

Members

Barnes H. Ellis, Chair
Shaun S. McCrea, Vice-Chair
Henry H. Lazenby, Jr.
Peter A. Ozanne
John R. Potter
Janet C. Stevens
Honorable Elizabeth Welch



Ex-Officio Member

Chief Justice Paul J. De Muniz

Executive Director

Nancy Cozine

PUBLIC DEFENSE SERVICES COMMISSION

PUBLIC DEFENSE SERVICES COMMISSION MEETING

Thursday, January 26, 2012

9:00 a.m. – 10:30 a.m.

The Oregon Gardens

Trillium Room

895 W. Main Street

Silverton, OR 97381

AGENDA

- | | |
|--|---------------------------------|
| 1. Action Item: Approval of minutes - PDSC meeting on December 8, 2011
<i>(Attachment 1)</i> | Chair Ellis |
| 2. February Session – Budget Update | Nancy Cozine
Kathryn Aylward |
| 3. Review of the Executive Director’s Biennial Report to Legislature
<i>(Attachment 2)</i> | Nancy Cozine |
| 3. Michigan Debrief | Peter Ozanne
Nancy Cozine |
| 4. OPDS Monthly Report | OPDS Management Team |
| 5. Commission feedback regarding 2012 Contracting process | Commission |

Please note: Lunch will be provided for Commission members at 12:00 p.m.

The meeting location is accessible to persons with disabilities. A request for an interpreter for the hearing impaired or for other accommodations for persons with disabilities should be made at least 48 hours before the meeting, to Laura Kepford at (503) 378-3349.

Next meeting: The next meeting of the Commission is scheduled for January 19, 2012, 10:00 a.m. – 3:00 p.m. at the Office of Public Defense Services.

Attachment 1

PUBLIC DEFENSE SERVICES COMMISSION

OFFICIAL TRANSCRIPT

Thursday, December 8, 2011
10:00 a.m. – 3:00 p.m.
Office of Public Defense Services
1175 Court St. NE
Salem, Oregon 97301

MEMBERS PRESENT: Barnes Ellis
Shaun McCrea
Chip Lazenby
John Potter
Hon. Elizabeth Welch

STAFF PRESENT: Nancy Cozine
Kathryn Aylward
Peter Gartlan
Paul Levy
Ernie Lannet
Shawn Wiley
Shelley Winn

The meeting was called to order at 10:00 a.m.

Agenda Item No. 1 Approval of the Minutes of PDSC's October 21, 2011, meeting

Chair Ellis recommended two corrections to the minutes – (1) on the top of page 8, “Reiki” should be “Reike”; (2) on page 9, in the middle of the page, the second line of the large paragraph the word “bit” should be “bid.”

Minutes were unanimously approved as corrected.

Agenda Item No. 2 Commission Approval of ongoing OPDS Personnel Rule changes

Nancy Cozine explained that ORS 151.216 requires the Commission to adopt a compensation plan, classification system, and personnel plan for the Office of Public Defense Services, and to adopt policies, procedures, standards and guidelines regarding payment of other costs related to public defense services. The personnel rules and our payment policies include things that have to be updated either because of statutory changes, or because it allows the office to capture efficiencies, and sometimes these changes need to, or should, be made before the Commission next meets. Ms. Cozine explained that the OPDS staff recalls discussion about this in the past - about what the Commission is comfortable delegating without specific approval prior to the change – but there is no documentation. She explained that there are two examples for the Commission to consider today, which might help illustrate the types of things OPDS would like to be able to implement prior to specific Commission approval.

Kathryn Aylward reminded the Commissioners about conversations had in 2009, regarding a change in the mileage reimbursement rate, which ended with an

agreement that the office would simply update the policy to match the federal reimbursement rates, without specific Commission approval. Ms. Aylward explained that there are changes required again, to match what is happening at the state level. Right now full reimbursement is 51 cents a mile. If an employee would like to take a state car, but one is not available and the employee uses a personal vehicle, the employee is reimbursed at 51 cents per mile. If a state car is available and the employee chooses to drive a personal vehicle, the employee is reimbursed at 19 cents per mile. Ms. Aylward explained that this is a change she would recommend, and that it might result in some savings.

Ms. Aylward went on to explain that OPDS's personnel rules regarding jury duty should be modified. The current personnel policy says that an employee will receive pay when they attend jury duty if the employee submits to OPDS the jury check that the employee received from the court. It costs the court about a \$1.50 to issue that eight dollar check, the employee presents it at OPDS and staff must fill out a slip, then treasury charges about \$1.50 to deposit the check. It is not efficient, and OPDS is suggesting a change to the policy that allows an employee to waive the fee, noting that the office can use other means of confirming an employee's participation in jury duty, if necessary.

Chair Ellis suggests that OPDS have authority to make these types of changes, with presentation for PDSC's approval on an annual basis.

MOTION: Commissioner Potter moved to approve the two suggested changes; Commissioner Lazenby clarified that he would expect OPDS to present to the Commission, at a later date, a formalized statement of delegation of authority.

Commission members unanimously approved.

Agenda Item No. 3

2012 PDSC Meeting Schedule and Possible Agenda Topics

Chair Ellis requested Commission thoughts on the schedule and proposed meeting topics. The January meeting was rescheduled to January 26, 2012, and will be an all day retreat in the Salem area. The March meeting was rescheduled to March 22, 2012. The July meeting was reset to August 16, 2012.

Judge Welch expressed concern about the lack of juvenile law topics on the proposed schedule. Chair Ellis suggested that Judge Welch submit to Nancy a few topics for addition to the agenda topics. Chair Ellis expressed an interest in pursuing follow-up information regarding waiver of counsel in delinquency cases. The Chief Justice sent out a letter and model waiver colloquy in February, but no follow-up has been done.

Chair Ellis asked about the "review of best practices," a suggested agenda item included on the May 10 list of topics, and whether that will include training for Commission members, as Paul Levy has provided in the past. Mr. Levy explained that it is on the agenda because OPDS needs to report on it, but that it can include a training component. Chair Ellis suggests that a training component be included if there is something that would benefit the Commission. Mr. Levy suggested that in past discussions, the Commission was interested in training about the structure and authority of boards and commissions that administer public defense in other states.

Judge Welch asked about the work being done on the approach to the quality assurance task force and the budgeting process, and making those more aligned. Mr. Levy explained that the topic has been discussed within OPDS, and that it will also require the Commission's input. It is the model of the Commission's service delivery reviews where you hold public hearings and get input in the jurisdictions that you are examining. The peer process that is confidential and OPDS can't share

that with the Commission, bust staff has been exploring ways in which these processes could be more complimentary.

Chair Ellis asked whether a portion of the retreat could be used to provide peer review information to the commission privately; not in a public hearing setting. He commented that it is odd to go to jurisdictions, meet the players, and talk about the structure, but there is a whole body of information that has been generated by the peer review. Chair Ellis also expressed concern about whether such a process would chill the candor.

Mr. Levy explained that retreats are public meetings that are open to the public, and there are minutes of those meetings. Subjects of peer reviews are told that the report is provided to only the administrator of the entity under review and OPDS administration. Each person interviewed is told that OPDS is receiving the information confidentially. That gives the report protection under the public records law, because the information is received with assurances of confidentiality from somebody who is not otherwise required to provide the information - it is an exception in the public records law. Mr. Levy expressed the view that if the confidentiality provisions were removed, people would still share information. He also explained that both the Quality Assurance Task Force and Contractor Advisory Group were consulted about changing this model, and those groups were in agreement that removing some confidentiality provisions would not have a chilling effect.

Chair Ellis suggested that the source could remain confidential. Mr. Levy confirmed that this approach would be possible, and explained that OPDS would like to maintain something of the initial peer review pieces, with peers coming to look at an entity – a team of other public defense administrators and providers. There would be some level of source confidentiality, but the findings and conclusions of the report would be at some point, or under some conditions, shared with the Commission and become a public document. Mr. Levy also suggested that Nancy Cozine could explain a possible alternate approach, in which the peer process results in recommendations to the entity under review, and if the recommendations are not implemented, they are brought to the Commission, or some variation on that.

Ms. Cozine explained that when OPDS administration talked with contractors at the October meeting in Pendleton, providers discussed one concept that would include giving the initial report to the entity, and giving them some time to react, to try and remedy any problems that came up during the course of the review. Then, bring back to the Commission a final report. Chair Ellis asked whether the final report would include the comments. Ms. Cozine indicated that it could, or that the final report to the Commission could be only the findings and conclusions. It wouldn't have all the detail about how OPDS came to the findings and conclusions, but it would give to the Commission what the findings and conclusions were about that entity. Again, with the idea that the entity would have some time to correct whatever problems were identified.

Commissioner Welch expressed some concern about the value of the peer review process. Mr. Levy explained that Commissioner Welch is the only commissioner to have participated on a peer review panel; that Commissioner Potter has been on many preliminary investigations for service delivery reviews. Mr. Levy explained that Commissioner Welch's experience was unique, in the sense of what she saw, and what came of it. There have been instances where the peer review panel spends a lot of time and gets some information, maybe not very good information, but the panel makes recommendations, and little happens. While that has been the experience with some reviews, the more common experience has been that the panel learns about practices that were concerning and prompts positive changes, and the panel learns about practices that are commendable, and those are incorporated into the best practices document and recommended to others. There have been a number of significant changes in how a county does its work, and how it a provider does its

work, as a result of the peer review process. Part of the problem with confidentiality is that the Commission can't know about the review details, can't applaud the panel's work, and can't publicly applaud providers who improve; nor can OPDS use the information to get the Commissions help in addressing a particular problem. When that situation arises, it requires a complete Commission "do over."

Ms. Cozine explained that there are pros and cons to consider regarding how to address the confidentiality concerns, and the way that interplays with public record laws and contractor reactions, but that everyone at OPDS agrees that we do need to make some changes, primarily around confidentiality, so that the Commission doesn't have to redo work. Ms. Cozine indicated that it would not have a chilling effect - everyone at this point is accustomed to the Commission and to the work that the Commission does, but that the office needs to touch base with the contractors again, probably in March of 2012, and continue this conversation with them.

Chair Ellis indicated that he would like to see the confidentiality piece change. He feels that the Commission can't do its job as it should without that information. Mr. Levy expressed the view that changing the process would not alter the quality, and may help OPDS and PDSC be in a better position to prompt changes. Commissioner Welch commented that when she participated, there was no openness; it was absolutely cover for everybody. People said that everything was fine - nothing wrong. Mr. Levy indicated that the experience has been very different elsewhere - people are happy that the panel is there, want to share everything about what is wrong, and make suggestions for improvement. He further indicated that Commissioner Welch's experience is not common.

Commissioner Potter offered that in his experience participating in the pre-Commission reviews, people talked openly even though they know the information will be made public.

Chair Ellis suggests that the change be implemented on the next peer panel, and Mr. Levy indicated that he can move forward with planning our next peer review with a different model.

Commissioner Potter asked about the death penalty peer review process. Mr. Levy indicated that this has been structured without confidentiality built into it. Chair Ellis invited Mr. Levy to provide more information, and to review the letter that he circulated. Mr. Levy explained that he sent the letter in November, to the five contractors for whom the Commission approved only one year contracts. Once the information is submitted, there is a death penalty peer panel that will provide input as needed in the process. Chair Ellis complimented the letter, and asked whether there was a way to take some of the review process burden off Mr. Levy.

Mr. Levy agreed that it is a burden, and he is not necessarily the best person to be making judgments about the performance of death penalty contractors. Mr. Levy has done death penalty work - both trial and PCR - and he keeps up on what is going on in the community, but agrees that he is not the best person to pass judgment. Mr. Levy explained that he has already talked to the death penalty peer panel, and a number of them said they would absolutely be happy to help. That is tricky because it is not a confidential, private process. People are not anxious to be involved in the process. It is time consuming. Of the five being reviewed, he has received so far only one submission. It was about 150 pages of motions, transcripts, and other information, and Mr. Levy believes it is a small submission compared to what others will send. Chair Ellis asked what role Jeff Ellis would play in this. Mr. Levy explained that Mr. Ellis is in an interesting position because his first responsibility and job is being a resource to the death penalty community. He wants people to feel free to come to him with their cases and their issues and their problems without fear of being judged and reported upon. So he has been advising and helping - he explained how Washington looks at death penalty lawyers. He will continue to help with the process, but doesn't want to be a formal part of it. Chair Ellis asked

whether it would make sense to have Steve Kanter or Susan Mandiberg be part of an evaluation group. Mr. Levy indicated that it would, and he has also considered reaching out to Matt Rubenstein. Chair Ellis expressed support. Commissioner Lazenby suggested including a retired appellate judge, as that perspective would aid the Commission in analyzing whether or not the practices are sound. Mr. Levy said he didn't want to completely undersell his ability to deal with large parts of this, as he has been part of fairly detailed investigations in the past, examinations of attorney representation in capital cases. Chair Ellis noted that the federal defenders are positioned remarkably well to aid in this process. Mr. Levy confirmed that he was envisioning drawing on them. Chair Ellis concluded by indicating that there should be at least two other people involved in this process, and suggested that if it is too large a burden for those people, Mr. Levy could whittle down what they need to be focused on. In situations where there are no concerns, maybe there is no need to involve the others, but if there is someone that has issues, Chair Ellis would like others involved in the review process.

Commissioner Potter asked for confirmation that the death penalty review is substantially different than the contractor reviews at the trial level, as in those reviews, the peer panel doesn't ask for motions that are reviewed. Mr. Levy confirmed, indicating that in the peer review process the panel tries to get a sense of the quality of the motion practice of an entity, but they are looking at an entity that could have 30 lawyers or more; they certainly ask about the quality of motion practice and the like. The death penalty review is a different model and a different beast altogether. OPDS has a responsibility under the ABA guidelines, as the appointing authority, and the Commission has told OPDS that the ABA guidelines should govern how we conduct our work providing counsel in capital cases. Chair Ellis offered that the death penalty review is different for two significant reasons – the reputational risk of this Commission is much higher in these cases, and there is a system cost if there is mediocre defense. He also pointed to the risk of the client, which is significant. Chair Ellis expressed comfort with the level of review contemplated for death penalty providers.

Chair Ellis asked for input regarding retreat topics, which is a one day event that has not yet been scheduled. Judge Welch requested a juvenile topic. All agreed that a discussion about the Commission's thoughts on the way OPDS presented 2012 contracts to the Commission should be reviewed soon, but that it didn't need to be a retreat topic – it could be part of a regular meeting. Commissioner Lazenby expressed interest in hearing from Mr. Levy whether the PDSC could have some level of involvement in the policy discussions happening around reshaping the death penalty in Oregon, and whether that conversation is appropriate for the Commission. Mr. Levy reminded the Commission members that they have said in the past the Commission will weigh in on substantive legal policy issues that have policy implications that affect the quality and provision of services to clients. The Commission is not prohibited from weighing in on an issue. The death penalty is certainly one where it has not advocated for a particular policy choice from the legislature, but has urged them to explore ones that would be more fiscally prudent. Mr. Cozine explained that the OPDS has discussed convening a group to look at different models and costs from the defense perspective, including (possibly) the appellate division, CBS, practitioners, and Jeff Ellis to make sure that OPDS can formulate and articulate clear lines of advocacy as we move forward in this conversation, and offered that the collected information could be shared with the Commission. Commissioner Lazenby clarified that the Commission would need to look at the information to give guidance on the topic, as OPDS has only as much authority as the Commission grants. Mr. Levy advised that the death penalty has always been an area where we received regular inquiries from the public, the press, and the legislature about cost, and that those inquiries are now coming more frequently since the debate has been engaged around the moratorium.

Commissioner Potter suggested that the retreat should be a big vision look at a variety of issues - the death penalty and what the political direction is now and what

our role might be, if any - juvenile issues and where we have fallen down and where we need to shore up - post conviction relief . He would like the retreat agenda shaped into a big vision global look, as these discussions have real value, and the Commission never has a chance to do that at these meetings.

Commissioner Lazenby echoed Commissioner Potter's suggestion, reminding him that during the executive director selection process, a lot of the conversation among the Commission members as they were looking at candidates had to do with the "next level." There were seven different ideas of what that meant, and the Commission needs to have a more cohesive view. He also expressed interest in looking at juvenile law, but also suggested that the Commission needs to look at all of the work it has done since it started to determine what needs to happen next. Commissioner Potter suggested looking at the political climate too, and whether there are things we have chosen not to do in the past, but should in the future. Commissioner Lazenby also suggested looking beyond the current situation of declining resources to give some preemptive thought to what happens when things start to improve and there are more resources. Ms. Aylward expressed support for that approach, indicating that LFO is always interested in how each policy option package plays into the entity's multi-biennia approach.

Chair Ellis confirmed dates for 2012 as: January 26, March 22, May 10, June 14, August 16, September 13, October 19, and December 12. All agreed that the retreat should take place on January 26, somewhere in the Salem area.

Agenda Item No. 4

Umatilla/Morrow Counties – Commission Discussion

Chair Ellis asked Commission members for their thoughts or comments about the Umatilla/Morrow update, and asked whether there had been any follow up on Mr. Fischer's request for OPDS help in establishing a group for the non-profit public defenders to work together to identify and recruit available applicants. Chair Ellis expressed some surprise at this request, as he thought this issue had been addressed in previous years. Ms. Cozine explained that OPDS had looked at the issue before, and collaborated with OCDLA to get all public defender positions posted on the OCDLA website. Ms. Cozine then spoke with Mr. Fischer to clarify what he had in mind when he made the suggestion, and that he requested that OPDS arrange for or convene a regular meeting of public defenders so that they could more actively work together on their recruitment and hiring processes. She also expressed the view that a statewide recruitment effort could be used to attract more minority candidates to Oregon. Chair Ellis wondered whether the recruitment issue was really more of an issue for public defenders in remote locations, and wondered whether they were looking for a way to recruit from Lane PD, or MPD, or wherever, to get attorneys with three or four years experience and who are willing to move to a less populated area if they can get increased responsibility. Commissioner Potter suggested that attorneys are getting increased responsibility in Lane and Multnomah County because Oregon doesn't have the structure of misdemeanors and felonies much anymore, and attorneys are doing felonies six months into their stint. It is challenging to get people interested in moving to rural locations, and it is not going to be money either, because the smaller counties aren't going to pay as much.

Commissioner Lazenby remarked that it is too bad that PDSC can't do an AmeriCorps/Peace Corps sort of model for the rural areas. He discussed a model used by the state police to station recruits around the state, and said it would be nice to structure something like that for public defense. Mr. Levy indicated that there is a model, called the Southern Public Defender Training Center. It is about five years old now. Attorneys get very high quality training in criminal defense in return for a commitment to serve in a public defender office across a tier of southern states. They serve dozens of public defender entities throughout the southern states. You go to the training academy knowing that you will have a position in a public defender office somewhere.

Chair Ellis asked for input regarding any structural changes needed in Umatilla/Morrow, suggesting that it didn't seem to need it, as it did two or three years earlier. Ms. Aylward indicated that over the last few years there were adjustments in the case rates to address the issue of recruitment and retention, but that there may still be room for improvement. Commissioner Lazenby expressed concern about the lack of Spanish interpreters, and waiver of counsel in juvenile cases.

Agenda Item No. 5 Outline of Biennial Report to Legislature and Annual Report of ED to PDSC

Chair Ellis requested feedback on outline of biennial report and annual review. Commission members indicated that the appropriate areas appear to be listed.

Agenda Item No. 6 OPDS Monthly Report

Mr. Levy began by explaining that in January he will send out the fifth annual statewide public defense performance survey. Again this year the chief justice will send a message to judges urging them to complete the survey; they provided good responses last year. The survey is useful because by using the same instrument, it is possible to identify trends. The survey is also sent to prosecutors, juvenile department directors, and CRB coordinators. Mr. Levy confirmed for the Chair that OPDS does follow up those who provide comments that warrant investigation. Chair Ellis encouraged Paul to think of others to include.

Mr. Levy reported information regarding a legislative change brought to OPDS's attention by Greg Hazarabedian. House Bill 3100 takes effect January 1, 2012. Reports that courts receive where there is an insanity defense or where there is a question raised about the competency of the person to proceed in adult criminal cases, and insanity in juvenile delinquency cases, must come from psychologists or psychiatrists who have been certified to provide such reports by the Oregon Health Authority. Alex Bassos at MPD has been involved in a work group charged with implementing the rules and the legislation, but right now there are no rules in place. OPDS has alerted the contractor community that providers must be certified when they are asking for evaluations services for these purposes. There are a lot of wrinkles to be ironed out here, and a lot of concerns from very good evaluators who do not meet what is currently proposed as very restricted requirements for certification. Commissioner Lazenby asked whether the legislation was aimed as preselecting doctors who would provide only one type of answer. Mr. Levy indicated that eventually there will be a peer panel assessing qualification, and that OCDLA will be nominating one of the members of this peer panel. The requirements, as they stand now, include that the psychologist has received 2,000 hours of supervised training in a forensic psychology program (and very few people have had that experience), or is a diplomate in some particular area of forensic psychology. There are some very good psychologists who would never meet the 2,000 hours and for whatever reason aren't interested in this other form of credential. So it is not quite workable the way it is established now, and it is certainly not in shape to be in place January 1, which could cause a lot of havoc in pending cases. There is a meeting this afternoon at which there will be further discussion about how to make the rules more workable until the peer panel is established, which may include allowing reports from psychologists who have a provisional certification.

Ms. Cozine reviewed the results of the annual staff survey, which showed very little change from the 2010 survey. There was a weakness shown in communication with staff, and a regular all staff meeting schedule has been adopted for 2012. Other areas where the score was below a "4" included whether people found their job challenging, whether there were opportunities to learn and grow at OPDS (the score was above 4 in the attorney group), politics in the office, reasonableness of the workload, and feeling appreciated. The scores were high in the area of excellence and leadership – a testament to the skills of the management team who preceded Ms. Cozine. The comments offered by staff fell into three general categories: (1) the

need for a Portland office, (2) slow computers and other office equipment issues, and (3) communication. Ms. Cozine explained that she has invited the staff to share additional concerns in any way they feel comfortable. Management may do some follow up work with staff on the areas of appreciation, and will continue to work with staff, and ask for suggestions regarding how to continue to improve.

Commission members discussed the invitation for Ms. Cozine to appear before the Michigan Commission on Indigent Defense meeting to share information about the Oregon model, and agreed that since Michigan is paying for the trip, she should attend.

Mr. Gartlan provided the update for the Appellate Division. The first two items are a follow up to the Pendleton meeting, at which the Chair asked about the filing dates for the AG's office. AD's median filing date is 229 days after record settlement. The median filing for the AG is 210 days after our filing. Mr. Gartlan reminded the Chair that back in early 2000, AD was filing well over 300 days after record settlement. Mr. Gartlan also reported that in January or February, AD would be sending out a survey to attorneys who handled AD's appellate cases at the trial court level. AD had five Supreme Court arguments in November. Everybody represented our office well. Commissioner Potter asked whether the attorneys are going to oral argument with laptop devices. Mr. Gartlan indicated that most of the attorneys do. There are three more Supreme Court arguments in January, with three different attorneys, including the first juvenile Supreme Court argument. The issue in that case is whether or not a trial court that has jurisdiction over a child can direct the parent derivatively to make another child, who is not under the court's jurisdiction, to have interaction with the child who is within the jurisdiction. Mr. Gartlan reported that there are two new attorneys starting in December. Chair Ellis asked about the number of applicants for the two positions – Mr. Gartlan responded that the juvenile one we had over 120, and the criminal had over 180. Mr. Gartlan indicated that AD must also fill a senior deputy vacancy, as Ryan O'Connor, one of our senior deputies and an excellent attorney, excellent team leader, and excellent teacher, is leaving. Finally, Mr. Gartlan invited the Commission members to the OPDS Holiday CLE presentation on Thursday, December 22, which will include Jim Nass, the Appellate Commissioner, who will talk about appellate jurisdiction; Paul Levy, who will discuss appellate rules and ethics; and Tony Bornstein from the Federal Public Defender will present on what is left of federal habeas.

MOTION: Commissioner Potter moved to adjourn; the motion passed unanimously. Meeting Adjourned at 12:10 p.m.

PUBLIC DEFENSE SERVICES COMMISSION
UNOFFICIAL EDITED TRANSCRIPT

Thursday, December 8, 2011
10:00 a.m. – 3:00 p.m.
Office of Public Defense Services
1175 Court St. NE
Salem, Oregon 97301

MEMBERS PRESENT: Barnes Ellis
Shaun McCrea
Chip Lazenby
John Potter
Hon. Elizabeth Welch

STAFF PRESENT: Nancy Cozine
Kathryn Aylward
Peter Gartlan
Paul Levy
Ernie Lannet
Shawn Wiley
Shelley Winn

The meeting was called to order at 10:00 a.m.

Agenda Item No. 1 Approval of the Minutes of PDSC's October 21, 2011, meeting

0:04 Chair Ellis We are ready to call the meeting to order. The first item is approval of the minutes of the October 21, 2011 meeting. Are there any additions or corrections? I have two. One is on the top of page 8. I think "Reiki" is misspelled there. I think it is "Reike."

0:45 C. Lazenby I think it is "Rieke."

0:47 Chair Ellis Then on page 9, in the middle of the page, the second line of the large paragraph the word "bit" should be "bid." Other than that I had no additions or corrections. Any others? Is there a motion to approve as corrected? **MOTION:** John Potter moved to approve the minutes; Chip Lazenby seconded the motion; hearing no objection, the motion carried: **VOTE 4-0.**

Agenda Item No. 2 Commission Approval of ongoing OPDS Personnel Rule changes

1:39 Chair Ellis Okay. The second item is the approval of the ongoing OPDS Personnel Rule changes. Nancy and Kathryn do you want to tell us about that.

1:49 N. Cozine This issue is on the agenda and it is really part of a larger conversation. We have personnel rules and we have payment policies. By statute, the Commission is required to approve them. So under ORS 151.216 it says that the Commission shall adopt a compensation plan, classification system and personnel plan for the Office of Public Defense Services. Then I am charged in ORS 151.219 of implementing them. Our personnel rules include things – and our payment policies include that things

that have to be updated either because of statutory changes, or because it allows us to capture efficiencies. I think there is probably some line between what requires Commission approval and what doesn't. We have two examples today of two things that are either capturing efficiency or statutorily required. I anticipate that something like annually we would come to you with a request for a full update, or every other year of the personnel rules. It is my understanding from discussions with staff that there have been updates over the years and at some point in time this probably was a conversation, but we don't have it documented, about what the Commission has delegated in terms of ability to update things without specific approval. So we have two examples for you today, and it might just help illustrate the types of things that we would like to be able to update without specific authority, but we also recognize you may want us to just bring these things to you individually which is also fine.

3:49 K. Aylward

The Commission, you will no doubt remember, I think it was 2009 when we came to the Commission because we wanted to change the mileage reimbursement rate and Commissioner Potter at the time said, "Well, why can't the policy just be the mileage reimbursement rate matches the federal rate?" We said, "The problem with that is we don't always hear as soon as it changes." I think the conclusion from that meeting was that what we have attached to our payment policy is a schedule of guideline amounts that include lodging, meal reimbursement, mileage, and all of those things. What we took from that meeting is the Commission said that yes it is fine to update the schedule as and when those rates change. You don't need to come back us each time and say it is a policy decision. I hope that was what the Commission intended, because since then we have updated as the federal reimbursement rates have changed we just changed our schedule.

4:53 C. Lazenby

Why don't we just use what the state does?

4:57 K. Aylward

They do the same thing but we don't always hear about it. We are not in that DAS information network because we are judicial branch. We just don't always hear. Usually it is an investigator calling us up and saying, "Hey, mileage rate went up three days ago." That is why we just want the flexibility to make it effective when we find out about it. In the last couple of months a couple more things have come up where it is more than just the rate changing, it is an actual policy change. I believe it was Senate Bill 566, passed during the regular sessions to amend ORS Chapter 292, regarding state agencies. What they want to be able to do is have state agencies all code their expenditures in a similar way. To use same comptroller objects. Internally you can break it down as fine as you want, but they want them to roll up at some levels so that when DAS is asked by the legislature, or whomever, what did the state spend on mileage? They don't have to piece together each little agency. It is great for us too because we would still get asked the question, so we might as well set our system up like the rest of executive branch. What we had always done with our mileage reimbursement was, if a state car is available, then calculate what a state car would cost. If you want to drive your own we don't care, but we are not going to pay more than we would have paid for a state car. A lot of employees like that. It is certainly less than the full mileage reimbursement in most cases. They are not getting the 51 cents, but they are getting something and at least they get to drive their own car which provides some flexibility. What the rest of executive branch is doing now, and I don't know whether the federal government is or not, I think they must be, is they are establishing a sort of two tiered partial reimbursement and full reimbursement. So it is effectively what we have been doing but they put a percent mile rate on it. So, right now full reimbursement is 51 cents a mile. If I am an employee and a state car is not available and I drive then I get reimbursed 51 cents. If a state car is available and I drive then I would only now get reimbursed 19 cents. It is really very similar to what we were doing in the past. I think I would, if the Commission required me to come forward as an action item, I would recommend approval. That is one example of something that would probably save a little money. It is probably not a big deal and we should do it. The second example is jury duty. What our current personnel policy says is that you can go to jury duty on work time, but you won't get paid unless you carry back that five dollar or eight dollar jury

check that you got from the court. Well, okay, that sort of makes sense, but it would be much, much simpler to just waive it. It costs the court about a \$1.50 or whatever to issue that eight dollar check, and then you walk it back and give it to someone in the office who has to fill out a slip. Treasury charges us like a \$1.50 to deposit that check and we don't care. It just goes right back around. So my suggestion is that we change the policy that says you get paid your regular pay on a work day if you had to go to jury duty if you waive the fee. We can fill out some form where the person swears they waived the fee. We could actually check because we know some people at the court. I think originally that may be been why, because nobody wanted to confirm that you waived it and you could have pocketed it. I recommend making this change. It will save money. It is simple. That is another example of something that I would just do without asking the Commission for approval if there were some level of delegated approval.

- 9:15 Chair Ellis To me that makes imminent sense, both of the things that you have said. The only thing that sticks in my mind is if our statute does require that we approve things. Maybe we could do this like an annual moment when we would approve what it is you guys have – like the two examples that you have given. I think approval could be retro as well as prospective. That way we comply with the statute but we are not micromanaging.
- 9:48 K. Aylward And you will never say no?
- 9:55 Chair Ellis I think we can give you some level of comfort that the worst that happens if we really disagreed with something prospectively that would not apply.
- 10:03 C. Lazenby Actually we would make you write a check.
- 10:14 N. Cozine Wonderful. Thank you. We will make those changes and we will set a schedule where we are bringing the policy updates to you at some regular interval, which I don't think we have scheduled yet, but we will make sure we build that into the plan for 2012.
- 10:31 J. Potter Do you need approval for these two changes right now?
- 10:34 N. Cozine That probably makes sense since we are sitting here. Now we can move forward with the authority to make the changes until we get the full
- 10:44 J. Potter **MOTION:** John Potter moved to approve the changes; Hon. Elizabeth Welch seconded the motion;
- 10:49 C. Lazenby But there are other items where you are going to want us to give you more delegation of authority in these matters, subsequently, so I would want to come back. I am going to vote yes, but I want you come back with all the other pieces that you want to do just in summary form and then we can form that and make a formal delegation to you. I think that is the proper way of doing it. Later. Not now. Just for the record they are nodding their heads yes.
- 11:25 K. Aylward And I think it was my understanding to that the Commission might, at some point, address, on all kinds of level, how much detail and information you want from us. We talked about it a lot with the contracts but maybe with all kinds of things. Personnel issues, activities, just to give us a sense of how deep do we go or not.
- 11:51 Chair Ellis That is always hard to define. I think about that deep would be good. There is a motion and a second. Any further discussion? All those in favor say aye. **VOTE 4-0.** Is that it on Item No. 2?
- 12:16 N. Cozine That is it.

Agenda Item No. 3

2012 PDSC Meeting Schedule and Possible Agenda Topics

- 12:20 Chair Ellis Okay. Item No. 3, the meeting schedule and agenda topics which is on tab 2. Thank you for changing the January meeting. Any thought on that, and that includes possible retreat topics, although I don't think we have a retreat scheduled. Right?
- 13:00 N. Cozine We do not, Chair Ellis. We thought the Commission might want to look at the current schedule of dates and think about if and when they would want to have a retreat in conjunction with one of the other meetings, which is what I understand has happened in the past.
- 13:23 Chair Ellis We have done it both ways. Is there a thought on, first of all, on the timing of the meetings and the number of meetings?
- 13:34 C. Lazenby Are their locations or is that just going to be on ...
- 13:37 Chair Ellis That is a TBD. Some of them coincide with OCDLA.
- 13:50 C. Lazenby The June one.
- 13:49 Chair Ellis Well, there are two.
- 13:51 C. Lazenby June and October.
- 13:52 Chair Ellis Right.
- 13:59 J. Potter Not that it makes a difference, but it appears that for the first time ever I will have two meetings that I will not be able to make. The 19th and the 15th. It looks like that is not going to work.
- 14:08 Chair Ellis The 19th of January and the 15th of March.
- 14:11 J. Potter Yeah.
- 14:13 Chair Ellis So two in a row.
- 14:15 J. Potter Yes. I don't think that has ever happened to me. I will be in Atlanta on the 15th.
- 14:25 Chair Ellis Do you want to move the date of the 15th? When are you back?
- 14:27 J. Potter I leave on the 15th. I can do it on the 8th. I can do it on the 22nd.
- 14:40 Chair Ellis How about if we did it on the 14th.
- 14:47 J. Potter I can do it on the 14th.
- 14:52 Chair Ellis My instinct is if we know there is a Commissioner that has a conflict and we have got three or four months leave time here, I would move the date if we can. Any issues with moving that date, Nancy?
- 15:04 N. Cozine To March 14 or 8?
- 15:05 J. Potter The 14th, 8th, or 22nd all work for me.
- 15:11 K. Aylward May I suggest the 22nd might be better because the meeting on the 8th or the 14th, prep for that meeting is still going to be during the February session. I would rather push it a week back than a week early for Nancy's sake.

15:28 Chair Ellis So let's move that one to March 22.

15:35 N. Cozine We can change it.

16:06 Hon. Elizabeth
Welch I am on the legislative task force again. The meeting schedule has not yet been resolved because there are more people on that than there are on this so it takes longer.

16:19 Chair Ellis What is your subject?

16:20 Hon. Elizabeth
Welch Public guardianship, again. I am a little worried. That is all I can say is I am little worried because I don't know what it is going to be monthly.

16:33 Chair Ellis The other date you had a conflict was January 19?

16:39 J. Potter Yeah.

16:39 Hon. Elizabeth
Welch I am worried about that date too, actually.

16:40 J. Potter I am not sure that it is a conflict but I think it is. The 18th is not but the 19th may be.

16:53 Chair Ellis I am pretty sure that I am not available on the 18th. I am still in transit.

16:56 J. Potter The 26th is available for me too.

17:02 Chair Ellis I think that would work.

17:03 N. Cozine 1-26?

17:06 C. Lazenby May 26th?

17:08 Chair Ellis January.

17:13 N. Cozine Alright.

17:18 Hon. Elizabeth
Welch I have another issue but I think it is inappropriate. I need somebody to tell me that it is. It doesn't have to do with the schedule. It has to do with the topics. Is it okay to talk about topics?

17:32 Chair Ellis Yes. We are going to go to that next. Go ahead.

17:33 Hon. Elizabeth
Welch I am concerned that there hasn't been a juvenile court related discussion or undertaking by this group in quite awhile. Obviously I would be happy to come up with five or six suggestions for topics. I am concerned about that and I am not saying that there is anything other things that crowded out or whatever, but there was a period there where we had some pretty important issues on the boards and with one exception they just kind of withered. I have already talked to Nancy a little bit about this.

18:22 Chair Ellis Why don't you submit to Nancy your top two or three issues you would like us to address and I think she will find a way to work that into the schedule.

18:35 Hon. Elizabeth

Welch Okay. I am hoping maybe some of the staff people that are passionate about this area, which is I think quite a few of them, might have some input as well. Some of the issues that came up at least implicitly in the budgetary process, again I can't pull one out of my head right now.

19:01 Chair Ellis One that I am interested in is that waiver of counsel issue that we heard a lot about. I haven't heard a current status of that. That is one I think we ought not just to hear about. I think we ought to follow up on it.

19:17 Hon. Elizabeth Welch It was interesting because I was reading the transcript and the discussion you had when I was in Paris with Judge Pahl and company up in Pendleton. There was what I thought, some amazingly frank discussion which was highly illustrative of the problem. It really was. It was like somebody wrote to make a point about how still very rudimentary that process can be. It is only when the kid is looking at a commitment to the training school that they provide a lawyer. At least that was what I read. That has been the practice but he is looking at changing it. I don't know whether the chief justice ever got any feedback on his letter. We never heard anything about it, right? We sent a letter in February was it? I don't know exactly who got them.

20:37 Chair Ellis It is the time old tension about juvenile. Is it a paternalistic model or an adjudicated model? We do kind of blend. I am not sure either side of that equation really knows which one they are doing when.

20:58 Hon. Elizabeth Welch There is a little complication about the constitution that some of these folks don't know about.

21:07 Chair Ellis I would encourage you to find the subjects that really would be helpful for us to hear about.

21:20 Hon. Elizabeth Welch I promise.

21:22 Chair Ellis Other thoughts on topics. Let's leave the retreat piece separately. Topics for the meetings.

21:33 J. Potter Not of the topics, Mr. Chair, but on July 12, on the flipside, there is a request to move it to one of three dates. Can we talk about that?

21:49 Chair Ellis We haven't yet. What is your preference on that, Nancy?

21:55 N. Cozine I don't have a preference. Kathryn is the one who works primarily on the budget pieces so she may between those three dates. I suspect it is the latest only because it gives us more time to build in.

22:11 K. Aylward It is the latest except the budget has to be submitted in final form by September 1, so if we met on the July 23, and you said, "Kathryn, we want major changes" and I don't have much time to do it. Maybe the 16th is better.

22:25 Chair Ellis I would rather not do it on the 23rd for personal reasons. If we could do it the 16th.

22:33 C. Lazenby So August 16 or July?

22:39 N. Cozine August 16.

22:39 Chair Ellis I am not sure under May 10, the third bullet, the review of best practices. I know that one of the things that we are supposed to have is training of us. Paul, you have

done that a couple of times. Is that part of what that would involve? It is not just a review of what the practices are, but we would get our CLE credit for training?

- 23:11 P. Levy I think it is on there because we need to report on it. We can include a training component. That hasn't been decided or set. If the Commission wants that we are able to do that. It wouldn't necessarily be me doing that.
- 23:40 Chair Ellis We are good girl and boy scouts. We want to get merit badges doing the right thing. I just don't want to gloss over it. If there a session that we could benefit from. I know things like identifying conflicts of interest and how you deal with that. I am sure there are other topics that are right up your alley to make us do right. I would make that not just review but to the extent training is a component, I would have an implementation of that. If that means bringing in someone from outside who does this elsewhere. You have been great. There is no criticism there.
- 24:39 P. Levy When this was last reviewed by the Commission, I think there was some expression of interest in training in a larger sense of understanding what boards and commissions that administer public defense, what they look like and what they have been doing in other states. Of course, we then after that began looking for opportunities to send you all elsewhere. Those haven't really materialized.
- 25:11 Chair Ellis I thought we were going to send Nancy to Michigan.
- 25:15 P. Levy That could result in some very interesting information for this Commission. We will plan in one way or another to have a presentation for you then.
- 25:28 Chair Ellis Okay.
- 25:28 K. Aylward Could I suggest if we are doing a service delivery for Douglas County we might be in Douglas County. Then we are doing Lincoln County as well. If it works out that we can fit it in at either of the two earlier meetings can we do that?
- 25:44 Chair Ellis No problem with that.
- 25:45 Hon. Elizabeth Welch I have another issue. It is kind of question. I think this is also your territory, Paul. I am very intrigued about the notion that the quality assurance task force approach and the budgeting process need to be married to each other better, or whatever, or absorb each other. I am curious what is happening with that?
- 26:17 Chair Ellis This is the issue that those site reviews are not shared with us. I very interested in this too. Where are we on that?
- 26:32 P. Levy We are continuing to talk among ourselves. I think we will want the Commission's input on this as well, about how this model can evolve. It is the model of the Commission's service delivery reviews where you hold public hearings and get input in the jurisdictions that you are examining. This peer process that is confidential and we can't share that with the Commission. We have been talking about ways in which we can make these processes work more complimentary.
- 27:23 Chair Ellis One thought that occurred to me is use either all or a portion of a retreat and we would get the information but not in a public hearing setting. It has seemed to me kind of weird that we go to these locations, we meet the players, and we are talking about the structure but there is a whole body of information that has been generated by the peer review. I think the issue for me is if the particular office that is being reviewed knows we are going to see and hear the outcome, does that chill the candor? Does that make them unwilling to share? I have to say that I don't think so but that is just me.

28:20 P. Levy I think I would agree with you on that. The retreats are public meetings that are open to the public and there are minutes of those meetings. What we have done with the peer reviews is adopt a practice of saying the report would only be provided to the administrator of the entity under review and the administration of this agency. Then for each interview we tell the people we are talking to that we are receiving the information confidentially. That gives the report protection under the public record's law we have always maintained, because the information is received with assurances of confidentiality from somebody who is not otherwise required to provide it. That is the exception in the public record's law. I think what our experience will be if we change that somewhat is that people would still share with us pretty much what we are learning now. We have talked with both our Quality Assurance Task Force and Contractor Advisory Group about changing this model somewhat. I think those groups were in agreement that we could play around a bit.

29:48 Chair Ellis You can still keep the source confidential. It can be employee A. I don't think that we particularly care who the source is.

29:59 P. Levy I think what we have talked about is trying to maintain something of this initial peer review with peers coming to look at an entity. A team of other public defense administrators and providers and with there being some level of source confidentiality, but that the findings and conclusions of the report would be at some point or under some conditions, shared with the Commission and become a public document. There are ways in which we can change that initial review. Nancy can talk more of this too. She has proposed an idea that I think – maybe she has discussed with some Commissioners. The peer process has recommendations and if those are not implemented, then we bring it to the Commission or some variation on that.

31:10 N. Cozine We talked with the contractors at the October meeting in Pendleton about the concept of going in, doing the peer review and issuing the report and giving it to the entity. Giving them some time to react to try and remedy any problems that came up during the course of the review. Then, bring back to the Commission a final report.

31:41 Chair Ellis That includes the comments.

31:46 N. Cozine Correct. Another version of that was submitting to the Commission only the findings and conclusions which would have a similar effect. It wouldn't have all the detail about how the office came to the findings and conclusions, but it would give to the Commission what the findings and conclusions were about that entity. Again, with the idea that the entity would have some time to correct whatever problems were identified.

32:21 Hon. Elizabeth Welch Mr. Chair a little knowledge is a dangerous thing and that may be what is operating here. My experience with this is very narrow, as I would assume most of the members of the Commission are. I know John has gone out on some of these things. I went on one. It was an experience. I just have a lot of basic questions about what it is and who benefits from this process? What good is the peer review process? What does it accomplish?

33:04 Chair Ellis You shock me. I thought it was one of the best things that happened.

33:08 Hon. Elizabeth Welch He knows which trip it was.

33:14 P. Levy You are the only commissioner who has been on a peer review. Commissioner Potter has been on many preliminary investigations for service delivery reviews. I don't want to say that your experience is unique in the sense of what you saw and want you know has come of it. Because there have been instances where let's just say this, we spend a lot of time and we get some information. Maybe we don't even

get very good information, but we make recommendations and you might say that nothing happens. That is not exactly your circumstances but something along those lines. One would question the value of that. While that has been the experience with some reviews, I think the more common experience has been that we have both learned about practices that were concerning and that were the subject of recommendations for changes, and we have also learned about practices that were commendable and that we incorporated into our best practices document and recommend it to others. There have been a number of significant changes in how a county does its work, how it a provider does its work, as a result of the peer review process. Part of the problem with the confidentiality is we can't applaud ourselves for having prompted specific changes. We can't tell you about it. We can't publicly applaud providers when they do that, nor can we come to you to say, "Hey, under the past practice, at least, we told these people. We tried to help them. This isn't working and we you to now take action." Now we have an instance of that but it required a complete Commission do over. Then there were significant changes because we couldn't share with you our report.

35:34 N. Cozine

This is a very needy conversation. We did include that on a list of suggested topics for the retreat. It does delve into process issues. Pros and cons of the way we approach things and confidentiality concerns and the way that interplays with public record laws and contractor reactions. I think everyone in this office agrees that we do need to examine the process and make some changes and primarily look at that confidentiality piece so that we are never put in a position to have to redo work. The contractors that we spoke with in October felt that it would not have a chilling effect. Everyone at this point is accustomed to the Commission and to the work that the Commission does. So the preliminary feedback that we have is, yes, move forward and make some changes. We are going to touch base with our contractors again probably in March of 2012, and continue this conversation with them. It is something that does need to get moved forward without question.

36:51 Chair Ellis

I think that in 2003, which I think is the year this started, there was a level of anxiety about, you know, the police are coming and all that. I think there has been enormous progress in terms of relationship with the contractor provider community. I would really like to see this change so that we do get access to that. I think we can't do our job as we should without that information. That doesn't mean it turns into this is going to make or break you, but really just so we have an understanding of what the issues are at the contractor level. I think it is something that ought to happen.

37:45 P. Levy

As Nancy says, the contractors have told us they don't see changing this as a chilling of process. The reality is that when we go to a community despite the evolution of how it is viewed from the early days, people still confuse the two and with the peer review they still see it as Salem coming to look at them. I don't think that changing will alter the quality, at least, of the information and it may help us be in a better position to prompt changes. Some places we go get thanks for coming, now leave.

38:38 C. Lazenby

Give us our money and leave.

38:38 P. Levy

We don't get very much information. I don't know how to make that change.

38:48 Hon. Elizabeth
Welch

If the peer review process allows people to speak freely and openly, my experience would suggest that – it is a joke. There was no openness. It was absolutely cover for everybody, everything is fine. There is nothing wrong. It was absolutely across the board. It was amazing.

39:20 P. Levy

The experience has been very different elsewhere. People are happy that we are there. They want to tell us everything about what is wrong and how we can make it better. Your experience is not common.

39:41 J. Potter I would suggest that even the experience in doing the pre-Commission site visit review, whatever we call that, people talked openly to us even though they knew that that information was going to be made public. You may have had a unique experience, but being a part of these other trips I have found people are, by and large, pretty open. Sometimes it takes awhile to break the ice.

40:11 Chair Ellis So where do we go from here.

40:24 P. Levy It is on the retreat schedule. I think we have just from this discussion a sense of where we might go with the process.

40:37 Chair Ellis I don't think we need to wait for the retreat.

40:41 P. Levy We presently have a peer review of the type we have been conducting scheduled. That is another issue both for peer review and Commission service delivery review. We have been to and looked at, through the peer review process, most of the major contractors. There are some that we would like to revisit for updates. There are some that still need to be visited. I think we can move forward with planning our next peer review with a different model.

41:24 J. Potter Does it make sense to take a look at the death penalty contracts in this next go round of peer review if we are doing assessments of contractors who are doing death penalty cases?

41:32 P. Levy We are essentially doing that now. I was going to talk about this more later. The peer review is a look at a contractor, as opposed to the service delivery review which is a look at the structure of public defense in a county. Sometimes there is only one contractor so you really are just looking at one contractor with a service delivery review. Death penalty contracts are usually one lawyer – I think they all are. We are looking right now at five lawyers in this coming year. I think we made the decision that it would be harder to at more than five. We are using a peer process with this review and it does not have confidentiality built into it.

42:50 Chair Ellis Do you want to address that issue now? The draft letter that you had sent.

42:59 P. Levy I would be happy to. This was just going to be a part of our staff update. What I think you received is not a draft but a redacted copy of a letter that did go out. On the date of that letter, in November, to the five contractors for whom the Commission approved only one new contract. We have asked that they submit to us the information that is requested in this document and the letter describes the process of reviewing the context that they provide – there is a death penalty peer panel and using that panel to provide input as needed in the process.

44:03 Chair Ellis I thought it was an excellent letter. The only kind of concern I had is putting too much burden on you. This all kind of comes down to one person doing the evaluating. You get input from a lot of sources and my question is, is that the best way to do it or should we give you a little support?

44:37 P. Levy That is an excellent question. It is a burden, and I am not necessarily the best person to be making judgments about the performance of these people. I have done death penalty work. I have done death penalty trial and PCR work and I keep up on what is going on in the community, but I am certainly not the best person to pass judgment. We talked to our death penalty peer panel about being able to draw on those people to help with this process. A number of them said they would absolutely be happy to help. That is tricky because it is not a confidential, private process. As I said at the meeting in Pendleton in response to Steve Gorham's concern that he may be evaluated on the basis of secret input with secret findings. That won't work for this process to the extent that it envisions some report to the Commission. That is tricky too. People are not anxious to be involved in the process. It is time consuming. Of the five, I have received so far only one submission. It was about

150 pages long of motions, transcripts, and other information, and I think that is going to be a small submission compared to what we are likely to receive.

- 46:31 Chair Ellis What role is Jeff going to play in this?
- 46:38 P. Levy Jeff is in an interesting position because his first responsibility and job is being a resource to the death penalty community. He does not want to serve as a monitor of it. He wants people to feel free to come to him with their cases and their issues and their problems and not be judged and reported upon. So he has been advising and helping me. He helped with talking about how Washington looks at death penalty lawyers. He will continue to help me with the process, but I don't think he wants to be a terribly formal part of it.
- 47:30 Chair Ellis Would it make sense for us to reach out to someone like Steve Kanter or Susan Mandiberg and ask them to become part of an evaluation group?
- 47:49 P. Levy Yes, it does. I have also – although I haven't approached them on this but I have considered reaching out to Matt Rubenstein. He is very busy with his new job but he is no longer in the way that Jeff is now involved with the Oregon
- 48:08 Chair Ellis He would be of the same caliber that I am thinking about.
- 48:13 C. Lazenby Would it be helpful to have former judges? They are more consumers of the services in some ways. Maybe even a retired appellate judge.
- 48:27 P. Levy I will certainly be getting input from judges. If there are former judges that could work.
- 48:44 C. Lazenby Well, the trial maybe, but I am saying the appellate more just because after trial the massive amounts that we pay for turns out to be appellate. I am not locked into that. I just think a judge would have the ability - I understand the tension of practicing colleagues and their hesitancy to be critical of their colleagues. Because there, but for the grace of God, somebody second guessing me in tough decisions that I am making as a trial lawyer. My thought about incorporating judges into that, is that is what they do to lawyers all the time. It would be good to have that perspective to aid the Commission in analyzing whether or not the practices are sound or not.
- 49:35 P. Levy I will say that I don't want to completely undersell my ability to deal with large parts of this. We have done fairly detailed investigations, examinations of attorney representation in capital cases. Some of it was quite easy for me to assemble and put together and even evaluate. In the two processes I am thinking of we have also drawn upon other lawyers to, for instance in one to evaluate the jury selection. That became a part of the report. Interestingly in one of these instances the lawyer who is being looked at had his practice examined by a retired Supreme Court justice who wrote a letter on his behalf.
- 50:47 C. Lazenby Paul, I didn't take the chair's statement for one person to do this to be a comment on your ability to that. I think the more eyes that we have on this and the more voices that we have looking at that keeps it from being personalized. That is just what Paul is saying or something along those lines. I think that is helpful. It is helpful to our process and it is helpful to the quality of our outcomes.
- 51:12 P. Levy I absolutely agree. The letter was meant to initiate the process and it is fluid, unlike our other peer reviews where we have already assembled a team and we have a template from past experience of how we are going to do this. This was meant to get it started and it is still open to development. I like the idea of soliciting
- 51:45 Chair Ellis There is another source that you haven't talked about, which is remarkably well positioned if one of them would be willing to do it, and that is the federal defenders. They do see the work product of our DP lawyers.

- 52:06 P. Levy They do and I certainly was envisioning drawing on them.
- 52:14 Chair Ellis Maybe the way to leave this, because I echo what Chip said, is that I am not raising this saying that somehow we don't have confidence in you, but I am raising this in that I think it puts an awful heavy burden on one person. For the contractors, it is important. Why don't you give some thought to how you think it would be effective as a – I don't know how you want to call it, but a sounding board, an advisory group that you could really look to, to get some evaluation input. I am thinking of at least having two other people. The names we have mentioned may or may not be the ones that you come back with. If Matt would do it he would be terrific. He obviously knows a lot about it.
- 53:16 P. Levy I have been thinking about this. I will follow up on these suggestions. It is an enormous amount of work for me but for others too. Unlike the peer reviews where you do have to commit to three days somewhere and a certain amount of drafting and the report, these are - you may be asked to read a lengthy transcript or a very lengthy, hopefully, motion, and not just say, "Well that is well written and reasoned." You need to know the subject matter and whether they are relying on the right authorities.
- 54:09 Chair Ellis I agree you need the kind of people we are talking about.
- 54:14 P. Levy It is really a big commitment of time. We wouldn't be able to draw on these people to participate in every one of the five reviews.
- 54:28 Chair Ellis I do think you can whittle down what they need to be focused on. If you are coming at a particular review and saying, "This is really good material. They seem to be right on top," you may not even need to involve the others. But if there is someone that has issues that you are concerned about, I really would like you to have input.
- 54:54 P. Levy I agree.
- 54:54 J. Potter So are we agreeing that the death penalty review is substantially different than the contractor review that are doing trial level cases, other than death penalty, it is a different model? We don't ask trial level folks for motions that are reviewed do we?
- 55:17 P. Levy Not typically, no. That is correct.
- 55:21 J. Potter So, you are really looking more at the substance. It is easier because it is one topic and there are fewer clients, but it is different model than when we have gone around and talked to the other folks. I am not arguing whether it should or shouldn't be, but if it is, we need to be pretty clear with everybody that death penalty is going to be treated differently with a different model.
- 55:45 P. Levy It is different. The peer review process we have tried to get a sense of the quality of the motion practice of an entity. We are looking at an entity that could 30 lawyers or more and we certainly ask about the quality of motion practice and the like. I think this is a different model and it is a different beast altogether. We have a responsibility under the ABA guidelines as the appointing authority, and the Commission has told us that the ABA guidelines should govern how we conduct our work providing counsel in capital cases. We have the responsibility under those guidelines under Chapter 151, to monitor the performance of lawyers in capital cases.
- 56:44 Chair Ellis In my mind it is different for two reasons but they are significant. The reputational risk of this Commission is much higher in these cases, in my mind. The other is the system cost if we have mediocre defense. That is just a reality which is another of our responsibilities. I am comfortable that this level of review, and that is before you get to the risk of the client, is obviously pretty significant. I am comfortable that this

level of review is appropriate and a good thing. I am just trying to find a way to do it that doesn't leave you as the sole person.

- 57:46 P. Levy I appreciate that. I am quite sure the contractors appreciate that too.
- 57:56 Chair Ellis Do you feel like you have enough direction from this discussion?
- 58:06 P. Levy Yes. The way I was envisioning going is entirely consistent with what you have suggested here and particular names were helpful too.
- 58:19 Chair Ellis Okay. Anything else on this subject? That was a detour, I think. Now we are back and I don't believe we have really addressed the retreat topic question. Anyone have thoughts or comments on the five that are suggested, or any that are not suggested, and whether it is too much to do all of them or how would you like to proceed? I am assuming a retreat is like a one day event, much of a full day, because that is what we have done before.
- 59:09 C. Lazenby When is it scheduled for?
- 59:09 Chair Ellis It hasn't been scheduled yet. We are checking on the availability of Potter's residence in Mexico.
- 59:28 J. Potter Anytime.
- 59:33 C. Lazenby Does the Oregon Public Record's Act apply in foreign countries?
- 59:35 P. Levy No. Not when we are out of the state. Out of the country, rather.
- 59:41 Hon. Elizabeth Welch I am hoping that we will be able to have some juvenile related thing.
- 59:50 Chair Ellis I think the fifth bullet is fine to include. I don't think it is a long topic. I think the fourth bullet is one I think we should try to address.
- 1:00:09 Hon. Elizabeth Welch The second one we have already talked about.
- 1:00:11 Chair Ellis The second one very much so.
- 1:00:20 J. Potter Explain the first one to me. The 2011 contract process. Why is it the 2011?
- 1:00:29 N. Cozine We were hoping to have feedback. My understanding is that the information that was presented to the Commission for the 2012 contracts, so it is about the 2012 contracts, but it is the process that we went through in 2011.
- 1:00:42 J. Potter Okay.
- 1:00:42 N. Cozine And whether or not that met the Commission's needs or whether that needs to be changed in some way when we go through the next round of contracting. We recognize that is not going to be up for another year, but we thought we should get the feedback while it is fresh in everyone's mind.
- 1:01:06 Chair Ellis I am happy to have that as a topic. I don't want it to take the whole day, but an hour would be useful. I see Kathryn nodding.
- 1:01:22 Hon. Elizabeth Welch Doesn't that discussion need to be soon? The retreat may or may not be soon. Maybe that discussion needs to be soon. The fresh in the mind. Not going to be very fresh in June.

- 1:01:43 C. Lazenby You know the context of this extending the one year death penalty and the reviews that we are having are on death penalty providers. I am kind of looking at our general counsel for a little guidance here. Is there some sort of limitation on us as a Commission in getting beyond looking at service delivery and getting involved in some way in the policy discussions that are going on, or that will go on around reshaping the death penalty in Oregon? Do we need to stand away from that as a Commission? Or could we get actively involved in that as a Commission? That sets aside the question of whether or not we want to. I am just wondering what our capabilities are. We are substantively talking about changes in the law around the death penalty as opposed to just looking at service revision and things of that nature. Is that beyond our purview to get actively in? I am not saying I want to. I am not saying I'm going to. I am just saying. It swings through here and these issues are going to get mixed. We are going to need some guidance – well that is beyond your role as a Commission. Now you are getting involved in policy and legal developments and all things like that. Or is that acceptable for us to do even from a standpoint of saying, “X, Y, and Z proposals would save us money and therefore we think they are good things as well as good public policy.”
- 1:03:11 P. Levy I am not sure it is a question that should be necessarily directed to me. The Commission has said in the past it will weigh on substantive legal policy issues that have policy implications that affect the quality and provision of services to clients. I don't think the Commission is prohibited from weighing in on an issue. The death penalty is certainly one where you have not advocated a particular policy choice from the legislature, but have urged them to explore ones that would be...
- 1:04:06 C. Lazenby Beneficial to the system.
- 1:04:09 P. Levy And more fiscally prudent.
- 1:04:12 C. Lazenby So it is up to us on a case by case basis as these matters arise.
- 1:04:18 N. Cozine Yes. When the Governor issued his decision we had a conversation within this office about the role that we could play under the Commission's direction. Clearly our appellate division has some substantive thoughts on the matter, and the contract and business services, OPDS administrative side clearly has some fiscal information to provide when it comes to this conversation. Then the role of the Commission is yet another layer of that same puzzle. We have been puzzling through that internally and have thought that we need to convene a work group within our office, both of appellate attorneys and practitioners, the analysts, and perhaps Jeff Ellis to talk about where some of those lines are. What some of the possible savings are? Make sure that we have identified all the possible nooks and crannies, so that we can create and articulate some pretty clear lines of advocacy for ourselves as we move forward in this conversation. That may be information that once we convene that group we could share with the Commission.
- 1:05:32 C. Lazenby I am not thinking so much that the people sitting on this side of the table are going to get involved in that directly as Commission members, but certainly for us to be able to give you guidance you only have as much authority as we have, right?
- 1:05:46 N. Cozine Yes.
- 1:05:47 P. Levy And it won't surprise you that the death penalty has always been an area where we received regular inquiries from the public, the press, and the legislature about cost. Those inquiries are now coming more frequently since the debate has been engaged around the moratorium.
- 1:06:22 J. Potter In part of my other hat role the job of putting together agendas for retreats, I always end up pretty much as we have done here with a bunch of bullet points of things we are going to discuss. The retreat soon begins to look like just a long, regular meeting, but it would seem like we would to try to come up if we are going to spend

a day or a day and a half, with a big vision look at what the Commission wants to do. We want a big vision look at death penalty and what the political direction is now and what our role might be, if any. We want a big vision look on juvenile issues and where we have fallen down and where we need to shore up. A big vision look at post conviction relief to see the same kinds of things. Eventually when you start looking like that then you end up with some bullet points that you are going to talk about. The 2011 contract process to me is really what went right? What went wrong as we prepare for the 2013 contract process? Let's take a look at the vision for that process and we can use the lessons learned on that. So to the degree that you can shape this into a big vision global look, I think there is some real value. We never have a chance to do that at these meetings.

1:07:43 C. Lazenby

I want to echo that too. In the executive director selection process, a lot of the conversation among the Commission members as we were looking at candidates had to do with the "next level." We are going to the next level. We sort of had seven different ideas of what that meant in the course of it. I think we need to have a more cohesive view of that. Maybe the process to get there, over the course of the last X years we have gone to performance measures which didn't exist before. We have done some other things around training and standards and things like that. Maybe review of where we have been will give us a clue as to where we need to go next. I think the juvenile piece is probably one of the most appropriate places to take a look at that just because it is sort of seems to be trailing behind a lot of things we have done in the regular main stream criminal defense systems. I agree with you. I think at least one of things that we ought to at least come out of the retreat thinking about is this vision of where the next plateau is. Where we are trying to get up to next and what the next steps are.

1:09:00 Chair Ellis

So maybe caption it as a five years out where do we want to be, as opposed to ...

1:09:09 C. Lazenby

I think you have to look back in order to figure out the direction that you need to go. What have we accomplished? Whose shoulders are we standing in terms of going up to the next place?

1:09:22 J. Potter

I think we can take a look at the political climate too. What is happening with the current Governor or the current legislature? What is going to happen when the chief justice retires? That person is now a resource and somebody else is going to step in. Are there things that can be done that we can participate in in some way that we haven't in the past? Does the public look to us on the death penalty issue, for example, to make any statement? To provide any information? Do we have a role in that? We have chosen not to in the past but should we in the future?

1:10:01 Chair Ellis

We know there is going to be a new chief, we know that, so we are probably all going get fired.

1:10:05 J. Potter

That is a possibility.

1:10:03 C. Lazenby

Another part of this since it is retreat conversation is for good reasons we are locked into this view of declining resources and hunkering down, and making those cuts, and doing those kinds of things. The capitalist economy is (inaudible). Maybe we should give some preemptive thought to what happens when things start to improve and we actually have more resources. What role can we play in terms of doing that? Do we just say we will do with skinny and we will just let the money go elsewhere, or do we begin to make a case for additional resources within the system to fund interpreters, to fund greater automatic representation of people in the juvenile processes. If we start thinking what we could do if we had more resources, I think we are going to be better prepared when they come along rather than trying to get up to the speed with the people who are going to be competing for those same dollars in the legislative process.

1:11:12 K. Aylward Can I just say that I think that is an excellent idea. One of the things that LFO has emphasized to our agency, and possibly others too, is that when you put forward a policy option package it sets the stage, it is a reminder, and if you have a multi-biennium strategy that says, "You know in six, eight, ten years here is where we want to be," then if every single time you put something in that says, "Hey, remember, this is step one of our five step plan," it is really helpful for legislators to have that continuity.

1:11:47 Chair Ellis Okay, this has been helpful.

1:11:51 N. Cozine Very helpful.

1:11:48 Chair Ellis To give some ideas. Anything else on schedule and topics?

1:12:02 J. Potter I only note that we should be aware that we have changed this July meeting to a August meeting. Then we have a September meeting 30 days later. Not that we need to do anything but that just puts us out of our normal cycle.

1:12:21 S. McCrea We have a very light September meeting, John. We can picnic.

1:12:27 Chair Ellis That doesn't shock me.

1:12:26 C. Lazenby Just so that I am clear, the dates are January 26, March 22, May 10, June 14, August 16, September 13, October 19, and December 12.

1:27:37 Chair Ellis Correct. That is what I had. Why don't we take about a five minute recess and we will resume.

(Recess)

Agenda Item No. 4 Umatilla/Morrow Counties – Commission Discussion

0:03 N. Cozine Yes. You have in your minutes a summary of the conversation from Umatilla/Morrow Counties. I did send all of the meeting materials from this meeting out to the representatives in that county and invited them to be here today, of course, and offered to provide any additional information. No one had any additional information to offer, and Mr. Fischer did offer to respond if the Commission had any questions. He was going to be available by the phone if anything comes up that requires Mr. Fischer's attention - he should be in his office.

0:48 Chair Ellis Any thoughts or comments? I think most everybody here was at that meeting. Are we doing any follow up on the item that shows on page seven, where OPDS can help by establishing a group for the non-profit public defenders to work together to identify and recruit available applicants? I actually thought we had done something like that before. I was little surprised that they felt we didn't have a good communication method for that.

1:26 N. Cozine We talked about that internally. It seems that - and maybe Kathryn wants to speak to this, but my understanding was that what we had done some type of collaboration with OCDLA to get all of the public defender positions posted on the OCDLA website so that they could share that information. I spoke with Mr. Fischer, following the Pendleton meeting, about what he had in mind when he made this suggestion. He felt that it would be appropriate for OPDS to convene a regular meeting of public defenders so that they could more actively work together on their recruitment and hiring processes. I could see the benefit of that. I don't know that the non-PD providers would feel that they are in a substantially different position. I think this is a matter that would be helpful to bring the Contractor Advisory Group so that they can weigh in about what would be helpful to them in terms of recruitment and hiring. It actually is an issue that was on my mind as well. When I attended the Conference on Inequality in Portland, one of the panels that I attended

talked about recruitment and retention, specifically addressing the recruitment and retention of minority candidates. It was a very interesting conversation. One of the pieces that came out of that is that especially for a state like Oregon you have to really focus recruitment on a national level oftentimes, in order to get the kind of candidates applying that you need. That is something more easily done as a group effort than it would be for individual PD offices. So I would agree with you there is something there to look at.

3:21 Chair Ellis

Maybe I just read this into it, but we have heard before that defender offices in the more remote locations have trouble sometimes finding qualified defenders. I thought they were looking for a way that would maybe make it easier for them to know who those younger defenders are in Lane PD, or MD, or wherever, who have three or four years experience and maybe willing to move to a less populated area if they can get increased responsibility. I have no problem with that. I think it is a good idea if there is a way we can kind of facilitate the communication flow. Maybe it is already happening with OCLDA. I don't know.

4:19 J. Potter

It is an interesting concept. We have a website and there are job things there, but your statement about lawyers that are in PD offices for three years in Lane or Multnomah and then moving to a place out in more remote areas to get more responsibility, I am not sure that is the case. I think the lawyers that are in these offices now that are three years are getting lots of responsibility in Lane and Multnomah County, because we don't have that structure of misdemeanors and felonies much anymore. These folks are doing felonies six months into their stint. So moving somewhere is probably not going to get you more experience after three years. There has got to be another incentive to move and it is not going to be money either. Coos County is not going to pay what Multnomah does. I am not quite sure how you attract folks out of already existing major offices to lesser or remote offices.

5:17 Chair Ellis

I think the most you can do is make sure those younger lawyers in the larger metropolitan area offices know the opportunities. They have kind of got to say that would be of interest to me. If we are not doing enough to make sure they do know those opportunities, let's see what we can do to encourage that.

5:47 C. Lazenby

It's too bad we can't do an AmeriCorps/Peace Corps sort of model for the rural areas. Something that is structured that way - just throwing out an idea. I think the incentive is going to have to be compensation. I think that is going to have to be the incentive to do that. Compensation is not only money but it could also be something in terms of advancement down the line too. I know the state police station people all around the state. That is just part of the routine piece of being in the state police. You end up serving all over the place and you get to know the state really well. It is too bad we can't figure out how to be in a position to do that - to create a flow of lawyers who go throughout the entire state.

6:32 P. Levy

There is a model for that. I am not sure what it is called. It is Southern Lawyer Training Academy. It is about five years old now. You get very high quality training in doing criminal defense in return for a commitment to serve in a public defender office across a tier of southern states. I think the Commission has received a report about this previously. That effort continues and they serve dozens of public defender entities throughout the southern states. You go to the training academy knowing that you will be serving in a public defender office somewhere with a job.

7:28 Chair Ellis

That is like the justice department honors program. You get the benefit of the special training but there is a commitment that comes with it. I know when we were in Curry County two or three years ago, I was very struck by the information we were given that it is hard to attract qualified, new entrants because in today's world both spouses want to be employed, and you may find employment for one but it gets very hard for the other. Anyone have any sense of any structural changes that people think are needed in Umatilla/Morrow? I didn't feel it. I remember being there two or

three years before. I actually thought it felt better this time than two or three years before. I don't know how you think, Kathryn?

8:47 K. Aylward We were able to make some adjustments in the case rates to address the issue of recruitment and retention. I think it is an issue of too little, too late. So if you have been working there and you are tired with Pendleton and you are just waiting to find a job in the big city, and then someone gives you a 5%, or 8% raise it is nice, but you are ready to leave. I think it will help for future recruitments to more easily attract people. We may have to do more still.

9:26 J. Potter Wasn't Doug saying that he was okay right now in terms of bodies that he had, and he wasn't having the difficulty that he was having a few years ago? That his salary level is now on par with the DA's or close.

9:37 N. Cozine He did, and in our follow up conversation, it is the idea of recruiting as we move forward and movement starts again - he would prefer to not be all alone in the process of trying to get qualified attorneys.

10:00 C. Lazenby My concerns out of that conversation had less to do with what was happening with the lawyers. The interpreter piece, I think, was glossed over. We have one person who does that and that is great. That doesn't seem that way to me given the growth of the bilingual or half lingual population that is out there. The juvenile counsel piece also bothered me. I thought those responses were inadequate. I think they were meant to get us moving onto the next topic. I wasn't satisfied. I don't know what we can actually do about that. Those are two areas in that conversation that concerned me a lot.

10:44 Hon. Elizabeth Welch What percentage of the population in the criminal justice system in those counties is Hispanic?

10:58 K. Aylward I will Google it at lunch.

10:58 C. Lazenby Google it right now.

10:59: Hon. Elizabeth Welch I would imagine it is significant. It would have to be.

11:05 K. Aylward I would imagine it is 12 to 15%.

11:11 Hon. Elizabeth Welch That low. Huh.

11:17 Chair Ellis Okay. Anything else on that?

Agenda Item No. 5 Outline of Biennial Report to Legislature and Annual Report of ED to PDSC

11:19 Chair Ellis Nancy, do you want to talk about this biennial report? You gave it a table of contents and it made me want read the report.

11:33 N. Cozine I gave you the outline so you could see it is really based upon what has been done in the past. I just wanted to run it by you to see if there was anything in there that you wanted included that wasn't already there in terms of topics.

11:57 Chair Ellis Any thoughts or comments? It looked like the right set of topics to me. Good luck on writing it. We will look forward to seeing it.

12:17 N. Cozine I will have it for you tomorrow.

Agenda Item No. 6 OPDS Monthly Report

12:23 Chair Ellis Alright. The monthly report.

12:36 N. Cozine I would like Paul to start. He has another commitment.

12:38 P. Levy I am fine. I have plenty of time.

12:44 N. Cozine You can start anyway.

12:43 P. Levy I was going to use this time to talk about our death penalty review and what we have been doing in response to the moratorium. We have talked about that. The only other two things that I will touch on is, we will be launching, again, our fifth annual statewide public defense performance survey. Again this year the chief justice will send a message to judges urging them to complete the survey. We had good responses from judges last year. The survey is useful because we are using the same instrument and we do see some trends. As much as anything else about the survey we ask for and do get lots of comments from our targets for the survey, which are judges, prosecutors, juvenile department directors, and CRB coordinators. So we will be launching that in January.

13:58 Chair Ellis I like us doing that for two reasons. You may learn something, and even if you don't, people have been asked and I think they appreciate it.

14:10 P. Levy We ask and they tell us stuff and we do follow up with them. When they choose to identify themselves we follow up on the comments that we have received.

14:26 Chair Ellis Remind me, you have listed who they go to? I don't know if there are other people we ought to be addressing?

14:39 P. Levy There are very likely are other people. I think in our very first survey we may have had a slightly broader group, but we have settled on this target and have looked at these people for the past four years.

15:02 Chair Ellis How about board members of providers? That wouldn't be hard to know who they are and you might consider...

15:11 P. Levy They would be a good group to talk to and survey, perhaps, but maybe not with this particular instrument which is asking for an assessment for performance in the courtroom.

15:35 Chair Ellis Okay. I would just encourage you to think of who else should be included. I don't know whether board of governors, whoever, I just want as many as possible to have felt the offer from us anything you want to share to with us about performance.

15:59 P. Levy We do take the opportunities where they arise to ask a broad cross-section of people and groups for input. For this particular purpose, on how are these lawyers doing in the courtroom, we may have settled on a good group. The only thing that I wanted to mention is - prompted in part by an email from Greg Hazarabedian, which forwarded a concern of a psychologist to him and then to us, we have now become quite deeply involved in the implementation of legislation popularly known as House Bill 3100, which is going to affect our defender community, and how we do business, fairly significantly beginning January 1. Reports that courts receive where there is an insanity defense or where there is a question raised about the competency of the person to proceed in adult criminal cases and insanity in the criminal and juvenile delinquency cases, those reports need to come from psychologists or psychiatrists who have been certified to provide such reports by the Oregon Health Authority. It is not legislation that our community particularly embraced or invited, but did try to soften in some respects. Alex Bassos at MPD has been involved in a work group charged with implementing the rules and the legislation. He has tried to do a good job and that work continues. There are no rules in place. I will be going to their next

meeting this afternoon. We have alerted our provider community that we will be requiring certified providers when they are asking for evaluations of services for these purposes. There are a lot of wrinkles to be ironed out here. There are a lot of concerns from very good evaluators who do not meet what is currently proposed as very restricted requirements for certification.

- 18:27 C. Lazenby Are they substantive, Paul? Is it only doctor nos and no doctor yeses that will be certified?
- 18:35 P. Levy They try not to be. There eventually will be a peer panel that will be assessing qualification. OCDLA will be nominating one of the members of this peer panel, but the requirements as they stand right now for psychologists for instance are that you have received 2,000 hours of supervised training in a forensic program, psychology program, and very few people have had that experience, or you are a diplomat in some particular area of forensic psychology. There are some very good psychologists who would never meet the 2,000 hours and for whatever reason aren't interested in this other form of credential. So it is not quite workable the way it is established now, and it is certainly not in shape to be in place January 1, which could cause a lot of havoc in pending cases.
- 19:45 G. Hazarabedian Paul, can I update a little bit. I just got an email during this meeting that I forwarded to you from Dr. Northway who is a Eugene psychologist who first brought this to my attention. He says that they have now agreed that everyone who applies for a provisional certification will be allowed to do everything until at least June of next year. I think they realize that the horse and cart are in the wrong order. It seems like they have bought themselves six months to figure it out.
- 20:16 P. Levy I think that is a proposal that will be entertained this afternoon.
- 20:17 G. Hazarabedian Okay. He characterized it differently.
- 20:19 Hon. Elizabeth Welch Whose idea was this? Where is this coming from?
- 20:24 P. Levy I don't know.
- 20:32 G. Hazarabedian I have heard anecdotal reports that there were a couple psychologists in rural areas who were hacks who were doing this work. I have never heard more detail.
- 20:47 Hon. Elizabeth Welch The only problem is that is exactly where it is probably going to have the most negative impact, is small towns where they don't have much resource.
- 20:53 P. Levy And it will be an impact on us too. We frequently are required to send Portland psychologists to Vale. If we do that in more instances that has a significant impact on us. I think the impetus as I understand it is from a community of people that were concerned with the quality of testimony in some cases about the issue of insanity.
- 21:33 Chair Ellis Okay.
- 21:40 N. Cozine Paul mentioned the survey that is used for his purposes. It is the same survey that we used for the staff survey. I apologize for the fan running but we thought it might be nice to show you the results of the staff survey. I know you have it. We thought we would pull it up. We went through this with everyone in a staff meeting yesterday. Interestingly, we did compare the results of the 2010 survey to the 2011 survey. They were remarkably similar. In my mind that says quite a bit because a lot has changed from 2010 to 2011. The fact that with all the changes in the compensation package, the change in the executive director, that things held steady was I thought a really nice compliment to the existing management and I am going to exclude myself from that. I think everyone really held everything together during the transition and

I'm sure the Commission's guidance was very helpful as well. The survey was completed by 48 employees.

23:07 J. Potter Before you move on could you go back to that statement you just made about the Commission's guidance. I didn't see a question on there about the Commission. It is a nice thing to say but I'm not sure that anybody even took that into account.

23:20 K. Aylward There was an individual reply that did address "the Board" which we assumed was you guys.

23:33 Hon. Elizabeth Welch Forty-eight is what percent of the staff?

23:35 N. Cozine The non-management staff is

23:43 K. Aylward We have 69 official positions. Not all are filled. We are around 65 and I do believe management might have decided not to answer. So maybe out of 60 we got 48. Pretty high response rate.

24:03 Chair Ellis I am just guessing that someone who does this for a living will say that an awful lot of people will answer in the middle. So it is the outlying answers that matter. Were there any of those that surprised you?

24:20 N. Cozine There were some sections that were surprising. The communication section was one that I was surprised about. I am skipping the good part because I got asked about the outliers.

24:44 Chair Ellis I would go either way. Positive or negative.

24:45 N. Cozine I am going to start with the negative and then move to the positive. This isn't necessarily negative. I think that when you look at the numbers here we had too many people indicating a disagree somewhat or a neutral in every category of communication. When we met with staff yesterday we implemented a regular all staff meeting schedule, so we have issued that for 2012. My understanding is we have never done that before. That last one communication between members of OPDS

25:23 J. Potter Where are you going to hold that meeting?

25:27 N. Cozine It is in here. It is pretty tight. We all gather and it really brings us together. We will have regular meetings and we will continue to work on our communication. We have two divisions that have really distinct responsibilities and where we overlap really is in the improvement of quality. Our appellate attorneys are raising the bar. CBS is raising the bar and we work together on that but it isn't as clear and obvious to our employees all the time day in and day out. We will work on that and we will work on our ability to get information to staff in a consistent way. Moving back up, the majority who answered were attorneys. The overall responses here...

26:32 Chair Ellis So we could probably figure out where the trouble is coming from.

26:38 K. Aylward No. I have got some troubles too.

26:41 N. Cozine I sorted these for attorneys and non-attorneys and the general themes were the same. That was also helpful to me. The highest rating average you can have is a five. Where I focused in terms of concerns was anything really below a four. Everything above a four typically was in the okay range. With regard to the first one there, "I feel challenged in my job," I am not sure that is a quality statement on this office because not everyone wants to feel to challenged in their job. I think it is good for us to know there are some who feel challenged and some who don't, but I am not sure that there is a positive or a negative there.

27:28 Chair Ellis I think I would interpret the question that I find my job interesting and I have to think about what I am doing, as opposed to just going through a routine and it is boring. Is that what the intent was on what challenged meant?

27:44 N. Cozine These questions are historical questions. It may have but I think between our two different divisions, I think that the lawyer staff would interpret it that way. I think it is possible that there are staff in CBS who would say, "I have mastered every skill and I am proud of the work that I do and I am not challenged by it, but I am proud that I have mastered it and I am doing it well."

28:09 J. Potter So your proud and happy group is great.

28:13 N. Cozine But there may be something to look into with regard to if people want to feel challenged and aren't. Leadership and planning was overall very strong. Again though you get to the last one, "Employees of both OPDS's division are working together to support the missions and goals of OPDS." Again we have along the themes of the communication where are two divisions have these distinct responsibilities and really work towards their missions individually. Bridging those two together is not as easy as some other things. We have talked about communication. Career development; with the clearly established career path, the rating average was a little higher among the attorney group, which I think is not surprising. That was above a four if you pulled out just the attorneys. The, "I have opportunities to learn and grow at OPDS," was below a four. Another good section was people seem to have what they need to get their jobs done. They seem to understand their role.

29:53 Chair Ellis There was a lot of times when there was no disagrees strongly. Then there are about 10 places where it was 2.1%, which sounds like it might be the same respondent.

30:02 N. Cozine It is one person.

30:07 Chair Ellis Whoever it is is not happy.

30:12 K. Aylward Survey monkey does give the ability to find the whole thing together. Sometimes you will see anomalies where someone will say all high numbers here and one thing, or you will just see the person who just checked one, one, one, and one.

30:27 J. Potter In this case you can just go to the person who has worst office and that is going to be your person.

30:38 P. Levy Or the slowest computer.

30:39 N. Cozine We have the two that fell below four. My workload is reasonable – we are always running that fine balance between having enough attorneys to get the work done, having enough staff to get the work done, and not overstaffing. The other one, politics at OPDS are kept to a minimum, and we talked about that in the staff meeting. This is an historical question and I'm not entirely sure...

31:09 C. Lazenby What politics they are talking about.

31:12 N. Cozine What politics they are talking about. I invited the staff to come to me with concerns if they have them, or to share their concerns in some other way if they feel comfortable. We would like to address it, but it is a general question. The nice thing about keeping the questions the same is that you can compare your year, but when there are questions like this where it is really hard to glean meaning it is not as helpful. This section I thought was a big compliment to the team leaders and supervisors. Very strong averages here.

31:59 Chair Ellis Except our 2.1% guy.

32:03 N. Cozine Yes we still have that. The scores in excellence were fairly affirming as well. The individual accountability piece came up somewhere as well, so another thing for us to look at below a four but not by much. There were comments. The comments tended to be in three different areas. One was the need for a Portland office. Another one was slow computers. We have talked to people about letting us know if they are having equipment issues. Then we just, again, ask people to come to whomever they felt comfortable with specific ideas about how we can improve. We may do some follow up work with staff on the areas of appreciation. What would inspire them in their work and what they need to feel supported. We will continue to work towards that with staff. Overall it is very similar to last year.

33:11 J. Potter Can you break out on survey monkey the two divisions?

33:17 P. Levy No. If we asked what division you worked for we could.

33:17 K. Aylward Right. If the person says they are an attorney, I ask Paul if this is his result and he says, "No," then I know it is not from my division.

33:32 J. Potter But if individually if you did an overlay and you had them separate. You could put an overlay you would see these numbers and if were the same, highs and lows, between the two divisions. Or if there is significant difference between the two divisions on they perceive things.

33:44 K. Aylward In the past what we have done is ask the survey for comments about individuals. Like tell us what you think of Kathryn. Tell us what you think of Pete. Part of what we were trying to do ...

34:01 C. Lazenby And it better be good.

34:00 K. Aylward Is establish this sort of concept of we are one office. That is what we have struggled with. We didn't want to have a survey where, "Told you. CBS is better than AD. Or look, AD's people are happier." We just didn't want it to be become another reason to snipe at each other.

34:27 Chair Ellis Well it is very apparent that the AD people think it is your fault their computers are slow.

34:32 K. Aylward They do. It is. I agree with them.

34:33 S. McCrea So can we tell whether one person skipped all the substances questions, or whether many people skipped one question. Because we had 47 responses each time and one thing was skipped in each category.

34:52 K. Aylward We can. I think what that most likely means is somebody started the survey and then probably bailed. They started it and then didn't want to answer or think about this. The computer froze up so they skipped all the other questions.

35:08 S. McCrea So you think it was one person?

35:12 K. Aylward Generally that is the pattern you see as you move through a survey. People get bored and by the end you can just say done. We can check and make sure that that one skipped throughout the rest of the courses is actually the same response.

35:34 Chair Ellis Give me an estimate. The rest of the report is 10 minutes or half an hour? The question is whether we should be eating and listening simultaneously?

35:42 N. Cozine I think it is pretty short. We have the Michigan inquiry that was in the email. We have CBS updates and AD updates. I think it is just another few minutes.

36:02 K. Aylward I thought of something like I always do.

36:08 Chair Ellis What is your pleasure? Do you want to be eating while you listen?

36:13 J. Potter I am fine if it is really only 15 or 20 minutes.

36:17 Chair Ellis I have something that if I left here at about 12:20 I could get to. I would just as soon eat while listening.

38:06 Chair Ellis Okay. We are ready to eat and listen simultaneously.

38:06 N. Cozine Wonderful. I will finish my topics then. The Michigan inquiry. I am happy to go.

38:15 Chair Ellis I think you should go. I am all for us connecting nationally.

38:19 N. Cozine Alright.

38:19 Chair Ellis I read enough of their stuff. They need help.

38:23 N. Cozine This will make my attendance at the January 19 meeting a challenge. I did look at the flights. Their meeting is January 20. The flights to Detroit it is hard to find one. They eliminated their red eye service.

38:36 K. Aylward But we moved the 19th to the 26th.

38:42 N. Cozine So it is no longer a problem. Wonderful. Thank you.

38:51 K. Aylward Can I do my thing? Maybe I dozed off. I am now back again looking at the dates and thinking, okay what we had for the January 19 now 26th meeting is three items. One of them was the annual employee survey results which we just did. So there is kind of nothing for the 26th. I am thinking well where did our retreat fall? Often what we do is we will have a bit of business if there are action items and then have the retreat sort of connected so you don't make two trips to wherever we are going. So I didn't hear us settling on a date for the retreat. I would like to suggest that it either should be January 26 or March 22. We can shuffle stuff around with either one of those two.

39:42 Chair Ellis I like your idea. Let's do it on the 26th. That has another logic, to the extent it is a look forward doing that early in the cycle is better.

39:52 K. Aylward I think that will be helpful also even going into the legislative session to really have recently heard from the Commission in a daylong meeting. That is all I had.

40:07 J. Potter So that is all day?

40:08 N. Cozine It is. I have a follow up question which is whether the Commission prefers to have that retreat here in Salem at some all day location, or we should find something in the Portland area?

40:20 C. Lazenby Potter's Mexican house.

40:23 Chair Ellis Anybody have a feeling on that? Portland is hard for Eugene to get too. There is a reason the capital is in Salem. I am happy to do it here. I think I would do it someplace other than this room.

40:41 N. Cozine We will find an off site location somewhere in the Salem area.

40:51 Hon. Elizabeth Welch With good parking.

40:51 N. Cozine Yes. Absolutely. Thank you. Anything else from CBS? Alright. The appellate division.

40:58 P. Gartlan This is the presentation that we have all been waiting for. The last one of the day. My first two items are kind of a follow up to the Pendleton meeting. Mr. Chair, you asked about the filing dates for the AG. I thought the AG was filing a little bit later than us but they are not. Our median filing date is 229 days after record settlement. The AG is filing 210. The median filing for the AG is 210 days after our filing.

41:43 Chair Ellis It surprises me in the sense that an answering brief is a whole lot easier project than an opening brief. So why is it taking them so long?

41:51 P. Gartlan Resources is what they would say; stress of bulk on the agency.

42:00 Chair Ellis I think my reason is, based on what I have said, on a comparison basis I think we are being a lot more efficient than they are.

42:18 P. Gartlan Historically, as a reminder, back in early 2000 we were filing well over 300 days after record settlement. Mr. Chair you also asked about a survey of the trial attorneys and we will do that in January or February. We will do a survey monkey, or as Inspector Clouseau would say, "A survey minkey." I am waiting to see how that comes out in the transcript. We had five Supreme Court arguments in November. I think everybody did well, represented our office well. I am not commenting on the outcome.

43:03 Chair Ellis That is a lot. That is like a whole year's total compressed into one month.

43:10 P. Gartlan Yeah. It was a busy month. We were not just preparing for the oral arguments, but we were writing briefs as well. We have three in January.

43:21 Chair Ellis How many different lawyers arguing the five?

43:24 P. Gartlan Five different lawyers.

43:24 Chair Ellis Impressive. Very impressive.

43:31 J. Potter Are they going to oral argument with lap top devices.

43:36 P. Gartlan People who are under 40, yes. I think most of the attorneys do now. I have my pen and pad. We have three more Supreme Court arguments in January and three different attorneys, including the first juvenile Supreme Court argument. We had one scheduled for several months ago but that went moot. We have the first juvenile dependency appeal on review in the Supreme Court in January. Interested in a moot court?

44:15 Hon. Elizabeth Welch Maybe. Is it sufficiency of the evidence kind of thing?

44:25 P. Gartlan No. It is interesting.

44:27 Hon. Elizabeth Welch Well the Supreme Court took it.

44:27 P. Gartlan It is whether or not a trial court that has jurisdiction over a child and can direct the parent derivatively to make another child, who is not under the court's jurisdiction, to have interaction with the child who is within the jurisdiction. It is really kind of interesting because it brings up the constitutional issue. The parent gets to decide how to raise a child. You have two children and one child is under the court's jurisdiction and another child isn't. Can the court direct the parent to bring the children together?

45:11 Hon. Elizabeth Welch Boy if that is not a double-edged sword. This issue about children having the right to relationships with these minors.

45:30 P. Gartlan We have two new attorneys starting in December. I told you about them. One is Valerie Colas, and she is a juvenile appellate attorney, and the other is Lindsey Burrows. She is starting in the criminal section. She just started. Valerie is from Miami. She was actually born in Haiti and schooled at Bacon University, Miami Law School and was at the Oregon Law Center before coming here. Lindsey was at the Federal Public Defenders. She is a graduate of Lewis & Clark.

46:17 Chair Ellis How many applicants for the two positions?

46:20 P. Gartlan Boy. I think for the juvenile one we had over 120. I think for the criminal we had over 180.

46:33 Chair Ellis Thank you.

46:38 P. Gartlan We also have a senior deputy vacancy that we are in the process of filing. Ryan O'Connor, one of our senior deputies and an excellent attorney, excellent team leader, excellent teacher, is leaving. It is good for him but unfortunate for us. We are in the process of trying to fill his position now. Finally, this is an invitation to the Commission. We are having our Holiday CLE presentation on Thursday, December 22.

47:13 C. Lazenby That is kind of an oxymoron isn't it? Holiday and CLE.

47:14 P. Gartlan It is spelled "H-O-L-I-D-A-Y-E."

47:18 C. Lazenby Excellent. Much better.

47:23 P. Gartlan We are going to have Jim Nass as a speaker. He is the appellate commissioner. He is going to come over and talk about appellate jurisdiction. We are going to have the esteemed ethicist Paul Levy, to discuss appellate rules and responsibilities for attorneys. Tony Bornstein from the Federal Public Defender will talk to us about what is left of federal habeas. You are all invited.

47:54 Chair Ellis Thank you.

47:54 P. Gartlan You're welcome. That is about it for me.

47:59 C. Lazenby I had a judge friend the other day who was complaining about a case that just came down that had to do with venue and sex offender registration cases. Was that one of ours?

48:08 P. Gartlan I think it was, wasn't it? Was it Alice's?

48:22 E. Lannet Probably.

48:19 C. Lazenby The judge was just saying, "I don't understand it. I don't understand it. I applied it but I don't understand it." I just wondered if that was some of our handiwork.

48:32 P. Gartlan Probably. I apologize that I don't know. The precedent out there is from this office. That precedent came out about six months ago, so I don't know if the judge is talking about that one. We also did follow up cases trailing that. I didn't think the court had issues yet, so maybe the judge is talking about that first one. If it is then it did come from this office.

48:58 C. Lazenby The judge was confused by it, but good work.

49:04 P. Gartlan

Spoken like a true PD.

49:11 K. Aylward

Commissioner Potter you asked about tablet device usage. We did conduct a survey. As you know we started out with the I-Pads as a pilot project and then that got expanded. We did a survey and said to people, "You have had it a couple months now. Are you using it for work? How are you using it? Has it made you more efficient, or is it really just not your thing?" Of the 40 that had been issued I was amazed that people's responses were, "Not only am using it. I love it. You can't pry it from my cold, dead hands," but they were pointing out ways that they were using it that hadn't occurred to me. Somebody said - we have two monitors here at work, or even if you have one at home, "I use it as a supplemental monitor. I can plug it in and I see Westlaw here. Then I see my brief here." Other people were saying, "I use it when I am telecommuting. I read transcripts and I mark them up. I am waiting in the dentist office I am doing this. I bring them to team meetings with all of the briefs loaded up with my own notes on them, so that I am prepared for team meetings." Just lots and lots of different ways that people are using them. Only two people said, "You know what. I am a paper and pen kind of gal and I don't need." That got put back into the system for availability for the new attorneys. I am really, really pleased. You look in our Commission audience and I see some I-Pads and mobile devices out there.

52:04 Chair Ellis

I think we are a point where we should either adjourn or....

MOTION: John Potter moved to adjourn the meeting; Shaun McCrea seconded the motion; hearing no objection, the motion carried: **VOTE 5-0.**

Meeting Adjourned 12:10

Attachment 2



Oregon

Public Defense Services Commission

Office of Public Defense Services
(OPDS)

Executive Director's Biennial Report to the
Oregon Legislative Assembly

Nancy Cozine
(December 2011)

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**Executive Director’s
Biennial Report to the Oregon Legislative
Assembly
(July 1, 2009 – June 30, 2011)**

“The right of one charged with crime to counsel may not be deemed fundamental and essential to fair trials in some countries, but it is in ours. From the very beginning, our state and national constitutions and laws have laid great emphasis on procedural and substantive safeguards designed to assure fair trials before impartial tribunals in which every defendant stands equal before the law. This noble ideal cannot be realized if the poor man charged with crime has to face his accusers without a lawyer to assist him.”

Gideon v. Wainwright, 372 US 335, 344 (1963)

“Our criminal and juvenile justice systems fail when defendants lack access to independent and effective counsel.”

*Written Testimony by Attorney General Eric Holder to Senate Judiciary
Committee, Washington, D.C. ~ Wednesday, November 18, 2009*

“The right to representation by counsel is not a formality. ...It is the essence of justice.”

Kent v. United States, 383 U.S. 541, 561 (1966).

I. Introduction

(a) Agency Mission

The Public Defense Services Commission (PDSC) is an independent commission within the judicial branch of state government. In July of 2003 it assumed full responsibility for administering Oregon’s public defense system. That system delivers trial level and appellate legal services in criminal, juvenile, and civil commitment cases across the state. In

carrying out these responsibilities, PDSC's mission is to establish and maintain a public defense system that ensures the provision of public defense services in the most cost-efficient manner consistent with the Oregon Constitution, the United States Constitution and Oregon and national standards of justice.¹

(b) The Right to Counsel

The legal services provided by PDSC represent an essential component of Oregon's public safety system. Under the United States Constitution, the Oregon Constitution and Oregon statutes, financially eligible individuals charged with a crime, parents and children in abuse and neglect cases, and individuals facing involuntary commitment due to mental health concerns are entitled to representation by court-appointed counsel at trial and on appeal. In FYE 2010 Circuit and appellate courts appointed attorneys to represent clients in more than 170,000 cases.

(c) Role in Public Safety System

Court appointed attorneys defend the rights of all Oregonians by asserting the constitutional and statutory protections afforded to the criminally accused. They also protect the interests of all Oregonians by advocating for parents and children in cases of alleged abuse or neglect, and by asserting the rights of allegedly mentally ill persons to ensure that they are not inappropriately deprived of their liberty.

The state cannot prosecute crime,² remove children from their parents, or involuntarily commit those in need of treatment

¹ ORS 151.216(1)(a)

² In the 01-03 biennium in several special sessions the Public Defense Services Account was reduced by \$27.6 million (17%) from the legislatively adopted budget. Although \$5 million of that cut was subsequently restored, these cuts occurred so late in the biennium that public defense funding was virtually eliminated during the last quarter. Crime rates increased, repeat property offenders could not be held. Fox Butterfield reported in the June 7, 2003 edition of the *New York Times* that "[b]ecause [there is] little money for public defenders, Mark Kroeker, the Portland police chief, said officers were now giving a new version of the Miranda warning when they

without providing constitutionally mandated representation to financially eligible individuals subject to these proceedings.

In addition, defenders contribute directly to public safety by (1) advocating for effective criminal sanctions that help clients avoid future involvement in the criminal justice system; (2) finding resources for families involved in dependency cases that help them to avoid or limit disruption of the family unit, lead to early reunification or, when reunification is not possible, help children find permanent safe and supportive homes; and (3) assisting allegedly mentally ill persons find safe and effective alternatives to involuntary hospitalization.

On the appellate level defenders play a critical role in clarifying the law and ensuring its consistent application across the state. On both the state and local level defenders participate in public safety planning groups and provide valuable input to policy makers regarding effective approaches to controlling crime, protecting children and providing for the mentally ill, and facilitating the efficient operation of the courts and the public safety system as a whole.

(d) Oregon's Public Defense Delivery Model

PDSC provides representation in most criminal and juvenile dependency appeals directly through state employee lawyers and staff in its Appellate Division (AD). PDSC approves and provides representation for all trial level cases and appellate cases not handled by AD through its Contract and Business Services Division (CBS), which negotiates and administers contracts with private contractors and administers payments to hourly providers.

arrested a suspect in a nonviolent crime. "They effectively have to say, 'If you can't afford a lawyer, you will be set free. Enjoy.'" Chief Kroeker said. Noting a significant increase in shoplifts, car break ins and other crimes, Kroeker said, "The scary thing is that the worst results are still six months down the road, as the bad guys realize nothing is going to happen to them...."

II. Agency Organization and Operation

The Public Defense Services Commission is a seven-member commission that serves as the governing body for Oregon's public defense system. It provides policy direction and oversight for the administration of the system. The commissioners are civic-minded, uncompensated volunteers who are appointed by the Chief Justice who serves as an ex officio, non-voting member. By statute, two members must be non-attorneys, one must be a former prosecutor, and another must be an attorney engaged in criminal defense practice who does not serve as a court-appointed attorney compensated by the state. The current members of PDSC are listed in Appendix A.

The Commission established the Office of Public Defense Services, as required by ORS 151216(1)(b), as the administrative agency responsible for carrying out the Commission's directives and other statutorily defined duties. The Commission appoints the agency's executive director. Ingrid Swenson served as the executive director of the agency through the end of the biennium and retired on July 31, 2011. The Commission hired a new executive director, Nancy Cozine, who joined the office on September 7, 2011.

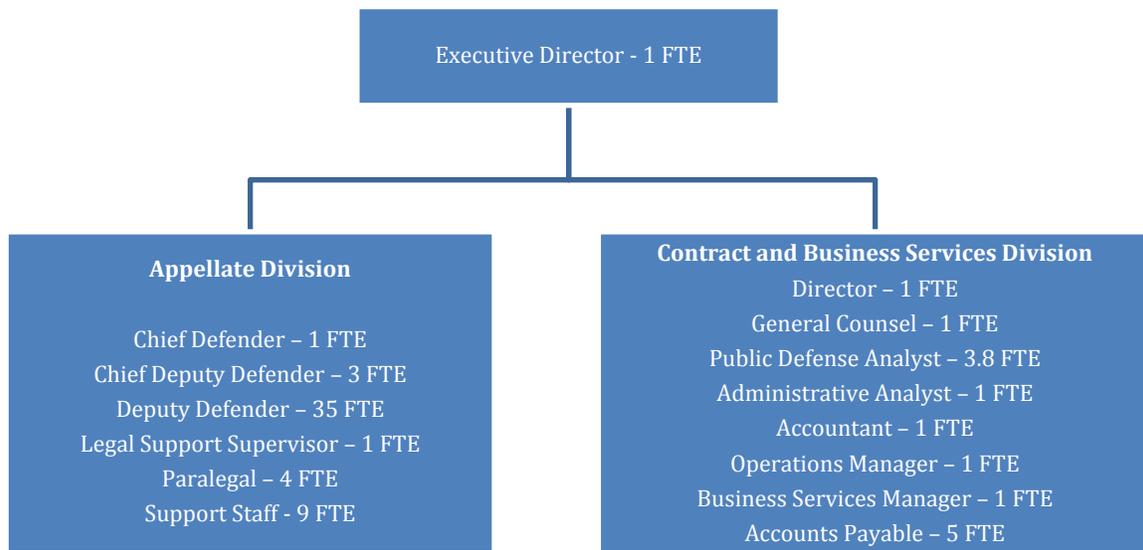
As shown on the Organizational Chart (next page) for 2009-2011, the Office of Public Defense Services is comprised of two divisions, the Contract and Business Services Division (CBS),³ and the Appellate Division (AD).⁴ CBS manages the business operations of the two divisions. CBS also negotiates with private contractors and administers the Public Defense Services Account which funds representation and related services in all criminal, juvenile, and civil commitment cases at the trial level and in those appeals not assigned to the Appellate Division. Finally, CBS processes all expenses related to representation in public defense cases. The Appellate Division (AD) provides direct legal representation in the state appellate courts in criminal cases, juvenile dependency and termination of parental rights cases, and

³ Prior to the creation of the PDSC, the responsibilities of the Contract and Business Services Division were managed by the Indigent Defense Services Division of the Oregon Judicial Department.

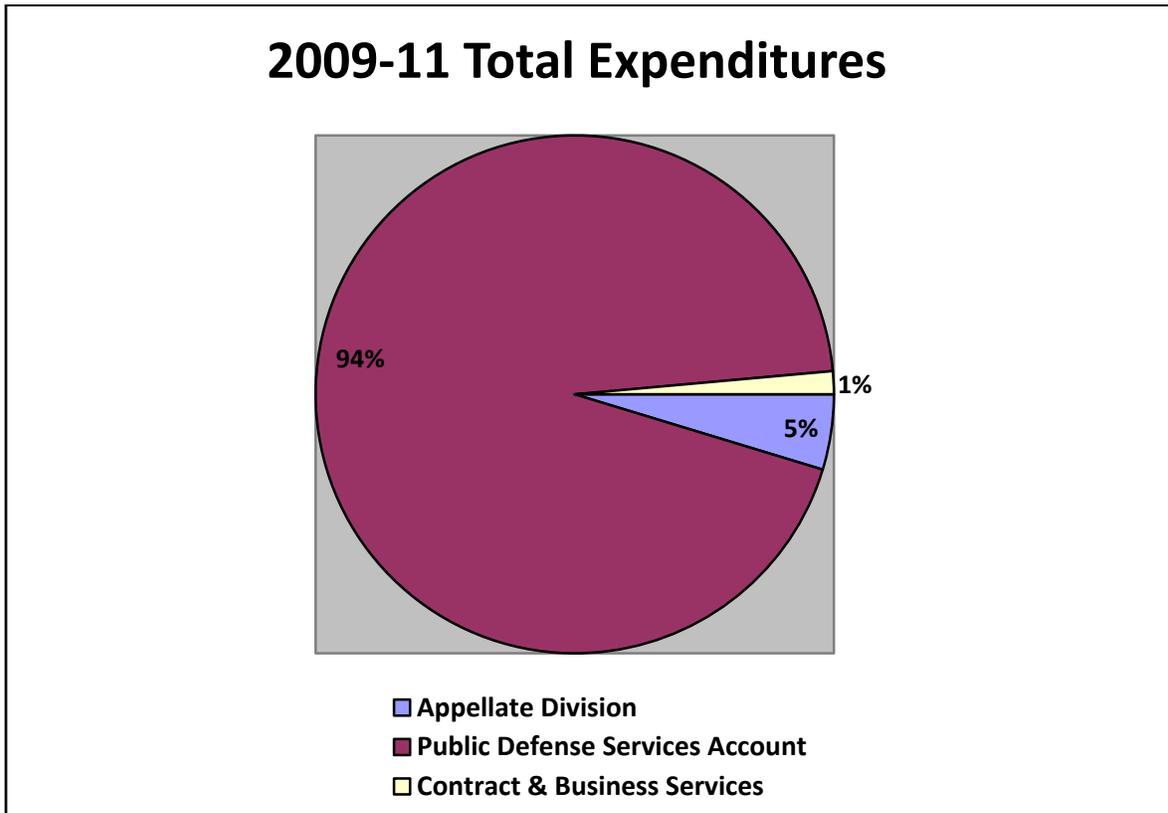
⁴ Formerly the State Public Defender's Office

parole cases. The Agency's General Counsel serves as legal counsel for the entire agency.

Kathryn Aylward is the director of the Contract and Business Services Division. Peter Gartlan is the Chief Defender and manager of the Appellate Division. Paul Levy is the agency's General Counsel.



The chart below sets forth the 2009-2011 funding allocations for the two divisions and for the Public Defense Services Account which funds private contractors, hourly rate attorneys, and other private service providers such as investigators and expert witnesses.



III. PDSC's Accomplishments in 2009-2011

(a) Contract and Business Services Division (CBS)

With respect to the provision of trial-level representation, the agency's Contract and Business Services Division was able to successfully negotiate contracts with more than 110 private providers in every region of the state to ensure representation in over 340,000 cases during the biennium. The division also monitored performance under these contracts by performing a monthly reconciliation of case counts from contractors and

data from the Oregon Judicial Department regarding court appointments.

In addition to negotiating and administering contracts for the provision of legal services, the Contract and Business Services Division manages the non-routine expense authorization process that was formerly overseen by Circuit Court judges in Oregon's 27 judicial districts. The expense authorization process requires OPDS to review each request for approval of fees for investigators, expert witnesses, discovery materials provided by other parties, and the like. The agency uses a peer-review process to obtain input from experienced attorneys about which expenses are truly "reasonable and necessary," as required by ORS 135.055. There were more than 30,000 such requests in 2009-2011. It is important to process these requests for services and the more than 50,000 invoices for completed services as promptly as possible. By assuring prompt and reliable payment the agency finds that providers are more willing to work at the below-market rates paid by PDSC. Responses to OPDS's Customer Service Survey in 2010 rated the agency very high in helpfulness, accuracy, timeliness, knowledge and expertise. One respondent commented that "[t]he PDSC is the most competent, efficient and professional agency I have ever dealt with in a government bureau in the State of Oregon."

CBS staff also planned and implemented the relocation of the Office of Public Defense Services in 2010. The agency had been housed in a location that was remote from the appellate courts, from the legislature and from other state office buildings. Some portions of the former building were not usable due to water leakage and others were at best uncomfortable. A search for alternative space disclosed that a new building near the capitol mall area could be completed and leased at a lower monthly cost than the former structure.

In addition to serving as the agency's legal counsel, OPDS's General Counsel provided oversight on quality of representation issues for public defense providers statewide.

He worked closely with the agency's advisory group, the Quality Assurance Task Force, to assemble teams of volunteer lawyers to perform intensive three-day site visits to public defense contractor offices and review the quality of services provided. When a peer review team identifies significant quality issues, General Counsel assists in outlining and implementing quality improvement measures. In 2009-11, he completed three site visits, in Klamath/Lake, Multnomah and Yamhill Counties. He also conducted two statewide public defense performance surveys and worked with CBS contract analysts to follow up on concerns raised in responses to the survey. General Counsel also oversaw the agency's complaint process that permits judges, district attorneys, clients and members of the public to bring complaints regarding the cost or quality of public defense services to the agency's attention.

The agency's General Counsel is a frequent presenter at continuing legal education training sessions for public defense attorneys statewide. He also organized a day-long diversity training for all OPDS employees, to which public defense providers from around the state were also invited.

In addition to managing the division and overseeing the work of her staff, the CBS Division Director serves as the agency's Chief Financial Officer. She prepared the draft budget proposal for the 2011-13 biennium for approval by the Commission. She and her staff monitored the agency's expenditure of funds to ensure that available resources were not exceeded.

(b) Appellate Division (AD)

During the 2009-11 biennium the Appellate Division made significant progress on PDSC's Key Performance Measure No. 1, which is to file opening briefs earlier in the appellate process. In 2006 the median number of days to file the opening brief was 328. In 2010 it was reduced to 226 days.

The division's juvenile unit, first approved by the 2007 Legislative Assembly, firmly established its presence in the

state appellate system. The Juvenile Appellate Section now represents parents in the majority of appeals in juvenile dependency and termination of parental rights cases. One of the unit's primary goals was to compel the component parts of the juvenile dependency system to more faithfully adhere to the statutory structure. The unit's appellate practice has spurred the Court of Appeals to issue written opinions that provide guidance to the trial bench and bar and promote more consistent statewide dependency practices. The Attorney General and the Court of Appeals report that the unit has provided superior representation that has enhanced and guided the development and application of juvenile dependency law statewide. One judge reported that the unit is practicing "vigorous advocacy" and producing "wonderful work" and has "pushed the court" in "several helpful ways." Another judge reported that the juvenile unit's attorneys "embody why we all wanted to become lawyers."

The criminal and parole section had many successful appeals, several of which established important new legal principles.

In October 2010 and October 2011, the Appellate Division undertook the annual project of revising and expanding its employee manual. The manual addresses AD policies, procedures, and commonplace issues that arise daily for attorneys and secretaries.

During the 2009-11 biennium the division restructured its approach to a particular class of non-trial cases that require unique and time consuming initial procedural requirements. Instead of assigning those cases to all of the attorneys, the division funneled the cases to one attorney for preliminary screening. This allowed the remaining attorneys to focus on cases that do not contain this procedural impediment. The restructure enables the division to address cases more efficiently.

Division managers continue to meet regularly with the Chief Judge of the Court of Appeals and Department of Justice

attorneys to promote practices that improve the appellate process without prejudicing the rights of clients. When the court implemented the statutorily enacted two-judge panel as an economy measure, the Appellate Division internally articulated criteria to identify cases that would benefit from the two-judge panel without jeopardizing client interests.

The Appellate Division provides ongoing support to trial level public defenders through various means. For example, the division sends an electronic copy of each brief filed in the Court of Appeals or Supreme Court to the attorney who represented the client in the trial court. An “attorney of the day” is available to respond to trial attorney inquiries about specific issues and opinions. In 2010 the Division initiated the Attorney Regional Contact program which designates individual Appellate Division attorneys as the appellate resource for trial level defense attorneys in specific judicial districts. Appellate Division attorneys regularly present at continuing legal education training sessions sponsored by others, and also developed and presented two half-day in house trainings. The evaluations from attendees consistently indicate a high level of satisfaction with the content and professionalism of Appellate Division presentations.

The Division’s workload increased significantly during the biennium. In view of the increase, the 2011 Legislative Assembly approved the addition of seven new positions in the division.

(c) Service Delivery Reviews

In pursuit of its mission to assure high quality, cost effective public defense services in 2009-2011, PDSC conducted service delivery reviews in five counties (Polk County, Lane County, Clackamas County, Lincoln County and Deschutes County), making significant structural changes in two of those counties. The service delivery review process includes holding public meetings in various locations in the state, gathering information from judges, prosecutors, other officials and

citizens, evaluating the need for changes in the structure and delivery of local public defense services and directing the Commission's management team to implement needed changes.

There are three phases in the process. The Executive Director and other agency representatives perform an initial investigation. The Commission then meets in the region to hear directly from the stakeholders in the local justice system. The Commission then develops a service delivery plan, which is incorporated into a final report. This report serves as a blueprint for agency staff contracting with providers in the region. All of these reports appear on the agency's website.

In previous biennia, PDSC completed investigations in, and evaluations of, most of Oregon's local public defense systems.⁵ It developed service delivery plans to improve the structure and operation of local systems, and to raise the quality of legal services in those jurisdictions.

(d) Quality Assurance Task Force – Peer Review Site Visits

As noted above, during 2009 - 2011, the OPDS General Counsel organized three peer reviews. The reviews contributed to significant changes in the operation of a contractor's practices in one jurisdiction, and identified practices and procedures in another jurisdiction that were working particularly well and could be recommended to other public defense providers. Each review assisted contractors in understanding areas in need of improvement. Peer review team members report that they gain valuable insight from their participation in the process, allowing them to implement improvements in their own work environments.

⁵ As they are completed these plans are posted on the PDSC website: www.oregon.gov/OPDS/PDSCReports.page.

(e) Efficiency of Operation

In August 2009, the Appellate Division converted from paper client files to electronic client files. Prior to that time, OPDS had been scanning closed paper files primarily to avoid storage costs. Since the conversion to electronic files, documents are immediately stored electronically without the intermediate steps of printing and then scanning. The electronic file is available to the attorney from any location, and provides significant savings in staff time spent filing and retrieving files. In addition, client files can now be provided to post-conviction relief counsel instantly at no expense.

Appellate Division attorneys regularly file briefs and other court documents electronically, which contributes to the Divisions ability to maintain paperless files and avoid the costs associated with reliance upon paper documents.

OPDS also developed an in-house brief bank linked to Westlaw searches so that issues that have already been researched and briefed by AD attorneys are readily available to all attorneys in the office.

IV. PDSC's Challenges in 2009 – 2011

(a) Quality Issues

The PDSC continued to actively pursue improved quality and case outcomes throughout the 2009-2011 biennium, through the work of both the Appellate and Contract and Business Services Divisions.

The PDSC's 2007-2009 Biennial Report to the Legislature noted the Commission's desire to concentrate a greater portion of its resources on juvenile representation in an effort to improve quality in that area of practice. Through increased training for trial level attorneys, and through the work of the OPDS's Juvenile Appellate Section, there is more clarity on legal

issues within juvenile law, particularly in the area of juvenile dependency law. The PDSC believes there is still room for improvement, and that continued efforts will avoid needless removal of children from family homes, improve time to reunification, and improve outcomes in juvenile delinquency cases. The PDSC's ability to achieve these goals requires continued efforts to reduce caseload sizes throughout the state so that attorneys have the time to be more proactive in their representation of clients.

(b) Recruitment and Retention

Public defense firms and other contract law firms report that Oregon's depressed economy has increased their ability to retain attorneys for longer periods of time. This small reprieve is not expected to last, and contractors, especially non-profit public defender firms in rural areas, continue to struggle with recruitment and retention issues. The PDSC will be exploring different models to help contractors with their recruitment and retention efforts, but must continue to address the issue of compensation, which is a critical factor in the effort to recruit new lawyers, many of whom have substantial law school debt.

(c) Compensation Issues

The PDSC has advocated for increased compensation for Oregon's public defense lawyers each biennium in an effort to reduce caseloads and improve quality of representation. Reduced caseloads improve representation and case outcomes in juvenile dependency cases,⁶ but are possible only when case rates are increased to amounts that allow attorneys to handle fewer cases. The PDSC submitted three policy option packages (POPs) in the 2011-13 agency request budget, all of them addressing compensation issues.

⁶ Mark E. Courtney, PhD., Jennifer L. Hook, PhD., and Matt Orme, "Evaluation of the Impact of Enhanced Parental Legal Representation on the Timing of Permanency Outcomes for Children in Foster Care," Partners For Our Children at the University of Washington, Discussion Paper Volume I, Issue I (February 2011). This report is available electronically at: <http://partnersforourchildren.org/pocweb/userfiles/PRP%20Discussion%20Paper.pdf>

- POP 100: Increase in compensation necessary to achieve a 20% caseload reduction in juvenile dependency cases
- POP 101: Increased compensation for appellate division attorneys (to match Department of Justice attorney salaries)
- POP 102: Increased compensation for public defense provider compensation

These policy option packages were not funded by the legislature. Public defense contractors, as well as attorneys and investigators who are paid at an hourly rate, have not had an increase in pay for several years and will be operating at a decreased real income amount through the next biennium.

(d) Funding for 2011-2013

At the conclusion of the 2011 Legislative session, funding for PDSC was approved at 7.7% below the 2011-13 Current Service Level budget. This decrease was partially based upon expected caseload reductions. Any unexpected uptick in trial level caseloads may cause some funding deficits in the 2011-13 biennium, which would require the agency to request additional funding at an Emergency Board at some point prior to the end of this biennium, as it did at the end of the 2005-2007 biennium.

V. Conclusion

PDSC has been functioning in its current form since 2003. The Commission understands its role and statutorily mandated obligations. During the 2011-2013 biennium, the Commission will be examining the excellent work it has accomplished over the last eight years, and creating a strategy to bring public defense in Oregon to a higher level of excellence. The PDSC looks forward to meeting the challenges of the next biennium, and providing the governance necessary to keep Oregon established as a national leader in the provision of a healthy, effective, cost-efficient public defense system.