

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

June 28, 2018

The meeting of the Nevada Right to Counsel Commission was called to order by Justice Michael Cherry at 9:19 a.m. at the Legislative Building, 401 South Carson Street, Room 4100, Carson City, Nevada, and via videoconference at the Grant Sawyer Building, Room 4412, 555 East Washington Avenue, Las Vegas, Nevada.

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

COMMITTEE MEMBERS PRESENT (CARSON CITY):

Justice Michael Cherry, Nevada Supreme Court, Chair
Assemblywoman Teresa Benitez-Thompson, Assembly District No. 27
Robert Crowell, Representative of the Nevada Association of Counties
Tom Grady, Representative of the Nevada Association of Counties
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
Anne Traum, Representative of the State Bar of Nevada

COMMITTEE MEMBERS EXCUSED:

Laura Fitzsimmons, Representative of the State Bar of Nevada
Joni Eastley, Representative of the Nevada Association of Counties
Justice A. William (Bill) Maupin (Retired), Nevada Supreme Court
Erika Ballou, Representative of the State Bar of Nevada
Phil Kohn, Representative of the Board of County Commissioners of Clark County
Senator Tick Segerblom, Senatorial District No. 3

STAFF MEMBERS:

Risa Lang, Chief Deputy Legislative Counsel, Legal Division, Legislative Counsel Bureau
Angela Hartzler, Secretary, Legal Division, Legislative Counsel Bureau
Jordan Haas, Secretary, Legal Division, Legislative Counsel Bureau

OTHERS PRESENT:

Judge John Schlegelmilch, Third Judicial District Court
David Carroll, Executive Director, Sixth Amendment Center

Justice Michael Cherry (Nevada Supreme Court, Chair):

I will now open the sixth meeting of the Nevada Right to Counsel Commission. We're starting this as a subcommittee. At this point, we have a couple folks that are running late. They should be here shortly.

The next item on the agenda is public comment. Seeing none, I will move to my opening remarks. Today, we will receive an update from the Sixth Amendment Center regarding their site visits. We're happy that David Carroll is here in Carson City and will provide us with more details about these visits and possible recommendations for Nevada. We also have included an item to receive any input from stakeholders who have not had an opportunity to speak.

I'm going to hold off on approval of the minutes until we do have a formal quorum. I believe we have a judge from Yerington here, Judge Schlegelmilch, who has been very active in the Indigent Defense Commission (IDC) and also has been a real supporter of indigent defense in Yerington in his district.

Judge John Schlegelmilch (Third Judicial District Court):

Thank you very much for allowing me to come and speak to you today. I think this is a very important issue statewide. It affects all of Nevada, especially rural Nevada, on how we view indigent defense services throughout the state. Just a little by way of background, I'm the current sitting District Court Judge in Yerington for Lyon County in Department One, so that's the Third Judicial District. Although not born in Nevada, I graduated high school here over at Incline High School. I went to Reno. I went out of state for law school. We didn't have a law school back in the late 1980s. I went to law school, graduated law school in 1991, came back and wound up in Yerington, Nevada. I have served many roles since 1991. I was with the Lyon County District Attorney's Office for about 10 years, starting off as the Civil Deputy District Attorney, going up to Criminal Deputy and ultimately Chief Deputy before I left in 2001 when I established my private practice. I was a sole practitioner until I stole my wife back from Mayor Crowell, and she came to join me in 2002. I've served on multiple court, Supreme Court and private commissions. I was a member of the Board of Governors for the State Bar for 6 years. But mostly, I was a rural practitioner until I became a judge and was elected in 2014 and took office in January of 2015. I got involved with providing services to the indigent in 1992. The reason I got involved is that I was through what the young lawyer section of the State Bar in Nevada did at that time. Sandra Mae Pickens, my wife, was also involved with that. We formed the Rural Pro-Bono Project, which was one of the first providers in rural Nevada—was the only provider at the time in rural Nevada for

attorney services for the indigent civilly, in the civil field. So, since 1992, that has changed to Volunteer Attorneys for Rural Nevada (VARN) in 1996, when they finally incorporated. Since that time, VARN is still present out there.

I've been involved with providing indigent legal services for a long, long time. It's been one of my pet peeves in the State of Nevada because there just are not enough attorneys in rural Nevada, and there never will be, to service all the legal needs in rural Nevada. And I say "never will be," well, maybe. You never know how things progress. When I moved to Lyon County, the population was about 12,000. Now we're the fourth-largest county in the State of Nevada according to the State Demographer. We're up to 54,000 and we're knocking on Carson City's door. According to the State Demographer's last numbers, we're only 700 people less than Carson City, being the third largest county in the State of Nevada. Lyon County has gone kind of a long way since the days when I came in 1991.

I have somewhat of a unique view of indigent legal services and indigent defense services because I have practiced not only civilly, not only criminally as Deputy District Attorney, but also as a criminal defense attorney for 13 years in private practice. I was an Interim Public Defender for the City of Yerington. I was the Special Prosecutor for Carson City. I've done a number of things statewide. To be honest with you, I practiced in pretty much every district and justice court in the state. You don't live unless you get to go to Beowawe Justice Court at least once in your life.

Lyon County is unique, and I think one of the things that this Commission needs to do is separate the anecdotal horror stories that are presented or that have been heard and look at the true legal services that are being provided for indigent defendants in the State of Nevada. We've heard stories that rural defense attorneys don't go see their clients, that they plea every case, that there's no incentive for them to go to court, that they don't get paid for extraordinary expenses, that rural defense is in crisis. I'll submit to this Commission, that's just really not the case. Yes, almost every county has adopted a different way to provide indigent defense services, and I think County Manager Page had previously testified before this Commission. I noted that there were probably a couple of questions that just kind of remained unanswered as it relates to that. One of the things that I'm glad to see is I believe that by Mr. Carroll going out and actually viewing all of the different courts, going to the counties, seeing how things work, the provision of legal services in those counties, we'll make an impact, because not every county is a good place to have an institutionalized public defender. They're just not set up that way. I'll tell you, Lyon County is one of them. There are a number of reasons for that. Lyon County has at least four distinct population areas. We have Dayton, we have Fernley, we have Silver Springs and we have southern Lyon County, which is basically Yerington and Smith Valley. Those four areas are unique. They have the major population areas. Each one has population in excess of 10,000 people in each of those areas. Each of those areas have justice courts. Now, the Silver Springs Justice Court is part of the Walker River Justice Court, which actually holds court in Yerington. It's unique in the fact that we have defense attorneys currently that have

offices in each of those communities that the justice court is located in. They provide services. They're the primary public defenders for those areas. They are contracted public defenders, but Lyon County is somewhat unusual because Lyon County has an ordinance that establishes the Office of the Public Defender. They are appointed by contract by the County Commission as contractual public defenders, their offices, each three of the offices. They serve as first conflict attorneys in any cases, and the conflicts work great, the way we handle conflicts. I think if this Commission were to do some kind of institutionalized public defender-type program—and I know in Senate Bill (S.B.) 377, and I was intimately involved with that, there were four judges that were somewhat disappointed at the first draft that came before the Legislature and the reprint. The four judges, including myself, basically sat down with the Administrative Office of the Courts (AOC) staff, with Mr. Lambrose and multiple others to try to make a balance, a balance between local control and state funding. Do I believe that the state should fund public defense? Probably. Is that really ever going to happen? Unknown. But the problems that we've seen in the past with the State Public Defender are a foreshadow of what could happen in the future, because unless we have in each of these counties—because in Lyon County, every contracted public defender is required to have an office in the county where they can meet clients. They go to the jail all the time. They have almost unlimited access. One of the things the judges in my county have never done is get involved in selecting anyone who has one of those contracts. We don't get involved. It's not part of our function, I don't believe. And that's why we actually incorporated that when we did S.B. 377 and we spoke about having some judicial comment on how the public defenders are doing, and I think that that's valid. Everybody should be able to comment in a forum of one way or another how public defenders are doing.

I think the second area you need to look at is not so much the delivery of services or how they're delivered, but training. I think that never in this state—and I know that Clark County has incorporated their own training program for their office, but they're an office of 140 attorneys, I believe was the last number that I heard. There's no real training out there, nor are there any real training requirements out there for the rural public defenders. For instance, in Lyon County, they don't just do criminal defense. They do juvenile defense, they do 432B actions, they do parole and probation violation hearings, both in the prison and in my courtroom. So, it's more of an extensive type of practice than just criminal itself, and I think that training in relation to those areas that they practice in every day, and I believe most contracted public defenders are under those types of contracts. They are paid very well in Lyon County. Each of them is currently under a \$185,000 contract. That contract is going up to \$205,000 this year, and I understand it's going to go up to \$225,000 the following year. That's why things like mileage are inclusive in the contract. Those costs are part of the negotiated rate. I understand that there has been some animosity toward fee requests, or fee requests for investigators, fee requests for expert witnesses, and it's been put forth that it should not be the function of the district court to do that. I will tell you, we do that. When one of the public defenders, or—there are other ways to get to that money. You don't have to just be a public defender. When the public defender needs an expert or needs an investigator, they apply to the court for excess money for that. I am unaware of any time

that any of the public defenders have requested any money out of the court that that money hasn't been granted to them. This is the standard. The standard is, "Judge, I need an investigator. It'll be reasonably incurred in my defense. Can you authorize up to \$10,000?" You authorize up to \$10,000, you sign the order. When they get the bill, they present it to the court, and the court basically signs the check. This fiscal year, we've spent—and I wrote some numbers down here, so I want to get it right—on private investigators and expert witnesses and the like, as of June 22, \$70,913 in addition to the contracts that we've reimbursed for those. In addition, we've paid excess fees in the amount of \$43,200 this year for extraordinary cases and for third party and for fourth attorney conflicts. That's both a mix of extra duty and that. One of the largest things, and I was intimately involved, is capital cases, especially in rural cases. In Fiscal Year 2016, during the course of the Jeremiah Bean case, the county spent, in addition to the contracts, an additional \$504,000 on murder cases, including the Bean case. In that year, they also spent an additional \$81,000 on expert fees, and they spent also in that year an additional \$17,000 on extra duty attorneys' fees.

There is just one more point that I would like to make, if you'd allow me. By having the contract attorneys, we have increased access to justice in the rural counties, because honestly, there might not be an attorney in Yerington, or there might not be an attorney in Fallon, or there might not be an attorney in Battle Mountain, absent the fact that they have supplemental income through the contracts that they may or may not receive. That opens up legal services to the whole community, not only to the indigent defendants. It runs a full circle. Sure, we don't know what their private practice is, and I'm not sure we can ever force a private practitioner to tell them anything about their actual private clients. I think that there's a conflict there potentially between their duties to their private clients and their requirements if they were made to actually tell a commission or make it public how many privately represented clients that they may or may not have. But I will tell you, in my course of being a rural practitioner, I represented thousands. It could be as simple as they could be writing a simple will. It could be just sitting down with somebody and saying, "Take this course or that," but that's what you get. I never had a contract. I never was a public defender, but I did a lot of conflict work for the courts, and I did a lot of conflict work all over the state. I remember once that John Davis, probably back in 2001, Judge Davis in Mineral County, Nye County—well, he calls me up. I'm sitting in my office, my judicial assistant says, "There's a judge on the phone that wants to talk to you." I said okay. He says, "John, I have this case, just won't go away. I need help." I said, "Sure, Judge. I'll come down and handle it." Those things don't happen anymore. You don't get that call from the judge anymore. You create lists. You have conflict attorneys that are set forth. None of those things go on anymore. The rural counties have learned the difference and procedurally have come so far in the last 18 years that I believe they are providing some of the best indigent legal defense services statewide, and in some cases, even better than the public defenders' offices in the big cities. Those are my comments, and I'm really looking forward to hearing what Mr. Carroll has to say. If anybody has any questions, I'd be more than happy to answer them.

Chair Cherry:

Well, I'm going to start off with some questions. It's very interesting about the population increase, because I remember when I came to Clark County and there were 270,000 people and now there are 2,200,000. What caused the population increase in Lyon County? Is there an industry, or what?

Judge Schlegelmilch:

No, I think the biggest part of it was that Dayton grew up as a bedroom community to here, to Carson City. It was cheaper, cheaper property, easy access to Carson City, and I think that was one of the impetuses that Dayton grew as fast as it grew. Fernley, just the opposite. Bedroom community for Reno. Half an hour, easy commute along I-80 into Reno and Sparks, so that grew up as a bedroom community. And then now, to be honest with you, because back when I came in 1991, Yerington was still number one in population. Southern Lyon County was still the highest amount of population in Lyon County. Now with the current growth going on, it's very much USA Parkway related. You live in Dayton, and it takes you 15 minutes up USA Parkway to get to work, and there are so many jobs available up there. That's what's creating the current housing boom. It's the same in Fernley. Fifteen minutes down 1-80, you're at work. So, that's what's creating it right now. I think the increase in the population, what that will amount to in the future, I don't know. Lyon County just approved an industrial subdivision on Lyon County's side of USA Parkway, so that could create housing and some other things.

Chair Cherry:

So, your indigent defense, you get no help from the state? There's no state funding at all in Lyon County as far as indigent defense?

Judge Schlegelmilch:

There's no state funding. It's handled 100 percent by Lyon County.

Chair Cherry:

If you had your druthers, with your knowledge of your county and also of indigent defense, would you think that an institutional public defender's office, as long as the folks lived in Lyon County, would be better than contract attorneys who have private practice?

Judge Schlegelmilch:

Is that a trick question?

Chair Cherry:

It's a true question, of somebody who has been there and done that.

Judge Schlegelmilch:

This is the way that I look at it: I think you get more benefits from having a contracted private attorney because they do more things for the community as opposed to one singular thing. The benefit to having an institutionalized public defender is they do that one singular thing. That's all they do, and they're supposed to get better at it. I've seen some defense attorneys in the public defenders' offices throughout the state that are incredible attorneys. I've seen some that are just awful. I've seen contract attorneys that are incredible attorneys, and I've seen some that are awful. So, I don't believe that the provision of the legal service itself is dependent on the institutionalization of public defense. I hope that answers your question.

Chair Cherry:

Very good answer, as a matter of fact. Are there any more questions for the judge?

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

I was impressed that these private contract attorneys are well paid, and I was curious to know whether you have a sense of their overall profile in terms of what else they're doing or whether the county tracks what else they're doing, if they're also practicing civil law in addition or taking retained cases in addition to their public defender work.

Judge Schlegelmilch:

They do. The only access I have to the amount of work that they do outside of the contract is when they appear before me in court. Occasionally, they'll appear before me in a probate matter. Occasionally they'll appear before me in a divorce case. But each of these offices are multi-attorney offices, so each of them have at least two attorneys in their office. In Lyon County, we contract with the firm, with the office. We don't contract with the individual. The amount, I couldn't tell you. But do they do other practice? Yes, they do, in a wide range of things, just like I did. Because when you're a rural attorney, you do everything. You do water rights, you do real estate, you do contracts, you do probate work, you name it, personal injury work, because you're the only person there when somebody needs help to be able to go to. That is a secondary benefit of having attorneys contracted, because they want to be there, they want to stay there and, quite honestly, they make a darn good living, and they don't want to ruin that for themselves. We hear that there's no incentive to go to trial. We've heard that anecdotally for years. The public defender just had a trial in front of me. Full acquittal. It depends on what the benefits are for the client. To be honest with you, the attorneys in Lyon County are advocates for their clients. We're constantly hearing suppression motions and those

kinds of things. It's not always the minimum amount of work. But there is that percentage of clients that are just guilty or their cases are just not good. They don't spend their resources necessarily on the cases that have little opportunity of winning, and 99 percent of those clients that understand that there's little opportunity of winning want their attorney to make them the best deal possible. I had a 2-week long sexual assault trial, public defense. Murder cases, they've done it. It doesn't necessarily matter all the time as to the age of the individual attorney. It matters as to their ability to advocate on behalf of their client. I think having a local person invested in a local community is more likely to give you that advocacy.

Ms. Traum:

One of the things that you mentioned was training. I was curious if, in your Lyon County contract, there's a requirement, if training is part of the contractual terms with the public defenders that you have. Another question I was wondering is whether some kind of either that kind of provision or centralized training resource you think would be helpful to the public defenders who are doing that kind of work on a contract. I'm suggesting not a centralized public defense system, but some kind of centralized resource for training.

Judge Schlegelmilch:

I am all in favor of a centralized resource for training. I don't think any lawyer can get too much training. It's always good to be able to get that, especially when you're a lot younger lawyer. I think that resource should be out there. Secondly, is it part of the contract that they are required to do that? No, it is not. It is not in the current Lyon County contract that they are required to do any certain amount of hours of training, either in public defense, juvenile justice, in 432B, a child in need of protection work. But, I will tell you that through my knowledge, and I've put on some cooperative things through the Community Improvement Council (CIC) and through the state networks that they attend. For instance, there was a training in my courtroom about 6 months ago in relation to the new child welfare laws, how they would affect the stakeholders in child welfare proceedings, a child in need of protection proceedings. Each of the public defenders' offices had somebody there for that. When it's provided, they do come and seek it out. Of course, it was free continuing legal education (CLE) and the court bought lunch.

Chair Cherry:

Seeing no further questions for Judge Schlegelmilch, I want to thank you for your testimony today, and also I want to thank you for your commitment to indigent defense, both in the IDC and in this Nevada Right to Counsel Commission. Thank you for your testimony. I hope someday now that Boyd School has been in business for a couple decades that we may encourage some of our good students to take their families to the rurals. That's probably the best-kept secret there is, our rurals. Having been to most rural areas and done cases in some of the highs schools and public buildings there,

we're very fortunate to have the rurals that we have. You do a great job as a judge. I'm very proud of you. Thank you for your testimony, and maybe we can encourage some good students from Boyd to maybe forego some of their student debt to have their families move to the rurals.

Judge Schlegelmilch:

It's not just in indigent defense, it's hard to attract somebody even to come and be your law clerk. Hopefully that happens. I've been on the Boyd list since I became a judge for law clerks, maybe two or three. We have one Boyd graduate that works for Judge Aberasturi right now. It's hard even to bring in especially young attorneys who are living in a city who don't know what it's like really, necessarily, to live in the rurals. It scares them a little bit.

Chair Cherry:

Well, we'll work on that. Also, you can also use the law clerk applications from the Supreme Court. We get lots of applications from all over the country, and maybe some folks would be willing to go. I know when we—Justice Parraguirre and Justice Hardesty—did a road trip to Yerington at the Dini Center, and I met a social studies and history teacher, and I said to her, "Did you grow up in Yerington?" She said, "No, I'm from Boston." She ended up in Yerington and she loves it. It was a very interesting argument that we had with attorneys. Whenever we went to the rurals with our roadshow, we always got front-page coverage and all the public officials would come, and the students were magnificent as far as their question and answer sessions.

Judge, thank you for your testimony.

Judge Schlegelmilch:

Thank you, Justice Cherry.

Chair Cherry:

Is there anyone else who wants to give testimony today before we get to David Carroll? Okay, before we get to David Carroll, we've got a couple housekeeping matters. Now we leave subcommittee work and we go into Commission work, the full Commission. Commissioners Tipton and Slaughter are here, so we have a quorum. We have some minutes from past hearings (Exhibit C) (Exhibit D).

COMMISSIONER TIPTON MOVED TO APPROVE THE MINUTES OF THE APRIL 25, 2018 AND MAY 25, 2018 MEETINGS OF THE NEVADA RIGHT TO COUNSEL COMMISSION.

ASSEMBLYWOMAN BENITEZ-THOMPSON SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

I think that takes care of our housekeeping matters, and now we're ready for David Carroll and his presentation. I want to thank him for the work that he's done, both for the IDC, which is ADKT (Administrative Docket) 0411, and also for this work for the Nevada Right to Counsel Commission.

David Carroll (Executive Director, Sixth Amendment Center):

I am happy to report that the Sixth Amendment Center has completed the site work portion of the assessment. As we agreed, we expanded the places that we went, and we can report that we sat in courtrooms and interviewed people in all but Carson City, Washoe and Clark. All the other ones we went to. I've put together a PowerPoint presentation (Exhibit E) of what we found and some of the things we saw. Let me just say no, that title slide is not stock footage. That's actually me. I believe, if I'm correct, that's heading down from Battle Mountain to Austin. I'm probably committing some sort of violation there, but there's really not a lot to do on these travels sometimes, so I took a lot of pictures.

I want the Commission to know that I have thought really long and hard about what it is I want to say to you all at this juncture, and more importantly how best to start imparting the information that we saw and we learned. At first, I thought I should simply give you some of the basic facts about who we spoke to and where we conducted courtroom observations. For the record, we've conducted over 150 formal interviews. This includes 39 judges, 25 district attorneys or municipal prosecutors, 15 sheriffs, police or corrections staff, 12 county managers or commissioners, 36 public defense providers, 8 former providers who used to have contracts, and another 8 to 10 public defense support staff. Those are formal interviews. We talked to far more people. That's really just the tip of the iceberg, as we had interactions with people in all of the courts in all of the jurisdictions, including those within Washoe and Clark. We realize that what one of the pieces of information you're going to need is to know exactly how much money is being spent in this state at which level. We realized very quickly that we had to bring in the municipal, justice and district courts in Washoe and Clark, because oftentimes some of the defenders doing the contract work out in the rural jurisdictions also have contracts for municipal courts in those jurisdictions. We talked to court administrators in particular

in every court at the trial level in your state, and I can say they were extremely helpful. I think we badgered some of them, but ultimately they did. We have that information for you from every court but one. We're still working on the Boulder City Municipal Court, but they've promised to get us the information that we want. We've also conducted 39 court observations. That includes 9 district courts or their specialty courts, 23 justice courts and 7 municipal courts.

But in the end, I thought those are just statistics and they're just numbers and they don't really get at the information you all want. So then I thought, let's start talking about the basic ABCs of how the right to counsel is provided throughout this state. We can tell you we've tracked down the name of every single attorney who handled an indigent defense case in 2017. There are a total of 140 attorneys providing indigent defense representation throughout the 15 counties that are not Clark and Washoe. By comparison, there are 269 attorneys in the courts within the geographic boundaries of Clark, and 77 practicing indigent defense work within the courts located in Washoe County. Of course, it would be nice to simply add up those numbers and say you have 486 public defense providers in your state, but of course there are a number of attorneys that are providing representation both within and without the two largest urban jurisdictions, and indeed a number of attorneys that have multiple contracts in multiple counties. We'll get to that later on. While each of those points is very important, I decided that none of them is really the proper starting point.

What I decided I wanted to do was start out this morning with an apology and a thank you. First, the apology. In 2012, the Sixth Amendment Center produced a report on behalf of the Nevada Supreme Court's Indigent Defense Commission entitled "Reclaiming Justice: Understanding the History of the Right to Counsel in Nevada so as to Ensure Equal Access to Justice in the Future." In that report, the Sixth Amendment Center got the history part right. I wrote about what the IDC was able to glean from limited data that was then available through newspaper accounts, what the IDC tried to gather and what other people's view as to what was occurring in the 15 local subdivisions of government where less than 100,000 people live. In social science vernacular, the non-historical part of that report is what they call a meta-study, or a study of existing information conducted by other people. I should not have done that. I should have found a way to secure the funding to allow my staff and I to watch with our own eyes the criminal justice systems and find out what worked and what individualized issues are encountered in the various courts across your state. What I've learned from being out in your state is that I will never use the term "the rurals" to refer generically to what are 15 distinct cultures as if they were a simple homogenized whole. Indeed, and I was saying this to the judge earlier, it's not only 15 distinct cultures, as it's often the case that within each county there are distinct population centers that are often great distances apart and they're dealing with different issues and concerns that are unique to that region's economic and social make up. Of course, the people within all of those population centers each have their own opinions and viewpoints. I'm a bit embarrassed to say that I once in an interview with Sixth Judicial District Court Judge Montero said, "What do you think? This recommendation, would it be palatable to the rurals?" to which

he correctly reminded me that he could only talk to me about his own thoughts and his own viewpoints. Let me say loud and clear, I am sorry for writing about all of these places without firsthand knowledge. To you all who live and reside in those areas, I promise to proceed from this day forward from a position that no longer tries to paint all counties not named Washoe and Clark as some sort of singular entity.

That leads to my thank you. I want to thank this Commission for affording me the opportunity to learn that lesson. It is one that I will continue to apply wherever and whenever the Sixth Amendment Center is engaged. As we all know, our country is currently polarized politically, culturally and just about every other way you could think about. Both the left and right need to come together, maybe break bread together and talk, because when you talk and you don't just characterize a people as being of one mindset, good things are possible. Everywhere you had us go, we found criminal justice stakeholders and policy makers that deeply value the right to counsel. I'm not just saying that. Everywhere we went, they all said, to a person, "If we're doing something wrong, that bothers us. We want to know how to improve." In sitting down with the people we interviewed, whether it was in a judge's chambers, court hallways, over coffee, at dinner or in offices, we were able to discuss some of the issues we saw to determine if there were localized answers to some of the things we were finding. The Sixth Amendment Center staff learned much from these encounters that will inform our report's recommendations.

Our recommendations to this Commission and the advocates in Washoe and Clark that have been working on these issues for a long time is simply this: please get out and engage criminal justice stakeholders and policymakers on their own turf. Conduct your own observations and interviews. Besides uncovering some of your own inherent biases when it comes to thinking about criminal justice reform, there are just plain and simply a lot of wonderful things to see out in parts of your state. For example, one morning I got a big cup of coffee early in Fallon and headed out to meet with Jerri Tipton at 8 a.m. in Hawthorne. This is Walker Lake ([Exhibit E](#)), simply stunningly beautiful. I have the volume turned all the way up on this video. It is dead silence. It was beautiful. I have to say that I had to venture down to the water just to walk along the beach myself, and I ended up being late for my meeting with Ms. Tipton, so I apologize publicly for that.

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

I was there anyway.

Mr. Carroll:

For those of you that are interested in the historical part of the Reclaiming Justice report and the fact that your state is the very first in the nation to require the right to counsel in all types of cases carrying a potential loss of liberty and the payment of lawyers for those services, you can go to Austin and sit in the very courtroom where the Honorable DeWitt C. McKenney arraigned Shep Wixom and where Wixom made that critical

statement, "I object to the time of this trial and to the legality of being tried without counsel." It happened in your state. You can walk the streets where this happened. Although I was not able to get down to the old jail cells where Wixom was detained in Austin, and I really wanted to, Sean Rowe, the Mineral County District Attorney, took me to the abandoned courthouse in that county that was modeled after the Lander County Courthouse just to see how it was that Wixom was detained for all those months. I had a great couple hours when District Attorney Rowe brought me to the depot and the military depot and all around and really got me to understand Mineral County. Your state also has some of the most interesting courthouses I have ever seen, and I have been to many courthouses in this country. Here's the courthouse in Pershing County. We were told that it is the only one, or maybe one of two, circular courtroom still in use in the United States. The Eureka County Courthouse, where they have a log of every attorney that has ever appeared there. That's still running. Here's the Esmeralda County District Court. Note they have Tiffany lamps, and the mounted head on the wall we were told was the animal that was the subject of the county's first case involving illegal hunting and poaching. Taxidermy is kind of a common theme in your state. This is the Hawthorne Justice Courtroom. It's not just the historical courthouses. The Lander County Courthouse and administration building is a fantastic example of a modern facility. Our understanding is that its creation was overseen by Justice of the Peace Bunch. It really has just got every bell and whistle you want, including everything to meet the American Bar Association's (ABA) 10 Principles as far as confidential client-attorney meeting rooms and others.

Okay, enough with my vacation pictures. It's time to roll up our sleeves and begin talking about what's working and not working in the jurisdictions we've visited. Just to throw you a curveball, I want to start this portion of the program off in a jurisdiction that is just about as far away from your state as possible, and that's Wayne County, Detroit, Michigan. Just prior to starting the site work in your state, the Sixth Amendment Center conducted a study of the Public Defender's Office in Detroit. Now, I will not bore you with all of the gory details, but what we saw in my opinion was perhaps the most deficient indigent defense system I ever studied. The Public Defender's Office handling felony representation in Detroit has been flat funded for 16 years. To say that this Public Defender's Office experienced flat funding, however, is a bit of a misnomer. Although Wayne County paid the same dollar amount each year, increases to workload and overhead expenses caused the amount available to defend each accused person to steadily decline over time. In Detroit, we found a Public Defender's Office with no support staff. Its 16 attorneys are expected to cover 29 courtrooms on a daily basis, meaning that attorneys must have to substitute out for one another, and an attorney with 20-plus years at the bar that was handling murder cases earns just \$35,000 a year.

Why did I tell you this story? Because the right to counsel delivery model simply is not the most important factor in this discussion that you're facing. For those of you holding on hope that the State Public Defender system of the 1980s will one day come roaring back into existence, I will say unequivocally that train has left the station. There is no cookie-cutter model that guarantees effective representation. In our travels throughout

your state, we heard from too many different people holding too many different jobs from too many different locations that the majority of the counties that left the State Public Defender system did so not simply for cost reasons but because the money the counties were spending was not buying them the quality of services that they needed. Time and again, we heard the same story. High turnover led to offices full of attorneys that were either too young and too inexperienced or old and burnt out to provide consistent, effective representation. Some defenders tried to commute from the larger metropolitan areas to the outlying rural counties and would be, as many people told us, worthless in court on Monday mornings. State government attorneys viewed their days, we were told, as ending at 5 p.m. If it was a 2 1/2-hour drive back to Carson City, they left at 2:30 p.m. The defender not being local to the community, the client sitting in jail would complain they never saw or heard from that lawyer, only meeting their attorneys when the misdemeanor trial or felony preliminary hearing was about to be held.

Most people we've interviewed during these site visits expressed the opinion that they thought that the local criminal justice stakeholders and local policymakers were in the best position to determine how best to structure their local systems rather than a state board. After spending time in all of these counties, I can tell you I agree with that viewpoint. To be clear, it's not universally true, but for the most part, for the majority part, local leaders have created indigent defense structures that meet their individualized needs. In thinking about how to ensure effective recommendations, I strongly urge a consensus around letting policymakers decide in the first instance until it's proven not to be effective that they can choose what their local delivery system looks like. For example, we heard about Lyon County. What works in Lyon County works for Lyon County, but it would not work for Humboldt County. What works in Elko just cannot be transferred to Lander County. As we heard this morning, Lyon County has three distinct population centers as far as where the courts are located that demand localized representation that allows for conflicts to be shared amongst the other providers. That model has no correlation for Humboldt County, where virtually everything happens on a single block in Winnemucca. There, the county decided it was important to have someone in the community providing representation, and they now have a full-time public defender and a full-time alternate defender, neither of whom is allowed to carry a private caseload, providing the vast majority of representation and sharing conflicts. It works for them. But that full-time model just doesn't make sense for neighboring Lander County, where there simply is not a large enough caseload to justify eliminating the opportunity for contract attorneys to take on private cases. When I was in Lander County, I spoke to the sheriff as we often do in these site visits, and I just wanted to know what percentage of the people in jail are there pretrial versus under post-adjudication sentencing. He kind of looked at me and he said, "We currently have three people in jail." I mean, there are just not enough cases in some of these places to ever justify anything that looks like a staffed public defender's office. I should say, by the way, I witnessed a district court hearing that day in which the public defender successfully advocated in, I thought, a very proper way to get that one person that was there under pretrial released, and indeed did, so there was good advocacy that we saw there. When you're in some of these really small places, the Eureka's, those types of

places, there's not this issue of whether judges are doing proper colloquies. If you're only doing a couple cases every week or two, you've got to take the time to do it right. It's not the high turnover volume of Washoe or Clark.

If you go a bit further east to Elko County, you find a system where the justice and municipal courts function, at least from a defense perspective anyway, as the same court and it's only the police and prosecution that are being funded from the various cities and counties, but where the entire defense system is administered at the county level with staffed public defenders. This again was another reason to get out there. We looked at that and we were like, "How many people do we have to send to Elko?" There are four municipal courts, four justice courts. But no, it functions essentially as just four courts from the defense point of view, that you wouldn't necessarily know unless you were out there. That court structure is very different from, say, that in Yerington, where the municipal court functions entirely separately from the Walker River Justice Court and thus must employ a different public defender approach than what the county does.

So again, I think that decisions about delivery model should reside in the first instance with local policymakers. That said, that does not mean that there are no issues needing attention and no legitimate role for the state to play when it comes to ensuring the right to effective assistance of counsel, and I will get to that. But another thing we learned is that the right to counsel system employed throughout the rural parts of your state is in constant evolution. Earlier, I rightfully apologized for publishing the Reclaiming Justice report without having visited the rural jurisdictions. However, I also believe if I had conducted the site work 5 years ago, I would have found things far worse than what we did today. In short, whether it was all the attention of the ADKT 0411 orders, the legislative battles over S.B. 377, the filing of the ACLU lawsuit or simply the establishment of this Commission, it is clear to me that local governments' views on effective representation have simply changed over the past 5 years. For example, indigent defense funding at the county level has significantly increased over the past 5 years and there have been a number of impacts to that funding. For example, we heard from the judge today that Lyon County increased their budget nearly 37 percent this year alone, and they're going to anticipate higher costs next year. In the past, when Lyon County increased competition to its contract attorneys, it allowed one of their contractors who is also covering Mineral County to simply give up that contract because it now allowed him to make a living just doing Lyon County work. This significantly decreases his workload because he is not driving to Mineral County. It improved the representation in Yerington, but at the same time improved Mineral County's system because they were able to go out and find an attorney that did meet their specific needs. There are any number of these examples out there where, over time, indigent defense systems evolved and improved. That does not excuse that there were years and years where indigent defendants were not properly represented, but it does say that if we're trying to solve problems, we need to solve the problems that are in existence, not problems that were there 10 years ago.

So, I want to dig deep on one county just to give you an example, and I've chosen Humboldt County. Just so you know, I talked to all of the stakeholders before coming here. I do not believe in gotcha politics. I spoke to them about this presentation, what I was going to point out as their weaknesses, and they were comfortable with it because they felt like I gave them a fair shake and a fair hearing. By the way, if you haven't told from the pictures, we had great weather everywhere we went. Not one rainy day or blustery day or anything. As we said, in 2007, Humboldt County created the Office of the Public Defender. Now originally, that office was a regional office that also provided representation in Pershing County. Humboldt and Pershing County separated their indigent defense services in 2010. Now, what I like about Humboldt County is that they have local ordinances that are written into their county codes that institutionalize a lot of what they've done. To the extent that counties have landed on models that work for them, I think some of it has been by happenstance. I think some of it is personality driven. If Jeff Page leaves Lyon County, there is nothing that's going to guarantee that certain things are going to continue. If Dave Mendiola leaves Humboldt County, there are things that go wrong if it's not institutionalized. Humboldt County Code, Chapter 2.44 provides the statutory framework for the office. I wish all counties had similar local ordinances about their indigent defense systems. It says things like "the Office of the Public Defender shall be filled by appointment by the Humboldt County Board of Commissioners after receiving recommendations from the Humboldt County Public Defender Committee." They actually have ordinances about how you create a hiring committee to hire a Public Defender. The Public Defender, as I said, is full time. The ordinances preclude carrying a private caseload. All overhead costs are part of the Public Defender budget. Public Defender staff receive the same benefits as other county employees, including medical insurance and retirement. The local code expressly states that the Public Defender may, before appointment as counsel for that person, interview the indigent person when he has been arrested and confined for the public offense or for questioning on suspicion of having committed a public offense, that they say, "We want them getting in there early." Upon appointment, the Public Defender or other appointed counsel shall represent the person at every critical stage of the proceedings from initial appointment by the court. They have what the U.S. Supreme Court wants you to have in their code. The Public Defender is appointed to cases at the justice court level, and the ordinance says they will continue to provide vertical representation for those cases bound over to the district court. There has been only one Public Defender since the creation of the office, a person named Matthew Stermitz. He is compensated at an annual salary of \$122,420, and this is in addition to his medical and retirement benefits. Now, that's lower than some of the contracts we've heard about in other jurisdictions, but those contracts have to pay for all the overhead expenses, and they're great, including simply you have to set aside your own taxes that you have to pay. This is, I believe, good compensation for an attorney of his stature. In April of 2017, Humboldt County created the Office of the Alternate Defender. Humboldt County Code, Chapter 2.44.110 provides a statutory framework for that office and many of the same requirements for the Public Defender apply to the Alternate Defender as well. Now, the Alternate Public Defender, it turns out, is not a true conflict office. With the creation of this new office, that office became the primary representation in juvenile proceedings,

abuse and neglect cases, parole revocation proceedings and diversions and opportunities for court participants. The Public Defender provides representation in those types of cases only if the Alternate Defender has a conflict and vice versa. The main Public Defender does mostly criminal work and the Alternate Defender is the conflict in those.

Now, that's the good stuff. But just because the system is well structured and they chose a model that works for them does not mean there are not issues to be dealt with. The first issue I bring up has nothing to do with constitutionality of services. There is nothing here that will get them in trouble, that will get them sued, but I put this into the best practice category. When you descend into the basement of the Humboldt County Courthouse, this is what a defendant sees trying to find the Public Defender (Exhibit E). There is no sign pointing out where the office is. There are lots of places that say, "Don't go this way." You start going down a pathway past janitorial closets and electrical rooms and storage rooms, and if you still have the determination to keep going, you will find at the very end of this corridor a room with the sign "Public Defender" on it. That's just not a good look for a county that says they value the right to counsel. How would you feel if it was your child or a friend of yours from school fallen on bad times that had to use a public defender? Walking through the door, the defendant enters a small vestibule. To their immediate right is a singular office dedicated to the Alternate Public Defender. To the left is the Office of the Public Defender's legal secretary. Her office connects to another conference room where the Public Defender sits. The look of the office is depressing. It is gray cinderblock with low ceilings and fluorescent lighting, and only the legal secretary's office has windows. This isn't even taking into account the ethical screens needed when you have the Alternate Defender and the Public Defender sitting in the same place. It's just not a good look for a county that values the right to counsel. Now, upon discussing this with County Manager Mendiola, he said he thought he could move Matt Stermitz immediately, and Mr. Stermitz showed me an office in the old courthouse part that might be a possibility, and they are already moving ahead on this. That's the value of ongoing assessments, that you can find out things that you just simply wouldn't think about.

Now, there are also constitutional issues in Humboldt County. On the day of arraignments, the Sixth Amendment Center was told that there was a pretty full schedule. Court is supposed to start at 9 a.m., but what that means locally is that defendants are expected to arrive at the justice court at 9 a.m. Out of custody defendants are met in the hallway outside the court by an Assistant District Attorney. He stated that he "mostly talks to people with traffic offenses." However, I witnessed him talking to someone charged with driving with a suspended license, and he advised him to plead guilty. Now, Matt Stermitz just in the past 2 weeks leading up to the Sixth Amendment Center site visit started going and standing outside the courthouse, because he never attended those hearings because that is the point at which out of custody defendants are screened for indigency and are appointed an attorney. He wouldn't go until the next hearing, whether it was a misdemeanor trial or a felony preliminary hearing. Matt Stermitz saw this and he walked up to the person, talked to his

case and said that he thought there were serious doubts about whether or not his license was actually suspended and that he should not plead guilty at this time. The person was very thankful and didn't plead guilty. This was just one example on one day. I notified the District Court Judge, the County Manager and the District Attorney about this practice. I'm sure with the localized feedback, this issue is being corrected as we speak, but that is a major constitutional violation. The U.S. Supreme Court has defined plea negotiations as a critical stage demanding an attorney for the indigent. Even in the best of places, you have issues. But I want to separate those issues from what is the system looking like, because they are two different issues. I think on that part of the localized system, it should remain localized, but there is a role for the state in pointing out some of these things.

Now, let's get to everyone's favorite topic: caseloads and workloads and what the difference is between those two things. Humboldt is a good place to start this discussion because their records are well kept. In most jurisdictions in this state, no two attorneys are reporting a caseload the same way, even within the same county. I don't mean to point out Lyon County, but each of those attorneys is counting differently. Some are counting defendants, some are counting charges, some are counting prosecutors' charging instrument, and you can't make heads or tails about what is what to be able to compare. And in Lyon County, when I went to the county, they could only give me sparingly some of those reports. I asked County Manager Page what he did with them, and he said he doesn't really do much with them because no one knows what to do with caseload reports. Luckily in Lyon County, and I think this speaks well to the quality of the attorneys, all of the attorneys had copies of all of the records they had submitted to the county, so we were able to look at those things. But that's where we realized that they were really pretty useless for really measuring workload. But in Humboldt County, they're doing it right. We've talked about this in the IDC, the National Center for State Courts recommends defining a case thusly: a charge or set of charges arising from a single incident against a single defendant. I think it would be great, whether it was this Commission, the IDC, I don't know how it works—we've talked a little bit to the Nevada Association of Counties (NACO) about maybe putting a group together that can talk about finding some uniform reporting standards coming from the locals instead of it being imposed from the top down. I know there are some implications about what this Commission can do legally and all that, but you need to do it and it needs to get done, and it needs to get done soon, that you're reporting indigent defense caseloads the same way.

Now, there was a National Advisory Commission (NAC) on Criminal Justice Standards created by the Department of Justice referred to as the NAC standards, and they prescribe that an attorney that handles only felonies should handle no more than 150 felonies in a single year, or 400 misdemeanors if that's the only type of case, or 200 delinquency or 25 appeals per attorney. This means that a lawyer handling felony cases should not be responsible for more than a total of 150 felony cases in a given year, counting both cases the lawyer had when the year began and the cases assigned to the lawyer during that year and including all of the lawyer's other private and pro bono

cases. Now, the NAC standards can be mixed, so you can do 75 percent felony and 25 percent misdemeanor, but we don't need to drill down on that much at this point. But we have collected a lot of caseload reports, and to be clear, the ABA's 10 Principles, and we've talked about this a lot at the IDC, states that there is no event in which those NAC standards should ever be exceeded. That is the absolute maximum. Most people in some of the better indigent defense systems in our country think those are ridiculously high. In my state, Massachusetts, for instance, the felony caseload level is actually 35, not 150, per year, just to give you a sense. So, we were able to go through Humboldt County's caseload records pretty thoroughly. I'm sorry, I apologize for how small this is, but I wanted to get all the information on there so people can look at it online ([Exhibit E](#)). To be clear, there are no NAC standards related to probation, parole violations, justice court appeals, 432B cases or any other cases that some of the Public Defenders are handling, like juvenile truancy. So, taking all that work aside and holding it aside, the Humboldt County Public Defender handled a caseload in 2013 that required 2.26 attorneys under the NAC standards. They only had one attorney at that point. Although the number of needed full-time equivalents (FTE) has reduced slightly in the next 3 years, the sole Public Defender still handled a caseload that required nearly 2 FTE attorneys in each of those years, before adding in probation and parole violations, appeals and 432B cases. As we've reported, Humboldt County opened an Alternate Public Defender's Office. In that year, Humboldt County needed 2.15 full-time attorneys and they operated with 1.75. It was 1.75 because the Alternate Defender was transitioning in, thus she only worked three-quarters of the year. Now, they have 2 full-time attorneys and the caseload is about 2.15 under the NAC standards. That's not too bad. But it does show you where they were 5 years ago, and it does show you that they're still pushing it.

Now, this is where the numbers always get a little wonky. I've got to say when everything takes place on a single city block, I think you can have a few more cases than in other places, especially because the severity of the cases in Humboldt County are not what they are in Clark and Washoe. But it goes to show that someone needs to be watching this and someone needs to be making decisions about that. Even this doesn't paint a full picture, because the NAC analysis only considers new assignments. Every caseload report from 2013 to 2017 in Humboldt County showed that they opened more cases than they closed, meaning that the number of cases touched by the Public Defenders is more than the number of new assignments. Furthermore, the Public Defender and Alternate Defender confirmed that the caseload reports do not include specialty court representation. Currently, the Alternate Public Defender handles all the specialty courts. In Humboldt County, there is a drug court, a drug court track II focusing on offenders aged 18 to 22, a family treatment court, certain 432B cases where there are no gardens available, a DUI (driving under the influence) third offender court known colloquially as "last chance court." Participants must pay for all the costs associated with staying clean for 5 years. All the specialty courts occur every Monday afternoon from 1 p.m. to 5 p.m., so that takes 1 afternoon a week out of the Alternate Public Defenders.

So, even the most structured systems in your state need constant evaluation and feedback to improve and ensure the constitutional adequacy of the representation, and that is where the state, I believe, can come in. Under U.S. Supreme Court case law first established in Gideon v. Wainwright, the provision of Sixth Amendment indigent defense services is a state obligation through the Fourteenth Amendment. Although the Supreme Court has not held it unconstitutional for a state to delegate its constitutional responsibilities to its local governments, in doing so, the state must guarantee that local governments are not only capable of providing adequate representation, but that they are in fact doing so. There is simply no mechanism in your state for overseeing the way indigent defense services are provided throughout the state. For example, no one can say with any clarity how much is currently being spent on indigent defense services. This is the most basic data point you need to have transparency to tell your taxpayers that you're providing representation efficiently. Why don't you have this figure? It's because the funding of the right to counsel is not just split between state and counties and cities in those places with municipal courts. At the local level, some of the funding is in the executive branch and some is in the judicial branch. If you look, and we collected all of the counties' financial reports for the past 5 years, there are 5 counties that don't even show a public defender expenditure line item. In those places, all the money is in the court's budget, but the indigent defense money, some of it's in an expert line, and that may go to prosecution and defense and some of it. This is where people were kind of sick of us is we really harped on people, the court administrators and judges, and said, "Can we have a single year?" Fiscal Year 2017, where you can literally go by hand and pull out every request for an expert, every voucher that was paid, what travel expenses can you distinguish, what was for actual indigent defense cases versus maybe providing an expert in some other type of case and other things like that. To a person, they did it. But it's very, very difficult to be able to do this. We had to call every court in your state, including those municipal courts in Clark and Washoe, to try to put this together. So, the state needs to be involved. It needs to be able to do this, if nothing more than just a central repository for the basic data so that local and state policymakers can make good policies based on good information.

As I spoke to people across the state in my travels, I talked about how the state might be able to help. I think it's fair to say, and anyone that's from the rural areas are able to speak up and counter this, but I think there is a warming up, a beginning first step toward saying, "Okay, we kind of get it. This needs to be some sort of hybrid approach." But what might the state involvement look like? Well, when I talked to county managers in particular, I mentioned that we had found numerous instances of attorneys holding multiple contracts, and wouldn't it be nice for you to know before you contract with someone exactly where they're working? Almost to a person, there were like, "Yeah, we would love to know that." How about if, as we've heard—I've got to say, by the way, Judge, ADKT 0411 about judicial involvement, I was shocked. That has taken root completely in your state. I don't think there is a judge that's involved in the hiring of public defenders. I don't think there are judges denying any sort of experts or anything like that. It's really worked. The downside of that is that county managers really don't have anywhere else to go to try to figure out, "Is this a good person? Is this a bad

person?" In Humboldt, when they hired the Alternate Defender, the Public Defender was on that hiring committing so that they had a criminal defense lawyer well versed to help them gauge, "Is this a good person?" Going off script a little, in Lyon County, it's almost like an apprenticeship that each of the law firms has younger attorneys that they are mentoring and bringing along. They recently had one of their attorneys retire, Mr. Ward, and the contract went to Matt Merrill, who was brought up along that. It's almost like a National Football League (NFL) coaching tree where Ken Ward, I think, is responsible for everyone that has come up through the system. But I've got to tell you, Matt Merrill, I thought, was some of the best advocacy I saw while we were sitting in the Dayton Justice Court, and I think they are really well set on that front. Again, some of it's happenstance, it's not institutionalized, but anyways. So, there's general agreement about that, so I took the next step and I said to county managers in particular, "Well, what if some sort of state body vetted attorneys so that you knew out of this group of attorneys, these people can handle these types of cases? Would that be something you'd be interested in?" Yeah, that seemed to be. We talked earlier about training. Everyone said having the state involved in training is a good thing. Just for the question from Clark County, by the way, Humboldt County is the only county we found where they require training. Now, it's just the CLE, but it is another area where the county is paying for that training. It's not coming out of the backs of the public defenders' paychecks, but it is the only county where we found that was true.

I think there is this general beginning consensus of where the state could be involved: identifying which attorneys are working where, qualifying attorneys, training attorneys, this information repository about how the system is set up. We're going to detail in our report exactly how every system works. Well, that's a resource counties should have because, like I said, not every county is doing it well, but they should be able to look and say, "Oh, I understand, I get this. This is how this county is doing it. Maybe we can take that best practice and import it here," and then the ongoing assessments. There is one that I didn't put on here that I just also want to raise just because it came up today. As I said, we didn't find a single instance in which a judge has ever denied an expert or an investigator, period. The problem with judicial interference isn't that a judge would do that, it's that a public defender would internalize "I'm not going to ask this judge for this because he may rule differently than I want him to," or something like that. It's all about the public defender internalizing that with judges. But if that's the case, where judges are approving anything anyways, how about if the state qualified what investigators are good to be using, or what experts are good to be used to be doing what, and what if local attorneys were able to expend a certain amount of money up to a level like you find in public defenders' offices where "up to \$500, we're not even going to question. Just go out and expend it and send us the voucher. Anything over that, come explain to us why you want it." If we're a criminal defense attorney and we have a relationship, we can talk to you about the case itself. A judge can't in many instances. Maybe the state could even pick up that cost to give the county some relief. We're not even formally saying yes to those. We want to mirror back some of the discussions we're having at the local level. I think we are in a point where people are starting to look from the rural areas at the urban areas, and hopefully, maybe after today, the urban areas can look a

little bit at the rural areas and say, "Okay, you can keep your local system, but we need to have these add-ons to be able to ensure effective representation." So, I am hopeful. That's the other thing I want to thank you for. I first came to your state in 1999. I've been doing this for almost 20 years. I think we've made great strides in Clark and Washoe, and now I can say we've made great strides in the rural parts of your state as well. We are not there. We're not done, but I really feel that this is different, that this approach of doing this study was a good thing because things are really starting to feel like people can start sitting down and talking about these things instead of just saying, "Don't tell me, urban people, what you think of my place because you've never driven out here before."

So finally, in closing, just one more thank you. I went to the Oasis Academy in Fallon and I sat with the kids, and we had a great afternoon talking about indigent defense. If these are your state's leaders of tomorrow, you're in good hands, as is the right to counsel. I was amazed how deep these kids went, the questions they were asking and the ideas they were coming up with. I really wanted to be able to talk to them more openly, but I said I have to present to the Commission first. But man, keep them involved in this next section when we're trying to figure out how to move forward, because I really think they have some wonderful ideas and they've really thought about this. Thank you, I'm happy to take questions.

Chair Cherry:

Thank you for the comprehensive report. Very, very interesting.

THE CHAIR CALLED FOR A BRIEF RECESS.

Chair Cherry:

I think I'll ask the first question. I was, I don't want to say disappointed, but I was disappointed about the institutional public defenders' offices, whether they be in urban areas or rural areas. One of the reasons that Drew Christensen opened up the office of conflict counsel and contract attorneys in Clark County was because of the exposé by the *Review Journal* on contract attorneys that just didn't do what they needed to do because they had private practice. I want to know, we're worried about caseload standards in the Indigent Defense Commission meetings that we've been having about caseload standards. How do you view caseload standards when you have people with private practice? I was a public defender that had private practice in 1990 to 1975. I was a public defender that did not have private practice between 1975 and 1977. I was a Special Public Defender that had no private practice that did murder cases with six other attorneys who had no private practice but did murder cases on a daily basis, and also I was a court-appointed attorney because judges liked me because I was a former public defender, and also I was a contract attorney where I had a contract in certain departments, so I've done it all. I think that the best thing I ever did was a Special Public Defender with a cadre of committed attorneys who were 250-qualified under our statute,

had no private practice and our only concern was death penalty and murder cases. We didn't even do anything with the juvenile court or anything. How do you justify saying that the State Public Defender shouldn't be in all of the counties?

Mr. Carroll:

A couple thoughts on this. The ABA's 10 Principles do say that where the caseload justifies it, you should have both an institutional public defender and involvement by the private bar. So, the threshold question starts, is there enough of a caseload? I think in many of the counties, there isn't enough. Now, if there is, I think there can be specialization and I think there are benefits that we all know come from a public defender's office if that public defender's office meets standards and is properly resourced. I think what I heard out in my travels was that this constant push where there's only this one model is very bothersome to a lot of people, as it should be, because it doesn't take into account their uniquenesses. There are always going to be private attorneys to some extent in many of these areas that we're talking about. That does not mean you can't figure out if they're doing a good job or not. It's not one of these, "Oh, we can't ever get them to record their private cases, so we're not going to do it." I had joked to a couple people that this is the meeting where everybody gets mad at me a little bit about something, which means we're getting towards the sausage that everybody kind of holds their nose and says, "Yeah, we can sort of push this legislation through." This is where all my public defender friends get upset at me, but you need to have public defense attorneys tracking their time, period, the end. If you're doing that on their public cases, it does not matter what they're doing on their private cases because you're looking at what they're doing on their public cases. If they're tracking time against performance standards, some of the standards that were passed by ADKT 0411, you're going to know, hey, they're doing motions practice, they're meeting their clients, and if they're not, then you don't contract with them anymore or you say, "You have to make these improvements." That's how policymakers can make determinations if private attorneys are doing what they're supposed to on their public cases.

I think that extends to public defenders' offices in Washoe and Clark. I think you'll answer the questions about workload by looking and saying, on the average, are they meeting clients on the average, are they doing this, and then you have data if some district attorney comes in and changes charging practices and it increases the workload of public defenders, you can look statistically and say specifically, "This was the impact on those new charging practices." I think it's just that people have to think differently about it and be open to it, but there is no doubt if there are enough cases, specialization is a good thing. You can get people that are specializing in abuse and neglect cases, you can get people that are specializing in serious sexual assault cases. I am somewhere in the middle of your position, Justice Cherry, that I think there are good things that come from it, but even in Humboldt, there are enough cases for what should be 2.25 public defenders. You're not going to get specialization at that point. It has to be at least—I think we saw it in Elko. They have six public defenders. That's enough of a mass to start getting specialization. That's my push. If I had the magic wand and could

grant one thing, it was that indigent defense providers would always be tracking their time. And let's face it, with the advancement in technology, it's no longer difficult. You just push a button on your iPhone when you start a new thing and you end it and push the next button when you start the next thing. That would be, to me, how you can get control over the private attorneys that will always be a part of the system.

Chair Cherry:

Can you also justify to our Assemblywoman and her colleagues in the Assembly and in the Senate that we definitely need an independent indigent defense commission in the state to oversee the entire indigent defense, rather than having it in the Supreme Court or that it belongs in the Legislature to come up with the money is what I'm saying, and then to have the appointments made so that the rural counties are represented, the urban counties are represented and the stakeholders are representative?

Mr. Carroll:

Absolutely. Again, the state holds the obligation for doing this under the United States Supreme Court. It is a Fourteenth Amendment obligation. The state is failing that Fourteenth Amendment obligation because they have no idea whether the counties are doing this and the cities are doing this right or not. Currently in your lawsuit, it's the state's fault. I think I fell on my sword about that 2013 report, but I will say it again: we got the history right. The state is responsible for whatever problems have endured for the past 20, 30 years because they were the ones that moved away from their original obligation to the counties and the cities, and it's the state that needs to step in and fix this.

Chair Cherry:

Thank you.

Ms. Traum:

I have a few questions. First of all, thank you for your excellent report. I really appreciate it. You mentioned the need that everyone agreed that there was a role for the state to play in training, for possibly picking up the tab, or possibly on investigators and extra expenses. But I'm wondering if you tested the idea of the state picking up the tab more generally or providing more support generally, in terms of who's paying for defense.

Mr. Carroll:

Again, not to just paint with a broad brush, but I think if the state picked it up, there would be no resistance if the locals were still allowed to make the local decisions about how the systems were going to be set up and run. I do think there is fear out there that if the state were to pick this all up, they would just say, "Okay, let's just go back to the

1980s and how we did it,” and that’s a real problem. But if the state would pick up more and more of the cost in partnership with the local governments so that decisions were made at both the local and state level, there is no doubt the counties want relief from this, and if the state would do it in such a way that it didn’t impact the local delivery system—I’ve heard it time and again that the attorneys living and being part of the community is a huge advantage, and if the state takeover money would impact that, I think they would then say no, it’s not worth that bargain, especially since the state has never upheld that bargain in the past. But if they were able to do it in such a way that everyone agreed on the model, yeah, I think that the counties and cities want relief from this.

One other thing I should say too about thinking about the question about the state commission, there is a lot of skepticism about this Commission out there. I think we did a lot of work to try to get all the various perspectives on this group, and I thought we did pretty well. I advised a lot of people that have been working on this issue for a while, don’t try to load it up with good people. I’d rather have people who are skeptical about whether there is even a problem, because if you convince them there is, they are the people that will carry the water and help fix this in the Legislature. In particular, I even wrote Justice Cherry and Ms. Lang, we encountered a lot of resistance originally in Lander County where they just didn’t want us in there. To their credit, once we were there and they saw we didn’t have claws, they were extremely cooperative, but there’s a lot of resistance because—and I don’t mean to call someone out that is not here, but particularly that Laura Fitzsimmons is seen as the rural attorney. Most people are upset about that. If this Commission becomes a permanent commission, I think we still need to re-think about who the members are. But, all that being said, I still think there is good will, and if the state is willing to pick up more of the tab with allowing decisions to be made locally and in consultation with the state, I think there is a great desire to have more financial relief done at the local level.

Ms. Traum:

This may be a little bit more in the magic wand category, but I’m wondering—what I’m hearing from you is skepticism, perhaps about the Commission or needing to be very careful about what that looks like, skepticism about a sort of take over from something like a statewide public defender. But I’m wondering if, in your perception of things, that these local attorneys would find it useful to have a resource center that is built for them that provides some of this information gathering so that when they’re up for contract they have a place where they can go to get all the support that they need, where there’s a network of investigators so if there’s someone who is really an expert in sexual assault investigation or murder investigation in Elko, that person can be brought in or called at least, and then also to sort of head up training and possibly some manpower to come in when needed. So really, maybe rebranding, not dropping attorneys in by parachute, but rebranding that as a support system that would help these people on the ground.

Mr. Carroll:

Yes. I think the short answer is yes. In fact, before the meeting started, I was talking to Jeremy Bosler. One of the unique things about your state is, usually when an indigent defense system is as decentralized as it is in your state, one of the things that does occur is there is a very strong public defender association for exactly that reason. People want to talk to people. “Well, how do you do this? How do you do that?” I’m not quite sure why that hasn’t materialized in your state. It may just simply be the great geographic expanses. I’m not sure. But everything that you’ve just put on the table I think there’s a desire for, and I think it would work. I don’t think people see that as the state being overbearing because in many ways it’s saying, “Hey, there may be an expert in Elko that can help on this issue or that.” As far as training, I just sort of toyed around a little bit at the beginning, mostly with Phil Kohn saying that I’ve been impressed with the training at the Clark County Public Defender’s Office. Maybe there’s a way the state could purchase some of that, whether it’s actually sending people to be trained in Clark County. I know there are certain things specific to Clark County about how the courts work and other things, but the core criminal defense, keeping up to date on all the various new sciences and all that sort of stuff, maybe we don’t have to reinvent the wheel. Maybe there’s a way the state can partner with Clark County to provide that training in the other areas of the state.

Chair Cherry:

Well, having been around for a long time, the history is there was a death penalty resource center that the Legislature created, and Michael Pescetta, who was probably the premiere person on the death penalty in the state, headed it, and then all of a sudden it was not funded anymore and he became a federal public defender. But let me tell you, as a contract attorney or a court-appointed attorney doing a death penalty case, having a death penalty resource center funded by the Legislature, Assemblywoman Benitez-Thompson, was important. Why they dropped it, maybe former Assemblyman Grady can say exactly what happened, but it was just a shame for those of us who are trying to practice law where we were dealing with death penalties in Clark County, which there’s now 80-some-odd people on death row. They seem to die from natural causes more than any other way, which I’m thankful for. But a resource center for public defenders and for indigent defense attorneys would be great.

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

To piggyback off Professor Traum’s question, did you get a sense in some of these rural communities with regard to the investigator and expert viewpoint? Did you get a sense on their ability to have access to those? It’s one thing to request them, but do they have the—one of the experts we use most here in Clark County is psychologists, for mental health reasons, competency issues. Do you think maybe some of the lack of requesting of these services is the access to the services?

Mr. Carroll:

Oh sure, absolutely. I think what we found is most of the requests are for investigators, and most of that is going to ex-law enforcement in the two urban areas anyways, so you probably have a better feel for who's a good investigator in your community anyways. I think part of it is training. I think if you've never used an expert, you don't necessarily know what an advantage it can bring. I don't mean to sort of generalize that the attorneys practicing in the rural communities don't know, because there are a lot of really good attorneys out there who are doing motions practice and everything. But I do think there are probably not as many requests as we would like to see arising out of these, and I'm not sure exactly what that is, but I think access is certainly one of them. We've talked about the magic wand. It's one of my stock questions I always ask: if I could grant one thing, what would it be? The majority of people all said social services. We need drug treatment, we need mental health treatment. We can't get it out here. It's difficult for our people to get there. It's really hard. That was number one. But I think it's very similar on the experts in particular, that it's just such a long distance and it's so costly for an expert to drive out and do whatever is needed to be done that I oftentimes think they simply don't ask. Not that the court would have said no or anything, but I think it speaks to a reason why there could be state involvement on that issue, qualifying the experts, qualifying the investigators, having the requests be asked of that group and also tying it in with training so you're training the attorneys as to what the advantages are of using certain types of experts in certain types of cases.

Mr. Christensen:

I think that's great. I think that's something we've tried here in Clark County, to keep a repository of all the experts and investigators that are used locally, and many of our local attorneys aren't aware they can call, and I think that would be a great resource of a state commission for nothing more than the information that's available statewide so that they can reach out to that group and say, "Hey, what about a DNA expert?" or whatever may be particular to your specific issue. In some of these jurisdictions when we talk about the attorneys that are under contract, did you get a sense of what they did when they had a tremendous amount of multi-defendant cases? We recently had like a 24-defendant case. I don't know the significance of what would happen in some of these jurisdictions. In one county you talked about where they have the Public Defender and Alternate Public Defender, which I think is Humboldt. Do they contract with some other county to come in, or did you get a sense for what they do in those situations?

Mr. Carroll:

No, we asked and we have the full list. Most courts are keeping a list of four or five attorneys that will take direct appointments when there are multiple defendants that can't do it. For the most part—not universally, but for the most part—they're following the statutory rate of \$100 an hour. There are some that will take less than that, that they will contract and say, "Will you take \$80?" We're going to detail all of that. But yes, they

all are prepared for what to do in the instance that if they have to go outside of their model and they have attorneys identified that do that. I think one of the interesting things again is the extent to how many of those attorneys are on multiple panels or have contracts in municipal courts or on your panel or on Bob Bell's panel. There's a lot of cross-pollination on all that stuff.

Mr. Christensen:

Thank you, Mr. Carroll, for all the work. Did you get a sense when you looked at the budgets, was that broken out? I know you said you had difficulty, but I took some notes when you talked about certain, I think it was Lyon County, extra-duty fees, expert fees. There were a number of blocks. Is that accounted for in the attorney fees outside the contracted public defenders? Is that what the extra-duty fee was?

Mr. Carroll:

Yes. We're collecting that as well, so yes, to the extent that there is a public defender line item in the financial reports, that's generally the primary or primary and conflict service if they're like Lyon County or Humboldt County. Outside of that, it's almost always in the court's budget. They have to appoint an attorney under the statutory rate, so it's under the court's budget. Yes, we've collected all that information to be able to say, "This is the number that you're currently spending." We're waiting for one holdout court as I said, but then we'll be able to present that at the next meeting.

Mr. Christensen:

Thank you, Mr. Carroll.

Assemblywoman Teresa Benitez-Thompson (Assembly District No. 27):

Thank you so much. I really enjoyed hearing your enthusiasm for the areas that you traveled to. In my non-legislative role, I'm a social worker and I work in the rurals, Fernley, Fallon, Stagecoach, Silver Springs, and spend lots of time out there. Every community is so different, echoing what you're saying about more social services out there, but we fight that fight on a different front. At the beginning of this process, we heard lots of kind of anecdotal stories about the public defenders not interacting with their clients frequently enough or interaction coming very late, being very short, not being reflective of what the state of it should be. In your report, are you going to talk about that and what you see? Is there a way that was quantified at all? I guess I'm interested to know at what frequency that seems to be happening.

Mr. Carroll:

I think it varies from county to county greatly. There are some counties where they are. I think you have problems where they're not being appointed soon enough under what

the U.S. Supreme Court requires. Then there's sort of the group that's sort of in between. We're internally debating some stuff, like your 48-hour probable cause. That's generally in camera. The next one, the 72-hour, it's supposed to be 72 hours from arrest, but most people are doing it 72 hours from the 48-hour hearing. What does that mean and all that? It's very convoluted. I thought it was best at this meeting not to go too deep into that, but it's a big focus of our report. We're just having some healthy debate about how much we want to say there are actual constitutional issues versus best practice issues. That being said, there are places where people are interacting right away. In other places, attorneys are not talking to their clients if they're out of custody until right before the misdemeanor trial or right before the felony probable cause.

Assemblywoman Benitez-Thompson:

I want to ask about that. Did you see or could you draw any correlation to those practices in the budgets of the county? Did it necessarily seem to be obviously a lack of funding, or did it seem to be more with location or internal practice, culture?

Mr. Carroll:

It's a very good question. I'm sort of just thinking in my head, I think my gut reaction is no, I don't think there's a correlation, because I think a lot of the increase in indigent defense that we saw over the past 2 years in particular went to the attorneys. It didn't change practice. It changed their ability to cover more of their overhead and take home a little bit more pay. As I said, that had some spillover, because some attorneys were able to say, "Oh well, I don't need now to try to handle multiple contracts. I'll just do this as my main one," so it had some spillover. But I don't think there was any impact on that question with the funding. I think it's just that you sort of learn the culture that you've been thrown into, so if, and this is just my thoughts right now, there wasn't a culture of meeting clients early, nothing that's happened in the past 5 years would have changed that. If there was, it's only gotten better. I think, again, you can't paint it with a broad brush, and I was hoping for starting kind of maybe getting somewhere with consensus to start with showing even the best places need some of this help. The question you're asking is really about some of the places that aren't functioning very well, and that's what I hope to present at the next meeting once we do a little more scrubbing of what our thoughts are.

Assemblywoman Benitez-Thompson:

Thank you, I appreciate that.

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

Just for my continuing legal education—I'm not retired—does the Constitution speak to whether or not there should be a balance of resources between prosecution and defense in the indigent defense arena?

Mr. Carroll:

Only peripherally. I'm trying to wrack my brain for the exact quote. In the case called United States v. Cronin, there's some dicta that says that the Constitution doesn't envision the two sides coming in on an equal footing, but it also doesn't envision it as throwing the Christians to the lions, or something like that. I don't know the exact quote. They're saying there doesn't have to be one to one on this, and we're never going to get it, because if you think about what's at the disposal of the prosecution, they have all the law enforcement at their disposal, where the public defenders have to do all their own investigations. So, it's sort of a feel and a general, like, is this just that one side is so over-tilted on the scale that people are being ramrodded through? To the prosecutors' and sheriffs' credits, they've opened up their books. We've got exactly what's being spent on most of this. Have we gotten any light to the Nevada Highway Department and stuff that bring in a lot of cases? No, but if you look, sure, there is much more being spent on the prosecution and policing side, but there are only a couple places, maybe two, I'd say, where I think things are way, way out of balance, and we'll talk about those things.

Ms. Tipton:

I appreciate the report. I could tell you had a good summer vacation. Was Mineral County helpful?

Mr. Carroll:

Mineral County was extremely helpful. I think it just shows sort of what happens in the smaller communities. I luckily had the opportunity to meet with District Judge Shirley up in Lander. He was sitting up there and had a case, and we had planned our schedule because he was going to be in Mineral, and the case settled. There was no need for him to be down there. Your justice of the peace happened to be on vacation that week, so there was no reason for the Public Defender to come down, so I interviewed him in Reno. It really was, outside of yourself, your Sheriff and your District Attorney, and they were extremely cooperative. It just sort of showed that on the prosecution side, there's one district attorney and one part-time attorney versus one attorney on the defense side, so it sort of shows things are in balance. I was talking to Dagny Stapleton about some of the stuff they want to do and how to bring people in, and I said, "I really like Sean Rowe. He was great for talking things through as far as understanding criminal procedure and how criminal procedure plays out of local areas," so it was very enlightening on that front.

Chair Cherry:

Seeing no further questions from the Commissioners, Mr. Carroll, I want to thank you for your report. It is magnificent. When Bill Maupin appointed me to the Indigent Defense Commission, Gary Peck was on my Commission, the Indigent Defense Commission, and he said, "You've got to get in touch with this guy David Carroll. He really knows a lot about indigent defense." I recently ran into Gary Peck at a trial lawyers' banquet, and I said, "Thank you very much for referring David Carroll to the Indigent Defense Commission, because he is also the consultant for the Nevada Right to Counsel Commission." So, thank you, Gary Peck, for everything you did for us and giving me David Carroll in both the Indigent Defense Commission and the Nevada Right to Counsel Commission. I've never seen anybody who knows so much about indigent defense as you. Incredible. Thank you for your report, and we'll see you either on the phone or in person at the next meeting.

The next item on the agenda is directions to staff and the consultant, and we can provide any directions we need to staff and the consultant. Is there anything any Commissioner wants to say to staff or to me? Seeing none, agenda item VIII is the discussion of dates and topics for future meetings. What I'm proposing is that the next Nevada Right to Counsel Commission meeting be Friday, July 27 at 9 a.m. That will be preceded on Thursday, July 26 by the next IDC meeting. Jamie Gradick is in the audience, and I will inform the IDC people of not only their meeting but also of this meeting so that anybody in either commission can go to either meeting, or both, hopefully. Let me say that again. Our next meeting will be July 27 at 9 a.m., and the next Indigent Defense Commission meeting under ADKT 0411 will be July 26, so we'll be very busy that Thursday and Friday.

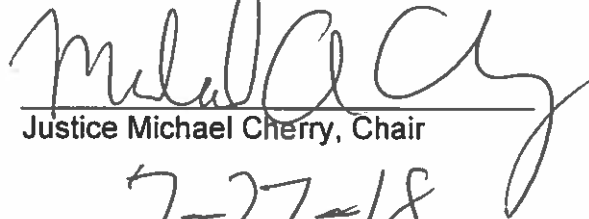
Now, agenda item IX is the second period for public comment. Seeing none, I will close public comment. I want to thank you all for attending today. Commissioners, thank you. People in the audience, Dagny Stapleton and Judge Schlegelmilch, thank you for being here from Yerington, and Mr. Carroll, and of course our State Public Defender and the press that's been here. Thank you for being here, and I will now adjourn this meeting at 11:36 AM.

RESPECTFULLY SUBMITTED:



Jordan Haas, Secretary

APPROVED BY:



Justice Michael Cherry, Chair

Date: 7-27-18

Exhibit	Witness/Agency	Description
Exhibit A		Agenda
Exhibit B		Attendance Roster
Exhibit C	Jordan Haas, Committee Secretary	Agenda Item IV: Draft Minutes from the April 25, 2018 Meeting
Exhibit D	Jordan Haas, Committee Secretary	Agenda Item IV: Draft Minutes from the May 25, 2018 Meeting
Exhibit E	David Carroll, Executive Director, Sixth Amendment Center	Agenda Item VI: Presentation by the Sixth Amendment Center