

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

May 25, 2018

The meeting of the Nevada Right to Counsel Commission was called to order by Justice Michael Cherry at 9:02 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 and Great Basin College, Room 112, 2115 Bobcat Dr., Ely, 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
Assemblywoman Teresa Benitez-Thompson, Assembly District No. 27
Robert Crowell, Representative of the Nevada Association of Counties
Tom Grady, Representative of the Nevada Association of Counties
Jerri Tipton, Representative of the Nevada Association of Counties

COMMITTEE MEMBERS PRESENT (LAS VEGAS):

Erika Ballou, Representative of the State Bar of Nevada
Phil Kohn, Representative of the Board of County Commissioners of Clark County
Senator Tick Segerblom, Senatorial District No. 3
Anne Traum, Representative of the State Bar of Nevada

COMMITTEE MEMBERS PRESENT (TELECONFERENCE):

Joni Eastley, Representative of the Nevada Association of Counties
Justice A. William (Bill) Maupin (Retired), Nevada Supreme Court

COMMITTEE MEMBERS EXCUSED:

Drew Christensen, Representative of the Board of County Commissioners of Clark County, Vice Chair
Laura Fitzsimmons, Representative of the State Bar of Nevada
John Slaughter, Representative of the Board of County Commissioners of Washoe County

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:

Conor Keitz, Student, Oasis Academy College Preparatory High School

Kate Dunkin, Student, Oasis Academy College Preparatory High School

Abbey Pike, Student, Oasis Academy College Preparatory High School

David Carroll, Executive Director, Sixth Amendment Center

Judge Steve Dobrescu, Chief District Judge, Seventh Judicial District

David Neidert, Attorney, Churchill County

Dana Hlavac, Court Administrator, Las Vegas Municipal Court

Bill Zihlmann, Court Administrator, Henderson Municipal Court

Franny A. Forsman, Esq., Federal Public Defender for the District of Nevada (Retired)

Justice Michael Cherry (Nevada Supreme Court, Chair):

I will now open the fifth meeting of the Nevada Right to Counsel Commission, which was set up by Senate Bill (S.B.) 377, chapter 460, Statutes of Nevada, from the 2017 Legislative Session. First of all, let me apologize for setting a meeting right before Memorial Day, but I wanted to get a meeting in May before we go to June and the summer time. Today, we are again videoconferencing to two locations. I'd like to welcome those who are attending in Ely. David Carroll, our consultant, will again attend by phone.

Next on the agenda is public comment. It's my pleasure to welcome you here to the Nevada Right to Counsel Commission.

Conor Keitz (Student, Oasis Academy College Preparatory High School):

We are here today to represent the Oasis Academy College Preparatory High School Project Citizen class (Exhibit C). Project Citizen is a program designed to inspire students to become more active in their government by finding an issue in their local or state governments, researching the issue and attempting to resolve the issue. The issue we discovered in Nevada that we found most prominent was the indigent defendant problem where people who cannot afford proper defense do not receive proper defense, and we decided that since this Commission was designed to resolve this very issue, we would come and present our ideas and our project to you.

Kate Dunkin (Student, Oasis Academy College Preparatory High School):

One of the key points of our project is to take action to further understand the issue and develop a well thought out solution. In order to do that, our class has met with representatives from the American Civil Liberties Union (ACLU) of Nevada. We have contacted Justice Cherry and we have set up a meeting with David Carroll of the Sixth Amendment Center. That meeting is intended to give us insight into the history of the indigent defense problem in Nevada. These meetings and conversations have allowed us to form the opinions we are going to share with you today. The Sixth Amendment guarantees the right to counsel. Therefore, the state has a constitutional obligation to provide indigent defendants with adequate representation. Frederick Douglass once said, "Where justice is denied, neither persons nor property will be safe." Additionally, in the Supreme Court cases Gideon v. Wainwright and Argersinger v. Hamlin, the Court ruled that states have the legal responsibility to provide representation to indigent defendants.

Abbey Pike (Student, Oasis Academy College Preparatory High School):

There have been many proposed solutions to our indigent defense problem, and their effectiveness depends on many variables. We have found that Nevada has unique problems due to its geography. We are a very large and sparsely populated state, and that can make providing defense to indigent defendants very difficult. We have decided that the best solution for this, as my colleague Mr. Keitz will further explain, is a public defender system with regional offices throughout rural Nevada. As Attorney Shawcroft mentioned at the previous meeting, there is a concern that the defenders will not be able to work closely enough with their defendants because of the physical distance between their offices and where the defendants are located. We can resolve this issue by having regional offices that are located centrally throughout. Another concern was raised about the attorneys not being able to have enough of a caseload. It may be necessary to allow the attorneys to do private work in addition to representing indigent defendants in order to guarantee they have an adequate source of income.

Mr. Keitz:

After carefully considering many policies and ideas, we have decided that the best policy for Nevada that would put the least strain on the resources and have the best effect would be a statewide public defender system with regional offices. This system would be more effective due to the regional offices that would allow the attorneys to better represent their clients due to being closer. To ensure that this works properly, the state would have to set standards for the attorneys and the counties would have to be responsible for adding maximum one-fifth of the cost to fund this program. This is because other programs similar to this have been attempted before and they tend to fail due to a lack of funding for the rural areas that cannot afford to fund themselves. If the state were to contribute the adequate funds, this program should work better. We

believe that if the state and counties work together to ensure the protection of the Sixth Amendment right to counsel, we could stop the denial of this basic right.

Chair Cherry:

Thank you very much, and I'm very proud that your Academy has decided to take this issue on, and your presentation was magnificent. I'm so proud of what you said as a Justice of the Supreme Court, as a former District Court Judge, a former Special Public Defender, a former contract attorney, a former private retained attorney and also as a former Clark County Public Defender. You hit the nail on the head as far as I'm concerned. You know that there are issues and they need to be resolved. Hopefully my Commission will be able to resolve those issues. Thank you for coming forward and God bless you. What a thrill to have young folks come forward and talk about indigent defense in this day and age. Thank you so much for participating, the whole Academy.

Next on the agenda is my opening remarks. By the way, we have a new date for the June meeting. It will be Thursday, June 28. I will announce it again at the end of the meeting. As with the last meeting, today we will receive an update from the Sixth Amendment Center regarding the site visits and any information they are developing towards making recommendations for Nevada. We are also again receiving input from stakeholders. At the last meeting, we heard from public defenders and local governments. This time, we will again hear from public defenders, municipalities and judges. As always, we welcome the perspectives of these different stakeholders.

Next on the agenda is an update from the Sixth Amendment Center, David Carroll, who is on the phone today. Mr. Carroll, would you please let the Commission know how things are going on your end?

David Carroll (Executive Director, Sixth Amendment Center):

My apologies for not being there in person, but we have been doing a lot of work out there. At the last meeting, we reported that we had completed our site work in Lyon, Nye and Esmeralda Counties. Since the last meeting, we have conducted interviews and site visits in Churchill, Douglas, Eureka, Lincoln, Pershing and White Pine Counties. That was the trip that we talked about, embedding one of our lawyers for 2 weeks out there. We also had two lawyers for the entire week in Elko last week, and the final trip is mine. A week from Sunday, I'll be flying out and doing Humboldt on Monday, Lander on Tuesday, Mineral on Wednesday, and also stopping by and talking to the Fallon students you just heard from. The good news is that by the next meeting, and I requested Justice Cherry to look towards the end of June because we will finally be able to start telling you what we found. We wanted to complete the site work before we started presenting the materials to you. I will tell you we are still very much concerned with the municipal courts and the level of justice in the justice courts is varying greatly depending on what county your crime is alleged to have been committed in. We have completed interviews with court administrators and judges in all district, justice and

municipal courts where we were trying to get budget information on how much has been spent in the past 5 years, breaking it down between what's been paid for direct services for attorneys versus experts and investigators and mileage or anything else the court may be paying for. We've also dug down and started to collect recoupment information about what courts are charging people for services for indigent defense and how much they have been able to collect on that. We're finding some very interesting stuff there with great disparities between what people are trying to do, again, on the municipal court level versus the justice court level. There are a couple lingering courts like the East Fork Justice Court who said they're short staffed and they had budget reports that they had to get done last Friday. They have committed to getting me that material in the immediate future, so we believe we will have 100 percent compliance on all the information that we've requested from all the courts which, I can tell you, we simply haven't ever been able to do in any other state. I think it speaks well for the cooperation that we've received from people. One of the things we will be talking about is that we are finding numbers of attorneys that are on several different panels, including those in Clark and Washoe. It really is going to be an issue of a judge may know what they are assigning an attorney in the court in which they are in front of, but they have no idea what the attorneys are doing in other counties or other courts in other counties, and indeed have no idea about their private caseloads as well. We've seen some good things, as I've said in the past, but we also are seeing problems that are going to need to be addressed by this. But we will be ready with actual hard data for you at the next meeting. We just want to make sure we're fair to all the counties and see all the counties before we start presenting our conclusions. I'm happy to take any questions if the Commission has any.

Chair Cherry:

Thank you. Any questions for our consultant, David Carroll? Seeing none, thank you very much, and your report is enlightening as to the situation in the rural counties especially. Hopefully, you'll come up with some solutions. Were you able to hear the Academy's presentation, the students' presentation about how they feel about indigent defense?

Mr. Carroll:

I did, and I'm actually looking forward on my trip a week from Sunday that we stop by and talk with them. I have told them I'm not at liberty to talk about what we are finding currently, but I'm happy to talk to them about our past work in the state and about the historical work that we did for the court 10 years ago or so, and just generally our views across the country about what's worked and hasn't. I've been very impressed with them in our conversations, but I do want to make clear that we have laid guidelines and ground rules that I'm not going to share publicly with anybody except the Commission and what we're finding in this work.

Chair Cherry:

Well, you need to be very prepared. These are very bright students and they know a lot about indigent defense. I think they're going to be challenging some of the information that you provide them. I'm so proud to have the Academy so interested in indigent defense, to see some young people in this state be able to come forward and make the presentation that they made. I was just overwhelmed. I'd like to thank the Academy.

Next on the agenda is the input from stakeholders. We're going to start with the judge in Ely. After that, we'll hear from the municipalities and other stakeholders. Judge Dobrescu, go ahead and give your presentation.

Judge Steve Dobrescu (Chief District Judge, Seventh Judicial District):

Thank you for the opportunity to testify on this very important matter statewide. The Seventh Judicial District encompasses the rural area of Nevada, including White Pine, Lincoln and Eureka Counties, and we cover approximately 23,000 miles. I returned to Ely after law school in 1986, and after serving a 1-year clerkship for the Honorable Merlyn H. Hoyt, I began my service as a Deputy District Attorney in White Pine County. From 1987 to 2001, when I was appointed by Governor Guinn to the bench, I was a Deputy District Attorney and I had private practice for 11 years. In addition, I served as a contract Deputy District Attorney in Lincoln and Eureka Counties. As a District Judge, I have presided over thousands of cases in this district. I've also served as a visiting judge in Reno, Las Vegas, Elko, Carson City and sat with the Nevada Supreme Court in 2004 and 2015.

When I started my career, the Nevada State Public Defender's Office represented most, if not all, of rural Nevada. Steven G. McGuire was the Public Defender in the Seventh Judicial District, and he was a great attorney. I tried many cases against Steve, and he eventually left Ely, moved to Carson City and became the State Public Defender. Diane Crow also began her trial experience in White Pine County as a State Public Defender. I tried cases with her and against her, and she also left Ely and eventually became the State Public Defender. Our current State Public Defender, Karin Kreizenbeck, also started her career in Ely as a law clerk for my former colleague, Dan Papez. Our current Chief Deputy State Public Defender, Marcie Ryba, started her career as a law clerk to myself and Judge Papez in Ely, and again, moved to Carson City. Bill Murphy, the other top State Public Defender, also started in Ely as a Deputy Public Defender. Each one of these great attorneys I named started their careers in this district, and each one of these great attorneys we tried very hard to keep in Ely and keep them in our district, but they didn't stay. For the most part, that has been the standard procedure for the Public Defender's Office in our experience in the Seventh Judicial District Court for my 30-plus years here. I've seen times when the State Public Defender could not fill a position here for many, many months, or more often than not, fill a position with a person who is only counting the days until they can move or retire.

In 2013, Lincoln County dropped the State Public Defender and contracted with a local attorney. The quality of services in Lincoln County to indigent defendants immediately improved dramatically. Mostly, I believe, because the lawyer did not have to drive 120 to 150 miles one-way to meet with a client. In 2015, White Pine County followed suit. The county dropped the State Public Defender and contracted with three separate attorneys. Shortly after that, I saw an email prophesizing that Gideon in Nevada is dying, and I have to be here to say that that is not the case in the Seventh Judicial District Court. The quality of services has improved, the stability of the services has improved, and the County of White Pine has realized an average annual savings of approximately \$80,000 by the virtual elimination of contract conflict counsel. Eureka County attempted to stay with the State Public Defender, but according to their District Attorney, was told that counsel would have to be based in Carson City.

The contract attorney system that we have now appears to have closed the revolving door of attorneys and attracted attorneys to our area who want to stay, invest in the community and raise their families here. I believe a key component of that is the ability to have private practice as part of their contract. In January of this year, it was said, and I quote, "In rural parts of our state, indigent defendants may sit in jail for an extended period of time waiting to speak to an attorney while witnesses' memories fade and investigative leads go cold. Even after that defendant is appointed an attorney, he or she may be one of several hundred clients all vying for the attention of that single attorney." That statement does not now, and to my knowledge, has never applied to the Seventh Judicial District. So, what is my concern with the effects to reform the right to counsel? My concern and the concerns of my colleague, Judge Fairman, who has been on the Indigent Defense Commission, as well as my former colleague Judge Papez, is this: whatever reform that may be proposed and adopted does not or should not negatively impact the quality of indigent legal services that is currently being provided in our district. I applaud the work of this Commission and all the years of hard work previously done by the Indigent Defense Commission, and I'm pleased that the Sixth Amendment Center realized that a county-by-county assessment is critical because of the vast nature and the differences in Nevada.

In closing, I would emphasize that in Nevada, one size did not fit all, and I hope that when all the information is in, the Commission will find that in many parts of rural Nevada, indigent defense is not broken, but is actually flourishing. As a footnote, Justice Cherry, I'd like to echo what you said about the Academy's proposal. Just to be a little in-depth on it, their proposal is a statewide public defender, regional offices, statewide standards, allowing private practice work and the counties fund one-fifth of that. I think the Commission's job is over. Make a motion and that's what we should do.

Chair Cherry:

Thank you, Judge, and thank you to your counterpart Judge Fairman in White Pine. You guys do a great job, there is no doubt. I think both of you have a great understanding of indigent defense with your backgrounds as defense attorneys and district attorneys. Do

any of the members of the Commission have any questions? Seeing none, that was a great presentation. I'm so proud of you and Judge Fairman. Thank you very much for your presentation, and keep up the great work.

Judge Dobrescu:

Thank you, Justice Cherry.

Chair Cherry:

Do we have Ted Herrera, the District Attorney from Lander County, here? How about David Neidert? Mr. Neidert is a former contract public defender.

David Neidert (Attorney, Churchill County):

For 5 years, I was a contract public defender in Churchill County, Nevada (Exhibit D). Before I begin my presentation on my tenure there, I want to briefly discuss two other issues that are highly relevant to the issue of indigent defense in Nevada. They both have to do with that most precious commodity, money. First, while I am no longer a contract public defender, I still accept appointments to represent indigent defendants in criminal cases. As a result, I am well acquainted with Nevada Revised Statutes (NRS) 7.125, which is woefully inadequate in its compensation amounts. As you undoubtedly know, this statute sets the amount of compensation at \$100 an hour for non-capital cases and \$125 an hour for capital cases. This statute also has caps on total fees that courts rightly ignore on a regular basis. The statutory amounts were set by the 2003 Legislature, raising the hourly fee from \$75 an hour. According to the Bureau of Labor Statistics, prices in general have risen approximately 30 percent in the last 15 years, which is actually a fairly low inflation. But the fees paid for appointed counsel do not change. Fewer and fewer attorneys are willing to accept these appointments. By comparison, attorneys appointed in federal cases receive \$140 an hour in non-capital cases and \$188 in capital cases. The other issue that has to do with compensation is within the Office of the State Public Defender. That office, like their other counterparts in state government, including the Office of the Attorney General, top off their deputies at pay rates 30 to 40 percent lower than their counterparts in Clark, Washoe and Elko Counties. When your pay structure is such that you're paying that much less, it is difficult to both recruit and retain good people. You are going to have a hard time not having high turnover that makes effective representation difficult.

Now to my tenure in Churchill County. I was a contract public defender for Churchill County for five years, from November of 2012 through November of 2017. My tenure as a contract public defender should be of some interest to this Commission. To put it simply, it is a matter of the good, the bad and the ugly. First, a brief history. Churchill County had been part of the State Public Defender system until some point in the late 1980s. The county left the State Public Defender system because the office would send deputies out from Carson City. Fallon felt ill-used. It felt it was not getting sufficient bang

for its buck. Churchill County's solution was to hire a local attorney, Paul Drakulich, to act as its Public Defender. Mr. Drakulich, in turn, contracted with another attorney to provide conflict representation.

This system was in effect until 2012, with the same attorney acting as the primary Public Defender the entire time and several other different attorneys acting as conflict counsel. In 2012, Churchill County realized this system was becoming untenable and its public defender system was teetering on the verge of collapse. In the summer of 2012, Churchill County started looking at other models. The County Commission ultimately concluded that the best model would be to contract with three attorneys as independent contractors to provide indigent defense. The Commission decided that \$10,000 a month was an ideal amount to offer as compensation. At the time, Lyon County was paying its contract public defenders \$11,000 a month. As I was told, because Churchill County only had one justice court and everything was centrally located, lower compensation was appropriate since there was no need for travel between different courts or offices in different parts of the county. I had left the Office of the Attorney General after 15 years in the summer of 2012, so the timing could not have been more fortuitous. I recruited another former Senior Deputy Attorney General, Troy Jordan, and the two of us put in a joint bid for one of the three contract positions. Mr. Jordan and I were both experienced prosecutors. I had been practicing criminal law for 20 years at that time and Mr. Jordan had been practicing criminal law for 8. Mr. Jordan and I thought that sharing this contract, coupled with the appointed work each of us was accepting in other counties, particularly Washoe, would provide us with sufficient income. Fifteen or so other attorneys also applied, though a Fallon-based attorney told the County Commission that he believed the level of compensation being offered was inadequate. We were assured in their selection process that the Criminal Division of the District Attorney's Office was not part of the selection process. In early November, the County Commission was presented with the recommendations of the selection committee as to whom to give the contracts. Mr. Drakulich and another local attorney, Jacob Sommer, were awarded two of the three contracts. Mr. Jordan and I were offered the third. Ironically, the attorney that Mr. Drakulich had been paying as his conflict public defender, Sheri Emm-Smith, declined to apply.

However, a problem had arisen. Mr. Drakulich had been arrested for a DUI (driving under the influence) and had checked himself into alcohol rehab. The county needed someone to fill in immediately. Mr. Jordan and I were approached and asked if we would start immediately and take over his caseload in his absence. In return, the county offered to pay each of us \$10,000 a month for November and December. We agreed. With his permission, we temporarily moved into Mr. Drakulich's office and started the next week. Less than a month later, we moved into our permanent offices. We walked into an unholy mess, with cases languishing and multiple cases set for trial. Mr. Jordan and I agreed that the best approach was for each of us to be responsible for half of the caseload, while providing cover for the other half.

One of the cases set for trial involved a charge of open murder. The case was not a “who did it” but “why did he do it.” While the trial judge was willing to reset the trial date, the trial was projected to last 2 weeks. There were thousands of pages of discovery. The preliminary hearing had lasted over a day. The defendant had been sent to Lake’s Crossing twice. Mr. Jordan and I realized that preparing for and participating in a trial of that complexity would take most of a month of the trial attorney’s time. The contract we had just signed allowed for ancillary services but there was no provision for extra compensation for complex trials. There was no way for one of us to prepare for trial and do any other legal work. We approached the senior judge assigned the trial and proposed that one of us be appointed as co-counsel at \$100 an hour with the other attorney handling the case as part of the contract and both us splitting the money from the appointment. Remember, each of us was being paid \$5,000 a month. For whatever reason, the senior judge asked for the input from the prosecutor handling the case. The prosecutor argued there was no need for second counsel and the judge denied our request. Realizing that this case would be financially ruinous for one of us, Mr. Jordan and I literally played rock-paper-scissors at the District Court counter to decide which one of us would be responsible. I lost. Fortunately for me, the case settled with my client pleading guilty to second-degree murder without a weapons enhancement. This was doubly fortunate, because as I reviewed the preliminary hearing transcript I discovered an error that, had it been committed at trial, would have almost certainly led to reversal and re-trial. Our local district judge, Tom Stockard, had been disqualified from the case. He later told me that he disagreed with the other judge’s decision and would have appointed one of us as co-counsel to prevent the case from being financially ruinous. Unfortunately, that was small solace when Mr. Jordan and I faced the possibility of financial ruin in the first year of our contract.

A year later, at the end of November of 2013, Mr. Jordan came to me and indicated that he didn’t think that our joint contract was working financially. Because the Washoe County Public Defender had made the decision to stop conflicting as much as the office had in the past with cases, there were fewer cases going to the Alternate Public Defender in Washoe County and from there fewer cases to the Bob Bell group. Mr. Jordan suggested that he resign his portion of the contract so that I could have the full contract and he would pursue a private practice based out of Reno. I agreed. From December of 2013 until December of 2017, I personally handled approximately one-third of the public defender cases in Churchill County. During that time, I took five cases to jury trial. I received an outright acquittal in four of those trials. My client was convicted in the fifth.

The cooperation from the court, particularly Judge Stockard, was beyond reproach during my tenure. In an early case, I was appointed to represent a client charged with dozens of counts of statutory sexual seduction involving a young woman who was 14 or 15 years old. The case had gone to preliminary hearing and the young woman had testified about a long-term ongoing sexual relationship involving most kinds of sexual activity, hence the stacking of the charges. While meeting with this client at the jail, he informed me that he was, in fact, impotent. Along with his general denials, his lack of

criminal record and the lack of other physical evidence, I thought that impotence was a pretty good defense for statutory sexual seduction. However, saying you are impotent and having persuasive evidence for a jury that you are impotent can be two very different things. I asked a friend of mine, a highly respected internist in the Reno area, if he would examine my client and testify if necessary as an expert witness at trial. Physicians are not cheap, and even when doing something of a favor for a friend, the discounts are not huge. My doctor friend had his price, both to examine my client and to testify in court, if needed, in the thousands of dollars. I approached Judge Stockard ex parte and told him who I needed to hire, why I needed to hire him and the cost of his expertise. Judge Stockard readily agreed and signed a sealed order authorizing payment for the doctor's asking price. The doctor examined my client and ordered blood work. The doctor's report came back with the opinion that my client had abnormally low levels of testosterone and was, in fact, impotent. At 4:30 p.m. on the Friday 3 weeks before trial was set to commence, I noticed this physician as an expert witness and supplied both his curriculum vitae (CV) and the report containing his conclusion to the prosecution. I heard later that the prosecutor was none too pleased with my notice. Apoplectic may in fact be the best descriptor. He quickly discovered my expert was not a hired gun and was in fact a very well respected doctor in his field. A week before trial, the prosecutor made an offer my client could not refuse. As a result, my client, who been facing the scarlet letter of being a registered sex offender and many years in prison as a sexual predator, instead pleaded to two gross misdemeanor counts of annoying a minor, which does not require sex offender registration.

But this case was not the exception. In addition to the doctor I hired in this case early on, I was never denied any other expert I sought either. Any time I had a case set for trial, I would ask ex parte for approval for an investigator. Again, I was never refused. I never felt like the county, the courts or the District Attorney ever tried to interfere with how I handled any of my cases. The District Attorney usually supplied discovery in a timely manner within days of an appointment. To ensure that I met with my client and the indigent defendant did not languish in jail, the Justice of the Peace, Mike Richards, holds arraignments on Monday, Tuesday and Wednesday mornings. He appoints counsels at those initial appearances and expects the public defenders to meet with their incarcerated clients before court on Thursday of that same week so they can intelligently participate in a pre-trial with the District Attorney and discuss their clients' custodial status. Additionally, Churchill County has a Pre-Trial Court Services program which evaluates risk to the community, and in many cases, Judge Richards will grant an "O R" (own recognizance) based on the Court Service's recommendation at the same time he appoints counsel. I had unfettered access to the jail to meet with clients at almost any time I wanted to meet with them, staffing and unrelated bookings permitting, morning, afternoon or night.

Those are all good things that Churchill County should be commended for during my tenure. However, in addition to the judge refusing Mr. Jordan and my request for the appointment of co-counsel, there were other things that were also bad about the experience. First, the contract itself was for 5 years. There was no increase in

compensation for the entire length of the contract. There was no additional compensation for lengthy jury trials. On two occasions, the county did not pay the contract public defenders in a timely manner. The first one occurred as my wife and I were preparing to travel out of state on a vacation. That occurred because someone in the Controller's Office did not release the funds. The other one occurred literally on New Years of 2017. On both occasions, I felt a singular lack of appreciation or concern on the county's part due to their acts, and I would add that the New Years one was deliberate, with none of the contract public defenders being informed in advance. The contract also had an asymmetrical termination clause. That is, if I wanted out of the contract, I was required to give 90 days' notice. If the county wanted to terminate my contract, they only had to give 60. Termination of parental rights and post-conviction petitions were outside the scope of the contract. However, when Judge Stockard decided that mediations were a good way to resolve certain child dependency cases, those mediations, which could sometimes last half a day, were included. The county took the position that extra work was expected, and it appeared very unappreciative when it was done without additional compensation.

In April of 2014, Mr. Drakulich was suspended from practicing before the Nevada Supreme Court. The Churchill County Commission subsequently voted to terminate his Public Defender contract. For approximately 4 months, Mr. Sommer and I handled all the public defender cases in Churchill County. For the first 2 of those months, we did not receive an additional dime of compensation, even though our caseload increased by 50 percent. When Mr. Sommer asked about him and me being paid for the extra work, we were informed by the County Comptroller that there was no money budgeted and there was nothing he was willing to do to ameliorate the issue. In fact, I don't remember receiving so much as a thank you for the extra work. The county should have been on notice that there was a problem with their Public Defender system, both in the scope of representation and the compensation it provided. When Mr. Drakulich was fired by the county, it put out a request for quote (RFQ) for his replacement. The response was underwhelming. The caliber and level of experience of the attorneys that applied was such that Judge Stockard asked his Child Support Master, Charles Woodman, to apply. Mr. Woodman agreed if he could have another attorney, Peter Smith, handle the bulk of the contract with him supervising. Mr. Smith was inexperienced in criminal law at the time, but Mr. Woodman's tutelage, I think, actually made it work. In 2016, Mr. Woodman decided to run for Reno Municipal Judge. He advised the county that, if elected, he would have to take office almost immediately. Churchill County sought RFQs. They received four bids. One was from Mr. Smith. Another was from a family law practitioner with no criminal law experience. The third was from an attorney who had just taken the bar, and the final one had been an attorney for 2 years but had skeletons in his past such that his appointment would have been hugely embarrassing for Churchill County. Unfortunately for Mr. Woodman, a very good attorney who would have made an excellent judge, but fortunately for Churchill County, he lost. Churchill County did not have to act further on those RFQs.

In 2017, however, the county proved, at least to me, that it views indigent defense as the ugly stepchild for which it will provide the absolute minimum funding. In the first part of 2017, Mr. Woodman, Mr. Sommer and myself held informal discussions on the state of our contract. We became aware that Lyon County, which had been the original model for Churchill County, had agreed to major increases in the compensation levels it was paying its contract public defender. We knew that Douglas County was paying its contract public defenders almost \$80,000 a year more than we were receiving. We naively thought that Churchill County would recognize that the amount it was paying was insufficient. When the county held its budget hearings in February of 2017, all three Public Defenders appeared before the Commission and expressed our concerns. We thought that we had impressed upon them that we needed to bolster the amount the county was paying for indigent services. We heard nothing. We waited and heard nothing. Finally, in late August of 2017, the County Manager asked me if I would meet with her in her office to discuss the Public Defender contract. I told her that I would. I found it odd that she wanted to speak with just me and not all three contract public defenders together. Still, I went into the meeting expecting the County Manager to hear my thoughts and engage in a discussion on what a fair compensation amount would be, as well as what other portions of the contract Mr. Woodman, Mr. Sommer and myself all thought needed changing. I was mistaken. Instead, the County Manager bad mouthed the county's fiscal health and offered to renew my contract for 3 years at the same amount the county had paid for the last 5. No increase. Some minor tinkering to the edges, but basically the same deal as before. Maybe if the economy stayed positive, we might get a 2.5 percent increase in the next fiscal year, \$250 a month, after 6 years. I was stunned. I had thought my loyalty in sticking with the contract, my experience in representing indigent defendants in Churchill County for the preceding 5 years, my trial record, everything would be appreciated. Obviously, it was not. Instead, I received the very real impression that the County Manager, Eleanor Lockwood, viewed the Public Defenders, at best, as a budgetary inconvenience. I listened politely but remained non-committal. I told her that we needed to discuss the issues further.

Over the next few days, I wrote Ms. Lockwood a nine-page letter. I told her that I was unwilling to re-sign for \$10,000 a month. I used the data from the Administrative Office of the Courts (AOC) to compare Churchill County's caseload versus other counties. I specifically focused on criminal cases filed in the District Court, since all criminal defendants are entitled to representation in those proceedings, and public defenders handle 95 percent of these criminal cases. Using the AOC numbers, I noted that the three Churchill County Public Defenders had the highest caseload per attorney of any contract public defender county in Nevada and the lowest rate per case. I also noted that, according to the AOC, Churchill County's District Court criminal case filing rate had risen 145 percent between 2013 and 2016. Additionally, I noted that the District Attorney's budget had increased 8 percent during the 5-year period. Using data from Transparent Nevada, my letter further noted that her own pay had increased 19 percent during the contract period, the county's Comptroller's pay had risen 18 percent and the Chief Criminal Deputy District Attorney's pay had risen 11 percent, even as the Public Defenders' compensation had remained flat during this same period. I further noted that

the amount of time I spent working on contract matters had risen from about three-fourths of my time in 2014 to 80 percent of my time in 2017. I also noted that once overhead was taken into account, I was being paid significantly less than the most junior Deputy District Attorney, even though I had more actual experience practicing criminal law than any other attorney in that county. The County Manager's response was silence, other than to put out an RFQ for my position. Over the next month and a half, only two attorneys responded to the RFQ, and one of them was the same ethically disqualified attorney who applied when Mr. Woodman was running for Reno Municipal Judge.

I had no further contact with her for over a month. In the interim, other than the RFQ and receiving pushback from Mr. Sommer and Mr. Woodman, she placed an agenda item on the County Commission's September 20 agenda where she proposed giving 3 contract public defenders a 5 percent increase, or \$500 a month, the first fiscal year, and a 2.5 percent increase the next 2 years, raising the Public Defender pay to \$11,000 a month over 3 years. Unfortunately, on the date of the Commission meeting, I was scheduled for cataract surgery, so I could not attend the meeting. Instead, I sent the Commission a four-page letter endorsing a suggestion made by Mr. Woodman that the county conduct a study of Public Defender compensation over the next year, showing our good faith by re-signing for 1 year at the current contract rate. At the September 20 meeting, the County Commission tabled Ms. Lockwood's proposal and suggested conducting a workshop to discuss Public Defender compensation. I sent Ms. Lockwood a conciliatory e-mail. She responded with an unprofessional, angry email impugning my professionalism while providing strong evidence that the Criminal Division of the District Attorney's Office had inserted itself into the negotiation process. The workshop itself never happened. I do not know if she individually contacted the County Commissioners or not, but ultimately, Ms. Lockwood decided to reduce the number of contract public defenders from 3 to 2, while increasing the compensation of the 2 remaining from \$10,000 a month to \$14,000 a month. I was left out in the cold. In effect, she increased the workload of Mr. Sommer and Mr. Woodman by 50 percent while increasing their compensation by 40 percent. She did not negotiate with Mr. Sommer or Mr. Woodman. Rather, she used coercion and intimidation, telling Mr. Sommer that he had less than 2 days to decide whether or not to accept her offer, and that if he did not accept it, she would seek an RFQ for his position. Mr. Woodman was given a similar ultimatum.

I made a final plea to the County Commission. I made two comparisons for them to consider. First, I looked at the per capita amount each county spent on indigent defense. Using that metric, Churchill County's indigent defense budget was second to last at \$14.47 per person. The state average was \$22.35. I then compared the indigent defense budget as a percentage of the District Attorney's budget. Churchill County had the lowest percentage of any county in the state at 16 percent. The average was 31 percent. Despite these numbers, the County Commission adopted Ms. Lockwood's proposal. On December 1, 2017, my tenure as a contract public defender came to an end. I would be dishonest if I did not say I was both hurt and angry at how I was treated by the County Manager. I would also be dishonest if I did not say I was deeply

dismayed by the active meddling by the Criminal Division of the District Attorney's Office.

Overall, other than the events surrounding the contract renewal, I would have to say it was a positive experience. My respect for Judge Stockard and Judge Richards remains high. They are both jurists who I believe deeply care about indigent defendants and those who represent them. I just wish I could say the same about the Churchill County Commission and County Manager Eleanor Lockwood. Instead, I feel like that unwanted stepchild, part of a system they wish they did not have to fund but know that they do. Indigent defense deserves better than that. For the sake of the indigent defendants of Churchill County, I hope the county realizes the mistake it made 7 months ago. Thank you for your time.

Chair Cherry:

Thank you for your testimony. It was very enlightening and brought back a lot of memories to me when I was a contract attorney at \$30 an hour in court and \$20 an hour out of court and spent a lot of lunch hours at the county jail making sure I got my \$20 instead of eating lunch when I was a young attorney in private practice, so I understand. I also feel bad about your relationship with Churchill County. Vinson Guthreau is here representing Dagny Stapleton, who is unavailable today, for the Nevada Association of Counties (NACO). As much as you had a bad time with them, I sort of look to the state, which has really let us down as far as indigent defense funding. We put a tremendous burden on the counties, a tremendous burden, and I know that when you've got to worry about public safety, education and welfare and the things that both the municipalities, counties and the state has to worry about, it makes it real tough for the counties to try to foot this whole bill. But they've come forward. At least they try. But I understand being hurt. I can understand. You're an excellent attorney and you're a credit to the whole policy of indigent defense. The good, the bad and the ugly is a great comparison or analogy of what you've gone through. I hope that the state will start coming forward and helping these counties with indigent defense so that there is a fair amount of money paid. I know that Judge Stockard—I was the Chief Justice when he was appointed to the court, and what a magnificent judge he's turned out to be. I'm so proud of him, and Mr. Richard also as a Justice of the Peace. Are there any questions from the Commission?

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

I have a comment. I don't have any questions, and I will not be at the next meeting, so I want to make these comments now based on the last testimony. We have to at some point adopt a commission that oversees the appointment of counsel. When I hear that in a murder case counsel need second chair and a judge says no and a district attorney gets to speak up and decide whether they believe a second chair—it happens all the time. It's outright wrong, and the only thing that is going to remedy that is a commission

that is not beholden to a county to determine whether or not counsel, experts or investigators are necessary. We've heard this story for the last 20 years in one version or another, and I find it incredibly troubling. At the last meeting, I listened to that county manager or county commissioner say, "I can't decide. I'm not qualified to determine who is competent counsel," and I could not agree with her more. She absolutely cannot and should not be put in that position. So, wherever we go with this Commission, we have to end up with a permanent commission for rural Nevada, and also for the appointment of either my successor, and I'm actually on the committee to pick Mr. Bosler's successor, but we have to do this not on a case-by-case basis, but we have to establish a commission that looks at the appointment of counsel, that keeps the local courts out of it, because they have other decisions to make on the case, and certainly the prosecutors have absolutely no say in the appointment of counsel either, in the number of counsel or who counsel should be.

Chair Cherry:

Thank you, Mr. Kohn.

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

Are there any rules, court rules or ethical rules, that govern the relationship between prosecutors and defense attorneys in situations like this that you described?

Mr. Neidert:

I'm not sure of an ethical rule. If there is one, I can't think of it off the top of my head. But I agree with what Mr. Kohn said. I thought that the judge hearing the case asking for the input of the prosecutor handling the case, that it was very inappropriate of that judge to have done that. By the way, I want to make it clear, because as I gave my prepared testimony, when I said the case settled, I didn't settle the case because I thought, "I'm not going to be financially ruined." Actually, based on the facts of the case as I discovered the case, my client was charged with open murder. They wanted him to plead guilty to first-degree murder with a weapon with 20 years on each recommendation. Based on my review of the record, second-degree murder without a weapon was actually a very good negotiation for the case.

Chair Cherry:

I would say so. Very good. And the fact that he was in Lake's Crossing a couple times made a big difference.

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

I don't have a question, I just am glad to hear a confirmation of what I've been saying since we formed the Indigent Defense Commission back in 2007 or 2008. A district

attorney has absolutely no business to provide any input whatsoever into the strategic and tactical choices made by counsel with regard to the retention of any witness.

Chair Cherry:

Thank you, Senior Justice Maupin. I agree with him 100 percent. I was lucky in Clark County when I was a District Court Judge to even make sure that in murder cases we had two counsel, because the District Attorney always had two counsel and I just thought it was even-handed. In fact, even in some retained situations, the county was good enough in Clark County to allow me to appoint second counsel so that one was retained and one was appointed. It worked out pretty good. But your testimony was magnificent. I hope David Carroll spends some time with you before his final report, because I think that you gave great analysis to the problems that exist. There are some good, there are some bad and there are some real ugly.

Mr. Neidert:

On that basis, I actually spoke to the representative from the Sixth Amendment Center when they did their tour of Churchill County about a month ago, and I spent about 1 1/2 hours and told them much the same thing that I just told you folks.

Chair Cherry:

Excellent testimony. Thank you very much. Our next witness is the Court Administrator from the Las Vegas Municipal Court, Dana Hlavac.

Dana Hlavac (Court Administrator, Las Vegas Municipal Court):

Thank you very much for this opportunity to describe and provide background on the municipal court's administration of indigent defense. Within the Las Vegas Municipal Court, we responded to Administrative Docket (ADKT) 0411 by submitting an administrative indigent defense plan back in 2008, and that has subsequently been amended in 2016 (Exhibit E). That plan calls for the selection of candidates to fulfill the role of public attorney or public defender by an independent committee. That independent committee includes a public defender, and that can be county, federal or any counsel compensated by a governmental entity to represent indigent persons; an appointee of the Nevada State Bar; an appointee of the Criminal Justice Association; a member of the City of Las Vegas City Manager's Office; and then a judge, former judge or other person appointed by the Nevada Judges of Limited Jurisdiction Association.

In practicality, what happens is the city would put out an RFQ. All of the responses to that RFQ are forwarded to this independent committee who then selects the top however many people they believe are eligible to serve the function of public attorneys. In the most recent RFQ, which we did I believe in early 2017, there were 8 respondents for 6 positions. Of those eight respondents, six of the respondents actually were already

public attorneys within the municipal court, and to maintain the ongoing string of representation, the judges said, "Let's have those six," and the city issued contracts to the existing six who were qualified by the independent commission. Additionally in this last prior year, we also sought out an RFQ for the provision of indigent defense in our traffic court, recognizing that there are instances where even though it is simply a traffic offense, the city attorney was seeking jail. The prior practice was to send those cases up to the criminal departments, which caused a delay, we felt an unnecessary delay, particularly for people who are already serving time or waiting for resolution of their case in custody. We now provide a public attorney in the traffic court sessions each day of the week for 1 1/2 hours during a public attorney session. Additionally, in what's referred to as a Sparks Memorandum of Understanding (MOU), or as the agreement between the court and the city relative to respective responsibilities in the management of the court, we have a paragraph which mandates that the city will pay whatever basically those contracts are and any fees that the court puts forward. The contracts themselves are what we call minimum compensation plus, which means there's a minimum guaranteed to the public attorneys, and at any time they feel they've exceeded a number of hours, they can seek additional compensation, and that contract automatically calls for the awarding of that compensation.

From 2013 through Fiscal Year 2017, we've averaged roughly half a million dollars a year on the provision of public attorneys (Exhibit F). That has ranged. Generally speaking, the attorneys have not sought additional compensation. I would note with regard to that, the attorneys generally appear in court for approximately 3 hours a day and then take care of their individual client contacts outside of that time. Frankly, it's not something that we are aware of or have access to in terms of how much additional time they spend. There have been attorneys who have sought additional compensation and received it, of anywhere from \$10,000 to upwards \$15,000 or \$20,000 above their underlying contract during the course of a year, and that has been awarded. To my knowledge, there has never been a request for an expert or additional fees for some sort of service or investigation or expert that have been denied. In the course of the last year, I personally know of roughly \$20,000 through separate cases where we paid for additional fees for interpreters and experts, particularly in vehicular manslaughter cases.

I think in the municipal court in general, there is a balance that we try to strike, and it does cause issues sometimes. That balance is between the fact that we deal with generally less serious cases, which generally carry less time, and every delay that is put in place in a system can cause a defendant to have an unnecessary delay in their freedom, so we try to balance the need to move those cases as quickly as possible with the need to provide representation as quickly as possible. There are issues relative to a remote jail site separate from the courthouse. Some judges deal with that in ways that I think are particularly effective. Other judges deal it in ways that may be deemed not as effective. The one difficulty is always that there is really no way to evaluate the effectiveness of the representation other than by the client's response to whether they believe they received effective representation, if they were happy with the scope of the representation and the quality of the representation. I would note that, relative to my

background, I've been both an Assistant Deputy District Attorney, as well as a Chief Public Defender and a Deputy County Manager, and now the Court Administrator for Las Vegas, and we do take this extremely seriously. We continually try to improve the quality of what's happening with indigent defense, quality for our technology that's available to the public attorneys to represent and to meet with their clients. We work actively with the jail to make sure that the highest level of access to the clients the in jail is available to our public attorneys. The difficulty will always be that cases move so fast, so quickly, really knowing what level of representation there is, and the quality of that representation is difficult for the court itself to determine. Really, our contracts mandate that the attorney abides by the ethical standards and by the American Bar Association (ABA) Ten Standards, but beyond that, we rely on the clients themselves to inform us whether there is a quality issue with the effectiveness of representation. That's all I have for now. If there are any questions, I would welcome them.

Chair Cherry:

Thank you for your participation over the years in the Indigent Defense Commission. Having been an Alternate Municipal Judge down in Las Vegas from 1977 to 1997, I know that that works. Also, when I was Assistant Public Defender for Clark County, I'm the one who set up the representation of indigents via the Argersinger case, so I'm very familiar with what goes on there, and I think you guys do a pretty good job. It will be interesting to see David Carroll's reaction to the urban municipal courts. Are there any questions for Mr. Hlavac?

Mr. Kohn:

Mr. Hlavac, obviously we all have the problem of trying to evaluate the work of indigent counsel. I do, you do. But I read through the contract. Do you require your attorneys to keep caseload numbers?

Mr. Hlavac:

The attorneys are required to submit a monthly report. It's rare that they do. I talk with them periodically, roughly once a month to each one to see how are they doing, but the actual numbers are not. Unfortunately, with our existing case management system (CMS), it's difficult to pull that information because it's inaccurate. We are switching to a new case management system over the course of the next year where we will be able to provide better data. I would note, while I was in Arizona, we had a caseload issue. I believe you and I have talked about this in my former life, and we literally stopped taking cases, did motions to withdraw, got sued, had all sorts of representation, including Norman Lefstein. The difficulty in using a pure number is always, it's really based on the complexity and what's the load. I think, although there is the Joe U. Smith standard, ABA standard, of I believe 450 misdemeanors a year, it's an old technical standard. There wasn't the technology and everything else. I don't know where that number is. I don't know if a pure number is really there, so what we look at is, the contract calls for

the number of hours. When an attorney is putting in too many hours that their hourly equivalent compensation goes too low, and I believe it was the fundamental principle behind the Joe U. Smith case in Arizona, their incentive then becomes financial versus justice. We never want to see that, so we always allow for them to ask for that extra compensation once their hours start reaching too high.

Mr. Kohn:

Mr. Hlavac, you and I have had many, many conversations about we've both had the same job as to caseloads and what the appropriate caseload is. Justice Cherry and I have been on a committee for a long time and we've never really addressed that. But my question is, do you just have your attorneys let you know how many cases and also their timesheets? You can't watch every lawyer do every case, I understand that. But the complexity of the cases in municipal court aren't like the complexity or the wide range of complexities that you have when you were the Public Defender in Mohave County. You're not going to have a death case in municipal court, right? You can have that vehicular manslaughter that you pointed out, but that's rare. So, after reading the materials—and you're doing a better job than any other municipal court that I know of—let me say that first and foremost, the Las Vegas Municipal Court is far and above the other municipal courts that I have seen down here. But if you can't have the attorneys keep their caseloads and also their timesheets and the number of times that they went to Stewart Mojave to visit clients who are in custody, I think they should keep those numbers. If you or someone else was reviewing that, you'd have a better idea of the work that they're doing. I say that because we do that in our office. When we have a client call up and complain, because I'm not sure that clients' input is the only answer, because that can depend on the client, their anger in the system, their mental health or the fact that a lawyer hasn't contacted them. But when we get a client complaint, we immediately see how many times were they visited? I would hope that the city would do that, would have lawyers keep track of the number of cases and the amount of client visits, either in their office, they're out of custody, or in Stewart Mojave if they are in custody. I think that would go a long way to helping you evaluate the lawyers, and I'm hoping that you can be a model for North Las Vegas, Henderson, Boulder City and Mesquite in Clark County. I think you guys are doing a really good job, but I think that's an easy way that we can do better.

Chair Cherry:

I think the colloquy between Mr. Hlavac and Mr. Kohn shows the definite need throughout the state for institutional public defenders, because what Mr. Hlavac runs into, and anybody else who's got contract attorneys is they also have private practice. Believe me, we've been working on caseload standards since 2008, and my statisticians in the Las Vegas Supreme Court Office, they're working very hard to try to figure it out, but as long as you have contract attorneys, whether they be in municipal court, justice court or district court that have private practice, it's very difficult to come up with caseload standards. Whereas Mr. Kohn and Mr. Bosler and Marc Picker and JoNell

Thomas in the institution and the Elko Public Defender's Office, they're able to do so much more with caseload standards because they understand exactly what the assignments are and their attorneys don't have any private practice. Let me tell you what's coming, Assemblywoman Benitez-Thompson. At least the rumor is, and John McCormick is in the audience here as he always is, that there are going to be more judges in Clark County and more judges—and this is district court judges—in Washoe and in the Fourth Judicial District that are asking for more judges because of the caseloads that exist for the judges. Whenever you have new judges, that means, especially if they do any criminal-type work, you need district attorneys and public defenders for them to do business. So, get ready. It's coming in 2019. I'll be retired at that time. Maybe I'll come down and give condolences to the legislators in the state, because this is going to be a big issue that goes hand-in-hand with what David Carroll is doing with indigent defense and what the Indigent Defense Commission is still doing with caseload standards. We're trying to figure out what the attorneys have, and now we're going to have to start looking at what the judges have, and that's why our folks, our statisticians in Las Vegas, are working very hard to prepare. So, Assemblywoman Benitez-Thompson, when they present these issues to the Senate and the Assembly, we'll know exactly what the caseload standards are for the judges, where they're asking for additional judges in Clark, Washoe and the Fourth Judicial District.

Are there any questions for Mr. Hlavac? Seeing none, thank you for your testimony. It was very enlightening and gives us an idea of what's happening in Las Vegas Municipal Court, which I can tell you is a very, very busy court. Thank you. Now we have the Court Administrator from Henderson Municipal Court, Bill Zihlmann. Let me just make a comment that my son happens to be an employee of the City of Henderson. He's a media person in government affairs. I don't know if that'll affect anything I say to Mr. Zihlmann or anything he says to me. If you'd give your testimony as to what happens in the Henderson Municipal Court, which again, Henderson and Green Valley are growing leaps and bounds and we expect it to even grow further. There is going to be more development there, as there is going to be in Northern Nevada and in Southern Nevada and the rurals. Get ready, because I don't think people could afford to live in California, so they're going to come and grace our great state.

Bill Zihlmann (Court Administrator, Henderson Municipal Court):

Thank you to the Commission for inviting me to this. It's my pleasure to be with you today. I've been around long enough that I remember Justice Cherry working as one of our pro tem judges, so I go way back. I'll be with the court about 25 years here in a couple months. As far as how our public defender process goes, it's very similar to the Las Vegas Municipal Court. We actually based our last request for proposal (RFP) off of their RFP that they put out, so we have three judges at Henderson Municipal. We now have Public Defenders assigned to each department individually through the RFP process. All the materials have been provided previously to the Committee, so I won't go into much detail about the RFP unless you have some specific questions. It is strictly

based off of Las Vegas Municipal Court's selection process. We have the same requirements.

As far as the contract itself, it was for an initial 2-year term with one 2-year renewal. The cost range that we'll be providing afterwards—roughly, our total costs from between 2013 to 2017 has ranged between \$272,000 and \$300,000 for our Public Defenders, and that is the three contracts and an additional conflict public defender use if one of the assigned defenders have to recuse themselves. We also have a couple specialty court-side public defender contracts for very specific attorneys. That encompasses all of the costs for us.

The process itself, the application form that we have developed is provided to each offender that's facing a possible jail sentence, either by NRS requirements or city attorney's request, along with the criminal complaint and the Admonishment of Rights forms. Prior to the offender's arraignment, the Public Defender reviews the arrest report and offer from the city, meets with the offender individually, reviews and advises the offender of their rights and conveys the city's offer. If the individual wishes to accept and enter the plea, the judge will canvass further in open court again about their rights, and the Public Defender represents the person through sentencing. If they wish to enter a not guilty plea and have the matter set for trial, then the judge would review the application and appoint the Public Defender's counsel with no fee if the indigency guidelines are met. We use the Health and Human Services (HHS) poverty guidelines that are updated annually regarding indigency, and Public Defenders in our court are present at all criminal arraignment and criminal trial calendars, so they're there at least for three sessions per day, from our day. Other than that, I would leave it open to questions from the panel.

Mr. Kohn:

Same questions I asked Mr. Hlavac—do you keep records of how many cases your lawyers get and how often they visit their clients?

Mr. Zihlmann:

We do have numbers that we can pull. One of the things that we do with our court case management system is when the Public Defender is appointed, we have a specific work docket that we can pull, so I can garner reports from that data. The other one that we also add is if the Public Defender's present for negotiation. We've got about five or six Public Defender-related dockets that we add that we can then pull statistics out, and I'm actually working on finalizing that for the last 3 years, so I'll put that as part of my supplemental and get that submitted to this Commission.

Mr. Kohn:

Thank you.

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

I wanted to ask, and I remembered what I wanted to ask the Las Vegas Municipal Court Administrator as well as the Henderson Municipal Court Administrator, and anybody else who has any input. I am a Deputy Public Defender in Las Vegas, and we've actually got really good ways to visit people in the Clark County Detention Center if the timing allows it or whatever from the jail. What do you all have in place to make it easier? Like, we can do a video visit from our desk as opposed to—and it's only two blocks from my office to the Clark County Detention Center, but what do you have in place to make it easier for the public defenders who are doing the municipal court? Even in Churchill County, are they using technology in order to facilitate people being able to visit clients?

Chair Cherry:

Mr. Hlavac and Mr. Neidert, could you please come back up? Let's have all three of you answer the Commissioner's questions. I think that's an excellent, excellent question.

Mr. Zihlmann:

All of our offenders are housed in the Henderson Detention Center. We're actually in the same building, so for us, the Municipal Court's on the third floor, Henderson Justice Court is on the second floor and then the City Attorney's Office, alternative sentencing and the Detention Center. For any of our sessions where the offender is in custody, the Public Defender actually is taken down to the Detention Center and meets with them in a side room down there before being brought on camera before the bench. They also have the ability to go to the Detention Center and use the visitor process any other time they need to. Again, just half a block down the street. It's kind of a weird set up, but they have that ability. Of course, they have an office in the courthouse that we have provided for the Public Defender, so anybody that's out of custody, they have the ability to meet with them on-site any time that they're in the facility.

Chair Cherry:

They have private practice, is that correct, in Henderson?

Mr. Zihlmann:

Yes, it is.

Chair Cherry:

Your Henderson contract attorneys, you're calling them public defenders, but they're contract attorneys with private practice?

Mr. Zihlmann:

That is correct. Yes.

Chair Cherry:

Okay. So, their private offices are off-premises?

Mr. Zihlmann:

Correct. But we do provide them office space in our facility as well for when they're acting as public defenders.

Mr. Hlavac:

The Las Vegas Municipal Court is located, I believe, 4 or 5 miles away from the Stewart actual facility. For arraignments, the defendants appear by video. The courts do those videos in a variety of different ways. Some of the courts literally have a separate opportunity where there is a one-on-one. Other courts, it's more public, where the attorney encourages the client not to get into facts of the case and they simply confer what the offer is. If the case is not resolved at that time, those defendants for further proceedings are brought to the court and opportunities in private conference rooms are provided for that counseling time between the public attorney and the defendant. We are working with the jail trying to put technology to provide for that video visitation. We did that back in Mohave County, and we want to do that here. We are kind of in a holding pattern pending a possible new municipal courthouse, which we'll see about within the next few months. The never-ending saga of whether there is or isn't. But we firmly believe that we do have the money to put those systems in, and it's just a matter of whether they'll be in one courthouse or another and the time it will take to do so.

Chair Cherry:

Mr. Neidert, in Churchill, how do you handle jail visitations?

Mr. Neidert:

Well, first the Sheriff's Department makes the Public Defenders available. People in the jail have free phone calls, so they can call from the jail to the attorneys. The jail is also very, very good about giving the Public Defenders close to unfettered access to their clients. Churchill County just moved into a new jail facility right after my contract ended, ironically, but I've had clients in that jail since then and it's become even more smooth. Basically, you go, and as long as they've got the staffing, and usually if they're not doing a booking of somebody into the jail facility, they make their jail populace available to the attorneys almost any time of the day or night you want to show up. There are not restricted visiting hours. If I say I want to see so and so, they let me in. The new jail

actually has, unlike the old jail, very nice conference rooms in the secure side of the jail so that the prisoner and their attorney can meet in a room that's dedicated as having a table and chairs and the kind of things you might want to have when you're talking to your clients. I think Churchill County is very good in that respect.

Chair Cherry:

Well, that's good news from the Henderson Municipal Court, the Las Vegas Municipal Court and Churchill County as to access to clients, so that's good news.

Mr. Kohn:

Wait, I think you may have jumped the gun on that one. I would love to ask the gentleman from Henderson, how do phone calls to and from clients work in the Henderson jail?

Mr. Zihlmann:

The office space we provide for the Public Defenders have city of Henderson phones. To my knowledge, they have access either from the offender in the detention facility to make calls to their offices or the public defender can make arrangements with the detention center staff to have time to speak to their clients.

Mr. Kohn:

I would ask you to please check on that, because we certainly do not do any work in the municipal court, but we do in the justice courts, so we will at times have clients in your jail awaiting a preliminary hearing. I've tried to make arrangements with the jail for us to be able to call in, because sometimes district attorneys will give us offers or other information late into the process and we can't get from downtown Las Vegas to Henderson, and they've made it impossible for us to the point where we have considered a lawsuit. I've asked justice court judges to work on it and they have not been successful. I would like very much for you to please see if that has been remedied. I have not had to deal with that in approximately a year, but I have had really difficult times dealing with the jail with the people that are held there for preliminary hearings. Maybe you and I and the mayor should sit down if it's not as I have described it, but I am really concerned that is not the case in terms of getting a hold of our clients, because sometimes, offers are just made late. That's just one of the problems in the criminal justice system, so we have had nothing but trouble trying to get through to clients. If you would please look at that and report back to this Committee, because our experience is not as you've described it.

Ms. Ballou:

I would also point out, we've had the same problem in Henderson as well as in the City of Las Vegas, which I believe now houses the people from North Las Vegas. Is that correct as well? One more thing that I had wanted to ask all of the people that were talking about—the only one who mentioned the HHS indigency guidelines on how to appoint, that would affect caseload numbers and things like that. So, how are people determined to be indigent, because I know in court just this week we were appointed to a doctor who the judge said was going to qualify as indigent, and I'm like, this woman is a doctor. She probably makes more than all of the attorneys in here. Why are we being appointed to her? Those kinds of things—are people filling out affidavits? What are they doing in order to ensure that we are actually being appointed to indigent people and not to someone who can afford an attorney?

Mr. Neidert:

In Churchill County, the justice of the peace does a brief soliloquy asking if they own property, stocks, bonds, things of that nature. Generally, when in doubt, he appoints the Public Defender. I've had clients that I wondered why they ended up having a Public Defender appointed to them, because they seem like they had the financial means to hire private counsel. On the other hand, there were often cases, and I had an early one where he declined to appoint a Public Defender to somebody who was in the United States Navy at the Fallon Naval Air Station, and that particular person walked up the street to a private office and hired a private attorney. But basically, he does a colloquy. There is not an affidavit or anything like that that he has them fill out. He makes a decision on a case-by-case basis, but generally erring on the side of appointing one rather than not.

Mr. Zihlmann:

We have an application for a Public Defender that is provided to each offender as part of their arraignment process, and if it comes to the point where a determination is going to be made that a Public Defender needs to be appointed, then that form is reviewed by the judge from the bench and he makes the final decision on that using the guidelines.

Mr. Hlavac:

For in-custody arraignments, all defendants are temporarily appointed Public Defenders while they have in-custody status. Once people are out of custody, they fill out a similar affidavit to what happens in Henderson and their financial status is reviewed based on the poverty guidelines.

Ms. Ballou:

Thank you.

Chair Cherry:

As a note from somebody who was in private practice, it's expensive to retain an attorney for a criminal case, whether it be a misdemeanor, a gross misdemeanor or a felony, believe me. I know what some people are charging today, and it makes it a tremendous strain on middle-class people to try to retain counsel. God bless them if they can, but that's why we have the Public Defender system, and Gideon was certainly very liberal as to who was going to be appointed counsel. The main thing is that people have counsel when they're facing prison or jail.

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

I wanted to follow up. He just mentioned that if people are in custody, they get, at least on a temporary basis, counsel appointed, and if they're out of custody, their indigency status is assessed. I'm just curious if any of you know the statistics in terms of how many of the people, particularly in the municipal court, are in custody prior to adjudication the entire time. You mentioned that many people are given an offer and that they are experiencing delays. I just wanted to know if that's a number that you track. How many people who get a public defender are in custody?

Mr. Hlavac:

I can only anecdotally say that on arraignment days, any criminal division will have upwards of 10 to 20 in-custody defendants. In subsequent proceedings, that number drops significantly. We are engaged in a rather aggressive OR program trying to get people out as quickly as possible based on the Nevada pretrial risk assessment tool that we are working with the Pretrial Risk Assessment Committee on. We are seeing anywhere from 20 to 30 people a day released, low-level risk assessment, so that they're getting out pretty quickly. Our turnaround goal with the jail is 3 hours, so we're getting people are fairly quickly. It's only the higher risk people or people who literally can't make a fairly low bond before that arraignment time. Even at the arraignment, a lot of those originals are OR'd or given time served.

Chair Cherry:

Hearing no further questions for any of the panelists, the Commission wants to thank Judge Steve Dobrescu for his testimony, Dave Neidert for his testimony, Dana Hlavac for his testimony and Bill Zihlmann for his testimony. Thank you for your participation.

Mr. Zihlmann:

Just to redirect to Mr. Kohn's comments, I will absolutely reach out regarding the phone call issue. I just want to make clear for the Commission that the Clark County Justice Court and the Henderson Municipal Court are separate entities, so I will be reaching out to the Justice Court Administrator, Derek Boyle, regarding your concerns on the

phones. But I just wanted to make sure that we're all under the same understanding that Henderson Municipal Court and the City of Henderson has their process and Justice Court will have theirs, but I will absolutely ensure that your concerns are brought to them and I'll double check on my end to make sure that we're not having issues with our public defenders as well.

Chair Cherry:

I hope this issue can be resolved. It would make me very happy as a Chairman that we are able to resolve something just on our own. It would be great if we resolved it. I think it's an important issue that Mr. Kohn has raised.

Mr. Neidert:

You made the comment about the expense of private counsel, and that's very true. As I thought about it, if I was arrested for DUI, which would be very difficult because I don't drink, but if I was arrested for a DUI, I probably would go and hire a private attorney. If I was charged with murder, I couldn't. As an attorney, I wouldn't have the financial resources to hire an attorney to do that. The other comment I'd like to make is there is a very real perception in the public at large that somehow Public Defenders are inferior attorneys. I tell everyone that I meet that I reject that proposition. I have seen as a prosecutor cases where I was prosecuting where a very good Public Defender was replaced by retained, very bad private counsel, and the cliché out there that Public Defenders are somehow inferior attorneys who could not get a real job and things of that nature, I want to state for the record, is categorically false. My experience is that Public Defenders are oftentimes a jurisdiction's best, or in all jurisdictions, among the best criminal defense practitioners in that jurisdiction, and I'm including Washoe and Clark County in that assessment. I think the issue in the larger jurisdiction is not so much the skill level of the attorneys, more oftentimes it has to do with the level of the caseload.

Chair Cherry:

Thank you, and that's very true. I know that when I was a young Public Defender in the early 1970s, the justices of the peace used to say, "Can you afford your own attorney or do you want to still appoint one," making us sound like we were inferior, when I didn't think we were. Hopefully that isn't done anymore. Again, thank you panelists.

I just wanted everybody to know that we will continue to hear from stakeholders at future meetings. If you were not on the agenda today and would like to be on the next agenda, please contact Risa Lang who will coordinate your testimony.

The next item is directions to staff and the consultant. We can provide any directions we need to staff and the consultant. Anybody have any issues they want to raise with staff or with David Carroll? Just keep up the good work, folks. Thank you very much, Ms.

Davis and Ms. Lang and David Carroll. You guys are great. And our secretaries over there too, you're fabulous people.

The next item is the discussion of dates and topics for future meetings. The next meeting of the Commission will be on Thursday, June 28, and again, we'll be in various locations, Carson City and Las Vegas. Depending upon if there are some rurals, we have to access to Ely, we have access to Elko by video. Also, I want to mention that the next Indigent Defense Commission meeting is Wednesday, June 6 at 1:30 p.m., and that too has various locations, the Supreme Court of Nevada in Las Vegas and in Carson City, Washoe County has it, the Clark County Regional Justice Center has access, Elko and Ely have access, so if anybody's interested in participating in the Indigent Defense Commission, we're going forward. Again, a lot it will have to do with caseload studies. Again, we have the performance studies we were able to pass right away and we got national recognition for it, but we're little bit stuck on caseload standards. It's very difficult to try to figure out caseload standards when a group of the people who represent indigents have private practice and have their own businesses. Believe me, I know. I was a contract attorney. It's very difficult to determine what your actual caseload is when you try to put in contract appointments, regular appointments and private practice. Those are the dates. Again, it's June 6 for the Indigent Defense Commission at 1:30 p.m., and the Nevada Right to Counsel Commission will be Thursday, June 28 at 9 a.m.

I will now open the second period of public comment. Franny Forsman is here. I'm always interested in what Ms. Forsman has to say. No one knows more about indigent defense than Ms. Forsman, as far as I'm concerned. She's the maven.

Franny A. Forsman, Esq. (Federal Public Defender for the District of Nevada (Retired)):

I want to comment on two things. The first is on the issue of caseloads. Whenever it gets tackled by either Commission, both Commissions should keep an eye on the Sentencing Commission, which may be seeking to establish guidelines for sentencing. Although it doesn't look like they're interested in the federal system, which I'm happy about, it does look like a similar system which would add to the caseload. I'm afraid, as I testified before the Sentencing Commission, I am concerned that a sentencing guidelines scheme would add to the number of hours that attorneys need to spend on every single case without a commensurate increase in resources. That's the first thing. The second thing is I want to talk about municipal courts and preface it by saying that municipal courts and justice courts are really where the vast majority of the public gets an idea of whether justice is being done with the idea of what the Sixth Amendment means in terms of representation by an attorney. I spent, as you know, many, many years in federal court. That's not where the vast majority of the public gets to know how our justice system works. It's in those lower courts. I want to describe, and I've shared this with Mr. Hlavac, this is not his fault, but I want to describe what I observed about 1 1/2 months ago in the Las Vegas Municipal Court. I was just sitting in the back and

watching what was going on, and I was horrified, frankly. What I saw was an incarcerated client discussing with his public attorney the offer and how the case should proceed and whether or not the client would accept the offer on the video monitor with the judge sitting there and the district attorney sitting there. The client had clearly never met that lawyer before, was given the offer, was given the alternatives, was given the penalties and was asked to make a decision sitting right there with everybody in the courtroom able to observe. As I said, I think that as Mr. Hlavac discussed, they're working on this issue, but it comes down to the judges and it comes down to the public attorneys. No public attorney should permit that to happen. They should refuse to participate in a system that requires you to do that. There are real problems, and it may be the way the contracts are set up, the way the selection process is set up, those are all good things, but there are some practical issues that are happening in those courtrooms that are absolutely horrifying.

Ms. Ballou:

Can I just add to what Ms. Forsman said about what's happening in courtrooms?

Chair Cherry:

Please do.

Ms. Ballou:

That happens in every courtroom I've ever seen in the State of Nevada. The district attorneys will give early offers and your client is in custody. You don't have a place to talk to them, so the way the courtrooms are designed, the way the courts are staffed in order to allow us to speak to in-custody clients, it's appalling, but it happens every single day, and it's appalling.

Ms. Forsman:

I can't think of a good reason why, when you have video arraignments, that the attorney is not what the client. The attorney should be with the client, not in the courtroom with the district attorney.

Chair Cherry:

These are issues that David Carroll—we need to have a report so that our Legislature can understand where we're coming from as a Commission. It's very important.

Mr. Carroll:

Understood.

Chair Cherry:

Again, it shows how important it is to have an independent commission for indigent defense so that these issues can be worked out to protect the rights of those accused of crimes.

Oasis Academy, again, thank you for being here. You're welcome any time. Seeing no further public comment and no further business coming before this commission, we are adjourned at 10:48 AM.

RESPECTFULLY SUBMITTED:

Jordan Haas, Secretary

APPROVED BY:

Justice Michael Cherry, Chair

Date: _____

Exhibit	Witness/Agency	Description
Exhibit A		Agenda
Exhibit B		Attendance Roster
Exhibit C	Students of Oasis Academy College Preparatory High School	Agenda Item III: Public Comment
Exhibit D	David Neidert, Attorney, Churchill County	Agenda Item V: Written Remarks
Exhibit E	Dana Hlavac, Court Administrator, Las Vegas Municipal Court	Agenda Item V: Indigent Defense Administrative Plan
Exhibit F	Dana Hlavac, Court Administrator, Las Vegas Municipal Court	Agenda Item V: Expenditures on Appointed Counsel