amendment Center):**

My apologies for not being there. The issue that came up was, of the five counties that were selected for site visitation, Elko, Humboldt, Lyon, Lander and Nye, there was some feeling afterwards when I spoke to representatives of the Nevada Association of Counties (NACO) that we really should consider including some of the very small, least-populated counties. That was the five that came out of our scientific draw, but I agree. Sometimes those very small counties often have some of the biggest issues. So, what we would like to propose is not to change or take away those five counties, because I think those are a good selection, but simply to add in—where we're going to places like Byre County, we could add in Esmerelda. When we're flying in and out of Las Vegas for some of the trips, it would be easy to add Lincoln. When we're up in the northwest, we could add Mineral. So, our proposal is, without any change in cost or anything like that, we would be able to add in those three counties because they wouldn't take very many extra days to do. That way, we would have seven or eight counties, so basically half of the non-Washoe and Clark Counties in the study. I think that would help us understand the difficulties of providing representation that may arise in some of these least-populated counties. I thought it was a good idea. I thought it was a great contribution by NACO, and I thought it would really add to the study, if the Commission wanted to approve that new direction.

**Joni Eastley (Representative of the Nevada Association of Counties):**

This doesn't change the amount of money that will be spent on on-site visits?

**Mr. Carroll:**

No. We always intended to sort of do a 13-county look, with only a deep dive in those 5 counties. But to be able to do court observations, in many of those counties, it's a single-judge county, probably one or two providers of services. It would be, since we're already out there, we would just add another day and go to those three counties and try to wrap it up. It wouldn't be an additional flight expense or anything like that. We would probably just switch out one of the days that we were going to spend in the office for the actual day on site. We thought the arrangement was fair as far as compensation, so we wanted to be responsive to this in a way that didn't change the contract or the amount of money.

COMMISSIONER EASTLEY MOVED TO APPROVE THE RECOMMENDATION OF THE NEVADA ASSOCIATION OF COUNTIES TO ADD LINCOLN COUNTY, MINERAL COUNTY AND ESMERELDA COUNTY TO THE CONTRACT FOR ON-SITE VISITS.

COMMISSIONER TIPTON SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

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**Chair Cherry:**

Mr. Carroll, does that include the second email that you sent? Is that the information as far as visitation of counties?

**Mr. Carroll:**

Yes.

**Chair Cherry:**

Now we're ready to go into your discussion of oversight of criminal defense in other states.

**Mr. Carroll:**

This probably would have been better in person, as I was hoping to have it be more conversational. The idea here is really to start the Commission thinking about other ways that services could be delivered if there are issues that we find out there. We thought we'd present an overview of how other states are doing it so that you can get a feel for where your state falls.

In the area of oversight, there are really three broad classifications for how states oversee the right to counsel. One is with a state commission. States in this classification have one or more commissions or boards that oversee all indigent defense services for all case types and in all regions of the state. There are 21 states that currently vest a single commission with all oversight of every type of case in every part of the state. Those are Connecticut, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Montana, New Hampshire, New Mexico, North Dakota, Utah, Virginia, Arkansas, Colorado, Hawaii, Missouri, Oregon, West Virginia and Wisconsin. I name them simply because these are not all just small states in New England that have

the ability, but you have states like Montana and New Mexico that also compare similarly to you as far as the rural parts of their state.

The next chunk of how states provide oversight is through limited commissions. These tend to have commissions or boards that either oversee some but not all types of cases or oversee some but not all regions of the state. For instance, in Idaho, they just created a new commission overseeing all indigent defense trial level services, but they do not have oversight of the appellate representation. In a state like Kansas, they have a state commission that oversees felonies and appeals, but not misdemeanors and juveniles. Those that do certain types of cases, in my experience, have been less successful than states that oversee certain jurisdictions but not others. For instance, in Oklahoma, they have a statewide commission, but they have the two largest counties, Tulsa and Oklahoma, outside of that system. I think this is going to be one that you're going to want to look at, because I do think we're looking at a commission that would probably always have Clark and Washoe outside of its purview. There are 13 states in this category, and I won't list them all here.

There are 16 states that provide no commission or oversight whatsoever. That is inclusive of your state right now. Even though you have the Commission, there's really no statutory responsibility or oversight in regard to ensuring that certain parameters are met. You really are at your infancy stage right now as a study commission, which is a great start and how most states get started.

In the states that have the ability to have a commission, the ones that are more readily meeting the constitutional parameters are those that vest those commissions with the ability to set and enforce standards, and those are generally the standards that I talked about at the last commission meeting: making sure attorneys have sufficient time to do what they're supposed to do, to make sure they are appointed early enough in the process and have the time and ability to do what needs to be done for the stated interests of their clients. Now, there are various ways in which that can happen. The two that are most pertinent to your state, I believe, are Michigan and Idaho.

What Michigan has done is create a commission to oversee all representation, and they have the power to promulgate and enforce standards. In fact, in the statutory language creating the commission, they mirror most of the language of the American Bar Association's *10 Principles*, saying not that this is the standard that will be enforced, but that the commission must take it upon themselves to create a workload standard, to create a training standard, to create performance standards, etc. What Michigan ultimately decided to do was that they capped the county spending at their current level when the statute was adopted, and said that any new monies that are needed to meet the commission's standards will come from the state. Through that process, we've seen through the past several years this all being implemented and taking place. For instance, the state promulgated four sets of standards in the first instance, then they required each county to create a plan about how they would meet those standards and what new monies would be needed. Those plans were sent to the commission. They

were reviewed. Many of them were rejected. For instance, counties that weren't previously providing attorneys at first appearance often in their plans put in money to increase the prosecution since prosecutors weren't also in those hearings. The Michigan commission had said, "No, we're not funding prosecutors under this," and adopted a new policy, and new plans had to come in. The long story short is that we're right on the precipice of the new monies coming in so that the counties can do everything that they said. To give you an idea, when I did a study of Michigan back in 2007, I believe, in total, all the counties were spending about \$85,000,000 if you added everything up and combined it. We had often said that we thought it would be almost twice that to bring Michigan up to the constitutional threshold of effectiveness that they needed to do. In the plans that came in, the counties requested \$65,000,000 of new money, and just last week, Governor Snyder released his budget, and it includes \$63,000,000 in new monies. The expectation is that, with a Republican house and senate and this being a Republican governor, those monies will be adopted. We always are cautiously optimistic on this, but the fact that the Governor put that money in shows that this is one method in which the state could begin to ensure that representation is met. If you looked at Oklahoma and held the two largest urban counties to the side, then the state increase to cover any new costs in your state wouldn't be quite as dramatic as it is in Michigan. But that's really what people across the country are talking about as the "carrot" methodology, that the state will hold out money to meet these standards, but leaving the decision making locally for the people who are closest to understand how the systems work and how best to promulgate or enforce the new standards.

Contrasting that one is really the idea that's taking place right now in Idaho. Idaho too had no state oversight and no state money for trial-level services. They created a study commission such as yours. They went and did a lot of study and said, "You know what? A lot of the deficiencies that were uncovered in our study report we have now validated as true. We want to fix that." They empowered this commission to promulgate standards. It's what we're calling the "hammer" method. Instead of offering counties money to improve, what they're saying is, "We will give some supportive monies to try new innovative things, like regionalization, combining three or four counties into a single region provided by a single indigent defense system. The counties are given a certain period of time to come into compliance, but if they still are not in compliance after a 6-month time period, the state is empowered to take over that system and create whatever system the state thinks will be most effective, and then charge that cost to the counties." If the counties still don't pay, the state is empowered to withhold their sales tax revenue. It's a major hammer, and the theory behind it as to why they did it is because prosecution is funded locally, they really thought that the onus should be on the local government to try to question whether each and every prosecution really is worth bringing. If there is any number of low-level, nonviolent cases that could be cleared up with the system in some other way, then that should be done. They wanted to leave the cost of funding this with the counties, even as the state's providing oversight of the implementation plans. That is just at the precipice. We've seen the amount of funding start to increase throughout Idaho, but there has not been a point at

which the hammer has been triggered, so no one really knows how that will work and what litigation that will enact.

Those are just a couple ideas which you can think about if there's a need to improve services. I do think one of the key features in both Idaho and Michigan is that their commissions not only have a central staff providing training and human resources and paying vouchers and all that other stuff, but they also have regional people out there who can provide local oversight and work with local actors to try to figure out the best way to provide services within those regions. It might be something that you all would want to consider recommending once you have the details of what is and is not happening out here in your rural community.

The final state that I want to mention is Montana. This was a state that very early on in the 2000s was sued by the American Civil Liberties Union (ACLU). I think the ACLU used it as a test case, because it was not a very populated state. They didn't have an intermediary court of appeals, so they knew that anything that would go up from the trial level would immediately go to the Supreme Court. It would truncate the process of bringing a systemic class action lawsuit. At the time that occurred, they reached an agreement to table the lawsuit and bring me in to help create a statewide approach to indigent defense. The ultimate statutory language that was adopted there basically looked at what counties were currently spending on indigent defense, and then through a fairly complicated matrix figured out how much money the state was passing back to the counties on all sorts of different fronts and reduced the amount the state gave to the counties by that exact amount. So now, the entire indigent defense budget in Montana is considered a state general fund appropriation, because all of the focus is on getting the budget that's needed there. The counties are held harmless, except for this subtraction of what their money was at the time of the statutory change. With that, the Montana Public Defender Commission really looked at their state and said, "You know what? We need to have flexibility in how we deliver services, because the eastern part of our state is not the central or the western part of our state. Areas that have more densely populated areas should be handled differently than others." So, they really created a myriad of ways of delivering services. In places like Billings, they have a staffed public defender office and an assigned counsel system for conflict, much like we see in Washoe and Clark in your state, although on a much smaller scale. But in the rest of the states, they've decided that, based on the number of attorneys that live in various parts of the state, they would be able to either contract or do an hourly rate to be able to keep attorneys wanting to do that work in those regions of the state. You have a public defender contract system and an assigned counsel system all playing out in that state depending on what would work in those regions of the state. That too is probably something to consider in your state. Towards that end, one of the first things we've done is reach out to your State Bar to understand how many lawyers are living in each of the counties so that we can determine which of those lawyers are the judges, the prosecutors, county attorneys or other things. What's left for sort of the basis of people that could be providing this service? We also went to your criminal defense lawyers. I always forget the acronym there.

**Erika Ballou (Representative of the State Bar of Nevada):**

It's the Nevada Attorneys for Criminal Justice (NACJ).

**Mr. Carroll:**

Thank you. We asked them to also give us a list of attorneys in the rural counties who identify as criminal defense attorneys so that we can do a cross section and start to understand how this could possibly come together to serve these regions. The answer may be that there are simply not enough attorneys to do it everywhere in the same way we would like. Potentially, we could create some sort of system that allows attorneys in Clark and Washoe and Carson City maybe to branch out and do some work in certain other counties that are nearby. I think that may work more for felony cases where there's more likelihood that they would travel to get experience in certain types of cases, and maybe misdemeanor and juvenile work could be handled more locally. I don't know because we haven't been out there, but I just wanted to give these models a sense of what's out there and what's going on. Maybe I should pause there, just to see if there are any questions or if people have thoughts about other states in your region or others that you would like to know how they operate. But that sort of gives you the beginning of the types of things once we start rolling in with our data and information about the services out there that you all might want to think about discussing and debating about what the future of your state looks like.

**Chair Cherry:**

I want to talk to you about oversight. I understand it's a strong position about oversight in the rurals. Let me talk about Clark and Washoe for a second. I've got Phil Kohn and JoNell Thomas with the Public Defender and the Special Public Defender. In Washoe, I have Jeremy Bosler and Marc Picker. I've got Drew Christensen and Bob Bell who do the assigned counsel stuff, and I've got John Slaughter and Jeff Wells from the county as far as people who—I trust every one of them, I think they do a great job. I think the model in both Washoe and Clark is excellent. But what about oversight of Washoe and Clark? I thought I heard you say that we would not have oversight of the urban areas, and I think it's important that we do that. I love the rurals. There are 15 counties, and I know they have a problem finding attorneys to represent folks. Also, I worry about exactly what we're going to do with the State Public Defender. Are we going to just make sure that Karin Kreizenbeck's office represents two areas and that's it? I'd like to hear what you think about a direction, especially of oversight, and what we do with the State Public Defender. Isn't it time for the state to step forward and take a little pressure off of John Slaughter and Jeff Wells in this matter?

**Mr. Carroll:**

Yes. Let me start with the easier of the two questions. Let's start with the question of the State Public Defender. I think there's always going to be a role for the State Public



Defender. In fact, if there is a need to look at a different way of providing representation in the rural counties, there are many states that have a state public defender that oversees two silos, essentially: a public defender office and an assigned counsel system. I think the State Public Defender could reorganize in that fashion. So, if it makes sense to continue having staffed public defenders handling Carson City and Storey County, and maybe some other counties nearby, great. If the other, more rural areas need to continue having private attorneys provide those services, then it still could be the State Public Defender providing oversight of those. I think the failure in your state in the past has been equating the State Public Defender with staff government attorneys. At least throughout the Supreme Court Taskforce discussion, the problem we always heard was, "Yes, you may get a young attorney to move to White Pine County, but probably after 6 months she wants to move back to Clark or Washoe and now that person has experience," so it was always hard to get people to want to stay in the rural areas if they weren't from the rural areas. Having a system that has oversight of local attorneys, often in other states, is the way to do that. I think the State Public Defender, in my opinion at this early stage of the study, is something that very well could continue, and depending on the quality of services, probably should continue in that capacity.

The harder question is the one you raised about Washoe and Clark oversight. Here's what I can tell you unequivocally. Nevada has the constitutional obligation to ensure that effective representation is provided in every court in the state. Generally, that means they need the capacity to have someone setting standards and then monitoring and making sure those standards are met. The discussion of whether a commission like this could transform into a statewide commission overseeing all services in all courts is one that I would strongly advocate for on a theoretical level, that the state has the obligation and the state needs to do this. Even if they require Washoe and Clark to continue funding it, they need to make sure that Clark and Washoe are doing so. I think the problem is that—and I agree with you. From all we know about Clark and Washoe, they provide very good services. But that's now, with Mr. Kohn, Mr. Christensen and Mr. Bosler and people like Jeff Wells in those positions. But they will not always be in those positions. It wasn't that long ago where Clark County in particular was the main focus of underperforming services back before the people that we just named were running the show. Just because it's doing well now doesn't mean it will always be that way and the state will always have the obligation to make sure.

The problem is one of pragmatism here, in my mind. I think if, from the counties' point of view, they're funding the vast majority of services, and if they have the funding obligation, they don't want the state telling them what to do and then having to increase their funding. Most of this really came about from the discussion of workload standards and how many cases should attorneys be carrying in the urban areas, which are going to be likely much different from the numbers that attorneys in rural areas should be covering, simply because we know in Clark County, the jails, the courts and the Public Defender's Office are all within a couple-block radius of each other. So, the ability to do more of the work quicker is greater in those areas. That's obviously knowing that some of the crime is upgraded capacity and other things that play off that a bit. But I think in

the Taskforce and the Supreme Court, we kept running up against that rock and a hard place. If the state's going to be telling Clark and Washoe what to do, then the state should be funding it. Of course, the state doesn't have the capacity to take over the amount of money that's already being spent in Clark and Washoe. This is really exactly the same rock and hard place that resulted in Oklahoma creating one system for rural and leaving Tulsa and Oklahoma City outside. I think the general understanding is that both Tulsa and Oklahoma City provide decent representation, but again, that could all switch. I think it's a matter of politics here. How do you take that first step towards complete oversight of everything, which I think is the ultimate goal? I think the first step is, let's see where the rurals are. Let's see what they need. Let's see more state involvement there, what that could look like, get the Commission going and then talk about the state's obligations in the urban centers down the road. That may be me, because I've been at this now for a couple decades it seems in your state, and I really, really want to get help where it's needed. But at the end of the day, I'm one person who's not a citizen of your state who's simply putting forth recommendations, so it's going to have to be the people on this Commission making really hard choices and looking at really tough decisions on that. But I think that's a summary of why I phrased it as I did, and where I at least see the discussions that have occurred throughout the Supreme Court Taskforce meetings.

**Phil Kohn (Representative of the Board of County Commissioners of Clark County):**

I have no idea how many qualified attorneys there are to do A and B felonies in Esmerelda County or Mineral County or Lincoln County, and hopefully our site visits will help us with that. That's what I'm really concerned about. But Mr. Carroll, before we write off the State Public Defender, knowing how effective they were when I became a member of the Bar a while ago, 30-some-odd years ago, and certainly Ms. Fitzsimmons can speak to it because she was there. I don't want to see us write that off to make them stronger and to give them at least the right training and the right capabilities to handle the more serious felonies in rural Nevada. I agree with what you say, Mr. Carroll, about how it's so hard for the State Public Defender to run with the salaries in the two major counties. But there's a new dynamic, and that's loan forgiveness. Now, who knows with this budget whether or not loan forgiveness will still exist, but one of the best recruiting tools I have to bring people from all around the country to Clark County is that law school debt is through the roof, and if someone comes and works for a government agency for 10 years and stays up with their loan payments, at the end of that 10 years their loan is forgiven. For those people who have \$200,000-plus in debt, and I probably have 10 to 20 of those people in my office, that's a really great recruiting tool that the State Public Defender can use, because they are an institution, and I don't think the small counties would have that. So, before we write off the idea of rebuilding the State Public Defender and giving them more responsibility, I think we should consider what debt forgiveness provides to young lawyers. I'm still curious to see what's available out in the rural areas.

**Mr. Carroll:**

I think that's right, Mr. Kohn. It's always difficult when a commission such as this is scheduled to meet monthly, as we're still gearing up the site visits and we don't have the information. A lot of my opinions were based on knowing how other states have been able to function with private lawyers in addition to staffed public defenders. But I think it's fair to say that everything's open at this point. I do think your emphasis on loan forgiveness is a good one and the potential that might be to draw some people out to the rural areas and others. So, that's to say, we have not formed any conclusions whatsoever, just trying to start people thinking on the different things that will need to be encountered down the road once we come back with the tangible information.

**Laura Fitzsimmons (Representative of the State Bar of Nevada):**

Thank you, Mr. Kohn, because I understand the articulation of having a statewide public defender's office with small, rural offices strategically located, and that somebody goes out to Winnemucca and they're not happy and they want to come back. I get that. But I'm sensing—and I have two children who are lawyers—generally, when you look at people who are applying to be public defenders in Nevada, we now have a law school, and there's just a renewed vigor about the role of the public defender. I really think that if we were able to join with the counties and have accommodation for scheduling—if we had a State Public Defender and let's say strategically located offices provided in the county building with the same perks as the District Attorney gets, and it shouldn't take their budgets much, and we have calendar accommodation so you can go into four different districts depending on the day of the week. With all those things, you have a state employee with state benefits and loan forgiveness, I think we have the potential to find people who have a commitment to their communities. You know, these are wonderful communities. I'd rather live in Winnemucca than just about anywhere else, so I really, really don't want to give that up. I have been indigent defense counsel with my own little office doing my own typing, and that is tough. When you add onto that if you're conflict counsel or contract counsel in the rural counties, the commute and not having people helping you out with a place in the courthouse and getting you in to see your clients, that's a tough life. But if you have the sense of community you can have and the deep resources you can have at a State Public Defender's Office, you're not alone out there. I really feel that some of the brightest kids, certainly at Boyd and nationally, they want to be public defenders. But please don't give up on that. I think that is really someplace we have to look.

**Mr. Carroll:**

Again, I'm excited to get out and talk to people in these communities and visit them for myself. I think everything's on the table right now, but I do hear the desire to not give up on public defenders.

**Ms. Fitzsimmons:**

When you go into these communities, I think many of them do not have criminal defense counsel that are capable of handling a serious murder case. So, you're not going to find them there. I think you have to put them there. That's just respectfully my opinion.

**John Slaughter (Representative of the Board of County Commissioners of Washoe County):**

The loan forgiveness program, absolutely a great program, but is that not a federal program that we could lose at any time?

**Mr. Carroll:**

There is federal student loan forgiveness. And yes, it is something that could be lost at any time. I don't know if Mr. Kohn was talking about something locally as well.

**Mr. Kohn:**

No, I'm talking about federal loan forgiveness, and it's been with us for almost 10 years. I don't know what this budget's going to bring, but I don't think we should write that off at this point yet.

**Ms. Eastley:**

You said that oversight is provided nationwide through three different means: state commission or commissions, limited commissions and then I missed the third one. What was the third one?

**Mr. Carroll:**

The last one was no commission and no oversight. There are really two ways and then the third category.

**Tom Grady (Representative of the Nevada Association of Counties):**

I'm not sure who I should ask this question, but if this is funded, will it be under the Supreme Court or will it be under the Governor's budget?

**Mr. Carroll:**

That is a question to be determined. What I can tell you is that, of all the states that have either a statewide commission or a limited commission, which is about 40 states, it splits almost exactly, with half in the executive branch and half in the judicial branch.

What I will say is that most of the ones in the judicial branch of government were ones that were started very soon after either Gideon or Argersinger, the case that extended the right to counsel to misdemeanors. At the time when they were setting up state public defenders and assigned counsel systems, they said, "Well, it's a judicial issue. It should be in the judicial branch." As things have progressed, and especially since there's been more focus on the need for independence of the defense function from the judiciary, and looking at things like the American Bar Association's *10 Principles of an Indigent Defense System*, where the first principle is independence. More and more of the more recently constructed statewide systems have gone into the executive branch. I don't think there's a right way or a wrong way. I think probably, keeping in mind the independence requirements and needs, the executive branch makes it easier. But it can be in the judiciary. In Idaho, they have it set up as an independent entity that's attached to the executive branch strictly for the separation of the different branches, but the governor doesn't exert direct control of the commission either. So, I don't know if there's something similar in your state or not. There are probably three or four states that have set up this quasi-truly independent system. But there's no right way or wrong way, but that's how other states have dealt with it. But it's probably going to wind up more towards the executive branch in states that are now contemplating changes, like Tennessee and Indiana.

**Anne Traum (Representative of the State Bar of Nevada):**

You described these two mechanisms as "carrot" and "hammer." So, with the "carrot," with the state stepping in to provide the extra funds, and with the "hammer," it seemed like you could subtract funds if the county wasn't meeting those obligations. I'm just curious about how those two systems play out, either in how the reforms are embraced and accepted at the lower level, or whether you see any difference at all in the quality of counsel. I guess part of this is that it seems like there might be some resistance to change generally, especially change coming from central, if it's perceived that way, and I'm just curious, especially in rural areas, how this goes over.

**Mr. Carroll:**

Well, I think it's safe to say that the "carrot" approach is the one that's more favored by local counties and created more political will in the legislative arena for change. I think they very clearly see, "Oh, our costs are going to be held steady. We can plan each year. We know what the cost certainty is going to be, and the state's willing to give us more money." I think the real key in those states has been that there's still a process whereby they're not calling the state capitol every time they need something, but there is some regionalization, local control in deciding how to deliver services as long as those services continually meet the standard. I think that is one that really helps move things forward quicker.

Idaho really is the one that's trying this "hammer" approach, and again, we're just on the precipice of seeing if that's going to work. There really was not a lot of support in many

of the counties for this, because they felt like, "Oh, this is just going to be the state continually telling us what to do without a lot of money." Now, when this was passed, I have to say, to their credit, Idaho did give more money initially to the commission proportionally than almost any state, and they immediately started getting money out to the counties to help them. A couple counties decided they wanted to regionalize, so they gave them some planning money to do that. One of the counties wanted to move to a staff public defender office. They gave them money to do that. Even there, there was a bit of a "carrot," but I think what sort of ruled the day in Idaho was that, with the political philosophies of the state, if the prosecution are the ones that are driving the caseloads here, which is the number one cost of indigent defense, then we want the pressures left locally so that the county commissioners and others or the local electorate can put pressure on the prosecution to really question whether everything they're doing is necessary. Idaho is one of the most conservative states in the country. I think it sort of fit their approach to government, but I'm not so sure it's one that can be easily translated to another state.

**Chair Cherry:**

Seeing no further questions, we'll move onto the next agenda item, which is also a report from Mr. Carroll, an update from the Sixth Amendment Center. Just give us an update as to where you are at this point and where you're going. I would like to announce at this time that I think the next meeting should be March 30. That gives Mr. Carroll 40 days to make some visitations and give us a progress report. Is that satisfactory to you, Mr. Carroll?

**Mr. Carroll:**

Yes. If it is for the Commission, we would really be thankful. Our plan right now is to do at least two of the site visits in early March. I think I'll have things to substantively report by then. We have been getting great cooperation thus far from all sorts of areas. We've reached out through NACO to the Sheriffs' Association. We want to get cooperation from them so we can do a slice-of-life look at what percentage of their beds are being spent on pre-trial detainees, and of those, who are indigent. Also, concerns about transportation costs and if attorneys are not prepared to move forward and ask for continuances. These are issues that other sheriffs in other states continually raise with us, so we've had big conversations with Eric Spratley, the director of the sheriffs' group. In fact, I just wrote him a formal letter that he's going to share with his membership tomorrow to get them to cooperate with us as we go through these counties. Things like being able to review jail logs to see how and when attorneys are meeting with clients and things like that. We've been focusing our initial discussions with Nye County, getting their schedules together. I know the County Manager and Assistant County Manager are coming east to Washington, D.C. for some meetings, so we're sort of coordinating our schedule and their schedule so that we're all there at the same time. I wanted to start with Nye County simply because I was there in 1999 for the American Bar Association U.S. Department of Justice study (Exhibit D), so I'd like to see how it's

changed, how it's evolved, those types of things. We'll certainly hit Esmerelda as well on that trip. We've been doing a lot of going through budgets and different things like that. We've gotten everything we've asked for, so it bodes very well. But we don't have a lot to say other than that we're pretty sure we'll do Nye and Esmerelda before that March 30 meeting, and probably one of the ones up north, maybe Humboldt or something, as well. Just because of the tight timelines on the Commission needing to report to the Legislature, we're really aiming to wrap up all the site work in March, April and the beginning of May, which is what we're trying to coordinate with court schedules and everything right now.

**Chair Cherry:**

Are there any questions or comments to Mr. Carroll about this update? Hearing none, I will open the next agenda item, which is actually something that I put on, for discussion of the status of the Indigent Defense Commission. As you know, then-Chief Justice Maupin created the Commission in 2007, and we came up with ADKT-0411, which is Administrative Docket 0411. The nice thing about the Indigent Defense Commission, and one of the reasons I'm asking this Commission to sort of give me a vote of confidence to keep it alive is because, in that particular Commission, I have rural judges involved, I have district attorneys involved, and I've got some fresh eyes. I'd like to tell you some late appointments that we have: Dagny Stapleton from NACO, who's actually in the audience. Ms. Stapleton is now a member of the Indigent Defense Commission. JoNell Thomas takes the place of David Schieck at the Special Public Defender's Office. I've appointed Jeff Wells and John Slaughter as actual members of the Indigent Defense Commission, so we have some oversight with Washoe and Clark with those two gentlemen. The National Association for the Advancement of Colored People (NAACP) after 10 years got in touch with me and said, "You know what? We'd like to have somebody on your Indigent Defense Commission," so I've got a young man named Alex Cherup, and he hasn't been to a meeting yet. We just appointed him, so I'd like to continue with his input, at least from the minority community. I think it's important. Of course, Marc Picker took the place of Jennifer Lunt as the Alternate Public Defender in Washoe. Ms. Lunt retired, so we've got Mr. Picker now. I've got some fresh eyes. I've also got some new people who are involved because of changes in the various offices.

Some of the issues that we can still talk about in the Indigent Defense Commission are caseload studies, especially in Clark and Washoe. I can leave the other stuff to you, Mr. Carroll. We can also talk about training, because I've got the public defenders who are involved and I've got Mr. Christensen and Bob Bell involved as to any type of training programs. So, there's a lot that that Commission can still accomplish without conflicting with this study group. Also, I think Chief Justice Douglas has given me the go ahead, because he's actually signed these orders that appoint these people. Are there any comments as to whether or not I should continue with the Indigent Defense Commission? Also, Ms. Fitzsimmons has a special interest in that because John Lambrose is a very active member, and so is Franny Forsman. I promise there won't be any conflicts between the Right to Counsel Commission and the Indigent Defense

Commission. Mr. Carroll, do you have any comment on that? Do you think it's a good idea to keep it going, at least while we're doing this study?

**Mr. Carroll:**

I do. It's funny, when I first thought of it, I thought it would not be necessary, but I think you're right as far as continuing issues in Washoe and Clark and having access to the rural judges. I do think it makes sense to continue.

**Chair Cherry:**

Well, it gives our public defenders a good chance to talk to the district attorneys in the urban areas, because both of the district attorney representatives are involved in Washoe and Clark in the Indigent Defense Commission. I'll let my colleagues know that, at least after March 30, I'll probably have a meeting of the Indigent Defense Commission after you give your report.

The next agenda item is direction to the staff and the consultant. This is an opportunity for us to discuss what we'd like to see: future hearings, speakers we'd like to hear from or anything else.

**Joi Davis (Senior Program Analyst, Fiscal Analysis Division, Legislative Counsel Bureau):**

Senate Bill (S.B.) 377 does provide that this Commission will provide a report to the Legislative Counsel Bureau and to the Governor's Finance Office. Maybe the consultant can reach out to the Governor's Finance Office, especially if this is something that might be coming before the executive branch for any future proposals. I'm not sure if that contact has been made by the consultant. That's just one suggestion I would have.

**Mr. Carroll:**

To date, I have not. I'm happy to do so, and certainly to do an introductory visit one time when we're out in that region. Just for clarity, I sort of thought that the report of this Commission would go to both, and through the Chair or Vice Chair, they would deliver those rather than the consultant, but I'm happy to play whatever role this Commission wants me to on that end.

**Drew Christensen (Representative of the Board of County Commissioners of Clark County):**

Mr. Carroll, can you keep us in the loop as to the actual days you will be out in Nye and/or Esmerelda? If my schedule permits, would there be any objection by yourself, Mr. Carroll, if we assisted or at least observed and tagged along with you while you were in Nye?



**Mr. Carroll:**

Let me think about that. I do have on my list that I want to spend time with you to understand the lawyers you work with and their willingness to maybe do work outside of the Clark area and what that might look like. You're high on our list. As far as coming with us, let me bat that around with staff and see if that would cause any conflicts. I'm not thinking of anything right now. It's the same with the assigned counsel system up in Washoe as well. I very much want to spend time to bat ideas around about how your systems could potentially, if the state or someone's paying for it, be able to use some of your attorneys out in some of these places.

**Robert Crowell (Representative of the Nevada Association of Counties):**

Did we ever hear from the prosecution side on what their take is on this, or is that later?

**Chair Cherry:**

They're very active, Chris Lalli and the District Attorney from Washoe. They're active in my Indigent Defense Commission. Certainly they're welcome to be here. They know about the Right to Counsel Commission, and they were certainly invited to attend.

**Mr. Crowell:**

You and I both know, and probably all of these members of the Commission know, they were involved in one way or another during the last legislative session. I'd kind of like to hear, at some point in time, or maybe it's inappropriate to hear, but I'd like to hear what their take is on some of this stuff and see what they have to say.

**Chair Cherry:**

Chris Hicks is the District Attorney in Washoe, and Chris Lalli is the Assistant District Attorney in Clark, and they've been very active in the Commission. Mr. Carroll, I'm going to ask you to look into this request by Mayor Crowell as to how this Commission should handle input from the District Attorney's Office, as in Washoe.

**Mr. Carroll:**

I will say, in the places we're going, we certainly meet with the prosecution staff and attorneys and get their opinions, thoughts and ideas as well. We'll probably be reaching out to the statewide association as well to get feedback from some of the prosecution in rural areas that we're not visiting directly. This is something that I forgot, Chair Cherry, that I did have in one of my emails. Some other states that have done these types of study commissions have done what they call listening sessions. They'll invite specific stakeholder groups in to address them. So, instead of just hearing from us at the updates, you actually bring in and invite the prosecutors to come in and address you or

to bring in the rural judges or the justice magistrates or whomever, the sheriff, to address you as well. I just actually came back from one of these listening tours with a taskforce in Indiana. I went through several of them in a supreme court commission in Tennessee. I think they are of value. In fact, I was talking to John McCormick about when different judges' associations' meetings are. The district judges, my understanding is, are meeting in April in North Las Vegas. We're going to try to do one of our trips then so we can attend and address a lot of the judges who we might otherwise not be able to meet if we weren't going to their counties. But it might be something for this group as well, just to try to coordinate to be able to let different constituency groups appear before you and talk about what they're seeing and the issues they're having. That was the other piece of the email. I did forget to bring it up.

**Chair Cherry:**

Are there any comments from any of the Commissioners on those issues? Listening sessions sound like a great idea.

**Ms. Ballou:**

If we're going to invite the prosecutors, I think for sure we need to invite members of the communities who are affected by the way the prosecutors do their jobs and things like that. So, I don't think it should just be prosecutors. If we're going to invite members of the public, it needs to be members of the public who are affected.

**Chair Cherry:**

Great idea. That's one of the reasons the Indigent Defense Commission is pretty good. I've got a real cross section in that Commission, and that's very helpful so that we can exchange ideas. Actually, Mr. Carroll is a consultant for the Indigent Defense Commission too, and he's been a great help. I'm going to look to him for guidance on exactly how we do these listening sessions. They sound very exciting to me, and we've got a number of months now that we've started rolling on this.

**Ms. Ballou:**

We were talking about some of the American Bar Association principles and things like training. I was just wondering how it would be involved. Even if we come up with the ideas of just having regional appointed counsel and things like that, I don't know if Mr. Christensen does training, if his Office of Appointed Counsel does training, or if they do that at the Appointed Counsel Office in Washoe. I don't know what's going on, because I am a county Public Defender and I went thought the training in Mr. Kohn's office, so I don't know how that's provided to people who aren't in a State Public Defender Office. I'd like to know more about that.

**Chair Cherry:**

Mr. Christensen or Mr. Kohn, can you comment on that?

**Vice Chair Christensen:**

Between Mr. Kohn's office, JoNell Thomas' office and the Federal Public Defender, there's enough continuing legal education (CLEs) that we provide our private bar the opportunity to go to those for free on a variety of topics. So, specifically, we don't necessarily have trainings specifically for the private bar, but they all are aware of the training opportunities that are available through the institutional offices here in Clark County.

**Chair Cherry:**

I'm not sure exactly what the training session is in Washoe. I'll find out from Jeremy Bosler and Marc Picker and Bob Bell as to what they're doing up there. Mr. Carroll, do you have any comment on what Ms. Ballou's raised about the training?

**Mr. Carroll:**

No, I actually need to learn more about the training. I know more about the Clark County Public Defender Office just because I hear more about it. It's certainly something, and you have established programs out there that I think need to be tapped into to make sure that the level of training out in the rural areas meets their needs. But I'm just not sure how it comes together, because I haven't studied it enough, and it's one of the things I want to talk to Mr. Christensen about specifically.

**Chair Cherry:**

Our next agenda item is our second segment of public comment. We do have the State Public Defender, Karin Kreizenbeck, in the audience. We also have Dagny Stapleton from NACO. Is there any comment from NACO or the State Public Defender? Both of them are shaking their head no. Seeing no public comment, are there any additional comments the members would like to make?

**Ms. Eastley:**

You referred to an American Bar Association report that was released in 1999. Is that available on the internet?

**Mr. Carroll:**

Yes. I will send it to Ms. Lang to make available to the Commission (Exhibit D).

**Chair Cherry:**

Even though many of you are members, I'll let this Commission know what we're doing with the Indigent Defense Commission after March 30 as to what we're doing with indigent defense as far as the Supreme Court ADKT-4011 Commission. I will now adjourn this meeting at 10:12 p.m.

RESPECTFULLY SUBMITTED:

  
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Jordan Haas, Secretary

APPROVED BY:

  
\_\_\_\_\_  
Justice Michael Cherry, Chair

Date: 4-25-18

<b>Exhibit</b>	<b>Witness/Agency</b>	<b>Description</b>
Exhibit A		Agenda
Exhibit B		Attendance Roster
Exhibit C	Jordan Haas, Secretary	Agenda Item IV: Draft Minutes of the January 26, 2018 Meeting
Exhibit D	David Carroll, Executive Director, Sixth Amendment Center	Agenda Item VI: Indigent Defense Services in the State of Nevada