

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

**April 25, 2018**

The meeting of the Nevada Right to Counsel Commission was called to order by Justice Michael Cherry at 9:03 a.m. at the Legislative Building, 401 South Carson Street, Room 4100, Carson City, Nevada, and via videoconference at the Grant Sawyer Building, Room 4401, 555 East Washington Avenue, Las Vegas, Nevada and Great Basin College, McMullen Hall, Room 102, 1500 College Parkway, Elko, 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  
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  
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):**

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

**COMMITTEE MEMBERS EXCUSED:**

Erika Ballou, Representative of the State Bar of Nevada

**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:**

Amy Rose, Legal Director, ACLU of Nevada  
John Lambrose, Assistant Federal Public Defender (Retired)  
David Carroll, Executive Director, Sixth Amendment Center  
Lorina Dellinger, Assistant County Manager, Nye County  
Jeff Page, County Manager, Lyon County  
Dave Mendiola, County Manager, Humboldt County  
Jim French, County Commissioner, Humboldt County  
Matt Stermitz, Public Defender, Humboldt County  
Kriston Hill, Public Defender, Elko County  
Robert Stokes, County Manager, Elko County  
Patsy Waits, County Commissioner, Lander County  
Eleanor Lockwood, County Manager, Churchill County  
Jeremy Bosler, Public Defender, Washoe County  
Tom Armstrong, Justice of the Peace, Carson City

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

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

Today we are videoconferencing to two locations. I'd like to welcome those who are attending in Elko. We also have two individuals participating by phone. David Carroll, our consultant, will attend by phone, as well as Senior Justice Bill Maupin.

Next on the agenda is public comment. We do have a lot of people whom we've invited to speak today. To ensure that everyone has an opportunity to speak, I would like to ask anyone speaking during public comment to keep their comments to no more than 3 minutes and to try to avoid repeating comments that have been made by a previous speaker. Seeing no public comment, I will now close agenda item III.

As with the last meeting, today we will receive an update from the Sixth Amendment Center regarding their 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 a district attorney perspective. This time, we will hear from public defenders, local government and judges. I hope the stakeholders that come to the Commission will help us get an idea of how they feel

about the issues before this Commission. It's important that we have a clear understanding of the various positions so we can ultimately try to put forward legislation that is supported across the board.

Before we get started though, let's move to item IV on the agenda, which is approval of the minutes (Exhibit C).

MR. CROWELL MOVED TO APPROVE THE MINUTES OF THE MARCH 30 MEETING OF THE COMMISSION.

MS. EASTLEY SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

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Item V on the agenda is a presentation by the American Civil Liberties Union (ACLU) of Nevada. The ACLU has been very involved in following this issue and advocating on behalf of the defendants. Today, Amy Rose, who is the Legal Director for the ACLU of Nevada, is here to update us on the work of that organization with respect to indigent defense.

**Amy Rose (Legal Director, ACLU of Nevada):**

Thank you very much for allowing me to speak briefly with you all today about the work the ACLU of Nevada has done, that we are doing, and just to give you an update on what's going on. So, what I'd like to do is just tell you a little bit about the ACLU National's involvement, what we have discovered from our own investigation here, which might be helpful to this Commission, and then just an update on the lawsuit that we filed.

From a national perspective, the ACLU has been incredibly involved with the issue of making sure that people have criminal defense counsel even if they can't afford to pay. There have been several lawsuits all across the country. In Montana, the ACLU filed a lawsuit against the state and seven counties. There are two lawsuits in Michigan that were ultimately addressed through legislation. There was an additional lawsuit in the State of Washington where a federal court found that the indigent defense systems there violated the constitutional rights in two different cities. There have been other lawsuits in Utah, Idaho, California, New York, Pennsylvania and Missouri. This issue has been continually addressed through our organization in many different ways. Usually it's a combination of litigation and legislation, which seems like that might be what the case is going to be here in Nevada. Locally what we've done, for many years we did try to advocate at the Legislature through a series of bills over a couple of

sessions trying to institute reforms and changes in oversight that we thought would make the system better here in Nevada. Unfortunately, we weren't able to go the whole distance. This Commission was created, which I think is a wonderful start to that. I'm really happy that you all are looking at this issue so seriously. I'm very happy that David Carroll is conducting this comprehensive report to really understand the issues. The ACLU of Nevada as well has done our own investigation, along with our ACLU National partners, a law firm, and Franny Forsman has been helping us as well. What we've discovered over the past couple of years, we've looked at the current county contracts for attorneys providing indigent defense services to rural counties. We've looked at public records. We've done many, many different Public Records Act requests to look at how the counties evaluate the people that they're choosing for these contracts. We've looked at the decisions that they've made, how they evaluate them, how they choose them, who is on those committees. We've looked at docket sheets for individual criminal defendants to see the type of representation that's being given. We've spoken with judges and other stakeholders, very similar to the work that this Commission is doing as well. We've looked at the history of indigent defense services here in Nevada. Obviously, we participate in the efforts by the Nevada Supreme Court to also address this concern. We've been very steeped in this issue for a number of years, and what we found in our conclusions as a whole is that the state has really abdicated its constitutional responsibility to provide adequate defense to the poor. Instead of the state doing that, what they've done, and what you all know, is that they've given that responsibility to the counties, but they haven't provided sufficient resources, standards or oversight to make sure that constitutionally adequate services are being provided. Some of the specific things that we found as problems are structural issues. For instance, with contract attorneys, the contracts don't necessarily cover all of the costs that are necessary. There is no oversight or supervision by the state. The state doesn't do anything to make sure that the counties have the funding, policy, programs, guidelines or other essential resources to equip these attorneys to make sure that they are providing constitutionally adequate representation. They've had inadequate resources. The de facto flat-fee contracts I think are a really big issue, and kind of the heart—one of the large issues that are going on that disincentivizes attorneys from devoting sufficient time to investigating or litigating their cases. One of the specific issues that we found is that the contracts often require attorneys to obtain a court order or to pay any investigators or any expert witnesses, so that comes directly either out of their own pocket from the flat-fee contract that they have, or they have to go and get a specific order from the court. As you can all imagine, that doesn't happen that often. For example, in one rural county, one appointed attorney had 76 misdemeanors, 35 gross misdemeanors, 122 felony appointments in the first 8 months of 2016, but they reported that no experts and no investigators were needed for any of these cases. That's an extreme example, but I think this is something that we saw quite often through our investigations. There is no compensation for attorney travel time or costs often in these contracts. Of course, in the rural counties, which is what we found to be specifically concerning in our investigation, there are large, large areas within these rural counties, and attorneys, if they're required to drive to different courthouses in one day, sometimes those courthouses are hours apart. Jails are far from the court that they have to go to,

or they don't live in that county, or they have contracts in several different counties, so there's a lot of travel that's required, and that travel is not reimbursed by these contracts. These contracts often include appellate work in that fee. That's already the flat fee. As I mentioned earlier, some of the concerns are the way that the counties are choosing these contracts. Often district attorneys will sit on the committee that chooses the contract public defender, so obviously that raises concerns about independence outside of who's evaluating these people. We had concern about the contracts not requiring appropriate qualifications, supervision, evaluation and training. Some of these contracts have no minimum qualifications. One specific concern that we have that I think would be of interest to this Commission as well is that the reporting requirements are not meaningful to really understand the caseloads of the contract public defender. Even when they do require caseloads, we couldn't find any caseload reporting. We couldn't find any instance where these contracts require the attorneys to report their private caseloads. So in almost all instances of private attorneys taking on these contracts in the rural areas, they all have their own private practice. We have no idea of the amount of work that they have in that private practice, and I think to really get a true understanding of the workload of these people who are providing criminal defense services in the rural counties, we also need to have a sense of what their private workload is as well, and there is no accountability to that at all that we have found so far. One other issue that I'm sure you all will be aware of as well is that there is just a lack of representation at initial appearances, which really decreases the quality of representation and the quality of services that are provided to indigent criminal defendants. So often what we found is that people are appointed an attorney at their initial appearance, but they don't actually meet with them until much later on. What that means in practice is that they are left to their own devices to make their own bail arguments, so often they unsurprisingly don't get released from jail or their bail is set at a very high amount because there is no one there to help them make those arguments, and they're doing this all without the benefit of counsel.

All of these structural problems of course infect the representation that indigent rural county defendants are getting, so that was really concerning to us through our investigation. What we've done, and I'm sure you're all aware, is file a lawsuit. We filed a class-action lawsuit in November of last year alleging all of the things that I've talked to you about today and more. We've also provided you a copy of our complaint (Exhibit D). It's very, very detailed. I don't know if you want to sit and read the whole thing, but a lot of the things that I've talked about today are contained in the complaint and lots of other specific details about the problems that occur in the rural counties because the state hasn't met their constitutional duties. Specifically what our complaint alleges is a violation of the Sixth and Fourteenth Amendments and the corresponding state constitutional right to counsel, and then also we allege due process violations of both the U.S. and Nevada Constitutions. Just as a procedural update to you all to know where we are in our lawsuit, as it is a class-action lawsuit, we are in the middle of class certification right now. We are doing some discovery in connection with that class certification, and then we expect this lawsuit to be ongoing for a while. That is all I have

to present to you today I'm happy to answer any questions that you like about what we found or our lawsuit or anything else you might like to know.

**Chair Cherry:**

The ACLU has been involved in the Indigent Defense Commission of the Supreme Court since the get-go, since then-Chief Justice Maupin created that and appointed me as chair. Why was it necessary to file the suit at this point? Ms. Rose, you have been on our Commission since you started with the ACLU and know that we were able to provide performance standards. We're working on caseload standards. What was the urgency to file the suit in November?

**Ms. Rose:**

I think the suit was necessary for a number of reasons. To start with, we have been on the Indigent Defense Commission for a long time as you noted, and I think our concern is that there were no substantive changes being made that we could see in the counties, or changes that were being made enough to meet that constitutionally adequate representation. These concerns were still ongoing. Although the Supreme Court has put out performance standards, caseload standards, those standards are not binding. They're suggestions. They don't actually have to comply with them, and in fact, people don't comply with them. There is no accountability on the part of these rural counties and the indigent defendant services that are being provided, so after several years of being on the Commission and seeing that people just weren't complying, of several sessions of failed legislation, we felt it was really important to show the State of Nevada how serious this problem was and that it was their constitutional responsibility to fix it. If I can just kind of frame that issue as to where the problems are and who is responsible to fix this, ultimately the responsibility is on the State of Nevada. The problems that are occurring of course are occurring on a county level, but that's because the state has abdicated their responsibilities. Constitutionally, it is the state's responsibility to do that. They can, and they are constitutionally allowed to say, "Counties, you provide those services and we don't pay for them," but if they do that, then they still have to provide oversight and they still have to ensure that counties are providing that constitutionally adequate representation, and we just didn't see that happening. The Indigent Defense Commission has been around for a decade, and we just didn't see the changes that were necessary.

**Chair Cherry:**

What's the bottom line that the ACLU is trying to achieve as far as state-county participation in indigent defense? In other words, you said it's the responsibility of the state. My opinion, and this is my opinion only and not any of my colleagues, I'm not speaking for my colleagues, I'm speaking for Michael Cherry only, the counties have been my heroes when it comes to indigent defense, whether they be rural or urban, stepping forward when really the obligation has always been on the state, which has

had problems with education, public safety, mental health, and now we're adding to their burden of indigent defense. We don't have a great constituency for this Commission. Our constituency is people who are indigent and charged with criminal offenses where they face either jail or prison. So, what are you trying to accomplish? I'm sure that my Commission would like to know. If you settled tomorrow, what would be the outcome as far as state funding versus—and I have a lot of rural county people in the audience today with me and I'm thrilled that they're here. Give them some assurance that they tried the best they can, but they have limited funding, and now the state of course has problems with education, public safety and mental health, and now we're adding to the burden with indigent defense. A loaded question, but I know you can answer it.

**Ms. Rose:**

I think, as a whole, you're right. The responsibility is not on the counties, and they have been doing as much as they can with as little as they have. What we'd really like to see is the state taking that responsibility to do all the things that they're not doing. For instance, yes, we would like them to fully fund indigent defense and make sure counties have the resources that they need to institute caseload standards that have actual teeth behind them, to institute performance standards that have actual teeth behind them, to institute oversight and accountability for the people who are providing these services to make sure that if the counties are giving a contract that that contract gives the money to the person that they need, that makes sure this person can have access to adequate resources, including investigators, including expert witnesses. I think all of those things have to be accounted for to make sure that the state is stepping up and doing that. I know there has been a lot of concern by the counties that they don't want to lose local control, that they still want to be in charge of their indigent defense, and I think that certainly is entirely possible in a world where we can get to that, but first we need to make sure that there are adequate standards that are being followed that have teeth behind them, that there are—like I talked about earlier, we don't have any real meaningful understanding of what even the caseloads are, and that's because there is no reason for people to provide that and they're not being asked that. Unfortunately, it's not just a quick fix from the Legislature of "give them more money and everything will go away." This is a very complicated issue that needs to be looked at in many different ways, and I would also point you all to the bill that was introduced last session, the first amended bill that had a lot of really great suggestions in it that I think struck a really great way forward, so I think that's a good framework to start from as a way to fix the problems.

**Chair Cherry:**

My last question involves the urban counties, Clark County and Washoe County, and we have John Slaughter here on the Commission and Jeff Wells has always participated in the Indigent Defense Commission. Are you giving a clean bill of health to what we've accomplished in the urban counties with our right to counsel there, as far as

institutional public defenders' offices, two in Clark and two in Washoe, and also independent contract attorneys? In other words, are we okay in Washoe and Clark as far as the ACLU is concerned?

**Ms. Rose:**

Obviously, our lawsuit does not focus at all on the urban counties or the counties that have institutional public defenders' offices. What we focused on in our research and in our investigation are the rural counties. Of course, everyone can always do better, and there are always problems that can be addressed no matter where you are, but that is not something that we had focused on specifically. When we looked at the overall issues in Nevada, we thought the rural counties are the ones that are suffering the most, and the defendants in the rural counties are the ones who are really getting the constitutionally inadequate representation, and that's where we wanted to focus our time and our resources, because I think those two issues from an institutional office versus the contract attorneys in the rural areas are kind of two different beasts, and we can only do so much at once.

**Chair Cherry:**

I think a lot could be solved if we had a statewide State Public Defender's Office if it was supported by the state, instead of limiting it to the couple counties that Karin Kreizenbeck and her gang are handling at this time.

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

You mentioned that the ACLU has brought similar lawsuits in other states, and I'm just wondering—I imagine all of these are basically based on the same theory and they're all seeking injunctive relief. I'm just curious if there is one of those states in particular that maybe seems to be, where the problem is maybe most similar to Nevada and what kind of result was yielded in that location.

**Ms. Rose:**

Yes, exactly. The lawsuits across the country have been based on similar theories, Sixth Amendment violations. Some of them focused more heavily on caseload numbers because those numbers are more obviously available. Some of them are focused on institutional offices as opposed to contract attorneys like we're focusing on here. One that comes to mind as somewhat similar is in the State of Washington. They also allege that the cities and the people responsible were aware of the problems but didn't act to remedy the problem or provide any meaningful oversight, and they had similar claims that the attorneys in practice were failing to get investigators or were failing to do all of the adequate things that they needed to do because of that. What I think might be helpful for the Commission is, I'd be happy to provide maybe an overview of all the other suits and what happened and where those are, which I think might also provide



you with some information about how this was solved in other states and what they've looked at.

**Ms. Traum:**

I'm curious if you could just be a little bit more specific about the state of the procedure. You said that you're doing discovery on the class certification, and I'm just wondering if the state has been forthcoming in providing discovery.

**Ms. Rose:**

Our original position was that we have 10 years of evidence and we didn't particularly need a lot more, but the state has alleged that they don't think that this is particularly as big of a problem as we say it is. So, I wouldn't say that they're not being forthcoming, necessarily. I think we have different views of the overall issues in the state, so I think that's kind of where we're hashing it out right now in terms of class certification.

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

I guess in the Legislature and in meetings like this, we often hear "the counties." We have a lot of counties with a number of different abilities, funding being one of the main ones. I happen to be from Lyon County. We're very proud of our court system, from the highest court to our justice courts, and I guess I get a little bit upset when a broad brush is used to say "the counties." I'm sure we have some counties that need help, and I'm sure we have some counties that are doing very, very well. I'd like somewhere along the line to maybe, if we could be a little more specific, if we have some real problems, and I'm sure with the help of the group from the Sixth Amendment Center we will find out some of these issues. I guess I'm looking for help. Are all the counties thrown into one group, or do we have some distinction of counties that are working hard to accomplish what you're trying to accomplish, and I think we all agree there is work to be done, but not throw everyone into one group?

**Ms. Rose:**

Thank you, and I appreciate the comment. When I'm here and I'm talking generally for just a few minutes to you all, it is easier for me to say "counties" generally. In our complaint (Exhibit D), we've listed out the specific counties that we count as rural counties, as the counties that we are specifically concerned about. Lyon County is one of the counties that is included in that that we have found persistent problems with. I think what's important is that there are these problems in every rural county in one way or another, so we've identified many different categories of issues, from the de facto flat-fee contracts to the lack of oversight to the need to request investigators and expert witnesses to a judge, and these are problems that actually do happen in all of the counties that we are concerned about and that we've named in our lawsuit. For instance, in Lyon County, I know the contract that we looked at doesn't cover travel

costs, and obviously Lyon County is big. There's a lot of space to travel between courthouses, so that is one of the concerns. Like I said, I don't want you all to take away from this that it is the counties' responsibility to fix this. Like I said, constitutionally it is the state's responsibility. They have that Sixth Amendment obligation to provide adequate criminal defense services to people who cannot afford it, so this is a very large and complicated issue with many different facets, and we have been trying to be diligent about being very specific and as specific as possible as we can, because I understand when someone says "counties," you don't know what that means or what your specific problems are. Like I said, in our complaint, it's very detailed. It's 47 pages, or something like that, that go through all of the problems that we've seen. I appreciate your willingness to say, "Maybe we do have some issues, and we'll look at that and see what we can do to make that better." That is the point of why we're here and what we are trying to accomplish is to make sure that everyone is giving the services that they are constitutionally obligated to give.

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

I have a couple comments, some of which will maybe assist the ACLU's efforts here. But first of all, the Supreme Court adopted the performance standards unconditionally with the original consent of the two big district attorneys' offices, Washoe and Clark Counties. They later woke up and found out that this was, for them, they felt was a disaster, so they exacted an agreement from the Supreme Court that the Commission—that these were aspirational. To say that these are aspirational, at least from a legal standpoint, is to say—to me, that they're aspirational means that there are still standards there that have to be considered, so the idea that these aren't binding, I personally disagree with. I think they are binding in the sense that they are considerations that have to be looked at to determine whether or not there is a Strickland violation. Now, that said, I believe that while these are not equivalent to Strickland, I still think they have a binding effect, as I said. That is because states can provide greater constitutional protections to criminal defendants than the federal government does. That's my point on the performance standards. I think the performance standards should be much more of an issue in evaluating effective assistance of counsel claims.

There's always this business about how the state gave it to the counties and somehow washed their hands of the whole business. Under the constitution of this state, counties are political subdivisions of the state, and therefore they are the state for this purpose. The counties and the state actually are the same for these purposes. Maybe the ACLU has a point on that.

Again, I'll say this as I always have, that it's my understanding that in certain counties, the judges approve the costs. I think the judges have absolutely no business approving these kinds of costs when they're neutral in the trial. They should be the last point of access to approve these costs, and I think there should be some sort of administrative

arm that approves these things, and if they're denied, then it would go to the judge as a matter of due process. Those are my thoughts on that.

**Ms. Rose:**

There were a few things that cut out in your comments, so I apologize, but I didn't hear everything that was said. I did hear you said that you agreed with us on a couple of things, so I appreciate that. I just want to point out, it is our understanding that the caseload standards are not binding. I believe that there is a case on that out of, I think, the Second Judicial District Court. I think they looked at that issue, but I will see if I can provide that the Commission as well as to whether those caseload standards are binding.

One other point I just want to make, and it may be a clarification in your comments that brought that up, I wanted to clarify for the Commission and for everyone else, we are not making ineffective assistance of counsel claim. That is completely different. Individuals can make those complaints and make those claims on their own, but that's not what we're saying. We're saying as a structural issue, the state's responsibility under the Sixth Amendment, they're not meeting that. The way that we prove that, the way we show that they are not meeting that constitutional responsibility is by showing all of these institutional structural issues, and also pointing out the individual representation that's occurring because of that that is not constitutionally adequate. I think sometimes there's some confusion about what claims we're making and what we're trying to accomplish, but we are not making ineffective assistance of counsel claims.

**Justice Maupin:**

My argument about the performance standards is my argument. A district court's rulings are not precedent for anything, so that means that the extent to which these performance standards are considerations with regard to providing adequate indigent defense services is an argument that I believe is out there and ready to be used by anyone who wants to use it.

**Ms. Rose:**

I appreciate that, and that's a fair point.

**Chair Cherry:**

Ms. Rose, thank you very much for your update on the lawsuit and where the ACLU stands. Also, I want to thank the ACLU for participating in the Indigent Defense Commission all these years. Thank you very much.

**Ms. Rose:**

Thank you all very much.

**Chair Cherry:**

Agenda item VI is an update from the Sixth Amendment Center. Before Mr. Carroll begins, however, I'm going to skip to agenda item VII so John Lambrose can give his presentation. He has another obligation, so we're going to take him out of order. After John Lambrose, we will go to David Carroll. I do want to thank Mr. Lambrose for everything he and Franny Forsman have done. The two of them took issue with the feedback we had from the counties. Mr. Lambrose, who is very familiar with rural Nevada, and of course the urbans too, having been a federal public defender for all those years, was able to work with Judge Papez and Judge Wagner and some county commissioners in the rurals, and he's going to tell you what he and Ms. Forsman accomplished with the rural report. Thank you for appearing today. I know you have another obligation, but thank you for being here.

**John Lambrose (Assistant Federal Public Defender (Retired)):**

Like Justice Cherry said, I've been involved with the Rural Subcommittee since the inception of the Indigent Defense Commission back in March of 2007. I went to the meeting last month where John McCormick gave his presentation, and I'm going to avoid any redundancies with regard to Mr. McCormick's update concerning the various iterations of legislation that passed and failed up until the amended version of Senate Bill (S.B.) 377 was passed. But one thing I want to try to do today, and I would urge each one of the members of this Commission to review as carefully as you can, and particularly the members of the Legislative Council Bureau (LCB) that are working as staff on this, the Nevada Supreme Court Indigent Defense Commission's Rural Subcommittee Report and Recommendation that the Rural Subcommittee presented to the Nevada Supreme Court in the fall of 2008, because I think that's a very thorough compilation of where indigent rural defense stood at that point in time (Exhibit E). Now, obviously, it's not relevant to where we are today, other than a historical perspective and other than insight to this Commission with regard to where all of the players were 10 years ago.

This will pretty much be my conclusion, but I think in order to be thorough, it's always good to give your conclusion before you start your case. What I can tell this Commission without any reservation is that all of the members of the Rural Subcommittee and the Indigent Defense Commission and all seven justices on the Nevada Supreme Court agreed on two things, and the Nevada Supreme Court's agreement is memorialized in a 2008 opinion. That is that indigent defense in the rural counties of Nevada, and by rural counties I'm going to be specific here, because I think the question by the Lyon County Commissioner was a very appropriate question. By rural counties, I'm going to identify those counties as the legislation in Nevada identifies

them, and those are counties with populations less than 100,000 people. By definition, in Nevada, as it did when I arrived in Nevada in 1980 and when the Nevada Legislature adopted this legislation post-Gideon in the 1960s, those are all the counties except Washoe and Clark. By inference and by specific knowledge, I can tell this Commission something that the Commission members already know, and that is Washoe and Clark were excluded and were forced to pay for their own indigent defense services because they could afford it. Washoe and Clark by definition are the economic engines of the State of Nevada. The rural counties are not. So, that delegation of the obligation to pay for indigent rural defense, what finally morphed into where we are today, essentially had its genesis in the legislation that took place in the 1960s. I believe personally, and I think that many of my colleagues on the Indigent Defense Commission and maybe some members of the Nevada Supreme Court believe, that that model as it has degenerated into is unconstitutional under the Sixth Amendment, because as Justice Maupin said just a moment ago, counties are political subdivisions of the state. The decision in Gideon v. Wainwright does not distinguish between the state and political subdivisions.

Having said that, the two things that we all agreed on, players across the board, is that the State of Nevada should fully fund indigent defense in the counties that have populations less than 100,000 people and that the indigent defense models that each county adopts would be subject to the oversight of a statewide commission, a bipartisan commission whose appointments would be made by the Governor, the State Bar of Nevada, the Nevada Association of Counties (NACO) and of course the Nevada Supreme Court, specifically excluding district attorneys and law enforcement and any sitting judge or justice, other than the ex officio member that the Chief Justice of the Nevada Supreme Court would appoint. Those are the two things that everybody agreed upon, and when Judge Papez and my committee first met during the period of time between April of 2007 and December of 2007 when we presented our first report, those were the two recommendations that we made. Those were the two recommendations that our Subcommittee made, and I know that my good friend Joni Eastley was on that Subcommittee, and at the time she was a Nye County Commissioner. We had representation on that Subcommittee by a vast cross-section of not only judges and defense lawyers, but the political representatives in the rural counties. We arrived at that agreement, and without getting into the boring details of why we had to go back and do it over again—and let me just say again, I would really encourage the members of this Commission to do what I did, and that's because I'm an appellate lawyer nerd, and that is to go back and review the entire record of ADKT 0411. It's a four-volume record, and it's fairly well-documented and pretty much explains what the ADKT 0411 members of the Indigent Defense Commission did between March of 2007 and today's date. One thing that the Nevada Supreme Court did is adopt the recommendations of the Rural Subcommittee in January of 2008. They agreed that there should be a statewide commission that would oversee the delivery of indigent defense in the rural counties, and they also agreed that there should be state funding, complete state funding, because at the time in 2008, as it exists today, the funding ratio had morphed from 100 percent state funding in 1971 to 20 percent state funding in 2008. In that 37-year period, the state delegated as an unfunded mandate to the counties the obligation to pay a bill

that the state had to pay. That delegation was exacerbated, and I'm kind of getting ahead of myself, because this is very eloquently explained in what was tabbed as the white paper that was prepared by just an amazing array of participants, and it's at your tab in the Rural Subcommittee Report that I'm talking about at tab four (Exhibit E), and that white paper was prepared by the National ACLU by Professor Ogletree at Harvard Law School and the Sixth Amendment Center. One of the things that the white paper pointed out was that Nevada was acting illegally by delegating that responsibility to the rural counties.

You have a starting point, albeit it is almost 8 years old, in which to go back and review why the status quo is illegal. I would encourage the Commission to look at pages 14 to 26 of this report, because in it, it talks about how in 1969 the Nevada Supreme Court in a somewhat related case entitled Nevada v. Second Judicial District Court foresaw the problem that we're talking about today. In dicta, the Nevada Supreme Court mentioned that the Legislature has passed the responsibility to pay indigent defense onto the rural counties, and that could really present a problem down the road. Well, here we are, nearly 50 years later finally addressing that problem. As I said before, it's a problem that the entire cross-section of the Indigent Defense Commission knew about 10 years ago. Again, to get some historical context, after the Nevada Supreme Court entered its order endorsing a statewide commission and endorsing performance standards and requiring all of the judicial districts throughout the State of Nevada to come up with model plans for the delivery of indigent defense in their judicial districts, there was an outcry of complaints, primarily from many of the rural county judges and district attorneys complaining about—and my review of the record again is certainly my review, and luckily it reflects what I recall just by my own memory. It wasn't a complaint. Again, if you go back and you look at the record, this took place between January of 2008 and March of 2008. The complaint was not about an oversight commission or about the fact that the counties should be reimbursed 100 percent by the state for the delivery of indigent defense. The complaint was about the application of the performance standards in the rural counties, and I think that diverted attention away from the oversight commission because, and this is again just my opinion, I believe that the District Attorneys' Association overreacted to the, for lack of a better way of putting it, strength of the performance standards with regard to an insular action of ineffective assistance of counsel predicated on Strickland. As Strickland itself says, a judge's decision as to whether or not a lawyer is ineffective is that particular judge's decision exclusively. He or she makes that determination based on whether or not he or she can decide after a complete review of the record that, in that case, that lawyer's performance was deficient, and prejudice was the result. Now, the deficient performance prong is one thing that the District Attorneys' Association was so concerned about, because what they thought was that the performance standards if violated would result in a per se finding of deficient performance in every ineffective assistance of counsel stake in every rural county and in every county throughout the State of Nevada. That was completely incorrect. Now, whether or not they actually believed that intellectually or they were using that argument as a ruse to ensure that they would not have any oversight at all is a political question.

At the end of the day, the legal answer to the question is as it has been since Strickland. American Bar Association (ABA) standards, the rules of professional responsibility in the State of Nevada, the performance standards as adopted by the Nevada Supreme Court as aspirational, they can all inform the discretion of the court's decision with regard to deficient performance to the extent that the judge wants to be informed by a standard. This judge can use the standard, or the judge can reject the standard. The violation of a standard is not a per se finding of deficient performance under Strickland. That is the law. I'm not saying something that I've just made up.

After having rehashed that, the Rural Subcommittee went back, and fortunately we were able in the summer of 2008 to meet at Lake Tahoe with the District Judges' Association. It was David Carroll, Judge Papez, myself, many of the players who had very large concerns about what exactly an oversight commission armed with the performance standards would do to the delivery of indigent rural defense in the rural counties. I can tell you just from memory, the judges that participated in that meeting in Lake Tahoe 10 years ago were rural judges: Judge Puccinelli from Elko, Judge Wagner and Judge Papez. We got together and we just sat down in a meeting room and we hammered out what we thought based on the caseload standards throughout the rural counties would be the best way of delivering indigent defense to the rural counties. Be mindful of the fact that—and this report will also refresh memories and help to enlighten the members of this Commission as to what the status was in the summer of 2008. The Nevada State Public Defender's Office did not represent many rural counties. In 2008, they had Carson City, they had Storey County and they had the counties that Judge Papez presided over in the Seventh Judicial District. In other words, most of the rural counties were on contract delivery of services. Most of the rural counties, and I'll get to this at the end of my remarks, were doing those contracts pursuant to a flat-fee arrangement. As Judge Papez and I noted in our recommendations to the Indigent Defense Commission in late 2008, one of those contract lawyers had a caseload ratio of 2,000 clients during the course of his 1-year tenure under the contract. Those were the statistics that we found in late 2008. Needless to say, it was a no-brainer that the counties needed help.

I was invited throughout the course of that time and up to recently to speak at the Nevada Association of Counties' board meetings and at a couple of Nevada Association of Counties' annual meetings. One thing I promised the members of the Nevada Association of Counties and the people that they represented throughout the rural counties—the rural counties here is what I'm talking about—was that I would never give up my crusade to have the state pay for indigent defense in counties that had populations less than 100,000 people, and I would never give up my crusade to ensure that that representation was overseen by a fair and impartial commission. I never got anything other than, from my recollection, and perhaps Ms. Eastley can refresh my memory if I'm wrong here, but I never got anything but absolute support from NACO.

When Judge Papez and I presented our final recommendations in 2008, what we recommended—and again, we were addressing the concerns, and I would encourage you to look at tab one, the letter that Judge Papez and I authored in 2008 as a preamble

to the report (Exhibit E). We were charged to address the following issues: the appointment of conflict counsel and approval of fees in rural jurisdictions, the obligation of state government to totally fund the delivery of indigent defense services in all counties of Nevada, the use of funding and performance of the State Public Defender's Office in rural counties, the creation of an independent oversight board to oversee the delivery of indigent defense services in Nevada, the method of delivery of indigent defense services in the various counties of Nevada, and to comment on the revised performance standards. At the end of all of that, what we did—and this can be found at both tab two and tab three in our summaries of our recommendations. We made five recommendations: that the state fully fund indigent defense in the rural counties of Nevada, that this recommendation is based on the fact that we feel like the rural counties are in crisis, and I quote, "That shows rural counties are in crisis in terms of indigent defense, one with a caseload of almost 2,000 cases per contract lawyer." Number two: The Subcommittee recognizes that retaining county choice in indigent defense delivery models is imperative in order to best serve local populations, but that local or county choice is subject to independent oversight of a statewide commission. I'll interrupt myself really quickly just to emphasize the fact that this was not just John Lambrose and Judge Papez's recommendations. If you look at tab 12, you'll see the members of our Commission, and it was a very good cross-section of all of the players: judges, contract lawyers, county commissioners, and of course, David Carroll helping us. Number three: The Subcommittee recommends the creation of a statewide indigent defense oversight committee. Finally, number four: The Subcommittee further recognizes that the practical realities are at work in rural Nevada and that a delivery model for indigent defense is not going to be as easy as the delivery model that ultimately resulted in both Washoe and Clark Counties, and this Commission is familiar with that. Vice Chair Drew Christensen is here. He is in charge of Clark County's model. Bob Bell is in charge of Washoe County's model. What we recognized and what I completely agreed with, at least as a temporary interim model, was that there should be judge involvement in the appointment of counsel in the rural counties. I won't bore the Commission with why, but anybody that's driven around Nevada knows that it's not that easy to find a lawyer that'll drive 300 miles to do a prelim for—I don't know what it is now, but when I was doing it, it was \$10 an hour, so maybe it's \$80 an hour. What we did, and you'll find it at tab seven, is we agreed on an interim solution with regard to appointment of counsel in the rural counties. Essentially, that solution was, if you're the judge that's presiding over the case, then you've got to give it to your colleague if it's a judge, because then, all judicial districts had, thank God, more than one judge. So, if the case is coming into your track either as the justice of the peace or the district court judge, and in most of these judicial districts as we all know, anybody that's done criminal defense in Nevada, it's the justice of the peace that is going to be in charge of appointing counsel. If it's your case, the justice of the peace, in conjunction with the district court judge in which the case is going to travel into, must seek assistance from a justice of the peace not involved in that case and a judge not involved in that case. To make this a little more understandable to everybody, if the case comes in to a justice of the peace in Carson City, say Judge Armstrong, he would talk to his colleague, whose name I can't think of, and they would then talk to the judge. If it were Judge Wilson's



case, they would talk to Judge Young about who would be getting the appointment. That's the way it would work. We were happy with that. It would avoid the problems that were created in the Eighth Judicial District that were the subject of a *Los Angeles Times* article that talked about how there was so much cronyism with regard to the appointment of counsel in the Eighth Judicial District.

So, those were our recommendations, and we also provided what we referred to as a "critique" of the State Public Defender's Office. I just think that it's very important again for the members of this Commission, and certainly the LCB staff involved in helping the Commission, to go back and review tab nine, because tab nine was very helpful for me having lived in Carson City from 1980 to 1990 and having actually been the Chief Assistant of the State Public Defender's Office from 1987 to 1990. The State Public Defender's Office is really a product of some interesting legislation. Right after the Gideon legislation, which is the legislation that created the public defender model in Nevada, the 1971 Legislature actually created a statewide commission, and that statewide commission was given the authority to select a State Public Defender. For 4 years, that was operative. The first State Public Defender was a man named Gary Sheerin in Carson City. Then, in 1975, the Nevada State Legislature disbanded the commission. I don't know why, and I'm hoping that somebody from the LCB can look at that and try to figure that out, because I think that may be a question that maybe somebody will ask if there's legislation that's proposed to reinstate a commission that was disbanded almost 50 years ago and made the State Public Defender a gubernatorial appointment. That lasted for 5 years. At the time, the State Public Defender was a man named Horace Goff. He resigned in 1979, and he made it clear that his resignation was predicated on the fact that the disbanding of the commission made the quality of the services that he could provide throughout the rural counties much worse. Again, that's not me talking, that was Horace Goff's goodbye letter when he resigned. After that, I think both the white paper and tab nine will give this Commission some inclination as to why and how the State Public Defender's Office, which started as such a strong and thriving office, degenerated into an office that now only serves Carson City and Storey County. Again, I'm not going to get into the whys and the wherefores. A lot of what happened throughout that 27-year period must be laid at the feet of the State Public Defender, because there were some periods of time in which the State Public Defender and the Office were derelict in terms of its service and performance to the various counties, not intentionally. I don't think it was ever intentional, but I don't think the greatest lawyer in the world could have provided the type of indigent defense that the county commission and the rural judges expected because of the amount of money and the lack of resources that they were provided to undertake that service.

Those recommendations were pretty much in limbo. The Nevada Supreme Court to this day has not adopted a model plan for the rural counties. The model plans for both Clark and Washoe are in place. I don't think they were ever officially adopted by the Nevada Supreme Court, but they're in place and they're working. We made our recommendations. Nothing happened. We proposed bill drafts that died in the 2009,

2011, 2013 and 2015 Legislative Sessions, and John McCormick talked about those. In 2013, I was instructed by the Indigent Defense Commission to work with Judge James Todd Russell in Carson City to review whether or not flat-fee contracts existed in Nevada and make recommendations as to whether or not they should be abolished. From 2013 to 2015, Judge Russell, Diane Crow, who was then the State Public Defender, had just recently retired, and I did an enormous amount of research, and Ms. Crow, to her credit, went into each rural county and got caseload statistics and got all of the contracts. For this Commission's information, those contracts are on file with ADKT 0411 in volume four. What we found was that some counties were doing flat-fee contracts. We made recommendations to the Indigent Defense Commission that flat-fee contracts should be abolished. The Indigent Defense Commission agreed, and the Nevada Supreme Court entered an order in the summer of 2015 adopting the Indigent Defense Commission's recommendations that flat-fee contracts should be abolished.

After that, beginning in early 2017 after the November elections in 2016, one good political thing that happened after November of 2016 was that Senator Segerblom was made chair of the Senate Judiciary Committee. Senator Segerblom was very helpful in our introduction of a bill draft resolution that was the product of much, much work by the rural county judges, David Carroll and myself, and by the rural county judges, I really want to give a shout-out to Judge Schlegelmilch, Judge Kacin, Judge Fairman and Judge Todd Young in Douglas County. We had many telephone conversations and conferences hammering out what would ultimately become S.B. 377. In my opinion, was S.B. 377 perfect? No, and I think my friends in the rural counties, Joni Eastley particularly, and NACO would be in complete agreement with me that it really sucked that the rural counties didn't have a bill that said the rural counties shouldn't have to pay for anything. But what that bill did do is it locked their responsibility for payment as no more than what they had to pay the last 2 previous fiscal years. They were locked into knowing that their financial obligation would never be more than it was in the average of 2015 and 2016. So, 50 years from now, that's how much they would be paying. Was that an unfair compromise? I think it was, because I don't think the rural counties should have to pay a dime. If the ACLU lawsuit were to prevail, they probably won't have to pay a dime. I'm in favor of a political solution as opposed to a judicial solution with regard to this particular problem, but I believe the bill that was introduced in Senate Judiciary and passed out of Senate Judiciary and was ultimately modified by Senate Finance was a great bill, a fantastic bill and a good model. As I said, the only tweak I'd make to it, and I would ask this Commission to think about it, would be a recommendation that any legislation that's passed is legislation that says the counties shouldn't have to pay anything for indigent rural defense. Whether or not that can get the necessary votes and signature by a Governor remains to be seen.

In short, that's kind of the summary. As I said, the conclusion that I have after 11 years of working on this is that there is unanimous, save and except for my good friends and colleagues in the District Attorneys' Association, agreement across the board that the state should pay and that there should be oversight of the delivery of the models, even for counties that want to completely opt out and pay their own freight. Those counties,

by opting out, don't get to go rogue. They get the same oversight that every other county is going to get, and that's not because we want centralization of the delivery of criminal defense. We want to ensure that there is quality, that there is good training, and that the caseloads don't degenerate into 2,000 to 1, because I can tell you right now, unless it's fixed, that's the default in the rural counties, because as Justice Cherry said earlier, there is no constituency for the beneficiary of the Sixth Amendment right to counsel. This is our responsibility. We've undertaken it, and there's been great unanimity in support of both of those things: fully state-funded, a legitimate and credible oversight commission. Unless there are any questions, I would really thank Justice Cherry for allowing me to do this and thank the members of this Commission for taking the time to do something that I sincerely believe is one of the most important things that can be done in Nevada.

**Chair Cherry:**

Mr. Lambrose, thank you for that presentation, and thank you for the help over the years that you've given me in the Indigent Defense Commission and ADKT 0411 and participating today. The question I have is, it sounds like a lot could be resolved if we could revitalize the State Public Defender's Office to where they represent as many counties as possible. Also, it's important—and I understand the counties. I understand that if I lived in a county that had a State Public Defender, I would want the State Public Defender to live there, and I know that's one of the issues. The nice thing is you've been there and done that, and you've also seen the aftermath in the Federal Public Defender's Office of the mistakes that can be made, somebody having to travel a lengthy time for a trial and live in a hotel because they don't live in the community that they're trying an A felony or a B felony and somebody goes to prison for a long time. Do you have any suggestions on revitalization? Karin Kreizenbeck is in the audience today, and I know she tries very hard. She's got a good staff, they're good people, and I even talked to Dean Hamilton recently about maybe some type of a subsidy or loan forgiveness for top students from Boyd that have maybe taken classes with Professor Traum and others in criminal procedure and the criminal justice system to go to the rurals. The nice thing is that I had the privilege of doing road shows. Justice Gibbons felt that I should go to all of the rurals, and I been throughout the rurals. They're great places to live, there is no doubt. If we can get some more young attorneys, men and women who bring their families to the rurals, they can become members of the State Public Defender's Office and be supported by state government and also live in the communities. Mr. Lambrose, what do you think? Can we revitalize it? Will that answer a lot of the questions that you've raised and that the judges have raised?

**Mr. Lambrose:**

Justice Cherry, your question's a really good question, and it's something that David Carroll and the rural county judges and I had talked about at length in early 2017 when we were putting together S.B. 377. Again, for some historical perspective, I would urge the members of this Commission to look at tab 9, page 55 (Exhibit E), Diane Crow's

statement with regard to—the heading that I’m referring to is when Diane’s report to the Commission was—one thing that she spent a lot of time talking about was why it is that it was difficult to maintain a State Public Defender that represented counties from a central office in Carson City throughout the entire state. The name of the heading of that tab is “Difficulties in Recruiting for Rural Lawyers Who Are Willing to Live Where They’re Working.” Now, you’re absolutely right. Karin Kreizenbeck’s office is top-notch. I know Ms. Kreizenbeck and I know many of her lawyers, and they’re excellent lawyers, but I don’t think too many of them want to go live in locations other than Carson City. One thing that Ms. Kreizenbeck and Ms. Crow before her had much difficulty doing was getting good lawyers, and again, by “good” I’m talking about lawyers with experience and with the kind of confidence that can handle cases by themselves 400 miles away or 300 miles away or 200 miles away from any support staff. That’s really, really difficult. Again, my memory is that it wasn’t that hard in the early 1980s. It’s gotten worse. Lawyers don’t want to live in the rural counties. Lawyers that do want to live—and I’m not inventing this. These are Ms. Crow’s words, and I don’t want to speak for Ms. Kreizenbeck, but I think she might also agree that the lawyers that do agree to go to the rural counties would like an understanding that it’s not going to be a life sentence, that they can at some point relocate to an urban environment. It’s just the way it is. So, what we did, and at a later date, we don’t need to do that today, but Mr. Carroll will probably help enlighten the members of this Commission as to how it is we arrived at the model that we arrived at. It didn’t necessarily mean that it was the elimination of the Nevada State Public Defender’s Office at all. In my opinion, we just renamed it the Nevada Indigent Defense Commission or whatever it was named with an executive director located in Carson City with a responsibility to handle representation of the counties that were willing to opt in. Those counties that opted in would be fee-capped. The counties that did not opt in could go their own way, with the understanding that they would be subject to oversight.

I don’t think S.B. 377 was legislation to eliminate the State Public Defender’s Office. I think it was legislation acknowledging the fact that, in order to deliver the kind of representation for indigent defendants throughout the state, this would be the model that would work the best, and we made that recommendation not because we personally thought it would work, but because we had empirical data to support our recommendation. To the extent that that’s an answer to your question, Justice Cherry and the rest of the members of this Commission, I personally do not believe that the legislation that came out of all of the phone conferences that we had in the winter of 2017 was an endorsement of the elimination of the Nevada State Public Defender’s Office.

**Justice Maupin:**

I don’t have a question, I just have a comment. Mr. Lambrose, your recapitulation of the history of this was impeccable, and all the doctrinal statements he made in it I agreed with 100 percent. While it would be nice, I think an interesting idea is that people should live in the communities where they work, but I think typically people that practice law out

in the rurals were from there in the first place in a lot of instances. The logistical problem of representing people across the state as big as this is a great challenge, and again, I think Mr. Lambrose's comments meet up perfectly with my experience.

**Ms. Traum:**

I'm curious, you spent a lot of time with the judges that you spoke very highly of, and it seemed to be, unless I'm missing this, that there is this sense, and I understand it to a point, of wanting lawyers to live in the community. There also maybe is a sense that they want to have a hand in picking the lawyers who represent people on these cases, and I'm just curious if you, over the time that you spent with these judges, got a firm sense of why that's important to the judges. I can see from a defense perspective that it may be important in terms of getting your case done, and if you're going through a jury trial or something like that to have a local attorney. I could see that as a different kind of concern. But I'm curious whether you got a firm sense from these judges that worked with you over the years about why they felt it was important to have a role in picking the attorney.

**Mr. Lambrose:**

That's a really good question. I think that, and again, this is my own personal opinion, it has been my experience throughout the course of my work on the Rural Subcommittee that the men and women, the judges that I worked with, were men and women of good will and good faith, and they wanted the system to work. I think the reason that they—I don't know if this is unanimous, but certainly most of them wanted input—made a lot of sense for anybody that spent any time in the rural counties. They wanted input not because, and again, this is my opinion, and some of my colleagues in the defense bar may not agree with me, but I believe that they wanted input because they wanted to ensure that, in their courtroom, good representation of the indigent accused would take place. I can tell you, across the board, the judges that I talked to that would make the statement on the record and in confidence to me were not thrilled with flat-fee contract arrangements. They knew that they were a recipe for disaster. They knew that somewhere down the road, somebody like John Lambrose or now Megan Hoffman in the Federal Public Defender's Office would come sniffing around and a 10-year-old case may have to be retried. Their concern, also known as the desire for local control, was, in my opinion, well founded, and that's why I was more than happy to agree to the interim solution, the interim compromise of the rural county model plan. Was there chicanery taking place in the rural counties over the last 10, 15 years? Were judges appointing their cronies? I don't know, but I wouldn't be surprised if it happened. My experience, though, from what I saw traveling around in the rural counties working with the judges that I worked with was that it certainly wasn't as prevalent as it was in the Eighth Judicial District, and I think that it was just a really hard thing to do. I'll never forget, and I told my wife this, one of the first meetings I had, Judge Gamble, a good friend of mine in the Ninth Judicial District in Minden, said, "You know, John, what's the deal? Clark County has the flu and everybody else in Nevada is going to get it? We're

fine in the rural counties.” To a certain extent, Judge Gamble was correct, but not across the board. Again, circling back, that’s why I think S.B. 377 was a palatable compromise, one that could arrive at a political as opposed to a judicial solution to this problem.

**Chair Cherry:**

I also think what Mr. Lambrose has raised is, having been an Assistant Public Defender who did assignments, when I did the assignment as to which attorney would handle which case, we kept the judges completely out of it, so institutional public defender’s offices don’t have the cronyism problem that developed with the contract attorneys in Clark and Washoe. But I think that Mr. Christensen and Bob Bell in Reno have been able to remedy that, because they are the ones who say which attorneys go to which court. I think it takes a lot of pressure off the judges too, because when you can have somebody else assign them, it makes their lives a little easier. It’s tough enough being a judge in Nevada.

**Justice Maupin:**

I have one very important comment. When I was a District Court Judge back in the early 1990s, I got into a very serious dispute with another District Court Judge who always thought that it was his prerogative about who would get these contracts. He and I had a very unpleasant closed-door meeting in the chambers over this. But that’s years and years ago, and I think the offshoot of the Indigent Defense Commission and the changes that have been made in Clark County largely addressed all this. Justice Cherry, you were there more recently than I was, but my sense is that, administratively, the system is much improved, at least in terms of the selection of lawyers involved.

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

Mr. Lambrose, to balance those concerns, would it be possible that the judges were removed from the selection of counsel, but the oversight vehicle, the commission or the director or whatever, would have absolute ability—if I’m a judge and I’m in Yerington and somebody else has selected a lawyer who is unprepared, unprofessional, doing a bad job, that judge should absolutely have a beeline to the oversight commission to say, “This is the problem,” and wouldn’t it help if then the oversight commission took that lawyer out? Doesn’t that address the concerns of the judges that you were working with?

**Mr. Lambrose:**

Yes. Again, without having a complete recall of S.B. 377—it’s funny, because that little vignette that you described was something that we kicked around during one of our phone conferences. I personally believe that we could—“we” meaning this Commission and hopefully the Nevada State Legislature and a Governor—sign legislation that could

provide the kind of model that would be able to ameliorate that type of problem, because again, I don't think that the rural judges would have any problem with that kind of model. What they didn't want was an oversight commission that would provide a list of lawyers to them that they had no idea who the lawyers were and the quality of those lawyers, that kind of thing. I think what the judges were interested in is knowing who the list—if they were a county that wanted to provide that type of indigent defense representation and not opt in to the State Public Defender's Office. Again, this is just my recollection of how we arrived at the compromise we arrived at. I never got the sense that they would not be agreeable to that kind of ameliorative process if something like that were to happen. Again, one thing that we all were cognizant of is that, in a model like this, the justices of the peace play a very important role, because that's probably the courtroom where most of the appointments are going to be made. We definitely had that concern, and I think that's something that David Carroll will absolutely address when the Commission gets to the point where you start having to really sit down and hammer out the recommendations for a bill draft resolution.

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

Ms. Fitzsimmons, just to kind of answer your question and maybe make a comment, or Mr. Lambrose, if you want to comment on a potential question I have, that's what we do in Clark County. Even though they assign, myself as the assigned counsel coordinator, we obviously freely take calls from the judiciary, clients, other lawyers if we have a concern about the representation being provided by a specific contracted lawyer. I spent the last week with a lawyer who is scheduled to start trial next Monday, but it became very clear that they weren't prepared to start trial Monday, and so, quite frankly, I removed them from the case, kind of got everybody's involvement, and we think it was in the best interest of the client to provide new counsel. But some of the comments I'm hearing, Mr. Lambrose, saying just having done this for the last 10 years, that while this Commission is going to ultimately make a recommendation, I think one of the big problems we'll have is what Mr. Lambrose suggested, that we'd like maybe to have the State Public Defender take over the entire state. But I do think it's hard to get lawyers to be able to live in the community while working for the State Public Defender's Office. There are many lawyers, and my guess is, especially in these small communities, they live there for the reason that they don't want to be employed by the State Public Defender. They like having their own private practice. They have personal injury cases, they have contractual cases, they have whatever issues in that community where they're familiar with residents of the particular county. Talking with Mr. Carroll, my guess is when he finishes his evaluation of the state, he's pretty much going to be able to identify every lawyer in the State of Nevada and where they live and who provides criminal defense. Ultimately, I think one of the decisions we may have to make is if the State Public Defender can take whatever counties they can, but if they can't take the entirety of it is maybe set up some type of assigned counsel program on a statewide basis and take applications from those lawyers who live in Lyon County, take applications from those lawyers who live in Mineral County, and have that oversight to

assess their contracts, assess their work performance, their caseloads and the variety of each, because just like we do in Clark County, it is a mesh. We could have an institutional office, we can have private lawyers contract with the government, but my guess is one of the controls that these local communities want to have is—because these people live in their community. These are smaller communities, and I don't think it's unreasonable. I think what we're missing now is some contractual oversight, some budgets with experts and investigators, and the oversight of what the contract looks like and the oversight of who gets the contracts. But take input from all of the local community players. I routinely talk to other criminal justice partners with respect to who is currently getting the work in Clark County, and I don't think there's anything wrong with that because it helps get kind of a 360-degree evaluation of who the individual is and what their performance is and what we seek and need in our particular local jurisdiction. You don't have to comment on that, Mr. Lambrose, but I think I kind of hear that's maybe where you're going because of some of the hurdles we may have in getting institutional offices in some of these communities.

**Mr. Lambrose:**

You're absolutely right, Mr. Christensen. Just to keep it short, because I notice time is running out here, David Carroll can riff off of that for sure. That's pretty much what we contemplated for the counties that did not—outliers, counties where lawyers just weren't going to live there. Come up with a list of counsel, and those counsel would pass certain qualification standards, that kind of thing, and the rural judges would be very, very participatory in the manufacturing of those lists.

**Chair Cherry:**

Well, now we have a law school, so that's going to help this issue, because there may be some Boyd graduates that decide the rurals is their way of life, and it could be a real benefit to our rural counties. Mr. Lambrose, thank you very much for your testimony, and thank you for all the work you've done over the years with ADKT 0411, and please keep up your work. I need you.

**Mr. Christensen:**

I don't mean to interrupt or change the agenda, but Chris Lalli has an appointment and I think we'd really like to hear a perspective from the district attorney. He's come this morning. He said he has a 10-minute presentation. Is there any way the Chair would have a problem with Mr. Lalli giving a quick presentation before he has to leave?

**Chair Cherry:**

Unfortunately, he's not listed on the agenda, and this is the Legislature. This is not the Supreme Court. He can speak in public comment. I'm sorry, but we'll make sure that—I'm going to have the next meeting May 25, which is a Friday. It's right before the



Memorial Day weekend, but it's a good scheduling point for us. We can definitely put you on the agenda then, Mr. Lalli, to give your presentation. That's the way we do it in the Legislature as opposed to the courthouse where I have a little more authority. Don't have to worry about agendas, we just do what we want to do.

We will now move back to agenda item VI. David Carroll is on the phone to give us an update on the progress of the Sixth Amendment Center, what the Center has been doing and their plans for the next few months.

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

Thank you, Justice Cherry. Currently, we have one of our lawyers embedded in your state for the next 2 weeks. This week, he's traveling between Churchill, Douglas, Pershing and some of the municipal courts in Reno, and also ducking into Carson City. Next week, he's going to be between White Pine, Eureka and Lincoln Counties. On the week of May 7, I will be in Humboldt, Lander and Mineral Counties, and the week of May 14, we will have two attorneys in Elko for the week. By the end of May 18, we should have completed the site work. We're still, even as we talk, contacting judges, county commissioners and managers, collecting all the data that we need. As Mr. Christensen suggested, we do believe now we know all the names of all the attorneys that are providing representation either as primary defenders or conflict defenders in all of the counties. We're now digging deeper into the caseloads of all of those attorneys right now is what we're doing when we're not out in the field. I would love to speak on a lot of what's been said today. I think it's prudent for us to wait until we've completed our site work. But I will say that specifically in respect to the gentleman from Lyon County, we are definitely seeing that every county is different. You may have very good representation in one county and not have good representation in the next, but more importantly, you may have good representation in one of the population centers but not the other, or you may have very good representation in justice and district courts but problems in the municipal courts. What I really value most about this project is I find my own thoughts on reform evolving as we go through each of these counties, as we encounter another attorney or judge or county manager as we do this work. I listened to a lot of what Mr. Lambrose had said, and certainly agree with the whole history, but I do want people to know I think it's been well worth the effort to get out into the counties, because it really has changed my perspective. Other than that, I'm going to hold all judgments until we've completed the site work.

**Chair Cherry:**

Seeing no questions, thank you very much for your update and thank you for everything you've done for ADKT 0411 and for the Indigent Defense Commission and now for the Nevada Right to Counsel Commission.

**Mr. Carroll:**

Thank you.

THE CHAIR CALLED FOR A BRIEF RECESS.

**Chair Cherry:**

I will now open agenda item VII, which is input from stakeholders. As I mentioned earlier, it's my hope to hear from stakeholders regarding the issues being studied by this Commission. Today, we have a lot of stakeholders who have offered to provide input. We will continue to invite stakeholders to come address the Commission at future meetings. Our first group will be Lorina Dellinger from Nye County, Jeff Page from Lyon County and our own Jerri Tipton from Mineral County. I want to thank Ms. Dellinger and Mr. Page for being here today. Ms. Tipton is always here, so thank you for participating in the Commission.

**Lorina Dellinger (Assistant County Manager, Nye County):**

I'm here to update you on Nye County's indigent defense program. As you all may be aware, we do the flat-fee contracts, and we are constantly assessing our program to improve the defense for our defendants. Right now, we're looking at our framework in moving up from our County Manager oversight to our Board of County Commissioners oversight. With our flat fees, we were able to reduce the costs for conflict attorneys, and hopefully be able to return those cost savings back into the program to identify needs, whether it's increasing our public defenders or creating ways to have easier access to our inmates. We have a program coordinator also that will oversee public defenders, so he will ensure that there is equitable distribution between the public defenders and monitor the reporting.

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

Welcome, Ms. Dellinger. I'm so happy to see you here this morning. I just want to make what I think is a correction. Nye County doesn't do a flat-fee contract, it's a modified flat fee, because the attorney may seek reimbursement for extraordinary investigative costs, expert witness fees or other necessary services if it's approved by the court, so would that qualify as a modified flat fee?

**Chair Cherry:**

I believe so.

**Ms. Dellinger:**

Yes, and thank you for that correction. We do allow for that reimbursement.

**Jeff Page (County Manager, Lyon County):**

I started my career 33 years ago with the Lyon County Sheriff's Office working in the jail facility. I left there in 2006, retired as a Captain from the Sheriff's Office, so I have experienced the Public Defender's Office from the side of providing services to the inmate population of Lyon County. When I first started here with the State Public Defender's Office, we had challenges, and I'm not here to complain or to dig up baggage from the old days, but we had challenges with the State Public Defender's Office in that all of the attorneys were centered out of Carson City. They drove to Yerington to visit clients in the jail. We had some challenges with communications. You have to recall that this is back in the day when we had a 50-bed facility and anywhere from 75 to 125 inmates in a jail facility. We worked that way for a good number of years.

We went away from that State Public Defender process mainly due to the workload and the lack of preparation that was going on in dealing with the defense attorneys and the backlog of court to get inmates through the process, if they were convicted, get the sentencing documents out and get them shipped off to prison so we could make room for more prisoners. As we've struggled along in the early days of the contract, I understand some of the concerns with contract attorneys. We had our fair share of struggles. We are now in a position in Lyon County where we currently have three contracts with three different law firms. Not all of our attorneys live in Lyon County nor do we require that, but all three of them have offices in Lyon County, and we do require that. The reason we require them to have offices in Lyon County is not everybody who goes to jail in Lyon County stays in jail until they go to trial. We have a pretrial services program in which a good number of our population are released on their own recognizance or lower bail recommendations are made based upon the screening processes that are in place.

At this time, our hiring process is not outlined in written format, but I can tell you that we don't hire attorneys willy-nilly. We do have a process that we go through to request an RFP (request for proposal) or RFQ (request for quotation). We do get input from both the justices of the peace and the district court judges if they'll provide it to us, and then we make a determination and make a recommendation to the Board of County Commissioners. I think one thing it's important for people to understand is that under contract law in the State of Nevada, it's the Board of County Commissioners who are the only ones who are authorized to approve contracts, so the courts have taken a hands-off approach in Lyon County as far as hiring anybody. They will make recommendations or tell us issues. We've also had our fair share problems with public defenders. I've been the County Manager for 8 years. In that 8-year period, I have terminated three contracts due to performance issues based upon what the courts, the district attorney or other public defenders are telling me. We've been successful at doing that. At this point in time, our contract system works similarly to Nye County. We have a modified flat fee. Somebody brought up mileage. There is a reason why most contracts don't cover mileage, and it has to do with the Internal Revenue Service. When you start dealing with things like giving them mileage, giving them a place to have an

office, giving them computers, they're no longer truly contract, they are now employees, so then everything else starts to kick in with that and it makes the cost much more expensive. We've learned that lesson the hard way as well. We were the first to do a number of things. It's not always the best to be the first. A lot of people get to learn from our experiences.

There was a discussion about S.B. 377. I think it's important to note that the testimony provided earlier is that if we were to opt with the state and pay the \$185,000 we're paying now, that that was taking place forever, my experience with the State Legislature, no disrespect to former Assemblyman Grady, is that's not always the case. It will stay in effect for 2 years, and if the State Legislature finds itself in financial problems, there is a good possibility that the counties will start paying more money for that service than what they originally budgeted for. That's been our experience in the last several years coming through the recession. So, that was our biggest opposition was that if the state's going to provide the services or we're going to be allowed to provide our own services through this process, that we understand what the financial impact is today as well as in the future. That was our opposition to S.B. 377 was that we've been through the last three or four sessions of being required to pay for services we had to pay for before and trying to come up with the funding to do that.

Overall, indigent defense is a huge issue for Lyon County. You can look at the slide (Exhibit F), and I apologize, I sent the unfinished presentation over. In Lyon County, our poverty level is at 11.9 percent right now. That's not a bad number. That's not a great number. What's more important is that our below poverty level is at about 15 percent. So, almost 30 percent of my population is at poverty or below poverty level, so we have a great number of indigents out there, and unfortunately, some of those folks commit crimes. It's a very big issue for us. We take this very seriously. We work with the Sixth Amendment Center folks very well to get information to them. We're still trying to get more information to them, because we do believe it's an important issue. If you aren't familiar with Lyon County, it isn't as big as Nye County, but we have 2,100 square miles with five different community bases, three different justice courts, one district court with two judges, and then a specialty court dealing with drugs and mental health, and then two municipal courts. What I haven't heard mentioned in any of the conversation is what are we going to do with public defenders in municipal courts? I don't pay for those services, the cities do. If the rules are going to apply to counties, are they going to apply to the cities as well? I understand that cities deal with strictly misdemeanors, but some of those misdemeanors have serious consequences, like DUI (driving under the influence) and domestic battery, so are the rurals going to be the same for them as well? I'm not opposed to having conversations about how we improve the system and how we ensure that reporting is done accurately. That has been a challenge. Just talking with Churchill County, what's been a challenge for years is when an attorney marks that Mr. Grady's arrested with five charges, one attorney will say that's five cases and the next attorney will say it's one case. So, how do we deal with those kinds of issues? I think the fact that we're having the discussion, getting things out in the open, is a very good thing, but I don't believe there's a cookie-cutter approach in the State of

Nevada to providing public defender services throughout the state. Clark County and Washoe County, granted, they have large populations, but Washoe is extremely different than Clark, as Lyon County is extremely different than Esmeralda County, so I don't believe you can provide a cookie-cutter approach to fixing this problem statewide.

**Chair Cherry:**

Mr. Page, wouldn't your life easier if you had the State Public Defender do your defense services in the municipal court and in the district court? You've got quite a set up there with the Third Judicial District Court with two departments, drug court, mental health court, two municipal courts, three justice courts. It looks like they may be able to make your life easier, make the County Commission in Lyon County easier, with a State Public Defender.

**Mr. Page:**

Thank you for the question. The answer is yes and no, and it all comes back to what are the levels of services the State Public Defender's going to provide and whether the counties are going to have to pay for ancillary services or unintended consequences of any legislation that comes down the pike. That's the challenge I have with anything that we do is that we never really look at the unintended consequences of the decisions that we make until it's down the path. Currently for us, the system we have works. The public defenders that we have, one law firm has an office in Dayton, one in Fernley, one in Yerington. They represent the specific justice courts in those communities and then they all come down to district court on Monday for law in motion, or when we have trials. We have a lot of trials in Lyon County for a variety of reasons. Whether it be the State Public Defender or a contract, I think that's kind of an open-ended question as to what type of service are we going to get from the state. We know what we get from our contract attorneys. We know that with 54,000 people now and the proximity to Reno and Carson City that we can attract attorneys, where way back when we had a population of 13,000, it was a little bit more of a challenge. The further east you get in the frontier counties, that becomes more of a problem. Getting back to my point, you can't have a cookie-cutter approach. I recommend that the state take a hard look at, with regard to the State Public Defender's Office, dealing with capital cases, submitting those to the State Public Defender's Office for any rural county, because the challenge is that trying to find qualified death penalty-certified attorneys is a huge challenge. I'm working on my second capital case right now. It's the same attorney that represented Mr. Bean in the Fernley case several years ago, because that's who the court appointed. But it is a challenge to find those death penalty-certified attorneys. It's also a challenge for them to be able to get their staffing that they need to do the investigations, those kinds of issues. I'm not opposed to having that discussion, I just don't know that it's always the best answer.

**Ms. Eastley:**

Just an observation based on experience, several years ago, I did ask on behalf of Nye County for a quote, if you will, on what it would cost Nye County to go from the modified flat fees to using the State Public Defender's Office, and it was significantly more expensive than what we were paying for the modified flat fees. We simply couldn't afford it.

**Ms. Fitzsimmons:**

My understanding based on the history of this is that there has been historically a real agreement that two things need to be done. One is the state needs to pay. We've heard every single meeting we've had that it's the state's obligation to provide the funding for adequate defense. So, my understanding is that everybody historically has said the state needs to step in and fund, and there does need to be oversight. Because it is the state's obligation, there does have to be uniformity in the application of standards. You don't object to either of those things, do you?

**Mr. Page:**

I don't, but again, unintended consequences. Let's say the State Public Defender's Office is the answer, that's what every rural county is going to do. My challenge is, what do you do when you have a rogue attorney and the State Public Defender's Office won't do anything about it? I've had three situations in the last 8 years dealing with attorneys who were either ill prepared or doing unethical or inappropriate behavior. We terminated the contracts immediately and we were able to get rid of them. Our experience back when I started in 1985 to about the early 1990s when we went away from the State Public Defender's Office was that when we had those challenges, we had those concerns, we had those problems with a particular public defender, nothing changed.

**Ms. Fitzsimmons:**

I'm not suggesting a State Public Defender. You're telling us and it's your experience that the system you have is working with the three people that you have. I'm saying you're paying for a good piece of those contracts, right? What's the total amount? Is it 3 times 150?

**Mr. Page:**

Currently, our contract is for \$185,000 a year per law firm. We have more than three attorneys. Each law firm has a number of attorneys that work for them and represent the public defenders. We just bumped that up starting July 1 another \$20,000, and the plan is in the following year to go another \$20,000 so we're competitive with our surrounding counties who have contract public defenders.

**Ms. Fitzsimmons:**

I understand you don't want to have some state employee and you can't get rid of them or it takes 6 months to get somebody else in there, but the concept of the state paying a much greater share because it's their responsibility, that would alleviate some of your other concerns?

**Mr. Page:**

If the state's paying, I don't particularly have a problem. The commission side of it, my only concern is that I don't want to create another layer of bureaucracy that takes forever to get anything done. I think if you craft that legislatively so that there are processes in place and everybody understands what those processes are, if the commission is overseeing the public defender, setting the standards and everybody is clear what those standards are and it's standardized, that's the biggest challenge that I have. Define for me what a case is. Define for me how many cases an individual attorney's going to handle. From my perspective, it's one criminal who's charged with anywhere from 1 to 60 crimes, that's 1 case, but the next jurisdiction over may take those 60 crimes as 60 individual cases. I do agree that, yes, there needs to be a commission. I do agree that there needs to be some oversight of setting standards for the public defenders, but let's make sure those standards are clear so everybody understands what they are. Many times in state government, they set standards and nobody really has any understanding what it is they're talking about.

**Ms. Fitzsimmons:**

In terms of your experience with the status quo, you don't see anything that needs to be changed? You're increasing fees, obviously. I'm not saying you're not really working on it and paying real strong attention to it, but in terms of the work that this Commission could do or legislative change or a lawsuit or anything else, is there anything that you see should be addressed?

**Mr. Page:**

I think that, as in any profession, there are standards that are in place. I look at the court system, and I mean no disrespect to those who sit on the bench, but to give you an example, the Supreme Court provides the district courts with a series of rules they want to see followed, and the district court has their rules for their court. The challenge that I have is that I don't want to see us create more bureaucracy that takes longer for defendants from the time of arrest to the time of adjudication, the length of that time out, even more so, especially if the defendant is found not guilty and we have somebody sitting in the county jail for 4 years going through the process if we've added more bureaucracy to lengthen those times. I mean that somewhat selfishly in that it's \$125 right now a day for me to house somebody in our jail facility. I'll put it into perspective. Sixty percent of my general fund budget of about \$31,000,000 goes to the Sheriff's

Office, the District Attorney's Office, the courts and the public defenders for 100 people. There are 100 people sitting in jail today, and 60 percent of \$30,000,000 is taking care of getting those people adjudicated through the system. The longer we lengthen that out, the more money that costs, then I can't provide the statutory services I'm required to provide on the other side.

**Ms. Fitzsimmons:**

What a position to be in. If they get out of jail and they're processed and they go to prison, then that's not your county's money anymore, right?

**Mr. Page:**

Unless they appealed. In our contract, they handle the first appeal, and then after that—

**Ms. Fitzsimmons:**

I meant in terms of housing the inmates.

**Mr. Page:**

No, we pay nothing for that.

**Ms. Fitzsimmons:**

Have you had a case in your county where somebody was in jail for 4 years and then found not guilty?

**Mr. Page:**

Not in my recollection. We've had some people found not guilty, but they weren't there for 3 or 4 years. That time now increases the more population that we receive in Lyon County, the busier courts get. It's a matter of scheduling in the district court now, but I think the last serious case I can recall of a person found not guilty, she was probably in custody about 18 months to 2 years on a murder charge and a jury found her not guilty.

**Ms. Fitzsimmons:**

Could you provide David Carroll with the name of that case?

**Mr. Page:**

Yeah. I'll have to go look it up, but it was back in the early 1990s.



**Ms. Fitzsimmons:**

I just really appreciate you coming and this input. Thank you.

**Jerri Tipton (Representative of the Nevada Association of Counties):**

I am a Mineral County Commissioner. Mineral County is one of those frontier counties. We're about 4,000 square miles. I have about 4,000 people, and 3.6 percent of that is my tax base. That's my private land in Mineral County. For us, we have about a \$10,000,000 or \$11,000,000 budget. More than 65 percent goes to the jail, the Sheriff, the District Attorney and public defense. In my tenure at that county, we do modified contracts, and we've had three different public defenders. The current one we have, we have opted not to go out for an RFP this time. We're just simply going to re-up the contract and increase it. The majority of my cases—and I'm going to go back a minute. My understanding is that at the time we had the State Public Defender for public defense, it was pricey. It was extremely pricey, and the challenges were, I've been flat told by former sheriffs, "Sometimes I had people in there 8 or 9 months before they ever saw a lawyer." Once again, I'm paying \$125 a day to feed and house, but not necessarily medicate, because that's mine too. In Mineral County, we have two lawyers that live in the county. One is the District Attorney and one is a former district attorney that does not take cases inside the county, because when you live in a very small community and you run for office and don't get reelected, there are some hard feelings. My Deputy District Attorney is a contract that comes out of Las Vegas 4 days a week. That's the legal arm in Mineral County. We have to use somebody from somewhere else. The one we currently have, part of the reason we've agreed in 2017 to go from \$80,000 a year to \$105,000 is because of the caseload we know we're going to have. We're looking at it, and instead of what I had handed out a while ago was a 1-year contract (Exhibit G), they're going to do a 2-year, which is good for us. We don't have the tax revenue to pay a lot of money for anything, much less public defense. My deputies are probably, I don't know about Esmeralda County anymore, but I think in Mineral and Esmeralda, the deputies run about the same, and a deputy starts in my county at about \$14 an hour.

It's a challenge. I am extremely interested to see where we're going to come out with this. Yes, Mineral County—and there is heart burn on a county level with public defense, with the State Public Defender's Office, because of the history. People in small communities have long memories, and we all know that.

**Chair Cherry:**

Do any of you get any subsidy from the state for your indigent defense?

**Mr. Page:**

No, I do not.

**Ms. Tipton:**

No.

**Ms. Dellinger:**

No.

**Chair Cherry:**

Not a penny. When we hear the 80-20, it's not true with Mineral or Nye or Lyon Counties. It's not true. It's not 80-20, it's 100 percent the county and 0 for the state. Have you approached your legislators at all to get some help with indigent defense in these counties?

**Ms. Tipton:**

Yes. When the 15 rural counties are represented by 3 in the Senate and 5 in the assembly, there is not a lot of votes in Mineral County. I have one justice court, I have one district court, I have a drug court, I have one public defender and five contract conflict counsel in the district court, and three of them are also in the justice court. That's where we are.

**Mr. Page:**

Back to Ms. Fitzsimmons' question, in regards to standards, Ms. Tipton brought up caseload. That's our concern. How do you define caseload? If they come up with a policy that says you have to have 1 public defender for every 60 cases per month, what does that mean? A good public defender who is dealing with misdemeanor DUIs may do 35 in front of the justice court in a month. Out of that 35, 34 are "It's my first offense, I'm pleading guilty. I'm done." What's that person doing with the rest of the time other than the one that is going to trial? I think besides looking at the sheer number of cases, we have to look at the complexity of the cases and what those cases are. We have some very complex cases going on in our county right now dealing with two or three murder cases, a number of sexual assault cases and a number of high-profile drug cases. But out of those high-profile drug cases, two of them aren't even going to trial. They are repeat offenders, they been through the process before and they're telling their attorney, "Make me a deal so I can get out of here." So, that's the challenge that we have, how do we identify what that caseload looks like?

**Chair Cherry:**

The other thing is that I believe, and I think I'm right, all of your contract attorneys have private practices. Is that true?

**Mr. Page:**

That is correct.

**Ms. Tipton:**

Yes.

**Ms. Dellinger:**

Yes.

**Chair Cherry:**

That makes it real difficult, because the Indigent Defense Commission is trying to get caseload standards, but it's very difficult. It's easy with the Public Defender's Office because we know exactly what they're handling. We're able to get those statistics. But a contract attorney, we can get the statistics as to the contract attorney's cases, but not exactly what the private practice is. I know, I was a public defender in 1970 to 1977, and in 1970 to 1975, everybody who worked for the state or the county or the city had private practice, and a lot of times some of my colleagues, I won't say me, but some colleagues would give more attention to private practice than to their state, city or county job.

**Ms. Tipton:**

I just got notice yesterday that, in conflict, with the five conflict attorneys we use, we've already spent as much to April 1 than we spent the entire year last year. That's about \$40,000 in conflict. More than 50 percent of our cases are drug cases. Some are repeat offenders, but US-95 runs right through the middle of us, and normally those folks don't travel in singles, they travel in pairs. If I've got a couple or three of them arrested, my public defender can only take one of them. The conflict attorney has to take the other two because he can't represent them. I will tell you that I visited with a young lady yesterday who has used the services of the current public defender and the previous public defender, and she tells me that it's the difference between night and day. She actually talked to this one prior to ever going before the justice of the peace, had conversations. The previous one, she saw him the day she went to court and that was it.

**Ms. Fitzsimmons:**

I'm assuming you don't know what these drug defendants really are telling their lawyers. It's just kind of a joke, right? When you said the clients are telling their lawyers, "Just get me out of here, I want to take a deal"?

**Mr. Page:**

I can tell you in one particular case I know that to be the case, because a friend of mine who has been in and out of prison his entire life deals with drugs.

**Ms. Fitzsimmons:**

Okay. But I guess this is what I don't understand. Like you said, you opposed the last bill because, and I agree with you, you were, under that bill, capped at the last 2 years, but things change. Going out in the future, you don't know what your liability would be. What I don't understand is why it seems like a lot of these problems, amazing problems about funding, would just kind of go away if somehow the state stepped up from the state general fund and paid for this. Is there a downside to that from your perspective?

**Mr. Page:**

The utopian world for me is that the State of Nevada is going to hire all the attorneys, they're going to manage all the attorneys, you're going to provide all the services required, including investigations and all those things, and we never see who they are. I'm okay with that. The reality of it is that's not what happens. It will go on for a few years, maybe 10 years, we hit another recession and the State Legislature is trying to figure out how to balance the budget and they go back to the counties, and they say, "Okay, you know what? We need you to help us out for the next 5 years, so you're going to pay half of it." Well, 5 years comes and goes and they say, "Oh, we were just kidding. Tom's no longer in office, and he made that promise. We're not doing this anymore." That's the concern that counties have. Unless you have a constitutional amendment that says the state's going to pay for this, then it's a different issue. And then, of course, the argument is, and I've had this argument with members of the Legislature, "If you want to go down this path, then great. You're the ones that create the laws that are felonies and gross misdemeanors, not counties. I'll take care of my misdemeanors if you want to take care of your felonies and gross misdemeanors." They don't want to have that conversation either.

**Ms. Tipton:**

I've seen too many times, and if they don't use that as revenue generation, then what else are they going to do? Are they going to say, "Okay, we'll take care of this, but you're going to pay for this, this, this, this and this"? They pick it out of their nose and wipe it on this county a lot.

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

I agree with Mr. Page. I don't expect a constitutional amendment that would lock in the funding that is required. But just parenthetically, earlier today, the ACLU was asked,

“Why file this lawsuit now?” She was pretty mild about the answer, but I would say that if you get a federal judge giving you a mandate that the state will pay for these services, the state is going to pay for these services. I’m not saying that’s the right way to do this, but having been on this Commission for 10 years—and Mr. Page brings up the point of municipal court. Mr. Page, you actually hit the Achilles’ heel. We for 10 years gave municipal court a pass, and it was wrong. We’re starting to look at it now, but you’re absolutely right that it’s a problem here in the big cities, as well as it is in rural Nevada, that you can have someone who gets 6 months, 6 months and 6 months consecutive and going to do 18 months, and their right to counsel is limited. But I do have a question for Mr. Page. When you talk about the poverty level in your county, how do you define poverty in terms of who has access to public defender work?

**Mr. Page:**

Let me clarify a couple points. Those numbers that I provided to you are the numbers from the U.S. Census Bureau as to where we are with poverty as a county, so that’s their number. Each justice of the peace, because that’s where these people start unless we have a grand jury, and we haven’t had one of those since 1977. Each justice of the peace has criteria that they follow. It’s a checklist form. It asks them a variety of questions. They determine whether it’s indigent or not. I will tell you, it’s been my experience that a large majority, upwards of 95 percent or more, are initially provided a public defender at that initial hearing until proven otherwise.

**Chair Cherry:**

Seeing no further questions for these witnesses, thank you very much to all of you for appearing today. Next we will hear from Dave Mendiola, Jim French and Matt Stermitz. These are all people from Humboldt County.

**Dave Mendiola (County Manager, Humboldt County):**

Mr. French will join us here momentarily. First of all, I’m responsible for the Public Defender in Humboldt County as well as the Alternate Public Defender, which is an office that the County Commission appointed about a year ago. Humboldt County’s indigent defense system works. Public Defender Matt Stermitz is here today. He’ll speak of the history of indigent defense in Humboldt County and the efforts we have made over the years to improve that system, including adding that Alternative Public Defender I mentioned. Commissioner French will also speak from a commissioner’s perspective of the history, as he’s been a two-time Commissioner as well as looking for reelection here soon.

The county enjoys, in my opinion, having the executive branch directly responsible for the Public Defender’s Office. I say this because I believe my office is the buffer between the courts, law enforcement, the District Attorney’s Office and the indigent clients. If there is a problem with the Public Defender’s Office, I hear about it. As a result of that,

Humboldt County has been able to improve our model year over year as we take that responsibility seriously. I have the utmost respect for my public defenders and believe Humboldt County is a model for any rural county to follow. I would encourage the Commission to not approach this issue as an all or nothing proposition. There are counties that have desired models that work. For these rural communities that have a need for improved indigent defense, focus on the needs of each of those counties and customize the solution based on the needs and the challenges in that county. Taking a shotgun approach would destroy years of hard work and effort by counties that have systematically focused on improving indigent defense. We are open to oversight. We look for improvement all the time, and one of the comments I heard earlier, which I think is spot on, is that having a set of criteria and rules that are easily identified so that we can look at those and say, "Okay, here's what's expected of us," is a great start. We've instituted some things that we believe are important and have come out of past history with indigent defense, but we are open to that. However, having governance by the State Public Defender and supplying those attorneys in Winnemucca, Nevada doesn't work for Humboldt County. It has not in the past. I have no belief or I've see no proof that it would in the future. Thank you for the opportunity to comment. My colleagues will have a lot more to say in more detail for you.

**Jim French (County Commissioner, Humboldt County):**

I think my County Manager has very effectively expressed much of my concerns with some of the things that have occurred in the past years having to do with indigent defense in Humboldt County. But Humboldt County's perspective, looking back on it prior to the system that we have in play right now which involves, of course, our own employees. We have two lawyers and a legal assistant who work directly for Humboldt County, are funded by Humboldt County and were adopted through ordinance in Humboldt County when the County Commission decided to opt out of the state's public defender program. I think it's important for us to understand what our motivation was when the county opted in that direction. It really didn't have to do with the money side of it. We're all worried about money and budgets and it's all priorities to us, but at the time the decision was made, it was about providing service, and it certainly didn't have anything to do with our budget at the time. Under the state system, and I appreciate some of the comments I heard earlier this morning, the services that were provided in Humboldt County were woefully inadequate and resulting in long stays for inmates in our county jail, backlogs in our courts resulting in too many defendants sitting in county jail too long. We made the decision at that time to first off start our own Public Defender's Office in Humboldt County, and also to require through ordinance that those employees are residents of Humboldt County. Our Public Defender, Matt Stermitz, lives in Humboldt County and has for some time, and the difference is—and I've seen it from both directions. I was there when the state was providing the services as well. The difference is we've got employees who are on-site 8 hours a day, 5 days a week, and they're available when somebody needs to see an attorney in our jail and they can see them in a hurry.

I believe we have met our requirement under the Sixth Amendment. I believe Humboldt County at this moment in time is complying, and I think it has not been at any small expense. It's a fairly large budget. I would say one other item is that if the county is required additional mandates through a commission through a set of standards and whatnot, I would hope that those mandates would be followed with the adequate funding to implement them. As you probably heard from a lot of counties at this moment in time, everybody in most of the rural counties are struggling right now financially, and any additional pass-through is going to be very difficult on them. I believe it's an opportunity, though, from an oversight standpoint for us to be able to have some input into what that oversight means and what it's going to require from a budgetary perspective. I would just say that one of the questions offered here a few minutes ago had to do with why are many of the rural counties adverse to just going back to a state-funded public defender. The anxiety came from, in my view in Humboldt County, at least, the request that we were going to still fund at the same level we're funding right now but we're going to return to a system that wasn't working for us. The only thing worse than paying for a system that's working is to pay for a system that isn't. I think ultimately the hard lift for the state at this point in time is going to be to restore confidence in the State Public Defender's Office on the part of the rural counties. The other side is that I believe that if you decide to go with the State Public Defender's Office, the legal defense for each of those counties needs to be housed in those counties. Those people are going to understand exactly what the needs are of that county and they're going to understand through the other people that provide criminal justice within that community exactly what was needed of them and, in many times, will be coordinating schedules as needed. I would say that it's important that the public defender is housed in the area that they're going to provide that service.

To answer one question I heard, I see no downside to the state funding the program. I think it's a great idea and I embrace it wholly. The downside in Humboldt County would be for us to return to a substandard representation for the indigents that we've had in the past. Thank you for allowing me to comment.

**Matt Stermitz (Public Defender, Humboldt County):**

I started my practice in Elko. It was a private practice there and I did some conflict work across the state and ultimately appeared in front of a district judge from every judicial district, most of my practice being out in Ely and Elko. In 2007, I came in and took over the Humboldt County Public Defender. They had terminated their contract with the state at that time. The state provided an attorney for Lovelock and an attorney for Humboldt County. They were at that time the same judicial district. Humboldt County ended up paying for about 80 percent of that budget and getting one of the two. Ultimately, the judicial districts split, and today Humboldt County is a county of about 16,000 or 17,000 people. We have one courthouse. We have one district judge. We have one justice court. We have one clerk. We don't have electronic filing. All the business takes place right there in the courthouse. Our jail is about 1/2 mile from the courthouse. The

population of Humboldt County largely lives in and around Winnemucca, probably within a 5-mile radius of the courthouse.

When I got there, I realized the problem with the State Public Defender was simply turn over. I had a client that lost a child in a neglect case, and for the 2 years she was without her child, she went through 7 or 8 public defenders from the State Public Defender's Office, and they just couldn't keep people there. They would send out newbies who would move on or some of your moribund lawyers, and I guess I'll be one soon, that were looking for a second chance or coming off disability, and it just didn't last. They would fill in the void with people from Carson City, but of course, those individuals didn't live there and would come in and go. Probably for a good part of Humboldt County's existence back under the State Public Defender, it was largely a satellite office with Lovelock getting the attorney. As a consequence, I think, of just being overrun, there was virtually no defense work going on. There was even confusion as to whether the State Public Defender in Winnemucca did motion work or whether it was just done out of the Carson City office. But needless to say, I started to fight back. I'm not the smartest guy, but I have experience. I could be a peacemaker and I can be a pugilistic. The jail population over the term of the district attorney went from probably averaging 60 to 70 down to now we're probably 20 to 40. We've established a practice and it has made a difference in the way the district attorney evaluates his cases. At the time that I came in, the Indigent Defense Commission was just starting up, so I was aware of the criticisms and some of the bullet points. I followed Mr. Carroll and his entity, his troop, across many states and always kept up on what the issues were. I tried to respond to those common criticisms. Recently, we added a second Humboldt County Public Defender. She's an Alternate Public Defender. We copied what was available and what takes place in Clark County and Washoe County. She handles conflict work and then she picks up drug courts, specialty courts and juvenile. The intent is to reduce our caseload to 200 clients per attorney, per year, and that was the purpose in adding the second full-time Public Defender.

I heard and saw across the United States whenever the ACLU or Mr. Carroll got involved in these cases that there were criticisms that people were languishing in jail, and so we went about creating an early settlement program in our justice court so the parties get together almost immediately upon somebody being incarcerated and charged with a crime to see if the case can be resolved. Efforts are made through stipulation to immediately get somebody released if possible, and we called upon our drug court, our specialty court team, to start monitoring people on OR (own recognizance) release. A lot of people that had been languishing or would be languishing in jail waiting for their cases to run now can get out of custody if they agree to be supervised and drug tested by our specialty courts. We have, I think, a phlebotomist in the courthouse, and we actually have a testing device in the courthouse. These people are out and they are released and they've got an obligation to call in and report and are subject to drug testing randomly five times a week. That has helped reduce our population and I think made a difference for those people. It's also a great primer for those that want to get into drug court because it gives them a chance to prove



themselves, see what life is like being sober instead of having them run around, I guess, with no supervision for a year before their case may resolve itself.

I observed that there were criticisms by the Indigent Defense Commission here and in other states that the rural clients were being obligated to discuss cases publicly in courtrooms because there were insufficient facilities adjacent to the court room for public defenders and clients to meet, so we've designated a specific room adjacent to the courtroom as the Public Defenders' Conference Room. We're in the process of remodeling a copy room that's just down the hallway so we can have a second conference room, the idea being that indigent defense clients should not be required to discuss their cases publicly.

Another issue that seems to have come up is this issue with regard to when and who gets a public defender. I can say in Humboldt County, and maybe it's just the wage of an underground miner, but the population is doing well and the public defender is appointed to—and I think someone up here earlier mentioned until it's proven that the person is otherwise not indigent. Sometimes to my chagrin, I find myself representing an underground miner who I know from just reading the newspaper may be pulling down \$160,000 a year. But it is what it is. Our justice of the peace does not deny anybody a public defender as far as I can tell that is facing any kind of jail time, and I saw this practice in Elko. It is interesting. I don't know if they do it in other states, and I saw it in Humboldt County where, if the district attorney is going to ask for jail time, he puts a JT on the complaint. At that point, the justice of the peace will not let that case proceed without counsel. Most of the cases obviously that we see in justice court are domestic batteries and DUIs. Those mandate jail time. Those people always have counsel. We make sure that our discovery was obtained in a timely fashion and our discovery was shared with all of our indigent clients so they could see for themselves what is in the police reports.

I heard this discussion today and would certainly maybe look at this issue, and that is having lawyers present at a person's first appearance. Two weeks ago on a homicide case, I made that appearance in the jail with my client, his first appearance. That's not yet a practice across the board, and I certainly am going to study the issue that was raised by the ACLU and then study the propriety of providing or getting Humboldt County to provide that service to our indigents.

I heard the criticism about whether rural trial attorneys are up to doing first-rate appellate work. When we went out and hired the new Alternate Public Defender, we focused on somebody who had appellate experience. They'd been a law clerk for a judge who had a criminal docket for 15 years, and they were also under Pennsylvania's rules allowed to engage in private practice where they seem to specialize in criminal appeals. She too, the Alternate Public Defender, has to live in Humboldt County. We're adopting a requirement that the public defenders who the county does pay for our continuing legal education, that we do 10 hours of continuing legal education and it be criminal specific, not maritime law or something that lets us travel to some favorite

place, but actually criminal law. It's our hope to maintain autonomy. We're going to continue to try to meet what other standards come up.

With regard to the numbers, oftentimes I see a criticism about the number of jury trials or the number of investigators that are being used and appointed as a measure of public defender systems' worth, and I don't know how to answer the jury trial one because it all depends on the reasonableness of your district attorney and your client. I have dealt with district attorneys over the years who are not reasonable, who are charging things that may not be a crime or are not provable, and if the stakes are high, then I by all means advise my client to proceed to trial. On the other hand, it kind of goes up and goes down. If you get into an area where you have a really reasonable district attorney, you just don't have that many jury trials. Me personally, between being a peacemaker between the district attorney and my client, that can be more aggravating and I can lose more hair doing that than simply going to trial, so there's no adversity to going to trial. I'm well over 100 felony jury trials in my career and I'll continue to do them. They sometimes provide a nice respite from the general work that we have to do.

We are also exploring having heard a concern over the requirements that statutorily the public defender has to go to a district court for approval for attorney fees and investigator fees and expert fees. We have looked at shifting more of the district court's budget that is reserved for that over to the district attorney's office so we have less judicial involvement. That's still in the works, but we have moved some money over, particular for, if necessary, use in justice court. Again, as a measure, I don't know if you can easily paint with too broad of a brush on that, because we do have open discovery. We do have resolution of cases. We have a reasonable district attorney. You have the power of the subpoena. You have the power of the phone. Never have I been denied an investigator or an expert for any work, and basically the district court has always approved it. But again, we'll listen to what the Indigent Defense Commission says about that, and if there is a need to move that funding out from judicial control, then I'll certainly lobby and suggest to my commissioners that we'll do that.

The last thing I would point out, and that is about really the ability of the State Public Defender to get people to live in rural Nevada. I won't repeat this again, because I think I've brought it up for 10 years, is it's a really tall order. The problem is that a lot of your urban people don't want to live there. Today, unlike about 30 or 40 years ago, most households have two incomes, two breadwinners. It's not the day when the husband graduated from law school, had three kids and a stay-at-home wife and moved out there. Now, you've got a woman who's a lawyer and a husband that's a doctor and you have to find jobs for both of them if you're going to keep and recruit them. That's difficult. Again, and it's been discussed here that probably the better practice is to use lawyers who are already there, who want to be there and worked to help improve our ability to deliver the services. I reached out to Boyd School of Law the two times I had to hire, and we didn't get an application from Boyd School of Law. The starting salary for the Alternate Public Defender was \$89,000. That may be a little bit lower than the starting salary for maybe Clark County, I don't know, but lo and behold, we could get

people from rural parts of other states, because in rural Pennsylvania, that's not what you're getting to start out as a public defender. I think you're going to have to go with the people that are happy to be there, and if you have people that are on the ground, work with us, tell us what we need to do, have programming. We are hoping to work with you and not have to change our system.

**Chair Cherry:**

Mr. Stermitz, are you full-time, and is the Alternate Public Defender full-time?

**Mr. Stermitz:**

We're both full-time and we're both prohibited from private practice.

**Chair Cherry:**

That's a good set up.

**Mr. Kohn:**

I agree with everything you said. I don't know if I misheard or what, but when you talk about getting funds for investigators and experts, and right now we know it's in the court, did you say that you thought it should be put in the district attorney's office?

**Mr. Stermitz:**

If I did, I misspoke. No, no, absolutely not. I do misspeak sometimes. The district court has the budget. Statutorily, you make application to the district court, so that's where they been housed historically. I do have my own investigator fee budget for my discretion. We are increasing that. I'm willing to listen to the Indigent Defense Commission and the ACLU on whether it's their position that all of those funds should be removed from the judiciary control and just assigned to the Public Defender's budget. Those are discussions I would have with my commissioners if it's deemed that that's what has to happen.

**Mr. Kohn:**

We've gone back and forth in Clark County, especially with the mental health issues and appointing psychologists or psychiatrists for competency. But you did misspeak, and all of us down here were concerned. Otherwise, you have a Public Defender's Office. I would certainly not be one to want you to get rid of it. As I said to Mr. Page, I think a lot of us believe that this should be a state function and your funds should come from the state and not burden a county of 17,000 in the way we do a county of 2,300,000. But everything I've heard sounds like you're doing a great job, and this member has no problem with what your office is doing.

**Mr. Stermitz:**

Thank you. If you have any suggestions, feel free to call me.

**Mr. Christensen:**

In Humboldt County, how does the county handle conflicts that the two institutional offices aren't available to accept?

**Mr. Stermitz:**

With any second-tier conflict counsel. We used to have an arrangement with Pershing County where they provided our Alternate Public Defender contract, and we terminated that and realized that we could actually get a full-time lawyer, put them on staff, have them handle the conflict and some of the additional work, reducing our caseload. So now, after the Alternate Public Defender, if there is a continued conflict, and I'm grateful, the justice court uses two Winnemucca lawyers on an alternating basis. When I got there, it was the practice of the then-justice of the peace to call to Elko and call to Reno and, for whatever reason, looked over the local counsel. Then you have these people and the drive time. I did that for years. You drive from Elko to Ely and it's 3 1/2 hours down in the snowstorm and then 3 1/2 hours back, and you end up billing for an 8-hour day and you really only do about 1/2 hours of work. Anyway, I saw it as a problem here. It was great that there were two lawyers available to handle that on the second-tier. It's great that they are local, because if things have to be filed, they can be filed. If there has to be a hearing tomorrow, they're available. Nobody's waiting for a week for them to show back up, or a month. So, that's how we do it. Their pay is not a flat fee, they're paid \$100 per hour. They too, and I think this was just reaffirmed by the Supreme Court for everybody, and the latest case being reaffirmed is they too can make application, that is the second-tier conflict, for fees for experts and investigators. And they do.

**Chair Cherry:**

Hearing no further questions, thank you very much for your testimony today, and congratulations on what you do in Humboldt County. It sounds pretty good. Next we'll go to Elko, and I believe we have Robert Stokes and Kriston Hill.

**Kriston Hill (Public Defender, Elko County):**

Mr. Stokes has asked me to talk about the history of our office and our current system. After that, I'd like to add some of the problems that I perceive and how we are dealing with them. First of all, the Public Defender's Office has been in Elko since November 1, 1990, so there's almost 30 years of institutional Public Defender's Office there. We currently have seven attorneys and five support staff. The support staff include a paralegal, our office manager and caseworkers. Of those 7 attorneys, 5 of us have more than 8 years of experience and 2 have more than 20 years of experience. We've also

recruited the help of some social work interns to help with looking at treatment programs for our clients. In addition to obviously in the Nevada Supreme Court and the Court of Appeals, we practice in the Fourth Judicial District Court. There are two departments, where our gross misdemeanors and felonies are litigated. The Fourth Judicial District Court also has a Family Division where the juvenile dependency and juvenile delinquency cases are handled. We practice in the Elko, Wells, Carlin and Wendover municipal courts and justice courts. We have four drug courts that we participate in, the adult drug court, juvenile drug court, DUI diversion and the family preservation court. Our office has about a \$1,400,000 budget. There is a specific portion of that budget set aside for experts and private investigator work. Unfortunately, we don't have a private investigator in our office, but there is a gentleman in the community that we use rather frequently for those services when we need them. Conflict counsel is appointed from a rotating list. They don't have contracts there. They are paid \$100 per hour for those services they provide, and it's my understanding for the last full fiscal year, our conflict counsel was paid approximately \$589,000 for their services.

When I became the Public Defender, there were some things that I noticed we weren't doing that I thought we could do better. There were multiple attorneys that didn't have, I perceived, the appropriate training to handle the juvenile cases. We weren't practicing vertical representation, and we weren't appearing at the 72-hour hearings for our clients who were incarcerated. Now, we have one attorney that practices juvenile defense. She has extensive training in that area. Our cases are handled on a vertical representation basis. You have the same attorney from the beginning to the end of your case, and we are appearing at all of the 72-hour hearings for our clients that are incarcerated. We are being appointed very close in time to their arrest, which I believe is incredibly beneficial to those clients. We have somebody working on your case right away. We are able to preserve evidence that we weren't able to preserve once we were appointed later on in the case. We're able to get our private investigator working on those cases sooner rather than later. One thing I think is a real attribute to our county as well is the Deputy Public Defenders are paid the same as the Deputy District Attorneys.

There are a few things that I would hope to change. Unfortunately, I don't think we have the funding at this time to do that. One of those things is I would like to appear at all of the first appearances, whether someone is in custody or not. I believe that's really important for Wendover especially, because there is a large Hispanic population there. I believe that some of those people are pleading guilty to crimes that they probably shouldn't at those initial appearances and not knowing the potential immigration consequences that those pleas could be having for them. Ultimately, at some point in time, I would like to have an in-house investigator. Our private investigator that we use, he does work for other attorneys in town so he's juggling the work that we are requesting him to do with some of that work as well. Ultimately, I would like to have more attorneys. I believe that our caseloads are a little higher than they should be. We haven't heard which budget request will be approved for this coming year. Hopefully some of those things will be taken care of as well. One problem that I do see that our office doesn't have any control over is that there is little oversight for the conflict counsel

as far as the training that they receive. One thing that I perceived to be a problem is that a lot of our criminal conflict counsel also handle the 432B cases. We have a new local court rule requiring the 432B attorneys to have 20 continuing legal education (CLE) credits each year. While I think that's a great thing for the parents who are being represented by people in cases where they've had their children taken away, I think that's going to take away from some of the training that they could be doing with respect to our criminal defendants. That's kind of where we're at here in Elko.

**Robert Stokes (County Manager, Elko County):**

I have been here for 17 years, so when I talk a little bit about the history of why the county decided to go with an employed Public Defender's Office, it's based upon information that I received from my predecessor, who was the County Manager for almost 3 decades before I came. My understanding is that some of the things we've already heard today, the State Public Defender's Office, which was being administered out of Carson City, when they would come to—and this was before, maybe, perhaps we had the freeway. Even with the freeway system, I travel frequently to Carson City, and invariably, depending on traffic, it's between 4 1/2 to 5 hours. We have a beautiful state here. We have a lot of open spaces. It doesn't always lend itself to being able to go in and have a meeting with a defendant or to just have a short visit to the courthouse if you live many hours away. We also share some of the concerns that some of the other counties have expressed with regard to the cost of the public defender system if it is changed. Even if it's not, it's already strained. If it is changed, we are concerned about how, in our case, Elko County would be able to afford any increases in the cost of these programs.

**Chair Cherry:**

Seeing no questions from the Commission members, thank you very much, Ms. Hill and Mr. Stokes, for your testimony. Congratulations on having an institutional Public Defender's Office in Elko. That's great. Next we will hear from Pat Waits from Lander County and Eleanor Lockwood from Churchill County. Thank you for being here today. Two more of our rural counties.

**Pat Waits (County Commissioner, Lander County):**

I represent the southern district in Lander County. Lander County is about 5,680 square miles and we have a population of about 6,200-plus. We are one of the smaller ones. My background actually is a court clerk for the Austin Township Justice Court, which I was 8 years prior to becoming a Commissioner, and I'm in my second term. The history of our indigent defense was actually captured by David Carroll in his report. Austin was one of the first ones to recognize that some folks needed some representation rather than just lynching them up in a tree, I guess. It's very interesting. The report is wonderful, and I know he'll finish up for us on all the things that we are not giving you today with all the information you need.

We have actually contracted for our public defense for over 30 years now. Currently, our District Attorney was our Public Defender for many, many years, so the last 4 years, we have a new Public Defender, and he is not in the county. He is from Pershing, but he does have an office and full staff in our county. Those of you that are not real familiar, we don't have any incorporated towns in Lander County. Battle Mountain is on Highway 80, and separated 90 miles south of there is Austin and the Kingston area, and that's on Highway 50, so we have two of the big east-west highways going through both of our towns. We do pick up a lot of the folks that are arrested that are not necessarily from our county. As far as our Public Defender, we very often, as Commissioner Tipton referred to, they have many that are traveling in pairs or more and we do have to go outside the Public Defender's Office. We have a fully qualified list that we call upon, and our Public Defender takes the most severe. We are under contract, as I said. The contract for the last 4 years actually has a 2 percent cost of living adjustment (COLA), and the cost of that in 2015 was \$86,970, in 2016, \$88,801 and in 2017, \$90,658, and we've got a couple months yet on the 2018 contract. Actually, we've paid \$92,471 so far.

We have two justices of the peace. We have the one in Battle Mountain, which is Argenta, and we have one in Austin, but the challenge is the attorneys. We only have three attorneys in Lander, and one of those was our Austin Township Justice of the Peace, and he has given up that position to run against our current District Attorney. We have the Deputy District Attorney, which is an attorney, of course, and was our District Attorney for many, many years, and then we have the current one that just gave up the Austin Courthouse Justice of the Peace, and then we have one individual, and that's it. So, it's always been a big challenge. Currently, our Public Defender comes out of Pershing. That seems to be about the biggest challenge we have is attorneys, and as I said, we've been under contract for some time and it's worked quite well for us. It does come before the Commissioners soon, and we will be looking at that again to renew. We've looked at several other opportunities, but we can't even hire a civil attorney at a really good rate, and so we have to go contract a civil for our county. It leaves a little bit to be desired, but we sincerely appreciate the opportunity to give our input today.

**Eleanor Lockwood (County Manager, Churchill County):**

I have been the County Manager since September of 2012. I came somewhat ill prepared for this. I thank Dagny Stapleton very much for letting me know about this meeting. I want to just echo a lot of the comments that my colleagues from Humboldt and Lyon Counties have expressed today. We have a modified flat-fee contract and we instituted that in September of 2012. So, as I came into this position, we were dealing with this issue. As I leave this position, because I'm retiring in a few months, we are still dealing with this issue. I think the biggest frustration that I have had—the County Manager oversees the contract of the Public Defenders. As with Lyon County, I take a recommendation to the Board of County Commissioners and they appoint the Public Defenders. Up until 2012, we had one Public Defender. In September of 2012, we went through a very formal process. We went out for an RFP. We got some very qualified

attorneys. We again echo the sentiments of our other rural counties. We strongly believe that if you have attorneys that either live in your community or become very familiar with your community, the counsel that is provided is more effective. In September of 2012, following a very formal process, the Board of County Commissioners appointed three Public Defenders, and then again in 2014, unfortunately, we had to terminate the contract with one of them. We continued with that process until November of 2017. In November of 2017, I tried to meet with the Public Defenders.

My biggest frustration has been echoed by both Jeff Page and Dave Mendiola. I think this is the responsibility of this Commission and what we're all trying to grapple with. How do you define a case? What are the reporting standards, both reporting to the county and reporting to the state? To answer the question, are we comparing apples to apples? I would certainly be served by having an oversight commission that is fair to assist in guiding the county with either a model that defines caseloads for my specific county. We only have one incorporated city. They don't have to travel big distances between district courts and justice court. I would certainly believe that the county will be well served with an oversight commission that can also grapple with the question of what is effective counsel? I don't want to be facetious here, but is effective counsel when you win or you lose?

The oversight of the Public Defender contract has been one of the most difficult tasks that I have had as County Manager. My background is planning, and I've been in public administration for all my career. So, when I try to get answers about the justice system, I have to go to my colleagues who work within that system to try to understand what is a case? When I look at the reports from the public defenders and I identify we have three public defenders and the total number of cases, one of them has been given 760, the next 520 and the next 145. The logic within me, and I understand from my husband that I'm not always logical, that doesn't make sense to me. You have three Public Defenders. There should be a more even distribution of cases.

Again, I don't want to waste your time, I just want to echo that we would like to retain some control in the counties. We do have limitations of funding. In 2017 of December, Churchill County finally found funding to build a new jail. We had terrible problems with our old jail, so now we have that bet to bear, so at least we've, I think, solved one of the problems in our community. But we do have severe limitations on funding. We have the same concerns that Jeff Page has, that even if legislation is passed, if the economic cycle turns down, we often get unfunded mandates. I would be happy to answer any questions, and thank you for allowing me to come.

**Chair Cherry:**

I assume that neither county gets any aid from the state, so you do 100 percent of indigent defense?



**Ms. Lockwood:**

That's correct.

**Chair Cherry:**

And that's good for Lander and Churchill?

**Ms. Waits:**

Yes, you're correct.

**Chair Cherry:**

Why do neither county want the State Public Defender? Wouldn't it be easier if there was a State Public Defender's Office in Carson City that had a resident in Churchill County and a resident attorney in Lander County? Wouldn't that be easier for you?

**Ms. Waits:**

I think a lot of the things that were said prior certainly apply. The biggest concern in Lander was that we would have somebody traveling that we would not know and wouldn't take the interest and just wasn't one of our group. The qualifications are terribly important. We thought that they'd start with some folks right out of law school that really wouldn't have all the experience that we needed, and when we go with Public Defenders, even the ones that are not contracted, the ones that just come in to help when we have codefendants, we check the qualifications really well. Of course, they are fine for traveling or they don't come. That's why we have a long list. Most of them are okay to help us when we need it. We figure we have it covered and we didn't want the state telling us everything and what to do.

**Ms. Lockwood:**

I echo the same sentiments as most of the others have. In fact, when we had three Public Defenders, they are required to have an office within Fallon. Two of the Public Defenders do travel from outside from Reno. However, they've come to know our community very, very quickly. They understand what our community culture is. They understand what our community is all about. What I want to say about the Public Defenders that have been under contract with Churchill County, I have never come across a more experienced group or a group that is more passionate about providing legal defense.

**Chair Cherry:**

Thank you very much.

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

Senate Bill 377 would have allowed a county to opt out. Where were your counties on that bill?

**Ms. Waits:**

That actually did not come before an agenda item, so it was just information, and our District Attorney was very upset. He alluded to the fact that the District Attorneys' Association was very upset about it originally, and the reasons why he thought they might have misinterpreted some things. Our District Attorney was very outspoken to all of our commissioners outside of the actual meetings about what was happening and that the county should look at opting out. I sat on the NACO Board, as you well know, Mayor Crowell, and NACO was a little bit disapproving of it too, because we weren't sure what all of our Commissioners wanted to do if it wasn't an agenda item. We had some that were for and some were against, so NACO could not really take a position because it hadn't come before. So, I don't really know what would have happened. I know they were pushing to opt out, and I know why they were pushing, but I don't know whether that would have been the final decision of the Commissioners.

**Ms. Lockwood:**

We were generally supportive of S.B. 377. We have similar concerns. The way we operate responding to bills, and again, we have to be in compliance with the Open Meeting Law, we only have three Commissioners, which makes it somewhat easy, but it makes it also very difficult. Many of our responses, I gain input from the Commissioners, and we echo some of the concerns that Jeff Page alluded to earlier. We are concerned, again, if indeed legislation is passed and the fee that we have been paying our Public Defenders is supposed to remain the same, we're not quite sure that that's going to remain in perpetuity.

**Mr. Kohn:**

This has come up, like, three times now about what is a case and how should cases be measured. Chair Cherry, I think you remember, we spent a great deal of time on this on the Indigent Defense Commission. We did recognize that cases were counted differently everywhere, so we made it a point to define a case. The way we have defined cases in Clark County and the way it was recommended from the Indigent Defense Commission is that cases aren't charges, and I can understand how you might have 700 from one person and 154 for another. If you're just counting charges, you're going to have a high number. What it should be is a complaint. The complaint can be one charge for one act, or a complaint can be 700 charges. But it's still one case. I would recommend that the County Commission, with all due respect, and the Public Defenders up there look at ADKT 0411, which was passed by the Nevada Supreme Court back in 2008. It won't define for you what is competent counsel. I know you said

that with tongue-in-cheek, because every court will define it differently. We have a 10-week training class in Clark County, and we still have trouble defining competency of counsel. But if you look at ADKT 0411, you will see a checklist of things that lawyers may not do in every case, but should consider in every case, so there are definitions and there are ways to help out. We spent the last 10 years working on this, so I would direct your attention to ADKT 0411, and that might be helpful.

**Mr. Grady:**

In the way of a comment, Ms. Lockwood mentioned that she has been the County Manager for about two years, but she didn't mention that she spent years on the planning and she is retiring shortly. I guess it is public record that your successor will be Jim Barbee, who is with the Department of Agriculture, who has worked with many others. Ms. Lockwood, the best of luck to you in your retirement.

**Chair Cherry:**

I see that John McCormick is in the audience. Mr. McCormick, I think maybe you and Jamie Gradick ought to get together and submit some of these issues that were discussed today about what's a case to the various rural areas. Jamie Gradick is our Rural Coordinator and John is Assistant Court Administrator but was very familiar with the rurals. I think some of the rural counties need to be apprised of the fact as to what a case is and some of the other things that we've accomplished. I'm not sure exactly how we're going to communicate this, but I'll meet with Mr. McCormick and Ms. Gradick and see what we can get to you folks to help you understand a little bit better and help your attorneys understand. Also, I wanted to mention again, I did meet with Dean Hamilton to see if it's possible on some type of loan forgiveness for top-notch Boyd students that would be willing to relocate to the rural areas. I don't think it's a problem. I think that sooner or later some people are going to take a look and see what I saw when I went to Winnemucca and Elko and Wendover and Tonopah and Pahrump and the rest of the rural areas. Having been in Nevada now for 48 years, we've got some nice places to live and some nice people, real nice people. Thank you for your testimony.

Our final two presenters are the Washoe County Public Defender Jeremy Bosler, who is a member of the Indigent Defense Commission and a dedicated Public Defender and a good friend, and also Justice of the Peace Tom Armstrong from here in Carson City. Mr. Armstrong is probably the future of the judiciary. Take a look at the young man who is now justice of the peace and probably has a great career ahead of him in the judiciary. Mr. Bosler, if you'll tell us whatever you wanted to say, and Mr. Armstrong, I'll let you say whatever you need to say and then we'll conclude.

**Jeremy Bosler (Public Defender, Washoe County):**

Thank you for the invitation to come give my comments regarding indigent defense. I've been in public defense for almost 25 years. I've been the Chief Public Defender for 13

years. As Justice Cherry has mentioned, I've been involved with ADKT 0411 efforts, the Indigent Defense Commission and some other commissions addressing the provision of indigent defense. Not to belabor the point, but I agree with many of the comments made today by the other participants, especially Ms. Rose from the ACLU, that there are some structural issues, I think, that exist in Nevada. The comments you've heard today have mostly dealt with rural Nevada, but the issue of funding for indigent defense is not only a rural issue. It also happens in urban jurisdictions, and it is a constant concern, I think, for Washoe County, and I would say probably for Clark County too, about how they can afford the provision of indigent defense, whether it's for investigators, for conflict attorneys, for expenses.

I think what we've heard today has shown the benefit of institutional public defense, whether you're talking rural counties, or what you'll hear about urban counties. There is some benefit of having an institutional defender. Let me tell you a little bit about Washoe County. We have 36 attorneys, 60 total staff. We take in about 10,000 cases a year that we open. We conflict out about 1,000 of those cases. It's criminal cases, juvenile delinquency, 432B dependency cases, it's involuntary commitments, it's misdemeanor practice. But by virtue of us having an institutional defender relationship with our funders, we've been able to establish a level of independence. I think it's important. That is the first principle of the ABA 10 Principles of Indigent Defense is that there's independence in the defense function. It has allowed us to have some very candid discussions with our funders, and we right now have declared unavailability for family court cases, and all those new cases go to tertiary attorneys because we've had to worry about our court functions in criminal defense, misdemeanor practice, juvenile delinquency and involuntary commitments. I think that's something you lose when you have to rely upon contract attorneys, and I'm not trying to disparage the quality or the intent or the motivations of contract attorneys across Nevada. Some of them are my colleagues. Some of them I've known as adversaries. But the reality is, if you have to worry about your contract being renewed by the agency that you have to contest their behaviors, whether it's a judge or whether it's a commission or a selection committee that includes the prosecutor, that can have a chilling effect, not only for the practitioners, but I think the public in general may start to have concerns about the independence of their counsel and the quality of that counsel if they realize that they have to do certain things to have the contract renewed.

One thing I heard was mentioned by one of the presenters today is that I think, from our perspective, one of the biggest concerns for counties for people who provide indigent defense is how can they provide defense at initial arraignments and be part of the pretrial release process. For members of this Commission, a lot is determined on how long you stay in jail. The outcome of the case, whether you go to prison, the length of your sentence, all those things can be tied to how much time you spend in pretrial detention. The benefit you get from an institutional defender's office, whether it's Clark County, Washoe County, a State Public Defender or some of these successful institutional defender offices we've heard about today is that they can figure out a way to provide counsel at the initial appearances, make contact with defendants, collect

biographical information, start their investigations and produce better outcomes. I think that is something that is not impossible if you have a contract system, but it is hard to manage when you have a contract system.

We've heard successes in the state for institutional defenders. What I've heard from the other presenters is that they worry about a level of bureaucracy if the State Defender is involved, but having sat through today's testimony, it appears that all the counties that use contract attorneys have to have a level of bureaucracy to manage those contracts. That is the reality of the business, and I think an institutional defender's office, whether it's the State Public Defender or whether we've talked about what's been discussed previously, that Nevada is regionalized, where you have the State Public Defender take a region, and Washoe County takes a region and Clark County takes a region or two. There is a benefit to having an institutional defender's office involved in that system, because it takes away the need for county commissioners and county managers to involve themselves in bureaucratic affairs and managing defense counsel when they may not have the expertise to do that job very well.

Something else that I think bears comment on, and I think Mr. Kohn mentioned this, is that not only is the provision of indigent defense a rural issue, it's an urban issue. As I discussed, the funding is an urban issue. But we have lots of lower courts, municipal courts that engage in the provision of defense counsel. In Reno, the municipal court judges actually hire the attorneys, and I would imagine that occurs elsewhere in the state. To me, that should be of concern for us, where you ask the courts to be the bureaucracy that supervises indigent defense. I think Mr. Carroll previously, and it's been mentioned at this Commission, that there probably is a need for a statewide commission to take that bureaucracy out of the hands of local government so they don't have to worry about those things. It helps preserve independence of the defense function. If that was done, I think a lot of these other issues could be dealt with through the statewide commission.

The other benefit I think that we get from an institutional defender's office is, again, we have 36 attorneys handling roughly 9,000 cases. That's a huge caseload. We couldn't do that without the institutional resources that we have. That includes nine investigators that just help with our office. An institutional defender's office allows for the staff to be trained regularly and supervised, have their performance managed in a way that protects the defendants, in a way that takes into consideration the concerns of the court and in a way that takes into consideration the concerns of the funders and local government. I think that's harder to do if you have a contract system. We put on between 20 and 50 trainings a year in specific areas that are of interest to our attorneys, whether it's being in the Mexican Capital Legal Assistance Program. You talk about cultural relativity and cultural sensitivity. We bring in training on family law issues we give to private counsel. The fact that an institutional defender's office can provide specific training that's tailored to the attorneys in that office is one of the other great strengths of institutional defender's offices, and it is a strength that you would get from the State Defender's Office. Maybe there's an opportunity as I'm listening to these

presenters to have the institutional defender's offices take more of a role in training. We've talked previously about trying to use the internet and videoconferencing to put on training where we can put on training for local attorneys in our Reno office but have it beamed out to urban and rural areas, maybe Lander County or other counties can take part in that training so attorneys can learn the latest developments in child dependency, maybe it's childhood brain development, maybe it's a DNA expert that we're bringing in so they could listen to that expert and think about how they can incorporate that practice into their rural area system. Again, I'm a spokesperson for a fairly large urban institutional defender's office, and I could talk all day about the strengths that brings to the system and how that helps you drive policy decisions and help you identify grant opportunities, things that you may not get with a contract system, but I think listening to the people who've spoken today, Nevada has some unique challenges. There probably is a place for contract attorneys in some jurisdictions, but I think the institutional defender's offices can play a greater role going forward. With that, I'd be happy to answer any questions you may have.

**Chair Cherry:**

Thank you, Mr. Bosler. You're an excellent Public Defender. I want to also thank Jen Lunt, who is a retired Alternate Public Defender in Washoe, and Bob Bell, who helps with the contract attorneys in Washoe. You guys do a really good job, there is no doubt. Marc Picker now has replaced Ms. Lunt, so we've got a good team up in Washoe. I do agree with you about the institutional public defenders. I think having Assemblywoman Benitez-Thompson and Senator Segerblom here that the state's got to step forward. If they don't step forward with us, they're going to have to step forward with the ACLU when they come out with some of the issues. You always have to have contract attorneys because of conflicts, but there gets to be a point where there is nothing better than an institutional public defender's office. Matt Stermitz shows what they do in Humboldt County. God bless that county for what they do having not only a Public Defender but an Alternate Public Defender in a rural county. Elko is the same way with Kriston Hill, so we've got some successes, but we've got to help the smaller rural counties too. Mr. Bosler, thank you for your presentation. We'll get back to you with questions, but let me have Judge Armstrong, who deals with the State Public Defender on a daily basis and with contract attorneys and court-appointed attorneys.

**Tom Armstrong (Justice of the Peace, Carson City):**

I appreciate the opportunity to speak to you all a little bit. I am the Carson City Justice of the Peace and Municipal Court Judge. I'm one of two. I'm in Department One in our jurisdiction. I'm also here, probably more importantly, I am the current President of the Nevada Judges of Limited Jurisdiction Association. I represent the limited jurisdiction judges. That includes justices of the peace, municipal court judges in all of the state, from Wendover to Incline Village, from Lovelock to Laughlin and all points in between, urban, rural, mid-level. The Association that I am tasked with representing is diverse, is broad, as diverse and broad as our state is, and getting consensus about what is best is

very challenging. But I'm pretty comfortable saying that to a person in the judiciary, we support quality, competent, diligent, indigent representation. It's very important to what we do, and I think we are wholeheartedly behind the very best product that we can get in our courtrooms. I'm going to point out that in the limited jurisdictions, I would say the majority, if not the vast majority, of indigent defense is practiced in the limited jurisdiction courtrooms. Justices of the peace, municipal court judges, we handle appointment of counsel, we handle the preliminary matters, all felony cases, we handle criminal cases, misdemeanors from the beginning to the end, and even after if there's supervision after the fact. Representation, appointment, the practice of indigent defense is done—if you want to know who is doing the work and doing a good job in indigent defense, I would say ask your local limited jurisdiction judge, because they deal with the vast majority of cases from beginning to end.

I think it's important for me to point out that in Carson City here, we have the services of the State Public Defender's Office, and we're very happy with the services they provide. In addition to identifying and helping with conflicts, we have three contract attorneys, a panel of three. They are assigned cases on a rotating and random basis unless there is a previous conflict with previous offenders. They're free to ask for extraordinary fees in extraordinary cases, investigator fees, expert witness fees, and in our jurisdiction, the State Public Defender's Office routinely petitions the court for expert witness fees. They have their investigators, but they don't have a budget for expert witness fees and they'll just submit it to the courts for approval. We're happy with the services they provide. I think that one of the things I want to point out, just a specific thing that the institutional Public Defender's Office provides us as a great benefit here in Carson City, is that in the drug courts, the drug court teams need to have a Public Defender representative. I don't think it's feasible to ask a conflict attorney to step into that role. Our Public Defender's Office has a representative on each one of the teams. I have a misdemeanor treatment court, my co-judge has a mental health court. I believe the Western Regional Drug Court and the DUI Diversion Court has Public Defender representatives on those teams. That's part of the service they provide, and the package that's very important, becoming increasingly more important, in all these jurisdictions. I noticed how many of these rural jurisdictions are speaking about the coverage for drug courts and specialty courts they provide, and that's important to us.

Pragmatically, the funding body, whether it's the county, whether it's the city, whether it's the state, whether the city manager wants control over the bureaucracy or whether the state should have control of their bureaucracy, speaking for the judges, what we want are confident, diligent, well-trained attorneys that do a good job for the clients. However we get there, we are in favor of. But we also understand that the budgets, the funding bodies—in the limited courts, the funding body for our budgets and the funding body for the justice of the peace salaries are the same people who are funding the indigent defense as well, so it's all a part of the big public safety part of the budget. We're cognizant of that. Frankly, the independence that the State Public Defender's Office provides our courts and our system works for us. I could say that a lot of my brethren in the judiciary would say they like their contract attorneys. I haven't heard

anybody specifically complain about any kind of institutional problems that I can speak to. I can say what works for us. The State Public Defender works for us. I will say that I practiced as a conflict attorney in Elko when I first started. I grew up in Carlin, Nevada and graduated from Carlin High School and practiced in Elko for a while, and I was on the list of rotating attorneys taking cases for \$100 an hour when I first got out of law school, and I felt like I did the very best I could in every single case regardless of how much time it took, regardless of whether I had other cases, private cases, I was handling. In Carson City, I was appointed to be on the conflict panel. I had a private practice. It was a civil practice. I did private criminal. I felt the same way. I felt like it didn't matter to me who was paying the bill, and a lot of times whether the bill even got paid because, I will say, sometimes with private clients, I didn't get paid. They got the best representation I could possibly provide. I think that that comes from the attorneys practicing, and I think you can see that regardless of who provides services.

I'm here to answer any questions you have regarding the judiciary and the judiciary's stake in this. We want good attorneys. We want attorneys that are doing the job representing their clients. It's important to us across the board to have quality representation in whatever form delivers that. I think we can say we would be flexible on how that model is delivered.

**Chair Cherry:**

Thank you very much. I think that you all agree that this is the future of the judiciary here in the State of Nevada. I'm very proud to have Tom Armstrong as a member of the judiciary and a member of the Indigent Defense Commission for ADKT 0411. I want you to know that he represents with limited jurisdiction judges, I think, John McCormick, there are almost 100 limited jurisdiction judges. I think that's the number they gave me, and they do a great job in the state whether they're attorneys or not, because some of them are not attorneys. They're not attorneys, but they do a fabulous job, and I think what we want to try to accomplish is that if somebody gets arrested in Lander County or Mineral County that they get the same type of representation that Mr. Bosler will give them or Mr. Kohn will give them or Mr. Stermitz will give them or Ms. Hill will give them with the institutional public defender's offices. So, that's what we've got to do, and it's a real challenge to the state to help out in this. The counties have done the best they can and they've been good friends to the Supreme Court's ADKT 0411. They've really come through with us when we said no more flat-fee contracts, and people are able to get hourly and they're able to get investigative fees, so that works out.

Seeing no questions for the presenters, thank you very much for your testimony. It's been a pleasure. We will continue to hear from stakeholders in future meetings. If you were not on the agenda today and you like to be on the next agenda, please contact Risa Lang, who coordinates testimony.

The next agenda item is actually directions to staff and the consultant so we can provide any directions we need to the staff and consultant. I have no direction at this point. The



ladies have done a great job for me, and David Carroll is doing a fabulous job. I think all the Commissioners would agree, so just keep up your good work and be patient with a justice who is not used to presiding over a legislative commission.

Agenda item IX is a discussion of dates and topics for future meetings. I know we'd like Chris Lalli from the Clark County District Attorney's Office. He is the Assistant District Attorney and a good friend, to testify at the next meeting, and I've set May 25 for the next meeting of the Commission. Now is the time for us to discuss anything else you would like to see in future hearings and speakers we would like to hear from or anything else. As mentioned earlier, it's my intent to invite other stakeholders to come to future meetings. If any of you would like a particular person to testify, again, contact Risa Lang so she can invite the person to make a presentation. Is there any information that the Commissioners want to give to Ms. Lang or Ms. Davis or our secretaries? Hearing none, agenda item X is the second period of public comment. Seeing none, I will now adjourn this meeting at 12:52 p.m.

RESPECTFULLY SUBMITTED:



Jordan Haas, Secretary

APPROVED BY:



Justice Michael Cherry, Chair

Date:

6-28-18

<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 March 30, 2018 Meeting
Exhibit D	Amy Rose, Legal Director, ACLU of Nevada	Agenda Item V: <u>Davis v. State of Nevada</u> , Complaint
Exhibit E	John Lambrose, Assistant Federal Public Defender (Retired)	Agenda Item VIII: 2008 Report of the Indigent Defense Commission's Rural Subcommittee
Exhibit F	Jeff Page, County Manager, Lyon County	Agenda Item VIII: Presentation on Indigent Defense
Exhibit G	Jerri Tipton, County Commissioner, Mineral County	Agenda Item VIII: Public Defender Contract Communication
Exhibit H	Lorina Dellinger, Assistant County Manager, Nye County	Agenda Item VIII: Coordinator for Public Defender Services Contract
Exhibit I	Lorina Dellinger, Assistant County Manager, Nye County	Agenda Item VIII: Public Defender Services Contract (Northern)
Exhibit J	Lorina Dellinger, Assistant County Manager, Nye County	Agenda Item VIII: Public Defender Services Contract (Southern)
Exhibit K	Jeff Page, County Manager, Lyon County	Agenda Item VIII: Public Defender Services Contract