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Operator: Good day and welcome to the President's Commission on Law Enforcement and the Administration of Justice conference call. Today's conference is being recorded. At this time I would like to turn the call over to Director Phil Keith. Please go ahead, sir.

Phil Keith: Thank you Travis. And good afternoon and thank you for joining us today. I called the President's Commission on Law Enforcement and the Administration of Justice to order.

On behalf of Attorney General Barr, we thank you for joining us today for this important Commission teleconference meeting. Before we begin today's hearing, I'd like to take a moment and address the protests that we're seeing across this great country, many of which have turned violent.

As Attorney General Barr has said, voices of peaceful and legitimate protests have been hijacked by violent, radical elements. Groups of outside radicals and agitators are exploiting the situations to pursue their own separate violent and extremist agenda. And we all agree that what happened in Minneapolis and the murder of George Floyd is reprehensible. But we cannot allow this lawlessness and violence to continue.

To echo more words from the Attorney General, these actions undercut the urgent work that is needed to be done, through constructive engagement between the affected communities and the law enforcement leaders to address legitimate grievances. The violence and destruction has to end.

But I also would like to take a moment to address another matter and let all the Commissioners know that in preparation for our hearings on community engagement, we've invited nearly 30 organizations involved in community engagement and civil rights to testify before this Commission. While some of these organizations have provided written testimony for our consideration, others have not. And most of those that we've invited have declined to personally deliver their testimony during the hearing.

We've invited the following organizations to testify before this Commission: The Vera Institute, the ACLU, the Leadership Conference on Civil and Human Rights, the Anti-Defamation League, the Human Rights Campaign, the National Action Network, the Center for Policing Equity, the Equal Justice Initiative, the Jewish Council for Public Affairs, the Sikh Coalition, the Innocence Project and the Mid-Atlantic Chapter of the Innocence Project, the National Urban League and the Urban League of Central Florida, the Brennan Center, Families Against Mandatory Minimums, the National Coalition to Abolish the Death Penalty, the National Coalition for Black Civic Participation, the Legal Action Center, the Aleph Institute, the National Association of Criminal Defense Lawyers, the Racial Equity Institute, Not In Our Town, Lambda Legal, the League of United Latin American Citizens, the Lawyers' Committee for Civil Rights Under Law, the National Association of Civilian Oversight of Law Enforcement, and the Voices of East African Women.

Of that list and to date, only the Urban League of Central Florida, the Aleph Institute, the National Association of Criminal Defense Lawyers, the Racial Equity Institute, the National Association of Civilian Oversight for Law Enforcement, and the Voices of East African Women have agreed to participate in person during conference calls. The President's Commission on Law Enforcement and the Administration of Justice remains committed to hearing from a wide variety of viewpoints. And we would still be interested in hearing from these organizations I've mentioned.

For those organizations that were not able to or chose not to participate in our teleconference, we would still like for them to submit written testimony. We will continue our outreach for these

organizations to ensure their voices are heard and ensure all Commissioners have received these documents.

Now for the business before us today. At this time I'll ask our Executive Director, Dean Kueter to conduct the roll call of Commissioners.

Dean Kueter: Thank you Mr. Chairman. And before I call the roll, I'd once again like to remind everybody that today's event is open to the press. And for any members of the media on the call, if you have any questions or need clarification on anything, please contact Kristina Mastropasqua, in the Justice Department's Office of Public Affairs. And with that, I will call the roll. Commissioner Bowdich? Commissioner Clemmons?

James Clemmons: Present.

Dean Kueter: Commissioner Evans? Commissioner Frazier? Commissioner Gualtieri? Commissioner Hawkins? Commissioner Lombardo?

Kim Nerheim: Kim Nerheim on behalf of Director Lombardo.

Dean Kueter: Commissioner MacDonald? Commissioner Moody?

Ashley Moody: I'm present.

Dean Kueter: Commissioner Parr?

Nancy Parr: I'm here.

Dean Kueter: Commissioner Price? Commissioner Ramsay? Commissioner Rausch?

David Rausch: I'm here.

Dean Kueter: Commissioner Samaniego?

John Samaniego: I'm here.

Dean Kueter: Commissioner Smallwood? Vice Chair Sullivan?

Katharine Sullivan: Here. Thank you.

Dean Kueter: And Commissioner Washington? Mr. Chairman, that completes the roll call.

Phil Keith: Thank you, Dean. All Commissioners should have the bios and testimonies for this panel. And as a reminder, we will be posting all these materials on the Law Enforcement Commission website. We again want to acknowledge the work of the Commissioners, the working groups, the witnesses today, and other witnesses, as well as, the federal staff toward meeting the goals of this historic Commission. And on behalf of Attorney General Barr, we thank each of you.

And I know a number of our Commissioners were unable to join us today and will be trying to join us later, as I've talked to a number of those with pressing problems in their local community. So we understand and we look forward to those Commissioners joining our call as time permits.

As noted on previous calls, we encourage Commissioners to take notes during the testimony of the panelists. We'll then open for questions from Commissioners after the last witness. Today our panelists will focus their testimony on the role of public defenders.

And our first panelist today is Geoffrey Burkhardt. He's the Executive Director of the Texas Indigent Defense Commission. Mr. Burkhardt has a distinguished legal career with the American Bar

Association and the Illinois Office of the State Appellate Defender. He's a graduate of DePaul University College of Law. Mr. Burkhart has also clerked at the Illinois Appellate Court. And has taught at the Loyola University Chicago School of Law. Mr. Burkhart, thank you for joining us today. And you're now recognized.

Geoffrey Burkhart: Thank you Mr. Chairman. Good afternoon Commissioners. My name is Geoff Burkhart. Again, I'm very happy to be here. I'm the Executive Director of the Texas Indigent Defense Commission. And today I'd like to talk about three things. Why Texas cares about public defense, what's wrong with public defense, and what this Commission can do to help.

Before we start, Texas as you probably know is a deeply conservative state. We believe in local control. We believe in the law, and we care deeply about liberty and about public defense. My agency, the Texas Indigent Defense Commission, is a state entity that funds, oversees, and improves public defense throughout the great State of Texas. And that includes building public defender offices. So why do Texans care about public defense?

Basically, we care about it for the same reasons that we care about anything in criminal justice, and that is public safety, fairness, and taxpayer dollars. As to public safety, we want Texans to be able to go to sleep at night knowing that they and their families are safe. Public Defenders help to do that by helping to lower recidivism.

And as Attorney General Barr has noted, criminal justice just isn't the best place to deal with certain issues like mental health, or homelessness, or substance abuse. One of the ways that public defenders help keep us safe and lower recidivism is by connecting their clients with services for mental health and homelessness and substance abuse.

So these are services that keep them on the right path. It keeps them out of jail, and it keeps the public safe. As to fairness, you know, there are times where we may need to incarcerate someone,

but we better get it right. And there are a couple of reasons for that. One, somebody's liberty is at stake. We're taking somebody away from their family, their friends, their home, and their work. And it's not something that we take very lightly in Texas.

But the second reason again goes back to something that Attorney General Barr has observed. And that is that public trust in the law is at a low point right now. Public defenders help restore that public trust by making sure that we get it right. And that if somebody is going to be incarcerated, we've given them a fair shake.

As to taxpayer dollars, you probably know Texas has successfully attracted a lot of businesses to our state. Mostly by keeping taxes low. As a result of that, we have to be wise with our limited taxpayer dollars. And we have to be accountable to our taxpayers.

So in Texas public defenders help us save money. We save money on jail beds, on prison beds, and recidivism. And in fact, one study here in Texas, in Fort Bend, shows that we are saving thousands of dollars per case, even in misdemeanor cases.

So that's a little bit about why Texans care about public defense. Again, we care about public safety and fairness and taxpayer dollars. And study after study is showing that public defender offices are better when it comes to all three of those metrics.

But what's wrong with public defense? You know, Mr. Chairman and Commissioners, I think that the biggest secret we have in public defense is that only about half of American counties have a public defender office. In fact here in Texas, we have 254 counties, but only 40 of those counties have a public defender office.

But I'll tell you, in those 40 counties where we do have a public defender office, we see supervision, we see case management, we see support services, we see training, we see quality assurance,

we see accountability. We know what we're getting for our money and we're good stewards of taxpayer dollars.

In the other counties here in Texas where we don't have a public defender office, we spend money but we don't always know what we get in return. In those counties, there's no supervision. Cases are assigned on an ad hoc basis, often for a flat fee. There are no support services, there's no in-house training, there's no quality assurance, there's no accountability.

But in a way, I'm probably not telling you anything you all don't know. I mean the, you know, police and prosecutors, judges and jailers, you all have long embraced systems that include supervision and management and training and support. You've done it very wisely for years and years. And public defense, at least in the half of the country that doesn't have a public defender office, we're really just trying to catch up with you all.

So my organization, my state agency, or state entity, the Texas Indigent Defense Commission, I'm proud to say that we have helped plan and fund every public defender office built in our state in the last 20 years. We built a public defender office that takes death penalty cases in 185 counties.

The real neat thing, I'll pause for a second to talk about that office, again we believe in local control down here. Those 185 counties opted in to this statewide public defender office. It was not mandated by the state. That means that in 185 counties, they decided a public defender office was the best thing for them and for the residents.

In addition to that, we're in the process of building a public defender office here in Travis County, which is Austin. And you know that in a red state like ours if we can agree with a pretty blue town, like Austin, that we're on to something. That we're doing the right thing.

Right now, TIDC, Texas Indigent Defense Commission, we're talking to another two dozen counties interested in building public defender offices. So that's a little bit about what's wrong with public defense, and what we're trying to do to fix that here in Texas. The last thing I told you that I'd speak to is what this Commission can do. And there are really, three things.

First, federal funding for state-level public defense. Public defense is a federal mandate. But we have never had federal funding for it. That federal funding, I would suggest this Committee recommend that it be tied to accountability measures like collecting data. Building public defender offices, and improving public defender offices. So that the federal government is investing in public defense, it's doing it wisely and getting some bang for its buck.

The second recommendation would be a federal entity focused on public defense. A federal entity could do many things, but that could include funding public defense, collecting data about public defense, providing publications, presentations, training, and resources about public defense.

And the last recommendation is that this Commission ensures that there's a public defense partner at every table. And this is something that I think me and my co-presenters, we really applaud this Commission for doing, bringing us here today. We really appreciate it.

Historically, public defenders have not always been at the table. And I think that's due in part to the fact that about half the counties in the United States don't have a public defender office. We appreciate you all bringing us here today. We ask you to please keep it up and encourage others to do the same.

We all want the same things. Public safety, fairness, and wise use of taxpayer dollars. And we'd very much like to work with you. So thank you Mr. Chairman, and thank you, Commissioners, for your time. Of course, I'm very happy to answer any questions you might have. And if there's any way that the State of Texas might be helpful, please just say the word. Thank you.

Phil Keith: Thank you Mr. Burkhart for your testimony here today and your distinguished service. Our next distinguished panelist is Mr. Douglas Wilson who is the Chief Public Defender for the City of Aurora, Colorado.

Before his appointment as Chief Public Defender, he was the Colorado State Public Defender. He has dedicated his legal career to working for those accused of crimes, who cannot afford counsel. He led Colorado's system for 12 years and received numerous awards for his work there. Thank you for joining us today Mr. Wilson. You're now recognized.

Douglas Wilson: Thank you Mr. Chair and members of the Commission. It's a privilege to be here. I want to thank you for inviting us to participate in this presentation and before your Commission.

As the Chairman said, my name is Doug Wilson. I was the head of the Public Defender's Office for the State of Colorado for 12 years. I have been a public defender for 30 plus years, unfortunately. And I - unfortunately, from the perspective I can't believe I'm that old.

I also was drafted out of retirement to come back and run the Public Defender's Office in Aurora, Colorado, and started in January. And I want to talk to you about three things as well. And I'm going to, as I go through my talk, address first the need for consistency and sufficiency in funding the public defender systems across the country.

Second, enforceable workload caps. And third, consistent and sufficient training to ensure that we meet our constitutionally mandated representation requirements.

Since the United States Supreme Court in 1963, and earlier in some cases, even all the way back to 1932, in a case called, *Powell vs. Alabama*, the U.S. Supreme Court has recognized that everyone is entitled to not just counsel, but effective assistance of counsel, if you're charged with a criminal offense that isailable.

And the problem has been, how do we fund those entities? The struggle at both the local and state governments, the funds, the delivery systems of public defense has continued since the *Gideon* case in 1963,

As a result, we have developed over the years, a variety of different delivery systems. We have municipal PDs. We have county PDs. We have state PDs. We have managed assigned case counsel. We have low bid contracts. And as you heard Geoff talk about, there are some jurisdictions that have delivery systems that are just court appointments.

We don't have a federal mandate, even though the *Gideon* decision was a federal decision under the Sixth Amendment, we don't have a federal mandate on how the delivery of indigent defense should be funded and provided for throughout the state and local level.

This lack of direction and support at the federal level has caused some severe resource deficiencies in different areas of the country. A lack of sustainable workloads, and inconsistent, if not non-existent, training standards. And what we will be asking for - I would be asking for, is some federal assistance in developing best practices, much like Geoff addressed.

There is a document, my Attachment 1 called, The Ten Principles of the Public Defense Delivery System that was written in 2002. And Principle 8 says that there should be parity between defense counsel and the prosecution with respect to resources and staffing.

Rarely, if ever, does that parity exist. And it's primarily because public defense has been such a dysfunctional set of programs. We don't have a consistent delivery system. And yet you're not going to find a more dedicated and compassionate group of people than PD employees.

If you take a look at -- and I'm not taking anything away from law enforcement, or fire, or paramedics, or medical personnel -- but throughout this pandemic, PDs have continued to be the unsung heroes of the criminal system, from this perspective.

Since March 16 my courthouse has been shut down. We opened up yesterday for the first time. And yet, as an example, my lawyers mask up and glove up and go to court every single day and have done so for the past three months, trying to help poor people stay out of jail and prisons.

We're the frontline defense of the Sixth Amendment. And I would urge you to take a look at Attachment 2 which is a Public Defender's NAPD letter about the work that we have done across the country during the pandemic. And yet we're one the first agencies to be cut.

And we do not receive the same level of grant opportunities that law enforcement and the prosecution does. So what's the resolution? Much like what Geoff talked about, I would hope this Commission would take a look at a federally supported and standardized program ensuring parity. Perhaps the creation of an office inside of DOJ. I even have a name for it which is, The Office of Indigent Defense Improvement. And that would be greatly appreciated by our systems across the country.

Principle Number 5 says that defense counsel workload should be controlled to permit the rendering of quality representation. In 1973 we attempted to do a caseload analysis, but we didn't look at workloads. And I would ask you to take a look at Attachment 3 when you have an opportunity.

In the past 50 years, the research has now clearly indicated that looking at the NAC Standards, the caseload standard is insufficient. And for the prosecution and the defense, there should be support for a national workload study and standards to set caps on how many cases and how much work folks within the criminal system can handle. As well as, sufficient funding.

We're at a crisis level when it comes to workloads. And failure to address the workloads is going to result in more convictions being overturned, slower movement of cases for victims and defendants, and more ineffective assistance of counsel claims. Which leads to more folks in our overcrowded penal institution.

So what's the resolution? Again, a federally funded workload study to establish workload standards for the indigent defense community as well as the prosecution and the judiciary.

And last, our ability, training, and experience must match the complexity of the case, according to Principle 6. The practice of criminal defense has become significantly more complex over the years. We have to advise, for instance, on immigration consequences, or it's not effective assistance of counsel.

DNA, capital jury selection, a multitude of new offenses, and the local nuances and procedures of each individual jurisdiction. And in order to meet our constitutionally mandated effective assistance of counsel, we need more extensive and timely training.

So again, how do I think your Commission could help us with that? By taking a look at the federally supported and standardized training program that would be offered to public defenders across the country. Many of whom have no significant training whatsoever.

So to conclude and I, much like Geoff, would be happy to answer questions. Or you can reach out to me afterward. Indigent defense is a critical and required component of the system. The establishment of a federal funding stream to ensure best practices, adequate resources, national workload standards, and training, would help ensure one's right to counsel in the years to come. So thank you very much and again, I'll answer any questions that you have.

Phil Keith: Thank you Mr. Wilson for your commitment to service, and certainly for your testimony you've provided here today. Our next panelist is Mr. Carlos Martinez, who is the Miami-Dade Public Defender in Miami-Dade County Florida.

As the elected Public Defender of Miami-Dade County, Mr. Martinez manages an office of 400 employees and handles around 70,000 cases each year. He's a known member of many civic groups and has co-authored articles on the roles of public defenders. Thank you for joining us today Mr. Martinez. You are now recognized.

Carlos Martinez: Good afternoon. Thank you so much for the invitation and the opportunity to speak with the Commission today about the role of public defenders.

Miami-Dade County, Florida, the county that I serve, has 2.7 million residents. I lead an office with approximately 200 attorneys and a similar number of support staff.

The three things that I will be talking about is: supporting adequate funding of public defender offices; law enforcement working with public defender offices, particularly on projects that improve community relations; and the creation and funding of an Indigent Defense Improvement Office within the Department of Justice.

As you all know, public defense plays a vital role in upholding constitutional principles and ensuring the justice system is just, credible, and reliable, and is perceived as such.

When public defenders lack the resources necessary to prepare a full and fair defense for each client, mistakes are made and the system's reliability is rightfully questioned. And we all lose.

I'm going to focus on the challenge -- the specific challenge that we had in our office when we've lacked adequate funding and the impact that that has. That's my first part.

I became the Chief Public Defender in 2009, during the last recession. My office's budget had been slashed 14%. And during the same period of time, the number of felony cases had increased 19%. We had almost 50,000 new felonies in my first year.

The total new cases assigned to my office has risen to an all-time high of 113,000 cases. My attorneys at that time could not even speak to all the clients they were assigned to represent, much less investigate or prepare the case for trial.

We challenged our untenable situation in court. We won in the Florida Supreme Court. But in the meantime, there are people that had a terrible impact. Between 2008 and 2013, thousands of individuals were negatively impacted by our inability to provide adequate legal representation. Those individuals in my community, they bore the brunt of the government's failure to adequately fund constitutionally mandated legal representation.

Our litigation showed us that we had to change our day-to-day practices. And without extra funding coming any time soon, we needed help, and we worked with outside organizations and agencies. Not the least of which was local law enforcement. Our longstanding working relationship with our county and our jail, helped us eliminate wasteful driving time via our attorneys.

Our local jails were typically between an hour and an hour and a half, round trip, up from my office. But using our IT funding, we installed secure video equipment connected directly between my office and each jail unit. That could not have been done without the full support of our corrections department.

Our corrections department also expanded the number of phone lines that were directly connected to my office and made phone calls toll-free to my office. That has led to continued communications with our clients, a reduction in the complaints that inmates have when they don't speak to their attorneys or when their cases are not being called on a timely basis. Video and phone calls reduce

case preparation time and also reduce the number of days spent in jail. Which resulted in significant cost-savings to our county.

Since then, Miami-Dade County has closed three jails and has not built a new jail. There's no way for us to measure how much of that is attributable to our efforts. But our efforts certainly contributed to the significant reductions over the last 10 years of our jail population. That video conferencing that we installed 10 years ago became a crucial link for my office to continue speaking to and representing clients when this pandemic caused our jails to eliminate face-to-face meetings at the jail. That is one concrete example where cooperation between a public defender's office and corrections, in many areas the sheriff, can yield beneficial results to public defender clients and the funder, here being the county.

We have also worked with law enforcement on community projects. Since 1998 we have had several programs. One of them we call it Play It Smart. The officers, police officers have participated in role-playing and in questions and answers. Play It Smart is a program where you educate young people about their rights and responsibilities during encounters with law enforcement where it helps promote public safety and prevent avoidable conflicts and arrests and reduce the need to use force by police officers. And it also fosters respect between young people and law enforcement.

Our program was based on a program that NOBLE put together back in the 90s funded in part by Allstate Insurance. Another program that we work with law enforcement on and not just community education but officer education. We teach at the police academy for Miami-Dade Police Department regarding the serious consequences of an arrest and involvement with the criminal and juvenile justice systems.

This came about because of my relationship with the last director of the department and it continues to this day. The manual regarding the consequences of an arrest, we created it in our office and

it's part of your materials. It's a document that is nearly 100 pages long. It gives you an idea of what the consequences are and they're numerous and long-lasting.

The last project that we have worked with our local law enforcement on is our Redemption Project. It's a sealing and expunging of criminal records and restoration of civil rights. Since 1998, we have had police officer volunteers to do the fingerprinting necessary to submit sealing and expungement applications and that's been a tremendous help.

So I have three recommendations. My first one: support adequate funding of public defender offices. I believe law enforcement has a role in doing that. Second recommendation is for law enforcement to reach out to the local chief public defender to explore ways to improve the administration of justice and also community relations.

And my last recommendation is create and fund a public defense assistance office within DOJ - the U.S. Department of Justice - with grant funding authority that is not competing with law enforcement for funding. And such organizations would serve as a clearinghouse and they would be able to share best practices, lessons learned, and information on projects that did not work. I greatly appreciate the opportunity to speak with you. I look forward to your questions or comments.

Phil Keith: Thank you Mr. Martinez for your valued testimony here today and certainly for the commitment to service of others. Our last distinguished panelist today is Mr. Mark Stephens who's the former elected public defender in Knox County, Tennessee. Mr. Stephens served as an elected public defender for 29 years and is now in private practice. He has spent his legal career working to improve the quality of the indigent legal representation throughout the south and the country and his work on indigent representation has been recognized by Gideon's Promise.

On a personal note, I have had the privilege of working with Mr. Stephens on a number of issues. He is a true professional and has served as a leader in all of his efforts in the criminal justice system. Thank you for joining us Mr. Stephens and you're now recognized.

Mark Stephens: Well thank you very much Mr. Chairman and thank you, Commissioners. As has been said, my name is Mark Stephens. I've been practicing law for a little over 40 years. During the course of my career I've served as a juvenile court magistrate. I've served as an assistant district attorney general. And I was the elected public defender in Knoxville from 1990 to 2019 before I retired and returned to private practice.

My presentation today is more on a micro level than my colleagues' presentations. I'd like to talk to you a little bit about a best practice I refer to as client-centered holistic representation, a model we've been utilizing in Knoxville for the past 16 years. Over the course of my career what I've come to know about client's engagement in criminal behavior is that most people who are enjoying some level of stability in their life, for example good familial support, a good job, stable housing, good mental and physical health. Those folks generally don't wake up one morning and decide to go commit a crime.

It's people living in chaos and dysfunction, however can get themselves in a place where engaging in criminal activity seems like a viable alternative to their circumstances. Living in chaos and dysfunction is exhausting.

I've also learned that a client's first arrest is an opportunity. When people are arrested for the first time they often experience that moment where they recognize they really need to make a change in their life. Their behavior has landed them in jail. And most are ashamed and embarrassed as to what has happened.

At that moment many clients are contemplating behavior modification in their life. However, most don't know what to do or how to bring about change. And that's where the public defender can come in. Criminal justice agencies of course include the judge, the prosecutor, public defender, law enforcement, probation officers, parole officers. And while public defenders don't always have the best relationships with their clients their relationship, whatever it is, is probably better than any of the other criminal justice actors.

The behavior change models utilized in criminal justice systems always involved a carrot and stick approach. In other words, a judge says do what I say or I'll put you in jail. The district attorney general says do what I want or I'll not agree to reduce your charge or I won't agree to offer you probation. Probation and parole officers say do what I say or I'll violate you and you'll wind up going to jail. Drug courts say stay clean or I'll sanction you with jail time.

But what public defenders can offer clients is different. It's a plan for change that includes the client being in control. It's empowerment at a time when a client is ready to make those behavioral changes. Doing this work for 40 years I've come to understand that criminal behavior is symptomatic of underlying circumstances that are present in the client's life. I can handle my client's shoplifting charge or theft charge or domestic assault case. But if I don't deal with the underlying dynamics that are driving that behavior it's highly likely that I'll get to handle that client's criminal charges next month and the month after that and the month after that.

And while public defenders aren't trained in behavior modification therapy, social workers are. With an interdisciplinary approach to client representation that includes a lawyer and a social worker, the client has his or her legal needs addressed, and while in that contemplative stage the social worker starts to move the client from contemplating a behavioral change to preparation in the action stage of behavior modification.

The trust the public defender has established between their selves and the client allows the social worker as a part of the defense team to develop a plan that empowers the client to attempt to gain control over most aspects of their life. When I was 16 years old my father and I had one of those father and son's talks. He told me that he didn't care so much that I drank beer now and then, though he cautioned me I shouldn't drink and drive. But I remember this vividly. He said if I ever catch you smoking you'll eat however many cigarettes you happen to have on you when I catch you.

And the first thing I did the very next day was to go buy a pack of cigarettes. And I've seen that scenario play out in the lives of the people that I represent. When you tell one of my clients what they absolutely have to do oftentimes that's the last thing they're willing to do.

And what this model and what social workers do is they make the client's involvement successful by empowering clients to take control of their life, allowing the client to make decisions that modifies their behavior for their own good not because someone is telling them they have to behave a certain way. But instead because they're ready to make a change.

So the question you might be asking is does this model work. As I said I ran the public defender office for nearly 30 years. This office is called the Knox County Public Defender's Community Law Office or CLO for short. We implemented this client-centered holistic representation model in 2003. Currently, Harvard University's Access to Justice Lab is currently conducting a random control trial at the CLO to measure the success of the client-centered holistic representation model. Soon we'll have a solid study with findings.

In the meantime however, around 2012 the CLO conducted its own in-house study. A sample group was defined consisting of approximately 1,000 clients. They were divided into two subgroups. One group of clients identified as high risk by CLO social workers. The high-risk group was defined as those clients who presented with histories of difficulty maintaining stability in the community

following the period of incarceration. A pattern of failed attempts at treatment and/or employment, and/or a pattern of failed attempts at community supervision. And that subgroup consisted of approximately 500 people.

The second group consisted of a group of similarly charged CLO clients who weren't identified as high risk and who had not engaged with social workers during their previous representation at the CLO. And this sample group was followed for three years.

In general, what the study found was that the high-risk clients - remember those who had the benefit of social workers - incurred fewer total misdemeanor arrests and specifically fewer A misdemeanor arrests which is the highest misdemeanor in Tennessee and had a lower probability of incurring those arrests during the two-year follow-up period. Despite the reality that they presented to the social workers of the CLO with lengthier criminal histories, suggestive of greater life disruption and more psychosocial concerns.

With regard to cost savings, clients in the high-risk group, each incurred 0.81 fewer misdemeanor charges during the two-year follow-up period after their engagement with CLO social workers. If we assume a minimum one day of jail for each arrest for each person the math looks something like this: 0.81 times average daily cost of incarceration which we're told here is about \$76 a day. So as a sample which was 1,039 people or \$64,650 in savings. If we assume a maximum period of incarceration that savings totaled \$23,506,000.

So what we know now is that this model works. What we're hoping that Harvard can confirm in their three-year study doing random sampling will be that it worked and, more specifically, the cost savings to our county as a result of the model.

So respectfully I would ask this Commission to consider a recommendation creating a federal entity - a national public defender office within the Department of Justice - that would be able to identify

and study best public defender practices like the CLO's client-centered holistic representation model so that these best practices might be replicated throughout the country. Again Mr. Chairman thank you for the opportunity to testify and Commissioners, thank you for the opportunity as well.

Phil Keith: Thank you, Mr. Stephens, for your three decades of service and for your testimony here today.

Commissioners, we're now open for questions to the witnesses. Commissioners with a question please state your name prior to your question and direct the question to the specific panelist or the entire panel. Just as a reminder to the Commissioners, your mics are hot at all times. And with that, we'll open for questions from the Commissioners to our panelists.

Ashley Moody: Chair, this is Ashley Moody. I have a question for Mark Stephens.

Phil Keith: Yes ma'am, you're recognized.

Ashley Moody: Mr. Stephens, thank you so much for your testimony. I thought it was very enlightening. As a former judge, and I know we have other former judges on this commission including our vice chair, I often was amazed at the amount of services offered by the public defender's office that didn't necessarily fall within their role as an attorney.

And so meaning if I had someone come in with a mental health issue and we were trying to get them stabilized in the community rather than keeping them incarcerated because we didn't necessarily believe that they were a danger, they would spend hours and hours calling trying to find a place for them to go, getting them on waiting lists, especially when resources were scarce.

My question to you and I think you touched on this a little bit. Do you find that the savings equated with the time of attorneys equate into what you need to pay for social workers to assist?

Mark Stephens: Well Commissioner Moody thank you very much for your question. What I would say is that our office is very fortunate in that our local government has made a significant financial contribution to our office. We are a part of a state-wide system. And so my budget primarily comes from the state. But our local government decided on their own to make a significant financial contribution.

And what we have found is that the savings that the social workers work on behalf of the clients goes directly to the county in the cost of folks not reoffending and not going to jail and not spending nights in the jail where they otherwise would. And so there are direct savings to the county by virtue of the fact the social workers are reducing recidivism.

And of course, then there's the public safety concern, probably the most important of the concerns, and that is that the folks who come through the public defender's office who have the benefit of the social services who are addressing those underlying dynamics are less likely to re-offend.

And when they do re-offend they re-offend on a less serious note than when they first came to the public defender office. So there are significant savings to be had. Your question I think was whether or not the savings in attorney's time justify the cost of the social workers. And I think that those savings have in fact proven to be beneficial to us in terms of the ability to expand the role of the attorneys and the number of attorneys who are in our office.

Ashley Moody: And Chair I just have one follow up question if that's okay.

Phil Keith: Yes ma'am, you're recognized.

Ashley Moody: Mr. Stephens does your - did your I should say - district have specialty diversionary court such as substance abuse court, mental health court, veterans' court? And did you find that these

social workers were helpful to the clients on their successfully completing requirements of those diversionary courts?

Mark Stephens: I think at the time that we implemented the model we did not have - we do not have diversionary courts. But we have a drug court. We have a veterans' court. We did not have them at the time that the public defender office - I don't recall but I don't think we had them at the time the public defender's office - rolled out client-centered holistic representation.

But once that happened there were opportunities that were made available to the county. And we were able to work with our local judges and our local community members to create the veterans' court - our district attorney's office. And so we have those functioning now. And I think in large part it's been the product of the model that opened up opportunities with other agencies that wouldn't have existed otherwise.

Ashley Moody: Thank you Chair and thank you, Mr. Stephens.

Mark Stephens: Thank you.

Phil Keith: Other Commissioners with questions?

Nancy Parr: Mr. Chair, this is Nancy Parr. I have a couple of questions.

Phil Keith: Yes ma'am, you're recognized.

Nancy Parr: First of all I would like to thank everybody for testifying today. And Mr. Stephens, I really appreciated what you had to say about client-centered representation. I have said many times that the defense attorneys in my belief -- I am the elected prosecutor in my city -- they're the ones who have the most information, or they should have the most information about their client, the

defendant, as to whether or not there are specific needs that can be addressed by outside sources or diversion because I can't have that conversation with the defendant and the judge can't have it. And we really look to the public defenders. So I really appreciate you talking about that area of it.

But then it goes into the resources because I think, you know, Commissioner Moody mentioned it too. If the localities don't have the resources then I recognize that the assistant public defenders may not have that time to put in with the defendants or with their families to find out that information.

So I have a couple of questions. And I guess to Mr. Wilson and Mr. Burkhart just from what your testimony was. For Mr. Wilson, you were talking about the workload standards - a study which I agree with. And I think that we try to do them all the time and we can't ever really come up with a good way to do them or to count what we do because prosecutors - our budgets get cut too just like public defenders.

And I can just speak locally how it worked here is that when the caseloads get too high for my public defender's office then they ask our judges to just appoint outside counsel and they stop taking cases. Well, you know, for prosecutors we don't get to do that. And so even though a caseload standards study might say we should only have so many cases we're going to have more than that. And then that could lead us into some ethical problems.

So I would like to know if you - I mean are you aware of successful workload standard studies that have turned into more funds for public defenders and even for prosecutors, like, jointly in jurisdictions? And then Mr. Burkhart, I'm going to ask you this question too and then I'll stop talking.

You were talking - you mentioned about the resources and the funding, and the lady said tying the money to accountability. If you could - I would like to hear more about that because again I think that that's kind of hard to define, at least for prosecutors because there are some people who I try to correct on a regular basis, who think success is determined by number of convictions and that's

absolutely not true. And I know that success for public defenders is not a not guilty verdict all the time.

And so if the two of you could talk about those I'd appreciate that. Thank you.

Phil Keith: Thank you Commissioner and let's start off with Mr. Wilson, your response and then we'll follow up with Mr. Burkhart. Mr. Wilson, you are recognized.

Douglas Wilson: Yes thank you sir. And I certainly didn't mean to leave the impression that I didn't think prosecutors got their budgets cut because I've certainly watched that all the time as well. Let's talk about the uniqueness of the State of Colorado because we're a state system. And the prosecutors were local elected officials. So we started doing at the state level with the public defender's office workload studies in 1996. And we've done half a dozen over the years.

And I would say, while never sufficient but certainly helpful, they did help us get funding because it's a very simple math once you get the workload study down and not a caseload study or caseload assignment. Simple math in this respect. We would time track. We would keep units of time on specific types of tasks within different types of cases because, as you all know, different cases take a different amount of work. And I always used, you know, homicides because that's to the big leagues, a non-death case versus a death case. The time involved is - difference is pretty significant.

So for our funding agency which would be our state joint budget committee we could show that for this type of case and we had X number of those cases it takes this many hours which equals this many lawyers. And our funding agency -- again the joint budget committee -- at the state legislature absolutely loved the fact that it was simple math and appreciated it.

Do we always get what we ask for? No. The resistance I had then when I approached the prosecutor's organization which is the District Attorney's Council, because there's such a diverse group of prosecutors across the state. I don't mean people but office sizes -- metro versus rural and even frontier counties -- we have that are small. It was difficult and I don't mean to make light of this but, like, some counties we still have rustling. Well you don't have rustling in Denver.

And so even the types of cases that were across prosecutors' offices made it difficult for them to want to come in and do a joint workload analysis. And I would argue with the director every year about let's do this together. And it just didn't happen.

There are law review articles and some research documents from the National District Attorney's Council that say basically you've to get away from a caseload analysis and talk about workloads. I recognize that prosecutors - that there are some PDs that say we can't take the cases. In Colorado, we were statutorily prohibited from doing that. We could not declare an overload. And so that was something that we had to address every budget cycle.

But we were an anomaly when it came to workload studies. I work with NAPD. We have a workload committee. Mark Stephens is actually the Chair of that. And most jurisdictions do not have workload studies nor analysis. And even those that do, there's inconsistency between how much time particular cases take.

So my long-winded answer is I would welcome the opportunity to have a nationwide standard for both prosecutors, judges, and defense counsel as to what and how many cases or how much work - what a workload looks, like, for those three branches or three parts of the criminal system. And then the question becomes, how do we get them funded? But until we figure out what an acceptable workload is across all three we don't really have any idea as to how much funding is going to be required to ensure that everyone gets their due process and equal protection in the courts. And I hope that - I probably just took up everybody else's time, so sorry about that.

Nancy Parr: No but thank you. That was very informative.

Douglas Wilson: I hope that answered the question.

Nancy Parr: Yes thank you.

Douglas Wilson: Yes ma'am thank you.

Phil Keith: Thank you Mr. Wilson. And Mr. Burkhart, you're recognized.

Geoffrey Burkhart: Thank you, Mr. Chairman. Commissioner, that's a good question. I would touch really briefly on the workload question and then get to the accountability question. With workloads, you know, we built new public defender offices here in Texas. We build in those workload standards. So we have caseload limits in every public defender office we build.

I know that, you know, in fact, there's a book written on the subject of workload in public defense called Securing Reasonable Caseloads by a man unfortunately who died - left us recently named Norman Lefstein who was the Dean of Indiana's Law School. And he talks about the problems that I think prosecutors for one reason or another have -- you're exactly right. I think there's been a tougher time getting the workload limits for prosecutors and his book talks about that a little bit.

But definitely on the public defense side, we build that into every public defender office we build here in Texas. As to the accountability measures, I think you're exactly right again that, you know, it can't be tied to dismissals just, like, prosecutor's performance shouldn't be simply tied to the number of convictions.

You know one of my attachments to my written testimony is our forthcoming public defender primer. A publication we put out just on kind of the research about public defender offices, what it takes to

build a public defender office, et cetera. And one of the things we talked about in there is looking at accountability. Some of the metrics we talked about include caseloads, the use of investigators, client visitation, or, you know, are you tracking visitation or communication with clients, stacking ratios, the use of training, counsel at first appearance.

I would pause there and mention that, you know, unfortunately here in Texas unlike in a lot of states we only have to counsel at first appearance in five counties out of 254. So we have a very long way to go right now. And then also metrics, like, timely appointment. Maybe one way to frame those issues and one of the ways that we often at the Texas Indigent Defense Commission kind of look at this are access issues and quality issues.

So first looking at, you know, all the folks who you have a right to counsel, getting an attorney. Do you have a proper instrument in place to sort those people who have a right to counsel under the Sixth Amendment and qualify for an attorney from those who don't?

Are you timely appointing attorneys where attorneys timely reach out and communicate with their client? So kind of this access question. Versus quality - again things, like, use of investigators, what kind of training do you have in place, and things like that. So that's a little bit about what, you know, this Commission could consider recommending. And if there's anything else I can do to be helpful and to flesh out that recommendation I'd be very happy to help with that.

Nancy Parr: All right thank you very much.

Phil Keith: Thank you Mr. Burkhardt. Other Commissioners with questions.

David Rausch: Director Keith, David Rausch.

Phil Keith: Commissioner Rausch, you're recognized.

David Rausch: Mr. Martinez, I appreciate – I appreciate all of your testimonies. It's very helpful. Actually you hit on several of the topic areas that we've been charged with looking at here at the Commission. And Mr. Martinez on a couple things that I kind of focused in on your testimony. The education piece for both the public under the Play It Smart and for the police officers in their academy can you expound some on the measurable impacts of those trainings.

They sound to me to be very needed obviously in terms of educating the public, especially using law enforcement officers doing that, and then educating those officers on the impact of their actions. I think both of those should have some huge impact on some of the areas like trust and accountability.

Carlos Martinez: So in educating the officers, our first time that we did is, I did that a number of years ago probably close to 15 years ago with the school's police in Dade County. The school's department has school's police. And during a summer, the chief asked me to go in and really describe as much as possible the consequences of an arrest and conviction.

Now at the same time that he asked me to do that, the school board had been contemplating changes to their zero-tolerance policies in terms of trying to reduce particularly misdemeanor arrests at the schools and attempt either doing civil citation or other sorts of things that wouldn't result in the child having an arrest.

I can tell you from the time that we started having the discussion to the time that we had the training, in a matter of two years the arrest rate in the school system went from 2,200 a year to 800 a year. The 800 may seem like a lot but to us that was tangible evidence that the officers were taking into consideration what the consequences were and more importantly it's really having an extra tool of recognizing what discretion the officers have.

Now in terms of the Miami-Dade Police Department, we have not measured in any way, you know, what impact that has had. It's been about four years since we have been doing the training at the academy. So it's about 300 officers which is about 10% of their police department.

But what it also does is it helps the officers know that, you know, the public defender - look I live in this community and so do my attorneys and so do my staff. And we have our job to do to represent our client and to fight cases in court. But we also know that we have a part in prevention, and whether that's through education or through identifying the proper placement or treatment for a client. All of it we see it as part of our role.

So in terms of police, I was very surprised at the first time it was not my idea to train the officers. That was actually the chief who saw me doing a training at a church and said I'd like to do that, you know, with our department. And the same thing happened with the Miami-Dade Police Department is they invited me in for the academy.

And the interactions have been fascinating because a lot of times law enforcement, particularly recruits, you know, whether they're brand new to law enforcement or sometimes I've had the classes that I've taught have been officers that have been law enforcement elsewhere and they came in.

And what I took away, my best take away from that, was also that the officers were able to find out not just the consequences but what some of the legal reforms needed to be because the officers themselves recognized there are some things that have lifetime consequences that shouldn't. And one of those things in Florida is a criminal record stays with you for life. If you've even been convicted even of a minor misdemeanor you can't seal that record forever.

And so it was a very good discussion as well with law enforcement that, you know, law enforcement typically enforced the law. But I thought it was important for them to know what some of the

challenges are and some of the things that they see in the communities that they have no explanation for. And more importantly a lot of times people in the community blame officers for social ills and blame officers for laws that they did not pass themselves. But that's the reality of it.

David Rausch: Thank you sir and I appreciate your office and your vision and commitment on that as well as the chief's. That's outstanding.

Carlos Martinez: Thank you.

Phil Keith: Thank you Mr. Martinez. Are there other questions from Commissioners? Other questions from Commissioners. Hearing no further questions let me close by thanking our panelists once again for your time and certainly your most valuable testimony and responses to the questions from our Commissioners. On behalf of the Attorney General and his leadership team of Rachel Bissex and Jeff Favitta and all the Commissioners, your contributions provided today are most sincerely appreciated and will assist this Commission in their deliberations and their work.

Also please check the President's Commission page for additional updates and documents and information on the main Justice website and we'll update it regularly when information is available for posting. Once again, we want to continue to thank the FBI for the use of their teleconference network and support, as well federal program staff for supporting the work of this great Commission.

Are there any questions or comments from Commissioners? Please note that this is our only hearing this week. We will be holding an executive session on Thursday. Commissioners will receive additional information about this session. And if there's no further business before us today the President's Commission is adjourned. Thank you again, Commissioners, for your dedication and commitment. Please be safe.

Male 1: Thank you Phil, same to you.

Male 2: Thanks Phil.

Female 1: Thanks.

Operator: Thank you, ladies and gentlemen. This concludes today's teleconference. You may now disconnect.