

BJA Criminal Courts Technical Assistance Project Follow-up Report

CCTAP #4-072
Assessment of the Initial Period of Operations of the
Montana Statewide Public Defender System

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Report Date: October 2009

Section I: Report Recommendations

1. The OPD needs to provide detailed information to adequately describe the Agency's caseloads, dispositional processes, attorney workload, and related data that describes the Agency's operations and services being performed.

Recommendation:

Accepted
 Rejected
 Under Consideration

Implementation:

Completed
 Scheduled for Future (date): Ongoing refinement____
 Other: _____

Notes: We now have the software in place to give us these answers, but the information was initially inaccurate due to inconsistent inputting procedures. We've included software training in our training program and assigned an attorney to look at all 11 regions to guarantee consistency in data input. Our current problem is failure to input. Our front-line attorneys have been resistant to change and feel put upon to do this. OPD and PDC have both made several pleas to our lawyers, explaining this information is the key to assessing where our resources are needed, analyzing our performance, and successfully making budget and funding requests. We continue to improve, but the progress will probably be measured laterally rather than in stepwise improvement.

2. The case weighting system should be refined to provide a meaningful reflection of the work entailed in handling different types of criminal cases.

Recommendation:

- Accepted
- Rejected

- Under Consideration

Implementation:

- Completed
- Scheduled for Future
(date):_ongoing_____
- Other:_____

Notes: The CWS is the product of a labor/management committee. The CWS exists separate and apart from our JustWare program, but refinement of the CWS will be highly dependent on JustWare data re: time devoted to various types of cases and time devoted to cases when the involve lengthy procedural matters including pre-trial motions and trial. OPD and the PDC have encouraged the labor management committee (LMC)to move as rapidly as possible. I have suggested they may wish to consult a mathematician specializing in specifics in order to determine how to create their model. Initial data relied only upon an educated estimate of the relative time any given kind of case would take and that weight is assigned when a case is opened. The CWS does not yet rely on information later applicable to any given case for purposes of adjusting the case-load of a given attorney(e.g. later adjustments in weight due to time devoted to pre-trial or pre-sentence efforts and hearings and then to trial and sentencing hearings.) While the initial system is sophomoric, it does allow a rapid determination of a number. The LMC must now figure out how to obtain ongoing data and how to determine the weighting of that data – e.g., should it be simply applying a multiplier or should they be looking at a graphic model where the area under a procedural curve is a better method of weighting any given case. I believe some delay has been caused because we can't yet trust the accuracy or completeness of our data, but we are pushing to improve that problem everyday.

The PDC also conducted an open meeting with all front-line lawyers and restricted managers from attending. One of the reasons was to address grumblings about the CWS. Lawyers from a particular region were loaded for bear and very vocal about how OPD central was manipulating the numbers in a fashion that left that region with a severe lack of resources. Oddly, these same lawyers indicated they were very pleased with their regional manager. As a result of that meeting, the PDC and OPD have looked closely at how that region was reporting. We found that there was some basis for the claim of lacking proportionate resources, but it was

the result of that regions manager failing to follow the protocol for providing data to OPD. OPD had no been manipulating any numbers. Our concern, of course, was that this issue festered for a long time with lawyers content to grumble rather than approach their regional manager to address the problem. As a result, I've initiated a liaison program whereby our FTE lawyers, FTE staff and investigators, our Appellate Defender's Office, and our Contract Lawyers have been asked to appoint a liaison to attend PDC meetings, be slated on the agenda for comment and be reimbursed for travel, meals and lodgings in the same manner as commissioners. More on that below.

3. A meaningful system should be developed for evaluating the work of the lawyers.

Recommendation:

- Accepted
- Rejected
- Under Consideration

Implementation:

- Completed
- Scheduled for Future
- Other: _____

Notes: This was an area where we didn't fail to act. We acted wrongly. We have now more clearly defined job titles., employee evaluations have been revamped, we're looking at a self-evaluation form used by the Federal Defenders as an additional tool. This process will probably be in constant flux, but we're making progress.

4. At a minimum, budget submissions should be supported by documentation describing the Agency's accomplishments presented in concrete terms.

Recommendation:

- Accepted
- Rejected
- Under Consideration

Implementation:

- Completed
- Scheduled for Future (date):_ongoing_____
- Other: _____

Notes: We continue to work on our software and inputting problem in order to guarantee accuracy. We are reluctant to make misrepresentations to the legislature. The system is becoming more reliable and more universally used by our troops.

5. The “minimal” caseload statutory requirement for the Chief Defender, Contract Manager and Regional Deputy Defenders should be reduced or eliminated.

Recommendation:

- Accepted
- Rejected
- Under Consideration

Implementation:

- Completed
- Scheduled for Future (date): _____
- Other: _____

Notes: We have accepted the recommendation only partially. When regional managers were queried at a PDC hearing, they universally felt they had adequate time to manage. When FTE’s were queried at a meeting not attended by management, they replied they felt they were adequately managed. One region felt micro-managed. The validity of those assessments, of course, depends upon whether those quereied were competent to answer the question and the definition of the term “management.” All managers felt they could use some more management training. OPD brought in a management trainer from the Kentucky PD system. The training was considered very valuable for converting trial attorneys to human resource officers and actual managers. While the PDC has not demanded and the OPD has not taken away case loads from all mangers, all mangers have now reduced case loads.

A fly in the ointment has been the Chief Defender. Three years ago, in the interest of saving money by not contracting out a death penalty case, Randi became part of a team representing an invidual in Billings. While the death penalty threat ultimately went away, the matter did go to trial. The trial lasted weeks. This took Randi out of the picture for a couple of months. She certainly listened to what you folks suggested by setting up a chain of command in her absence, but the situation was simply unavoidable. Randi now has one open case – a DUI.

With respect to the definition of “management”, while everyone felt they were being managed enough, as the study suggested, there appeared to be a lack of communication on most levels and lack of mentoring. Universally, the front-line troops would prefer more oversight and help, especially when assuming new roles. Many of the unfounded rumors circulated and became infectious because our front-line troops had no real sense of what management was doing.

We are looking at how to improve mentoring – this will certainly require more funding. I have also initiated a process whereby I write a letter to Randi after each meeting asking for information and updates. That letter is posted to the website. Her response is also posted to the website. I have also been sending letters to the front-line troops explaining what we’re doing and where we hope to be going. That letter is e-mailed to everyone and posted to the website. My letters to union reps and other players have also been posted to the website along with the responses I receive.

Finally., the PDC and the OPD have discussed the need for another central manager. I’ve not been happy with the progress and will push at our meeting tomorrow to get some resolution of the job description. We lack funding. The position will probably not be created until we get funding in the upcoming session. We’ve asked for it. Your study should help us get it. If we don’t get funding, we’ll cross that bridge when we come to it. Right now, most are reluctant to take the \$100K or more it would take to hire someone away from other efforts.

6. The Commission must become more aggressive in demanding comprehensive, reliable reports of Agency activity.

Recommendation:

- Accepted
- Rejected (Not Applicable)
- Under Consideration

Implementation:

- Completed
- Scheduled for Future (date): _____
- Other: _____

Notes: We continue to experience problems with the accuracy of the information we receive, but we are now insisting on written reports and responses from OPD. The poor quality of the information is not a function of OPD central knowingly providing misleading information, but a perceived sense among the regional managers that if they simply provide reports saying everything is rosy, even if it is not, they will stay under the radar. A particularly troubling problem arose in one region where we were not seeing defendants in custody prior to initial appearance. The information we got about this was faulty. Randi was in trial. I offered to

handle it (in part to take away from a perception that she was always the bearer of bad news – in fact she has been the only bearer of news, good or bad. Randi, however, had left a chain of command in place. Her appointee handled it. A regional manager was demoted. Shortly thereafter I received anonymous e-mails complaining about how the manager had been wrongfully treated and echoing a series of invalid complaints coming from a undefined greek chorus of discontented employees.) Frankly, I would have fired the manager. I replied to the anonymous e-mails explaining that I would have taken more drastic action – that the time for anonymous input has come and gone – and explaining the other complaints made had been looked into and were unfounded.

In the sense that what is good for the goose is good for gander, I recently attended a national management training seminar in Lexington, KY. If OPD is short of management, the commission is also very short on those who have extensive management skills. The program was not designed for me – it was an expansion on the training our regional managers had gotten. It was, however, valuable. First, it gave me insight into what our managers do and how they should be doing it. I also took every opportunity to get information from state-wide PD folks who attended. The people from Minnesota and Kentucky were particularly helpful in explaining how to implement a better management and communication system on a state-wide basis. Again, our efforts will take some funding, but we’ve got a better sense of what we should be attempting to do. The answer isn’t this simple, but it does involve more visits from central management to regional offices on a regular basis to insure better communication, mentoring and quality control.

7. A separate Conflicts Office should be maintained for trial and appellate cases with the director reporting to the Commission, not the Chief Defender.

Recommendation:

- Accepted
- Rejected (Not Applicable)
- Under Consideration

Implementation:

- Completed
- Scheduled for Future
(date): _____
- Other: _____

Notes: I say “rejected” because we have agreed to wait out a decision. A case was argued on April 21 before the Montana Supreme Court. Hopefully, the Court will not sidestep the issue and give us extensive guidance. They are “pragmatic.” I suspect they will approve our approach. Neither the PDC nor OPD have substantial concerns about ineffective assistance claims or a waive of writs as a result of some case. We are very concerned, however, about placing our front-line troops and mangers in a position where they might be the subject of a disciplinary complaint. The Supreme Court should issue a decision in the next 90 days.

My general sense of the PDC and the OPD central is that if we had the dollars necessary to set up a separate conflict system, we’d rather spend it increasing wages and hourly rates of compensation.

8. The Training Director should regularly survey staff and contract lawyers to determine what training they believe is needed.

Recommendation:

- Accepted
- Rejected (Not Applicable)
- Under Consideration

Implementation:

- Completed
- Scheduled for Future (date): _____
- Other: _____

Notes: Our sense is that we were already doing more than you were aware of by the time the report came out. As a result of your report and follow-up meetings, we have asked our training folks to include training in software use and will be asking for more mentoring and procedural workshops as opposed to substantive law programs.

9. Each training program should have systematic feedback and evaluations from attendees.

Recommendation:

- Accepted
- Rejected

Implementation:

- Completed
- Scheduled for Future (date): _____

Under Consideration

Other: _____

Notes: Again, by the time we looked at this, our training officer, after getting poor feedback on hard-copy evaluations, had gone to a mandatory electronic document. This seems to be working well.

10. At the very least the following activities should be a part of the training functions.

- The training office should prepare and distribute a separate trial book applicable to each category of case, e.g. misdemeanor, felony, appellate, juvenile, etc.
- The Training Director should be responsible for developing and implementing through Public Defender managers two introductory programs:
 - First: an orientation program for all new staff, including an introduction to office processes and policies.
 - Second: an initial skills program for the attorney staff to introduce the attorneys to their professional duties.
- The Training Director and the Appellate Division are developing a brief bank. That activity should continue and periodically be upgraded.
- Every continuing education training program should continue to be recorded and the recordings made available to lawyers.
- A monthly newsletter summarizing recent noteworthy decisions from higher courts and of any changes in Agency policy and procedures should also be prepared and distributed.

Recommendation:

Accepted

Rejected

Under Consideration

Implementation:

Completed

Scheduled for Future (date): _____

Other: _____

Notes: I say accepted because we agree with most of what you proposed. In fact, however, we already had a “boot camp” for new attorneys. The brief bank is in progress, but appellate attorneys are insisting they need more resources if they are to play an active role. The newsletter has come out in fits and starts, but I’m optimistic OPD will produce at least a quarterly publication.

11. An evaluation procedure for lawyers needs to be developed which is timely, is based primarily on objective data, and promotes the lawyer's professional development over the next year.

Recommendation:

- Accepted
- Rejected
- Under Consideration

Implementation:

- Completed
- Scheduled for Future (date): _____
- Other: _____

Notes: As mentioned above, in this area ours was not a sin of omission. We had simply done a poor job. Like all recommendations this matter has been placed on a gantt chart, assigned to a subcommittee and has a tentative scheduling date. Recently, the FTE liaison raised a concern that was on point about the perceived subjective nature of our past evaluation practices. The labor/management committee will be playing some role in improving our evaluation process and exit interviews.

12. Special procedures should be developed for evaluation contract lawyers, relying primarily on the information provided in the periodically filed fee petitions and the proposed closing documents.

Recommendation:

- Accepted
- Rejected
- Under Consideration

Implementation:

- Completed
- Scheduled for Future (date): _____
- Other: _____

Notes: We've placed this on a gantt chart. We'd like to get moving on this. I perceived the first step, if possible, should involve linking up with a contract lawyer liaison. I asked OPD central to send out their e-mailing list to all approximately 240 contract lawyers so they could by whatever method they chose appoint a liaison to work with us on this issue. OPD suggested we should probably seek permission from all contractors before sending out that information. I immediately wrote a letter which was e-mailed to all contract lawyers asking them to contact

OPD central giving approval to send out their e-mail addresses. I made several requests and a re contract lawyer also sent out a plea asking them to provide her with the approval assuring her fellow counsel the list of those who provided her with approval would be kept confidential (there was yet another rumor about fear of retaliation and no longer being assigned cases). This process was started months ago. To date OPD has gotten approval from 49 lawyers. The contract lawyer has gotten approval from 54 lawyers.

I intend to discuss in tomorrow's PDC meeting what we might do about this.

13. A contract lawyer should be prohibited from having an assigned client becoming a fee client in the originally assigned case.

Recommendation:

xAccepted
 Rejected
 Under Consideration

Implementation:

Completed and Ongoing
 Scheduled for a Future (date): _____
 Other: _____

Notes: This was a patently obvious failure on the part of the PDC. We've corrected it.

14. An emergency lawyer should be available 24 hours, seven days a week to ensure immediate provision of counsel in compliance with the Commission Standards.

Recommendation:

Accepted
 Rejected
 Under Consideration

Implementation:

Completed and Ongoing
 Scheduled for a Future (date): _____
 Other: _____

Notes:

OPD and the PDC discussed this. Given the geographics of our state, it would be impossible to do this without undue expense in some areas. Our standards require seeing clients asap and we

are now see in-custody defendants prior to initial appearances. We are not inclined to do more at this time.

15. Management staff should develop a plan for situations in which case overloads occur, particularly when they coexist with budget shortfalls.

Recommendation:

- X Accepted
- Rejected

- Under Consideration

Implementation:

- Completed and Ongoing
- X Scheduled for a Future (date): _____
- Other: _____

Notes: We agree, but have not put this high on our priorities. We've got funding problems, but we think the administration will get out of the. We do so, in part, because we have been very frugal. I personally spoke with the state Budget Director last fall. I told him a decision on our "conflict of interest" policy or just ever-increasing case loads would require us to do something. He asked me to assure him we would make no cuts in service until we discussed the matter with him.

Generally, in discussion, both the PDC and OPD have expressed opinions that if we have to cut services, we will do so in Dependent and Neglect Hearings where the state is not trying to terminate parental rights. We have this on the gantt chart, but it does not have an immediate priority.

16. When caseloads of staff lawyers are at maximum levels for assuring effective levels of service and contract lawyer resources are exhausted, the Defender Agency must refuse to accept more cases.

Recommendation:

- x Accepted
- Rejected

- Under Consideration

Implementation:

- Completed and Ongoing
- Scheduled for a Future (date): X _____
- Other: _____

Notes: Both the OPD and PDC understand the ABA's ethical ruling. Our case loads are nowhere near those in other systems that have shut down or refused to take further cases. We will need to talk about drawing a line, but because we don't face an immediate crisis, we have not prioritized this for immediate resolution.

17. Budgeting for the 2012-2013 biennial legislative session should begin immediately.

Recommendation:

- Accepted
- Rejected

- Under Consideration

Implementation:

- Completed and Ongoing
- Scheduled for a future (date): _____
- Other: _____

Notes: As mentioned, above, we are frustrated because we now, in theory, have the ability to develop a wealth of information, but, in practice, we can't yet rely on that data. We have submitted an initial report on how we've been doing, but the package isn't much more extensive than two years ago. We will be submitting an initial budgeting request soon. At tomorrow's meeting we will be talking about prioritizing requests for funding increases. Almost all requests are tied to your recommendations.

18. There should be a separate fund category for emergency situations. Some examples where contingency reserve funds are essential are the high profile case, instances of extreme community disorder, and other catastrophic events.

Recommendation:

- Accepted
- Rejected
- Under Consideration

Implementation:

- Completed and Ongoing
- Scheduled for a future (date): _____
- Other: _____

Notes: OPD has such a fund. We're content with the amount at this time.

19. The Chief Defender should communicate with staff regularly regarding the application of policies and procedures to OPD offices operations, staff compensation, evaluation, etc., as well as any proposed changes in these policies.

Recommendation:

- X Accepted
- Rejected
- Under Consideration

Implementation:

- Completed and Ongoing
- Scheduled for a future (date): _____
- Other: _____

Notes: As explained, above, the Chief Defender, OPD central, and the PDC are in general agreement that we need more communication and meetings with regional managers. We're not yet agreed on how to do it, and whether we should wait until we get additional funding. In the meantime, Randi will do her best to keep her case load to a bare statutory minimum and spend time talking with and traveling to our regional offices.

20. The rationale for distribution of resources to Regions must be published, explained and supported by facts.

Recommendation:

- X Accepted
- Rejected
- Under Consideration

Implementation:

- Completed and Ongoing
- Scheduled for a future (date): _____
- Other: _____

Notes: As mentioned, above, communications between the PDC and the OPD are now in writing and posted to the website. The various documents submitted by the OPD at PDC meetings are also available in conjunction with a published agenda of each meeting. We think this has served to make our front-line troops feel more enfranchised.

21. Special effort should be made to remove the fear of retaliation from management for publicly noting Agency problems.

Recommendation:

- X Accepted
- Rejected
- Under Consideration

Implementation:

- Completed and Ongoing
- Scheduled for a future (date): _____
- Other: _____

Notes: As I said in my response to your report, we weren't willing to accept your evaluation without looking into this ourselves. In doing so, I did some short term damage to any sense of chain of command. I invited anonymous input (for a while) – I invited all our front-line folks who were at an annual meeting to meet with members of the PDC without any management

present. There were those who said they wouldn't attend for fear of retaliation if management knew they attended. There were those who didn't attend because they saw me as "too close" to Randi. (She and I were partners 30 years ago) Those who did attend were very vocal about being afraid of central OPD and in accusing central OPD of misdeeds.

Some of what we heard, we feel is valid. Central OPD could have been better about communications and management style. The same is true for the PDC. We are taking steps to interact with all of our folks with a kinder, gentler, more open attitude.

Some of what we heard was both wrong and highly infectious. Our concern was not about the legitimacy of the complaints, but how to improve the system so as to minimize this sort of delusional and counter-productive talk and rumor-mongering. It was unexpected. It was the natural product of the audience's leanings. Most folks who go to law school tend to be a bit contentious. In my experience, many criminal defense attorneys tend to be inherently suspicious of authority. If I were sitting in that audience, 25 years ago I might have been one of the most vocal participants in the discussion. My biggest fear is not that we have ongoing confrontations and controversies, but that we have none. This system will be created by those of us with a common goal, but with different and often competing interests. We are people who have been trained and are naturally inclined to voice our opinions and champion our positions. With that said, some of us will prefer to complain about rather than improve the system. They will repeatedly attempt to better their position by turning to the highest perceived authority that will listen to them and pointing an accusatory finger toward someone, demanding the authority do something about it. "Daddy, Daddy, Tommy poked me." Hopefully, those folks will someday learn such conduct is inappropriate. If they don't, I'm hoping the liaison system will at least serve as a means of airing out this sort of counter-productive sepsis and keep it from spreading.

Some of what we heard arose from my realization that Randi and Central OPD were not just the bearers of bad news—they were the bearers of all news. The PDC (a very benevolent body by nature) had remained a mystery to many of the front-line troops. If we made an unpopular decision, Randi and central OPD had always been the messenger. The PDC had, in good faith and with a huge press for time, established and mandated guidelines. We, of course, asked for feedback before final implementation, but we had done all this with very little input from the perspective of our front-line troops functioning in today's world. By statute, a commissioner cannot be a Public Defender. While many of us have played that role, our experiences are from decades ago. I tried to explain to those in attendance that the PDC had a statutory mandate to "supervise and oversee" the system. I made it clear that if they saw fault in the system, the blame ultimately lay on our shoulders. I asked them what they wanted. In general, the response was they wanted more information about what went on at higher levels and some representation or participation at the PDC level. The first request was easy to meet. We've reduced much of the PDC/OPD dialogue to writing and published it to the website. I've begun sending out letters between each PDC meeting to the front-line troops. The second request has been a bit more sticky. Many of the FTE's are union employees. While the FTE's now have a liaison, there was some wrestling around about how that liaison would be named and whether some concerns raised would be stricken from any list the PDC saw because they were more appropriately union issues. Those not happy with the process attempted to turn to me to resolve it. "Daddy, Daddy, Tommy poked me."). I refused. We now have two FTE liaisons, but we are still moving

cautiously so as to not get involved in an unfair labor practices dispute. In general, however, I'm optimistic the liaison system will allow some productive venting, improve communications, aid the PDC in understanding what the front-line troops are experiencing in real time, and give our troops a sense of being a part – an integral part- of the system.

22. The Commission must demand accountability from staff for implementing its promulgated standards and policies and for providing competent, efficient representation.

Recommendation:

- Accepted
- Rejected

- Under Consideration

Implementation:

- Completed and Ongoing
- Scheduled for a future (date): _____
- Other: _____

Notes: We agreed when we received your report. We continue to agree. I went to Lexington, KY thinking I could get an answer to the question: “How do we do this.” Are there carrots that can be offered? Are there sticks that should be brandished and sometimes used? I didn’t get a quick answer. The PDC continues to be concerned about the accuracy of reports received from regional managers. At the PDC’s request, OPD has begun sending out compliance queries about certain standards. One of the initial exercises was a disaster. The response from one region was “everything’s rosy.” The truth was that region was universally failing to comply with a specific and very important standard and making no efforts to correct the situation.

The answer I did get in Lexington (from those state-wide folks that took time out their busy schedules to mentor me) was that there is no quick answer. Everyone agreed, however, that there was a need for a central manager (lawyer or not) who did nothing but manage. That person should be responsible for a initiating a generous two-way flow of communication, establishing ways to do compliance checks, and meeting with managers and very often their entire staffs on a regular basis. In short, if staff, lawyers, contractors, or managers have a sense that they are part of a regularly monitored and managed system, they will be much better about providing a true picture of how things are going – right or wrong.

23. The Commission must become considerably more assertive in demanding relevant information from staff.

Recommendation:

Implementation:

- X Accepted
- Rejected
- Under Consideration

- Completed and Ongoing
- Scheduled for a future (date): _____
- Other: _____

Notes: As mentioned above, we have converted to written requests and response to requests for relevant information and have published those missives on the website for all to see. I (and I suspect the whole commission) still struggle with exactly how we'll implement and afford to implement a system that guarantees accuracy of information. Initially, some commission members wished Randi to send out a blanket form asking all Managers to attest to the fact that they were following all PDC guidelines. Randi pointed out, astutely, that the PDC promulgated a lot of guidelines and it would be more reasonable to start with compliance checks in specified categories. I still agree with the approach, but remain concerned about whether we can rely on the responses, even when the questions are very specific.

24. The Commission should also raise challenging questions and provoke management into considering new options.

Recommendation:

- Accepted
- Rejected
- X Under Consideration

Implementation:

- Completed and Ongoing
- Scheduled for a future (date): _____
- Other: _____

Notes: We have included this on the gantt chart. In some ways, other recommendations made in your study (recommendations with which we agree) echo this suggestion. On point, generally, is the PDC's query to OPD about how we can insure the information we're receiving in the form of compliance reports and operational updates is accurate and how we can improve the accuracy and amount of inputting into our software system. We will continue to discuss this tomorrow.

25. The Commission should consider selecting a secretary from its own ranks or hiring a person for that job and not rely upon the Chief Defender to act as secretary to the Commission.

Recommendation:

- Accepted
- Rejected
- X Under Consideration

Implementation:

- Completed and Ongoing
- Scheduled for a future (date): _____
- Other: _____

Notes: On July 1, 2010, I will step down from the chair. When I do, I will suggest that the PDC at least request budgeting in the next session for administrative help. I knew what I was getting into when I accepted this position. It would be self-serving to make the request now. Initially, we were very fortunate. Jim Taylor, a very good lawyer and experienced manager, was working in a clinical position at the UM Law School. He was our first Chair. While I'm sure he worked long hours to serve both the school and this commission, his schedule was a bit less demanding and more predictable than mine or than any other actively practicing criminal defense attorney. He did a stellar job for the PDC and the clients we serve. After serving nearly 10 months as chair, I am concerned that everything your study said about OPD's management shortcomings is equally and perhaps more applicable to the PDC.

As I said, above, the PDC is a very benevolent body. We are lawyers, administrators and caregivers who empathize with our managers and front-line troops alike. We have no prosecutors, no law enforcement and no judges who might suggest unpopular or unfavorable plans of action. In retrospect, though, I think the legislator contemplated the non-lawyers would be able to play a more significant management role than they have so far or may be capable of doing. If the OPD needs a business manager, there is some argument the PDC is very much in the same boat. Over these early years, most decisions have been about issues uniquely understood by lawyers. The ongoing management decisions, however, have certainly been beyond my educational and vocational ken.

26. The Commission should insist that definitive lines of authority be established, published and be included in job descriptions and be communicated to all staff.

Recommendation:

- X Accepted
- Rejected
- Under Consideration

Implementation:

- Completed and Ongoing
- Scheduled for a future (date): _____
- Other: _____

Notes:

OPD has taken your suggestion to heart. More clearly defined chain of command has been defined in the absence of a key manager. OPD has drafted and sent to the PDC more clearly defined job description. We're not done with the process, but we're addressing the problem.

27. The Commission should consider imposing its own limitations upon the private practice of law by a defender staff member at all levels of authority within the Defender Agency.

Recommendation:

- Accepted
- Rejected
- Under Consideration

Implementation:

- Completed and Ongoing
- Scheduled for a future (date): _____
- Other: _____

Notes: As mentioned in my initial response, this matter has been decided by the Montana Supreme Court. Frankly, the bulk of PDC members agree with that position.

28. The Commission should require a strategic plan from each region that, among other things, results in measurable improvement in supervision, management, retrieval of information, and evaluation of staff.

Recommendation:

- Accepted
- Rejected
- Under Consideration

Implementation:

- Completed and Ongoing
- Scheduled for a future (date): _____
- Other: _____

Notes:

OPD has provided the seeds of this strategic plan. Regional managers were requested to provide at least an initial summary. That was done in December. The process continues.

29. The Commission itself should evaluate and assess what statutory provisions have been adequately satisfied and where it has fallen short.

Recommendation:

- Accepted
- Rejected
- Under Consideration

Implementation:

- Completed and Ongoing
- Scheduled for a future (date): _____
- Other: _____

Notes: No other commission in Montana state government is charged with the duty to “oversee and supervise” a system. I’m not sure everyone on the commission agrees the PDC should be as active as it has during my tenure. Administrators who in good faith have attempted to give us some direction about the role of a state commission have suggested, in spite of the foregoing mandate, our role is comparable to that of other commissions. For now, I’m running the show. This item has been placed on our Gantt chart and discussions have begun.

30. Commission members and Agency management should be active in proclaiming the value of the Agency throughout the state and should speak to civic organizations, schools, and other community groups regarding the role which the Agency plays in the community.

Recommendation:

- X Accepted
- Rejected
- Under Consideration

Implementation:

- Completed and Ongoing
- Scheduled for a future (date): _____
- Other: _____

Notes: We've put this on the Gantt chart. We haven't given it a high priority. But your report is well taken.

31. Investigative resources should be provided for misdemeanors as well as felonies.

Recommendation:

- Accepted
- Rejected
- X Under Consideration

Implementation:

- Completed and Ongoing
- Scheduled for a future (date): _____
- Other: _____

Notes:

Fundamentally, we agree. The Bill of Rights and the right to effective representation applies to an accusation of DUI as much as it does to a homicide.; Our current resources, however, do not allow us to provide investigators in all cases. It remains a point of contention. We'll talk about where this item is ordered in our triage of what we'd like from the legislature.

32. All lawyers should have authority to use automated legal research engines when necessary.

While we can't seem to get our contract lawyers to send the PDC a liaison, this concern was raised in a recent letter to the PDC. All FTE's have computerized search capability. I haven't asked the OPD about this recently, but I will. The snag is the fact that we can only purchase license packages in bulk. I believe each package is 50. For a while we only had a few on the

waiting list. Friday, OPD advised we have 242 contract lawyers. I'm thinking that means we're close enough to another 50 to warrant another bulk purchase. It may be that many of those lawyers have their own search engines, so my assumption is wrong. In any event, answering this query has made me put this on a list for tomorrow.

Section II: Supplemental Follow-up Questions

33. Were there any unexpected developments after the submission of the TA report that would affect implementation of the report recommendations? If so, what were they and how did you address them?

Yes
 No

34. What process did you follow after receiving the report in order to consider the recommendations outlined by the consultants? For example, were committees formed, did a chief judge issue an order, etc.?

We assigned all recommendations we had not overtly rejected to a Gantt chart. We made very tentative estimates about time to implement many of the recommendations, but tried to prioritize those we saw as most important or immediately able to remedy. Those items were then referred to subcommittee. We met in February, but I got very little done on the Gantt chart. It was our first meeting with liaisons. I wanted to make sure they didn't feel shorted. We also had other distractions. I'm hoping to get a status report from each subcommittee tomorrow.

The PDC has also sent letters asking various associations if they would be good enough to evaluate us on at least an annual basis. Supreme Court, District Court and Lower Court judges and clerks of court have agreed. I will assign this to a committee tomorrow with the understanding that committee will act in tandem with the OPD and the organizations. in getting together a workable questionnaire

The ACLU refused. Frankly, I'm very disappointed. The ACLU is an organization dedicated to protecting the rights afforded our clients via the Bill of Rights. Presently, we have no real system of evaluation in place other than a grievance procedure if a client is displeased. I've prevailed upon the ACLU to reconsider. I will do so again tomorrow. The ACLU is to be credited with the creation of this system. While it's far from completely operational, it is a clear improvement of what came before it and has the potential to be a paragon of what a PD system should be.

In short, the ACLU, with no punches pulled, opined that I had done less than my job required and that I had done so in deference to Randi. That was it. I don't agree. I very much respect the

ACLU's opinion and appreciate the candor. I'm not offended by the response, but would very much like to know what the ACLU feels should have been done differently or what now could be done to correct their perceived problems in the system.

35. Would it be helpful to put the consultant in contact with you in order to resolve any problems or questions that resulted from the TA?

Yes
 No

I'm not sure a consultant could serve as an oracle to guide our way, but, as explained above, we've still got questions about how to even approach some of our quandaries. This is especially true in the area of insuring the information we receive is complete and accurate.

36. How influential was the TA in providing your office with a course of action to follow, in assessing the operations of the newly established statewide Montana Public Defender system? On a scale of 1 through 10 (with 1 being "no influence at all" and 10 being "maximum influence on your course of action") how would you rate the impact of the TA?

1 2 3 4 5 6 7 8 9 10

Additional Comments

I have delayed responding to this query because I thought it would be very summary in nature. Frankly, given the work you folks did and the insight you've given us, I wanted to provide more. I was pleased to see your formate afforded me that opportunity.

This form was completed by: _____ Date: