

District Attorney's Budget Presentation

Budget Committee, May 14, 2007

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BUDGET COMMITTEE CHAIR JOE BAKKENSON: Can we bring the meeting back to order? Our first order of business under Public Safety, we have Judge Phil Nelson here who wanted to give a few comments.

PRESIDING JUDGE PHIL NELSON: I don't know that I wanted, but I told Josh Marquis I would come over for just a few moments. He's discussed with me your budgeting process off and on for the last few weeks and has talked about the numbers. What I wanted to talk a little bit more is just about the practical effect of maybe what the numbers do not show.

First off, actually it was when chairman of the budget committee Bakkenson was chairman of the county commission that we were talking about getting the third judge and some of the consequences of doing that. We certainly had the case load that justified doing it but I know that he and county manager Britt Ferguson at the time had some concerns about, well, what is that going to do if you have a third judge and carry over to the needs of the courthouse and how's that going to affect other people that were here. It's something that's been recognized since whenever you were commission chairman. We knew that at some point we were going to get the third judge and we do need the numbers.

I met with Commissioner Roberts and Commissioner Lee, I think it was last fall we had a meeting, just Judge Brownhill and myself, and Judge Brownhill pointed out the issue that probably, since we've been having pro tems coming through for the last several years, that the DA's office has probably needed more help, more people there, because of stretching their resources thin. I think she made a pretty good point that the DA's office was able to work around that a little bit because it knew it would only be for a week at a time and they could postpone or put off vacations or where there staff had to be somewhere else when we had that third judge there. But now that we've got the third judge there, we've put her to work. She's been doing things that we've always been doing, it's just that we've been able to spread that out over the course of time. The numbers may look the same or may be going up each year, but that still requires lawyers for both sides, whether it's prosecution or defense, to be at those hearings to represent their respective clients.

One of the other things that I think you probably haven't, may not have considered is the fact that cases probably in many ways are more complex now than what they have been in the past. When I started this job, my job 15 years ago, a DUII driving under the influence case was driving under the influence of alcohol. The person either was or wasn't and a jury decided, unless they pled guilty. Any more, oftentimes we've got driving under the influence but it could also be drugs, where you've got drug recognition experts coming in to testify as well as the arresting officer. They're more complex.

We also have.... Society's more complex. The cases are more involved. Now when one parent comes home from drinking at the bar and they get into a fight with the

other parent in the house and give the other parent the black eye, it doesn't matter which sex the person is, and then the police come and lo and behold they find meth or drug paraphernalia on the counter, or find out that the other parent was using drugs that night and all this is going on in front of three kids. So not only do you have the Assault IV, then you've got the drug possession case and you've got the endangering the welfare of a minor case, which you probably have to do dependency cases. Then probably not all the children there have the same father or mother, so you may have three or four other parents brought in to a case. It's a lot more complicated than dealing with drug and alcohol or drug issues as well. There are all kinds of things that can go on, so the complexity has changed.

Oftentimes a prosecutor has to deal with specialization lawyers who specialize in dealing with certain types of cases. Sex abuse cases are one. We've got a major one now pending, it's an animal abuse case where there are lawyers from the Portland area that do nothing but those types of cases and they do file more types of procedural matters that take more time for the district attorney's office. Just because the case load that we've had with the two of us, we're now spreading it over three ways, it does require more court appearances for the prosecutor's office.

That was the message I said I'd come over and relay to you folks. I know you've got limited resources and I don't have the answer for you on how to divide those resources up. I'm not here to make the case for the district attorney about why he needs the space or the positions that he does, but I can sympathize with him because I think he is meeting more of a demand and he has to have more people, or people in more places just because we have a third judge. We all knew that was coming.

But I think on the other hand, for those that have cases going to court, we are as courts able to devote more time to those cases and try and come up with a better solution for everybody in that situation. So I think it's better for the public to have more judges available and I think we're being a little more efficient and taking a little more time to come up with a solution on those cases, but it does take more time.

So that's about as much as I can say. I don't know if you have any questions for me or not.

JOE BAKKENSEN: Are there any questions for Judge Nelson? Any comment? Thank you, sir.

JUDGE NELSON: Okay. Thank you for getting me on because I've gotta get back over to court.

JEFF HAZEN: How do you like your new courtroom?

JUDGE NELSON: Very nice. In fact I was going to come over and I've been in a two-week trial. We broke it in right for the jury trial, we had a two-week one, and the jurors said it was a nice facility. We were up and going the first day we were there, no problems. We think it's great, everybody that's come through. I actually had somebody from Multnomah County doing _____, a judge from Portland, just happened to wander in and said what a nice-looking facility it is and never would guess it wasn't part of the original courthouse. It's great. I intended to come over and tell you that. I guess I can tell

you all right now, since I've got you all here, what a nice job you guys did on the remodel. Probably about the end of June or sometime in July when we've got our permanent, I guess I shouldn't call them pews, but when we've got permanent seating _____, we will invite you over for a celebration.

JOE BAKKENSEN: Thank you. Okay. District Attorney.

SCOTT DERICKSON: Thank you, Mr. Chair.

Before you is the district attorney's budget. On page 4 you'll see that there are some highlights about the proposed budget. The budget includes two new positions that were funded the last year by the budget committee. They've been shifted from special projects to the general fund. Other than that, the budget is as requested by the district attorney, with the exception of a capital purchase of a car which was cut in special projects per our special projects discussion earlier today.

My recommendation is that the budget be approved by the budget committee as proposed.

[the PowerPoint presentation shown by the District Attorney is here. You need PowerPoint or a compatible viewer.]

JOSH MARQUIS: Thank you.

For those of you who don't know the gentleman seated next to me, he's Ron Brown. He's my chief deputy district attorney. He's been with me since 2004 and when I'm not around or if I get hit by a bus he is the district attorney. He's been the chief prosecutor in two other Oregon counties.

I very briefly want to take you through...and I know we have, I think, four new people on this committee that weren't here last year.

The district attorney's office is a very reactive operation. We operate entirely by the number of criminals that commit crimes, and the courts on the other end. This graphic essentially shows the process. Somebody commits a crime, they're arrested by the police, the police file a report, the report is logged in in the DA's office. This, by the way, is the case whether it's a murder or a misdemeanor, or even an infraction like an MIP or less-than-ounce. Then it goes from the trial assistant to the deputy DA who has to review it and make a file or no-file decision. That happy little guy jumping up and down is the person who didn't get the charges filed against him. That happens about, I don't know, 15 or 20 percent of the time, for a variety of reasons -- we just don't have the evidence or whatever.

If the person is charged, then they appear in court. And although the process is much more complicated than just that, they go to trial and theoretically after trial they would either get found not guilty, which they do in about, I don't know, 10 or 15 percent of the time, or found guilty and might go to jail. I'll let the sheriff address the issue about the jail.

The number of deputy DA's. Last year, in anticipation of the third judge, the county manager I think rather wisely decided to get a consultant to come in. Originally we shopped around a national organization, and the money they wanted was just...it was like 35,000 bucks. It was sticker shock and I agreed with Scott, I thought that was way

too much. So he contracted with a group called the Local Government Policy [sic-- is Personnel] Institute which does a lot of HR work for this county and other counties, and I think all of you now have copies of that study. It was done by a lawyer who's also a management consultant and she took a number of counties and made some comparisons, compared not just based on the population but also on the case load.

These aren't all of the counties, but.... One of the things I mentioned in the memo which I think most of you have is the national standard, which is admittedly aspirational, is that for every trial judge you have three assistant DA's. Lincoln County actually has that luxury; they're at actually nine. We're the same as Benton and Polk, although I think Benton may have just lost one, I'm not entirely sure.

These next numbers are important only in that I know that one of the decisions that has to be made, and it's been addressed I think in a press release and in some of the memos you received, is whether or not.... The budget as requested is basically the same budget as we have this year, which would be different from the budget we had the year before that because there were two people added. The study called for between 4 and 7.5 new staff, 2 to 3 lawyers and 3 to 4.5 trial assistants. At the budget committee last year we had a vigorous discussion and decided to go with one, and started that position essentially halfway through the year. That is what is referred to in your budget as the DA special projects staffing project, at \$65,000.

These numbers are important because this doesn't deal so much with caseload or a lot of other things. It's basically apples to apples. The bar on the left is the ratio of deputy DA's, or lawyers, to the judges overall. I frankly don't know if that includes me or not, but if it does it includes the DA in all the counties, so it's the same regardless of whether it's six or seven.

Two-point-three-six indicates what it is for the comparison counties. Before the new judge we were actually doing a little better. Where we are now is that purple 2.34. If we were to go back to one less deputy, we would fall down to the one in the middle. The one on the right would be the ideal one, which would put us somewhat higher.

Next has to do with support staff which I would hate to sever. I've got a great staff. They give 120 percent and I'm very proud of them, and they do really good work for the citizens of Clatsop County. The staff assistants, the standard is 6.36, we were at 7.08. If we were to lose the person that we got last year we'd go down to 5.5. With what we have now we are still below. Even with two more we would be below, and you don't even get to average until three. I'm not asking for any more people. I understand that there are constrictions.

One of the things that.... The performance measure that's used by the courts is really important, and that's the speed with which cases go through the system. Most people would agree it's generally a good thing for a case to go faster. I can tell you it's better generally for the DA's office because defendants like delays-- the more chance for somebody to forget or run away or whatever else. But it does put pressure. Clatsop County Circuit Court is one of the fastest courts in the state, both before and after the third judge. These are combinations of Crook/Jefferson, in order to make the sample large enough.... Again, I didn't pick these, these were picked by the consultant. The lower the number means the faster the cases are being processed or churned.

She also took the total number of cases that both go in and out, and this includes infractions, each year, from the comparison counties. Now it's way more than actually

the cases filed because you have a lot of cases that resolve and a lot of cases from previous years. This is sort of a gross number. Again, these are not my numbers. I didn't even have input into how these numbers were selected. You've got both the executive summary of the LGPI study and the two-page.

I think also it's important to look at how we've grown here in Clatsop County. The sheriff's office got more employees; the only reason they're not on there is because it just makes it more difficult to look at them. Tom has justifiably got more deputies. What this shows is ten years ago there were 15.5 employees in the DA's office and there are now 18. Or at the moment there are 18, unless the budget gets cut. At that time the juvenile department had 6; it now has 12.14. The community corrections had 8 and now they have 20.

As no doubt will be pointed out, a lot of things have changed. We have a transition center which has certainly added, and we also have a juvenile detention. And almost all the funds for community corrections don't come from general fund, they come from the state. The point, however, is just like the courts which have gone from two judges to three, a 50 percent increase. One of the things that was constantly re-emphasized about the National Institute of Corrections study was that we are all inter-related. My point is that you can't dial up part of the system and expect another part of the system to not be affected by that.

So essentially, in ten years the DA's staff has gone up 20 percent, the juvenile department staff 100 percent, and community corrections 150. Don't think for a moment that I'm suggesting that juvenile or community corrections didn't need it. They did.

One of the other issues that was raised, partially in a memo that the county manager generated in April, was the personnel costs and how they've gone up. On the face of the memo you've got it looks like the DA's personnel costs went up enormously. In the comparison period I think it was 600,000 to 900,000 or roughly 50 percent, but it was with the same number of FTEs. Now there's a little bit more.

I took -- again, using the budget figures -- I just took a sampling of departments, and then said, okay, what are the growth in these departments -- again, just taking the personnel level. Community corrections is at 108 percent, employee relations at 90, information services at 32, DA at 25, a&t at 22, and the juvenile at 19.

Now, again, there are also other factors. Dean's coming back to work. The transition center. My point is ... And you have also some documents that Scott prepared for you, showing overall costs of personnel. Over the period of time I think in the county manager's documents he shows that the overall personnel costs over a set period of time went up about 68 percent organization-wide, and 62 percent in the DA's office.

I mention this only to show that the amount of increase in the costs of the personnel in the DA's office are not out of line with the rest of the system.

I got another figure that I didn't have last year that I thought might be useful, and that is the state also pays for indigent defense -- that's court-appointed lawyers. The total amount, Ingrid Swenson who runs indigent defense told me, for 2006 -- this is calendar 2006 -- was \$855,000, not including the Anthony Johnson aggravated murder case which we successfully resolved. I don't know exactly.... Those people operate on contract. They get between one and three hundred thousand dollars per case. So, roughly speaking, the state is spending about as much money defending criminals as you are for prosecution.

However, what that doesn't include are all those people who hire their own lawyers. Steve Roman, for example, doesn't do indigent defense, nor does Steve Gertulla, nor do a lot of other lawyers. Ron is trying a number of very high-end child abuse cases where people have hired very expensive lawyers from Portland.

This figure here takes again the numbers from LGPI. It correlates how many cases were filed and terminated -- "churned," if you will -- how fast they went through. And again this didn't consider child support enforcement, which is not part of the criminal department's budget.

So then the bottom line is: Okay, what is the current DA's staff at the moment? It's six deputies plus myself. We have three courtrooms. Grand jury Tuesdays and Thursdays. Basically what I operate for you is the largest law firm in Clatsop County, and that takes money.

I have some good news that I wasn't able to come up with until...didn't find out until now, and that is that the general fund transfer actually is going to be \$20,000 less. I think this is going to probably be news to both Scott [Derickson] and Deb [Kraske] because I got this information last week. This has to do with victims' services, I know something Commissioner Samuelson is interested in, and that is that the state reassessed the workloads of the various counties to come up with a more equitable distribution. Although it's not a huge amount of money, 10,000 bucks everywhere is a lot of money. So the amount that shows as departmental revenue [looking through papers]...

ASSISTANT COUNTY ADMINISTRATOR DEB KRASKE: In the victims' assistance programs?

JOSH MARQUIS: I'm sorry?

DEB KRASE: In the victims' assistance programs?

JOSH MARQUIS: Yes.

DEB KRASKE: On page 8.

[more looking through papers]

DEB KRASKE: So we'd increase that to 53?

JOSH MARQUIS: You can increase that to 30. It's going up to \$29,000 and change, or roughly...

DEB KRASKE: It's already at 33.

JOSH MARQUIS: No no, that's a different program. I'm talking about the VOCA.

DEB KRASKE: Oh, the VOCA.

JOSH MARQUIS: The state victim assistance program is what's called unitary assessment money. That's a slice out of every.... That's money that criminals pay. That rate is basically fixed, unfortunately, for a variety of complicated reasons that we don't really get our fair share. No, the one I'm talking about is the one called VOCA which has been, as you can see, at five thousand, ten thousand. And not only will it be at thirty thousand for this year, but it's expected to continue at thirty thousands.

PATRICIA ROBERTS: It's coming at twenty thousand.

JOSH MARQUIS: It's coming \$20,000 a year more, yeah.

MAN: So a total of thirty thousand.

JOSH MARQUIS: Yes. So, for example, the general fund subsidy is going to be affected accordingly. Instead of 95,000 it's going to be more like 76,000.

WOMAN: Good.

JOSH MARQUIS: You know, \$10,000 here and there makes a lot of difference.

I certainly want to answer any questions. I'm going to turn it over to Ron to sort of wrap up.

CHIEF DEPUTY DISTRICT ATTORNEY RON BROWN: I've been the chief deputy, as Josh said, for about the past three and a half years here in the county, and I've been a prosecutor for about 20 years. I'm proud to be a member of Josh's office and an employee of the county. I just want you to know that the DA's office here is a very hard-working and dedicated bunch.

I hope that when you deliberate and vote on this budget that you're thinking not only of the numbers on the page but also the names and the faces of all the victims and the potential victims that we have in this county. As I see it, cutting our budget has two potential impacts.

One is we'll just not be able to prosecute certain types of cases.

The second would be that we won't be able to spend as much time per case that we should, even if we are able to prosecute the cases.

Now, I never thought I'd ever be a victim myself, but I have been a couple times, so I'd just like to say a word about that.

In 1994 I had an experience that a lot of people have: I had my car stolen, down in Klamath Falls on Christmas morning. Due to the diligent police work in Klamath Falls I got the car back in pretty short order and the guy was prosecuted. But I didn't feel very good about things because the DA's office dropped the ball and never contacted me at all about the case. I never heard from anybody about what they were going to offer the guy or what sort of sentence they were going to try to get. I didn't even get any dates in terms of when court was. So, it was a very frustrating experience even though I got my car back, which sometimes victims don't get.

Well, it got worse.

In 2002 I was living in Prineville. I was the chief deputy DA and three guys set a fire in the basement of our house with my wife and I sound asleep, along with our three kids who were two, five and six at the time. In the basement of the house, while we were asleep. And thank God for smoke alarms because they, that's what saved our lives. Quick response by the police department, who got there before the fire department, and myself, we were able to put the fire out and save our house. The police did a great job on the investigation and within about a week there were three guys in custody.

About nine months later and two trials and one plea, all three co-defendants had been successfully prosecuted and sent to prison. The guy that set the fire got 40 years and the other two who were his lookouts got 9 and 11, respectively.

So I've had both good experiences and bad experiences as a victim myself, so I've been able to see the process from both inside and outside. If you've never been a victim, and I hope to gosh you never are, there's one thing for certain I can tell you and that is you always feel violated, whether it's your car or your house or especially if there's a crime against your person, and you feel very helpless when you're dealing with the system.

The prosecution, which is made up of the police and the district attorney, go to bat for you. They're your lawyers. They're your advocates, your support, your friends, and hopefully your heroes. They're a dedicated, caring bunch of professional people who are proud of what they do.

As I said, if you cut the DA's budget some victims just may never have their day in court. And even if they do, they may not get the kind of care and attention that crime victims need and deserve.

Statistically, probably there's gonna be some people at this table who either have been victims of crime or will be. You may have your house burglarized. You may have your car stolen. There's an awful lot of ID theft that occurs in this county, where people's mail is stolen and their credit cards and their checkbooks get taken. It can take you years, sometimes, sorting that out.

God hope it doesn't happen, but there might be some sort of crime of violence committed to someone in this room. Believe me, you'll need the help of the DA's office to feel vindicated and that justice has been done.

Please don't hamstring our office. Our work is essential to the victims in this county.

Thank you.

BUDGET CHAIR BAKKENSEN: Are there any questions. I have one. Why aren't you included in the numbers. You know with five or six assistant DAs, one more makes quite a bit of difference. If you were in Multnomah County with a hundred assistants, the DA himself wouldn't count. And you try cases.

JOSH MARQUIS: I'm in court every day, Mr. Bakkenson. And all those comparison numbers include either including the district attorney in or including it out. So for the counties that were compared in the LGPI study, they either included the district attorney as one of the lawyers in the office or didn't. In other words, it wasn't separate for Clatsop County.

I'm certainly one of the lawyers, and if I wasn't in court every day a deputy DA would have to pick that up. I mean it's six deputies plus the district attorney, no question about it.

Also if there are any questions about the performance measures or any of that, I'd be happy to answer those questions.

CHAIR BAKKENSEN: Go ahead.

BUDGET COMMITTEE MEMBER RUSS FARMER: I was just curious. There's been several trees cut down in the last week or two publishing various documents, and there's a large discrepancy between the study that's presented here and yet numbers and graphs that we've been looking at out of the DA's record system. Any comment? Why the...? Because the numbers we've been looking at appear to be...everything's flat and has been flat, and yet costs continue to escalate, contrary to what the staffing study indicated.

JOSH MARQUIS: You're right, Mr. Farmer. They are quite different and that study, the reason a couple trees were cut down on my behalf is it came as quite a shock to me because I didn't know that those numbers were going to be generated.

The problem, as I hoped I was able to indicate, is that the DA Case Management System is a word processing program. It is not a case data bank. It doesn't include all kinds of things that we do. It doesn't include, for example, any probation violations which we're in court for every day. It also doesn't weigh cases, so it counts an MIP the same as it does a murder.

There's an expression in computerese: Garbage in, garbage out. I'm not trying to insult anybody, I'm just saying that the kind of data -- and Scott and I have had some brisk email exchanges over this or at least I wrote him a lot of emails saying that you can't count on the DACMS data. We've never counted on it before. We've never used it as a factor. And it's not helpful in doing it, for a whole bunch of reasons.

MAN: What do we use it for then?

JOSH MARQUIS: We use it as a word processing program. It has the potential of being able to be used to manage.... We don't even.... For example, one of Ron's jobs is to try to allocate the case load equally. The Case Management System data is so poor that we can't even use that to figure out how many cases. When Laurie Johnson, my office manager, counts the number of indictments, we can't use the Case Management System because it won't tell us. She goes off of the numbers.

It's very useful to us for a lot of things that are really critical to what we do, which is generate subpoenas and documents. But it has not had the ability, we haven't had the ability to use it to crunch numbers.

Now, there is that possibility and as a practical matter -- Mike knows more about this probably than I do -- the Case Management System was brought back to the county just a few months ago because we were getting such lousy service from Benton County.

But that takes also programmer time, and it also takes data entry time because you have to put in information. You have to do things like weight. In order, for example, to

have an intelligent thing about how many number of cases, you have to weigh them. An MIP would get, you know like maybe a quarter of a unit and a murder would have ten. But the DACMS system doesn't do it.

My other concern about those numbers that you're talking about, which I saw for the first time on April 20th, were precisely what you say, Mr. Farmer: that they show a DA's budget just going straight up, up up, at a time essentially when the other numbers show that basically there's no case load. The implication from that is, well, What's going on? They must be frittering money away!

Again, if you look at personnel costs, it turns out that the DA's numbers are no different than the rest of the county's. The case load is not just generated.... I think last year one of the commissioner's mentioned, well, you're not going to file any more cases with a third judge, and that's true. But as Judge Nelson pointed out, it's not just how many cases we file. It's how many courtrooms we have to appear in.

BUDGET COMMITTEE MEMBER DAN BARTLETT: I think most of my questions would first be directed to Scott Derickson.

Mr. Derickson, it's my understanding from your recommendation that you're recommending to continue the DA's staffing that was recommended by last year's budget committee, at 15.9, but you're moving that to the general fund? And then you're advising us that this may not be sustainable beyond the year 2009-10?

COUNTY MANAGER SCOTT DERICKSON: That's correct.

DAN BARTLETT: And then you sent out some information from the district attorneys. I know you didn't produce the information, but I highlighted.... They've got Clackamas County with eight staff and \$375,000 budget, and that's exactly equal to the numbers from Baker County. So it appears that the latest update of the DA's survey has some problems in it, which I don't think is a problem, but I did go on board to check on some other numbers, being a bean-counter by profession, I guess, and experience, and I have to do two disclosures: I was the Benton County budget officer for nearly 15 years and I'm currently on the payroll of LGPI, Local Government Personnel Institute.

With any type of study like that you can always find problems. I did, though, in checking with the numbers I'm comfortable in Mr. Derickson's recommendation that we ride it out and spend some more time getting better information, because with what's happening in Oregon counties -- I printed off this morning the Benton County budget number and find that the budget officer there is recommending 15.4 for the district attorney's office in the next biennial budget. Benton County does a different budget system.

But then when I started looking at the LGPI study, I don't think that the person who put that together corrected the numbers between counties that work 40 hours a week and counties that work 37.5 hours a week. So if you take a county that works 40 hours a week, you get an equivalent of about an extra .93 FTE, or .06 -- or six-hundredths -- of an FTE for every person, and over a 15-person office you get about one extra FTE.

Which begs a bigger question than anybody probably wants to address right here, and it's definitely not one that the budget committee can recommend because the budget committee doesn't do labor negotiations, but a number of counties after the 1980s crash

and that did move away from a 37.5-hour week. That was instituted in my memory because there were a number of years in the 1980s where employees were not able to be given salary increases so the hours were reduced. Many counties, and this is changing again with the timber revenues, many counties went back to a 40-hour-week cycle to get back up to the productivity.

So I think that rather than address it with this budget committee at this time, what really needs to happen is continue the staffing and then perhaps seek redress from LGPI to get apples and apples in the numbers.

COUNTY MANAGER SCOTT DERICKSON: Was that a question? [laughs]

DAN BARTLETT: That was a statement, actually.

SCOTT DERICKSON: Okay.

DAN BARTLETT: But could you do that? Could you get LGPI to redo the study, given that there are a number of gaps. Mr. Marquis and you have been sending information back and forth and it doesn't.... I mean the clear gap is that the study doesn't, when it takes different counties, reflect the actual equivalent hours' work between the staff in different offices.

DEPUTY COUNTY ADMINISTRATOR DEB KRASKE: And we have a mixed bag there, Josh, to confirm this. The DA's are all 40-hour work employees, correct?

JOSH MARQUIS: Yeah.

DEB KRASKE: And then the clerical staff is 37 and a half.

JOSH MARQUIS: I do need to point out that.... I smile a little bit when you say a 40-hour work week. There's no deputy DA's that work 40-hour work weeks. They're not hourly employees. And frankly we have relatively, although we're under labor contract....

I see your point and I note that difference, but bodies to bodies. Mr. Bartlett you've been in city and county administration much longer than I have. I think it would be an excellent idea to ask LGPI to redo it. That data is a year old.

DAN BARTLETT: Is that something that's possible? Without an increase in fee.

SCOTT DERICKSON: [chuckles] Can I paraphrase back what I think I heard your statement to be? Was: given that there's discrepancies within the LGPI staffing survey between data in the survey and data produced from a county-owned software package, should those issues be redressed with LGPI so that there's maybe more consistency with the information available in the report and the other data that we've developed in the last year?

DAN BARTLETT: Yeah. And I think you're gonna see the impact of the timber-dependent O&C counties budget cuts this year. I know in Clackamas County I've been talking with the manager there. You're going to see some dramatic adjustments in budgets across the board.

SCOTT DERICKSON: We certainly could.... If that's the budget committee's recommendation, we certainly would do that.

BUDGET COMMITTEE MEMBER: Well, the other thing besides that, besides comparing to other counties and the study that Scott put out, it wasn't comparing with other counties. It was year to year to year. The caseload from year to year. That's the other thing I'd like to see, is how many cases they're handling.

And I agree with you Josh, about they should be weighed, because I understand the fact that a murder trial's going to weigh in more than an MPI. Just so we had the year-to-year statistics to know where we're at.

BUDGET COMMITTEE CHAIRMAN JOE BAKKENSEN: Don't plea bargains speed up the process somewhat? And how many do we have? Percentage-wise versus the other counties.

JOSH MARQUIS: One of the immediate concerns is that there was a line that said plea bargains, and I can guarantee you we can't find out how many plea bargains.

We make a plea offer in virtually 100 percent of the cases. We try to resolve every case, with a few exceptions, mostly being the very, very high-end sex and murder cases. We often will take less than we think is right because we have a finite number of resources.

There is actually a really easy measure of that that doesn't rely on my office, and Bryant Baird can explain it. It has to do with the state court administrator's office, and they have a listing of every county of how many cases...what percentage of criminal cases go to trial. The ones that don't go to trial are either dismissed or plea bargained, and I think we're at about 5 or 6 percent trials, meaning that about 94 -- and that is about the state average -- about 93, 94 percent of cases are resolved either by a plea bargain or, in some cases, a dismissal, or just a flat-out plea.

SCOTT DERICKSON: And we did change that on the statistics, per the DA's request, before it went to the board.

JOE BAKKENSEN: Any further questions. Pat.

COMMISSIONER PATRICIA ROBERTS: Josh, I just was kind of curious. In one of these trees of paper there was a reference to infractions and at another point it's violations.

JOSH MARQUIS: It's the same.

PATRICIA ROBERTS: Are they interchangeable?

JOSH MARQUIS: Yeah, they mean the same thing. Under the law there are offenses -- that includes felonies, misdemeanors and infractions.

PATRICIA ROBERTS: That's everything.

JOSH MARQUIS: Um yeah. Infractions and violations are the same thing. An infraction or violation means a crime or an offense for which somebody cannot go to jail. So...we have way more than our share of them.

PATRICIA ROBERTS: Is trespassing an example?

JOSH MARQUIS: Not generally.

PATRICIA ROBERTS: Okay.

JOSH MARQUIS: Although in counties that have had to cut back, what they've done is.... We can reduce a crime to a violation. It cheapens things up. You don't need a jury, you don't need a....

PATRICIA ROBERTS: I understand that.

I guess the thing that has come across to me after reading absolutely not only you gave but the county administrator has given and other information that's come in, is that we don't really have any way to measure what the statistics are. In other words, we don't have any way to know how much of a burden the input is into the computers for your staff on these violations which are included. Because if you take the violations away, the actual number of cases drops down to relatively a small number. I mean comparatively. It's over 5,000 that are violations or infractions, or whatever you want to call them.

And I guess what I'm having trouble with not only with the weighing of the cases but also what that burden is upon you. Some of these, I understand, are collecting state funds that go to the state -- for traffic violations. Is that correct?

JOSH MARQUIS: The fines from the circuit court all go to the state.

PATRICIA ROBERTS: Yeah. So that is part of it. And do you do that or does the court system?

JOSH MARQUIS: The court does most of the collection, if you will. I mean, we enforce it in the sense that if somebody owes thousands of dollars in fines we will...his probation officer will often violate him and will threaten him with jail if he doesn't pay the money.

But the larger issue you addressed, commissioner, is a good one, and that is: How do you measure? One of the things that Scott forwarded on to you that I'm pleased he did was a pamphlet about how do you measure the performance of the DA's office?

PATRICIA ROBERTS: Yes, I loved that. You have an opinion poll. [laughs]

JOSH MARQUIS: But the problem is, and Scott and I have some discussions about this: What is it that you measure? Do you measure convictions? Do you measure.... Is it good if more cases go to trial or is it good if there are more plea bargains? There's a lot of things that performance measures lend themselves to, and I'm sure there are ways to do performance measures in district attorney's offices, but they're a little more complicated.

PATRICIA ROBERTS: But my whole point is that somewhere I'm hoping that we can move down the path where we come to some agreement so we have some measure. Every other department **is** doing this. And while you are a state employee, all your employees are paid for out of the county, and the county still has to figure out how to keep its budget, and how to afford what you need. But we can't measure it, the way it is now. We don't know how. The statistics are saying one thing. We compared them to other counties. We need some help.

JOSH MARQUIS: Well, you know, one of the advantages is we are a fairly small county and I would really urge any of you, *any of you*, at any time, to come if you want and spend a half a day in the DA's office.

PATRICIA ROBERTS: That's not what I'm suggesting. What I'm suggesting is, can we come up with some performance measures that we can agree upon.

JOSH MARQUIS: I'm sure we can work on that.

PATRICIA ROBERTS: Great.

MAN: Can I weigh in real quick on that? I went into the National -- what's the national organization?

JOSH MARQUIS: National District Attorney's Association?

MAN: Yeah. Have you read that article that's in there on Prosecution in the 21st Century?

JOSH MARQUIS: Yes.

MAN: It talks about some performance measures and some goals. I don't know what was your thought on that article.

JOSH MARQUIS: I'm a vice president of that organization so I'm familiar with most of the stuff that they do. I don't remember the specific details of that.

We have really robust discussions at the national level about these exact same issues. One of the issues also is, do you measure... How do you measure the performance? Do you measure it personally, about how people think about the DA himself?

There was a study done asking people, What do you think of how Josh Marquis is doing as DA, as part of an attempt to get a case kicked out of the county. It was Anthony Scott Garner. It didn't. He stayed, he got convicted, he got true life. Seventy-five percent of the people had an opinion. Seventy-three percent of those people rated my performance as "good" or "excellent", 16 as "fair" and 8 as "poor." But what does that mean? I mean, that's just me, and as Commissioner Roberts points out, 95 or 98 percent of the office is not me personally. It's my staff, and it's paid for by the county.

PATRICIA ROBERTS: I just have one other quick question.

It's my understanding that there are no new defense attorneys that have been hired by the state. Is that the indigent? Is that correct?

JOSH MARQUIS: There's no new contracts. There are two consortiums with, I'm trying to remember, six or seven attorneys in it, and then they do hourly rates. Bryant would be able to address this better than me; I know he doesn't want to be put on the spot. But no, they haven't introduced new defense attorneys. And if you want to hear somebody complain, ask a defense attorney about what they think of the DA.

PATRICIA ROBERTS: So what I'm saying is that at least on the indigent, I know that those who can afford can go out and hire attorneys, but is it common that you have to have three attorneys at the same time in court? How often does that happen now?

JOSH MARQUIS: It happens **all** the time in dependency cases.

PATRICIA ROBERTS: Every day you have numerous...at the same...three courtrooms at the same time?

JOSH MARQUIS: Oh, you mean criminal cases. Yes. It's very rare that there's a day where criminal stuff is not going on in all three courtrooms. Are there trials going on in all three?

PATRICIA ROBERTS: At the same time.

JOSH MARQUIS: At the same time, yeah.

PATRICIA ROBERTS: I guess that would be another statistic that would really help us to understand your case load and your workload.

MAN: But not necessarily trials.

JOSH MARQUIS: No. Trials are only held on Tuesdays and Wednesdays.

PATRICIA ROBERTS: Yeah. So just the total number of days in court and how many times you actually had three attorneys at the same time in court. That would just be helpful for us to understand your workload.

ANN SAMUELSON: And just to kind of back up what you're saying. When Measure 37 claims happen, we know what those cost us because of staff time. Some of it's data entry, some of it's _____. So even though it's a pain to sort of track that, it gives people, it gives the public a real... We can say this is what it is. So when you talk about violations and all these kinds of things, I think, I mean that makes sense to me.

PATRICIA ROBERTS: Somehow we have to understand your workload.

ANN SAMUELSON: And we have to be able to explain, you know, ultimately. And I agree about what Judge Nelson said, that cases are very much more complex. I know when I used to be involved in juvenile probation, it's very different now than it was then. I mean it wasn't easy then, but it was a little simpler. You didn't have as much of the multiple things. But again, documentation of all that.

BUDGET CHAIR JOE BAKKENSEN: Sam.

COMMISSIONER SAM PATRICK: On prosecutions of misdemeanors and felonies: when there's evidence involved in the case are there any additional hearings or legal activities that have to be, you have to have people in court for?

JOSH MARQUIS: Oh yeah. My little graphic simplifies it grotesquely. There's an arraignment. There's usually two arraignments. Then there's an early resolution conference. Probably a motion to suppress. Maybe some other motions. Then a trial. Then a sentencing hearing. So one case can easily generate five, six, seven court appearances. Some of them are short and some of them are very lengthy.

SAM PATRICK: So looking at the case load by the individual case doesn't give you all the appearances that people have to make on a particular case.

JOSH MARQUIS: Oh no. And Ron was reminding me of dependency cases, which can go on as long as the child's in the system. They can be nine-year files and you can walk into one of the courtrooms and see seven or eight -- literally seven or eight -- lawyers in the courtroom, of which we're one.

But then also probation violations. For example, if they're probation officers... In order to make probation effective they need basically the power of the court, and they access the power of the court through the DA's office by requesting a probation violation.

RON BROWN: There's a trend going on in sex abuse cases. The attorneys in Portland primarily, they try to wear me out basically. They try to file as many motions as they can. They try to challenge every single piece of evidence. I've got a case right now where they want to try to prevent the victim from being called at trial because she's had some problem with lying in the past. We had a hearing in regard to the Lighthouse evaluation, that's our child evaluation center, to prevent the doctor from being able to testify. We had a *five-hour* hearing in front of Judge Nelson last November -- we're supposed to have another one tomorrow -- Doctor Little has to come in and be subjected to basically cross-

examination for five hours ____ to get that one piece of evidence in one type of case
____. So, we get buried.

SAM PATRICK: Do any of the stats include time spent on case preparation?

JOSH MARQUIS: No. One of the things that the higher-end study, the \$35,000 study by APRI -- that's called the American Prosecutor's Research Institute -- they actually come in and put software on the lawyers' system and have them log in the amount of time. As you might imagine, the deputies aren't real thrilled about that, but yeah, there are ways to measure it.

BUDGET COMMITTEE CHAIR JOE BAAKKENSON: Josh, when you show your numbers of cases, if the sheriff's department gets called because some gal's beating up on her husband, and they show up and then she assaults one of the officers and then tries to escape, she's got a bunch of items. Does that appear as just one case or does that appear as three or four?

JOSH MARQUIS: That's a good question. Generally that's one case. One of the problems with numbers in law enforcement is that it's really easy to cook the books. If a DA wants to appear that they're filing more cases, they file separate complaints on every one of those charges. We don't do that because we don't have the time and nor does the court. So that would be *one* case with four charges.

COMMISSIONER JEFF HAZEN: Not a question, but I guess a statement, Josh. This whole going back and forth, this is how I see it. We want to see statistics, okay -- somewhat solid statistics -- in order for us to make the decisions of whether we're going to continue to fund these two positions or not.

I guess I will formulate a question: Is there a way that you can congenially work with staff to set up some of those statistics and some performance measures that would be beneficial to the board of commissioners?

JOSH MARQUIS: Well yeah, I've tried. I've got an email in January where I asked Scott what would you like to measure, and we had some discussions about that.

I want to say.... You know, you have the study from the LGPI. It was only an \$11,000 study so it wasn't that intense, but it's not as though these statistics don't exist.

COMMISSIONER JEFF HAZEN: Well, where are those statistics at? Where can I go in and get those statistics?

JOSH MARQUIS: They were provided to you in the LGPI study.

This is not reinventing the wheel. Commissioner Hazen, you're right. This is the 14th year I've been district attorney and I gotta tell you, sometimes, and I know the budget committee and Scott as the budget officers are the stewards of the public's money, but we're looking at a \$57 million budget. I guess the question is, is the \$122,000 for

these two positions, is that the place where the crunch ought to come? Ultimately, that's your decision.

JEFF HAZEN: Again, when it comes to dealing with the general fund, you're darn right it does. It's just like every other department. In your graph you pointed out health and human services increased this. Those are all -- and you made the statement yourself -- those positions are actually funded by the state. Your positions aren't. That's a tax on the general fund and we're going to be in trouble within two years, so there is a concern.

COMMISSIONER ANN SAMUELSON: All this talk about studies kind of makes me get a little crazy, because that all costs money. But other departments aren't having studies done, are they? I mean that I'm aware of. Other departments on this performance-based budgeting, so you can just go through. If something was agreed upon in terms of what was going to be tracked, how it was going to be tracked, wouldn't it be wearably apparent without a study? That there was or was not a need, or whatever?

COUNTY MANAGER SCOTT DERICKSON: Well, we were able of course to work with all the appointed department heads and with the sheriff's department, and in conversation with the DA's office about performance-based budgeting. And you've seen in here the consistency amongst the types of things that we're measuring in your budget. We were able to develop those without the use of any consultants. It was done in house.

BUDGET COMMITTEE MEMBER DAN BARTLETT: If I may. I quickly go to the internet and to some of my professional associations when looking at this. I believe the article that Scott sent out on outcome-based budgeting is very good, and I think that's what I understand people are wanting, is to know what outcomes are they getting from the dollars invested.

The RAND Corporation has a report you can download for free called "Measuring Performance of Prosecution, Defense and Court Agencies Involved in Felony Proceedings: Analysis and Demonstration." The profile of it indicates that chapter 6 is "Application of Performance Measurement in Multnomah County." So I think without doing other studies there are ways we can do this.

The International City County Management Association, which I'm a member of and Scott's a member of, was involved in some work in the state of Minnesota -- did a performance measurement model. This particular one is for non-felony prosecution, but I believe they've also got those where I think it would be possible for the county administration and the district attorney to agree on some performance measures without having to recreate the wheel because there are already processes around.

I told Scott I wouldn't tell this story, but I guess I will. The District Attorneys Case Management System that was started in Benton County came about through a meeting much like this one between myself and Peter Sand _____. In that county they've agreed upon some sharing of information and reporting so that the budget committee and the county management and the county commissioners could feel comfortable in the money they're investing in the district attorney's office.

JEFF HAZEN: That's what I want. How can we accomplish that this year?

MAN: Some trust has to be built.

JOSH MARQUIS: I don't think between now and the end of today or in the next month we're going to be able to generate new numbers. I think Commissioner Samuelson -- maybe she didn't mean it this way -- but you don't need a RAND study to tell you that when you get a third judge there's going to be some impact in terms of staffing. There's a larger question that is always legitimate I think to ask: Are you getting value for your money and does it make sense, or is the money being frittered away? That's fundamentally what it's about.

If there's a pre-made study that you can get downloaded off the Internet that doesn't involve, for example, having my support staff take 25 percent of their time to do the data entry, because they're doing the other work, I'm happy to do that. And again, I'm sure there are some performance measures. But some of these are policy issues and as commissioners, as opposed to the budget committee members, you have to sort of decide what is it you want measured.

COMMISSIONER ANN SAMUELSON: And I don't think it's as black and white as somebody's either frittering money away or they're overworked. I don't think it's that simple.

What I've learned about this performance-based budgeting, which I thought was a real pain when I first came on board here but I really like it now, now that I understand it and have asked enough questions, is you get to kind of prioritize about where are people going to be spending their time, what works, what takes the most time, how can you shave time off of that. It's just kind of a good business model, I think.

So, I don't mean to say that people aren't doing their jobs at all. Every time I walk in there people are working hard. But when you talk about growth and you talk about reducing timber revenues, and you talk about all these things that are realities for our county, if we're going to ask the public for more money some day or if we're gonna...we better be able to back it up. I mean, that's my feeling.

COMMISSIONER JEFF HAZEN: DAN, can I get a clarification? When you were at Benton County you said you developed that system?

BUDGET COMMITTEE MEMBER DAN BARTLETT: That system came about over the same discussion between the board of commissioners, the budget committee and myself as county administrative officer, over how do we measure the output of the district attorney's office.

JEFF HAZEN: And is it a different system than what we're using now?

DAN BARTLETT: No. Josh has correctly described it. It's primarily word processing with some statistical data _____. I haven't dealt with it in years.

JEFF HAZEN: Okay.

DAN BARTLETT: I haven't been in Benton County since 1989. I'm just saying that the genesis of it came about over the same type of discussion between the county administrative officer and the district attorney, as is occurring now.

JEFF HAZEN: There were usable numbers In there.

DAN BARTLETT: Eventually. We got the numbers where it was supported by the budget committee and administration, in common agreement between the two parties about how much they should budget each year. However, as you heard, with the timber crunch, there's a significant reduction coming to Benton County.

I think what I was talking about and all, and I know we've been going on the process, Mr. Hazen, about not making motions on individual departments, but I think based upon what I read in Scott's recommendation, I'd move that we approve the county manager's recommendation to continue the two positions, but over the next year work to get better numbers before this budget committee and a long-term sustainable plan for the years past 2009-10.

JEFF HAZEN: I'll second that motion and comment on that. If that could be done, that would be great. It's kind of like what we're doing as far as, on a different scale, reorganization IN health and human services. We're going to supplement some money this year as a one-time shot, so, for this year I could probably live with continuing those two positions -- as long as we can get some good information to the board and for everybody to use, so *we* can tell the story.

BUDGET COMMITTEE CHAIR JOE BAAKKENSON: Go ahead, Pat.

PATRICIA ROBERTS: _____

JOE BAAKKENSON: Use the mic, please.

PATRICIA ROBERTS: I could support that as long as we understand that there are budget policies in place right now and the method with which we approach the budget next year, I would like these positions and the positions in the health and human service budget to be those considered first, to see where the cuts are going to have to come. Because I'm not saying that we can't come up with statistics, but if we don't, we're really going to have to take a hard look at it. We have to be realistic.

MAN: Because we're making this exception.

PATRICIA ROBERTS: Yes, because we're making an exception. It's not sustainable.

JOSH MARQUIS: If I may just say one thing. I know that there was concern that.... Last year this conversation was kind of similar, in the sense of what are we going to do and it was put in the special projects money, which I don't think Scott was real comfortable with and I wasn't thrilled about because I know what it means to be in the special projects budget.

We of course will do whatever the commission directs us to do and we'll work with the county manager's office as we always have.

But you also have a number of other policies in terms of priorities of what comes first, and so I would hope that isn't some sort of exception to that.

JEFF HAZEN: I think it *is* an exception, Josh, and I'll be straight-forward with you, because that exception was made against the long-term financial plan last year, by last year's budget committee. I think that's what Commissioner Roberts was referring to.

PATRICIA ROBERTS: That's what I'm saying, yes.

JOE BAAKENSON: Talk about the third judge putting extra pressure. You aren't getting any more cases because of the third judge, so you're speeding up handling? What'll it take, one year to catch up? You know, I can see a third judge putting timing pressures on, but the third judge isn't creating any more trials.

JOSH MARQUIS: No, but since the courts operate on a performance-based system of how fast the case is, it doesn't matter. If we resolve cases faster, they will just set them in more. They will fill all three courtrooms, and if we ARE more efficient about doing it, they'll fill more of them. So, no, there is not a period in which the third judge is going to catch up.

JOE BAAKENSON: You're going to catch up one of these days, at the rate you're handling cases, and you're not gonna have.... You're not gonna pick up another.... It would take 840 cases more to fill the rate that you've been going in the past, per judge. You'll only have so many cases and that hasn't increased over the last few years.

JOSH MARQUIS: I guess maybe.... I apologize, I'm obviously not being very clear about this.

The number of cases, whether it's at 800 or 1,000 -- let's just take those as numbers that come in -- they'll be set. If they're resolved, then simply other cases will be set quicker. Instead of cases being resolved in 180 days they'll be resolved in 90 days, and that will continue on.

The only thing that will result in the spigot being turned, in terms of the volume coming in from one end, is two things: the number of crimes committed, but more significantly, the number of police officers. For example, with state police refunds and adds more troopers. Or a decision to simply stop filing certain kinds of charges, something that we have been able to not do in this county.

But Mr. Baakenson, no. In terms of the third judge catching up? This is the rock that rolls up the hill that always comes back down. I've been doing this for 20 years, in four different counties, and it's no different.

MAN: Are the deputy DA's, they're union?

JOSH MARQUIS: Yes.

MAN: How long have they been union?

JOSH MARQUIS: Oh, six or seven years I think.

JEFF HAZEN: Why did that change?

JOSH MARQUIS: I don't know. They decided.... I think when we went from three to four deputies they wanted to associate with AFSCME. If it was all my choice I'd rather not have them in a union, but it's not my choice.

BUDGET COMMITTEE MEMBER DAN BARTLETT: Call the question?

JOE BAAKENSEN: Any more?

COUNTY MANAGER SCOTT DERICKSON: Could you restate your motion, Dan? I heard some dialogue and some clarification of the motion. I'm not sure specifically.

DAN BARTLETT: I think basically what I was saying is: Continue the positions within the general fund. Spend the next year working on coming up with mutually-agreeable performance measurements so that we can see the outcomes and we can see better data that is apples and apples. And get a sustainable plan to keep those positions.

I agree with Mr. Marquis that as the state police adds officers, if a new police chief in Astoria is successful in convincing the city to buy more officers, the workload will probably increase. But I'm going off into a dialogue, so that was basically the motion.

SCOTT DERICKSON: Can I state it back to you for my understanding?

The motion is to continue the positions as recommended by the budget officer, in the general fund, and over the course of the next many months develop mutually-agreeable performance measures that are mutually agreeable between budget officer-DA's office?

DAN BARTLETT: And commissioners.

SCOTT DERICKSON: And commissioners. Update the LGPI study -- is that what you're referring to?

DAN BARTLETT: Yes.

SCOTT DERICKSON: And come up with a revenue plan to provide more sustainable support for these positions.

DAN BARTLETT: Continuing these positions.

SCOTT DERICKSON: Continuing these positions.

PATRICIA ROBERTS: And I modified that to make it clear that the understanding was that if this was not successful, the DA would be right up there along with health and human services.

SCOTT DERICKSON: Can I restate my understanding of that, Commissioner Roberts, and you can tell me if I have understood it correctly?

Based on Commissioner Hazen's comment that part of the dialogue -- this is what I heard and you can tell me if I'm incorrect, and I hope that you will -- you too, Commissioner Hazen -- that if in the course of the next year there is a general fund shortfall or we experience a need to cut the general fund, that there is an exception made to our reduction strategy and the DA's positions are cut first, in addition to any others.

MAN: Potentially.

PATRICIA ROBERTS: Potentially.

DAN BARTLETT: I'd accept that as a friendly amendment.

PATRICIA ROBERTS: I mean, we have to.

SCOTT DERICKSON: Did I get that right?

PATRICIA ROBERTS: And then may I follow with....

JOE BAAKENSEN: Jeff, will you accept that as a friendly amendment?

SAM PATRICK: Well, let me ask you a question. Are we saying that the commission will be able to cut those positions, or are we saying that they'll be cut if this set of circumstances occur?

JEFF HAZEN: We're talking about, as was in the budget message, the general fund is going to be in trouble within a couple years and if we get to a point where we have to have a strategy of reduction, we're going to deviate, make that exception, from what's in the long-term financial plan for cutting back the different departments, and include the two positions out of the DA's office as potentially part of the cutbacks.

PATRICK: Potentially.

SAM PATRICK: So what you're saying, what this motion is saying, is that if the time arises, the commission will make the decision whether those positions will be cut.

JOSH MARQUIS: Let me make sure I understand it. Basically they would come first if these things weren't met. And the last part of what Scott said gives me grave concern, and that is about new revenue sources. I can guarantee you that I cannot generate new revenue out of the DA's office. So if the issue is that the district attorney somehow has to

come up with an extra \$122,000 dollars -- we're not taking bribes and we're not selling cases off, so.... All of those other things I understand.

SCOTT DERICKSON: Two things about what I'm getting from the conversation, and maybe this will help clarify.

One of them is that a sustainable strategy for supporting general fund expansion may be beyond just what the district attorney's office is able to generate or not generate. I think the responsibility for that will fall with the Clatsop County board of commissioners in looking at how to achieve that, and I don't think that we would necessarily say that the revenue needs to come from the DA's office. It's a general fund program.

And then secondly, for example, if I understand the motion correctly, let's say hypothetically, in December of this year there is a general fund shortfall. We didn't achieve revenue that we thought we were going to achieve because of whatever reason. We would lay off the two staff positions and then we would implement the reduction strategy accordingly to bring our spending in line with where our revenues were.

That's how we would apply that, if I understood it correctly. It then becomes a personnel issue and part of the management of the budget.

JOSH MARQUIS: So am I understanding then that if there is a revenue shortfall, the first thing that would come off the top would be these two positions? That they wouldn't even necessarily be guaranteed for a year?

SCOTT DERICKSON: That's what I've heard, and I want the board and the budget committee to tell me if that's not what I'm understanding.

ASSISTANT COUNTY ADMINISTRATOR DEB KRASKE: Or if it occurred as we were preparing the requested proposed budget for '08-'09.

MAN: I may be wrong. What I got out of this is basically the exception is you're the one department without performance-based budgeting.

JOSH MARQUIS: No, that's not true. Health and human services doesn't have it either.

MAN: Okay. And, well, those are the two at the top of the list. There are no statistics, there's no justification, there's no way to weight the performance, if you will. So without that statistical information available, those two departments are first on the chopping block. That's what I heard.

PATRICIA ROBERTS: Yeah.

MAN: So, if you can come up with a performance measure of some kind, that's a way of side-stepping that bullet.

JOE BAAKENSEN: Sam?

SAM PATRICK: My next question is, is the budget committee can make recommendations to the commission.

MAN: Correct.

SAM PATRICK: And the recommendation would be in the budget, that those two positions go automatically if there's a problem.

JEFF HAZEN: That's part of the motion.

SAM PATRICK: And when the commission adopts the budget, if that language is in there, it would set it in motion automatically and make it a personnel decision. Is that correct?

MAN: No. It's a budget reduction strategy.

SAM PATRICK: We have a budget reduction strategy.

MAN: Right, and this would be an exception to it.

JOE BAAKENSEN: This would be an amendment.

PATRICIA ROBERTS: An amendment to that.

SAM PATRICK: So, with this budget we're going to amend the county budget policy?

PATRICIA ROBERTS: For this one year.

JEFF HAZEN: Did it last year when they added the two positions out of the special projects fund, which was against the long-term financial plan.

SAM PATRICK: They changed the budget document itself. That was a decision that the budget committee could make. This seems to me to be a decision that the commission should make based on the circumstances that are at hand when the decision needs to be made.

ANN SAMUELSON: Basically I think what we're doing here is we're kind of setting a deadline and we're saying that we need this information. I see it as being solutions-based. On my work with the supervisory authority, which wasn't really a budgetary thing, we went in there, the three of us, and made things happen, and it was a solution. The solutions are really what's in order to fix it, I think.

JOE BAKKENSEN: Things may have changed but I always thought the county commission could amend the budgets during the year by a vote of the commission itself. I don't think these things are completely cast in stone. I think the county commission has some rights and privileges....

JEFF HAZEN: There is flexibility.

ASSISTANT COUNTY ADMINISTRATOR DEB KRASKE: There are some limitations, though.

SCOTT DERICKSON: There are some limitations to that, but the budget committee did make a recommendation last year that was adopted by the board of commissioners, and the board can amend their own policies if they choose to do so, as they did with expanding operational liability in the special projects fund. So, the budget committee can make that recommendation and the board of commissioners can amend their policy to implement it.

SAM PATRICK: It seems to me that the budget committee can recommend the budget with those two positions in there, and then have an addendum someplace that recommends to the commissioners that they look at those two first.

[multiple speakers: "That's what it says."]

JOE BAKKENSON: The question has been called for. Can we end the discussion?

DAN BARTLETT: Let me just clarify. This would be very similar to a state budget note in the state legislature. We're recommending this budget motion approving the two positions, with a budget note that gives a contingency.

SAM PATRICK: But then the commission needs to make the final decision.

DAN BARTLETT: I totally agree. That's the budget note.

SAM PATRICK: That's the point I was trying to make.

DAN BARLETT: That's local budget law.

DEB KRASKE: And I think really that it would be simple to think about it this way: If it's included that way in your approved budget document and the board approves the budget as is, _____.

JOE BAKKENSON: Okay, the question has been called for. With no further discussion, all those in favor say Aye. [Aye] Opposed. 1 opposition. Carried.

JOSH MARQUIS: One question before you gentlemen and ladies move on, so I know what I need to do and what I need to tell my people. I understand that the county manager and I are going to be expected to come together about some performance measures. But it's my understanding that not only is the budget policies that say "public safety first," that's off the table at the moment, the two positions in the DA's office go first and that that could happen as early as December if the budget revenues....

PATRICIA ROBERTS: Whenever.

SCOTT DERICKSON: The December was strictly a hypothetical example of...

MAN: That was a for instance.

SCOTT DERICKSON: ...to illustrate...

JOSH MARQUIS: I hire lawyers. Professional people. And it's difficult to say, "I'd like you to stay and work here, but your job may be gone in seven months." Now, we're never able to tell people from year to year because budgets go like that. I just want to make sure I understood that.

PATRICIA ROBERTS: We'll see what the timber revenue does.

JOE BAAKKENSON: A question was raised about the stipend.

SCOTT DERICKSON: It wasn't my question.

JOE BAAKKENSON: Okay.

MAN: What is it? What's it for?

JOSH MARQUIS: Can I address that, Mr. Farmer?

The county commissioners have the ability, should they choose to do so, to give the district attorney a supplement or stipend. When I became district attorney the previous DA had just been sent to jail, so it was reduced to zero. After one year it was at \$9,000 and then it's basically gone up mostly because of cost of living adjustments. There's absolutely no legal requirement that that be done.

I think Mr. Bartlett requested information about comparables. There are some counties that choose to not give it at all. Of the counties that do give it, the average supplement is approximately \$19,000. A couple years ago it was my idea to ask the budget committee, as the elected officials compensation committee, to consider that. One of the documents you have is a legal opinion from Heather Reynolds, requested by the county manager's office, that indicated that I was not a county employee; therefore, budget committee, the elected officials compensation committee, had nothing to do with setting that.

So, that's been.... It's been going on for years.

This is somewhat personal, obviously, because you need to understand that if my supplement were to change or go away, which is within the power of the commission to do, I would be paid less than not only Mr. Brown, but at least one of my deputies and possibly two. But the supplement is something that is entirely up to the board.

JEFF HAZEN: Isn't the supplement, the stipend, tied with some stuff that you do for the county, like the civil commitments? You were talking about that the other day.

JOSH MARQUIS: Well it's generally not been tied. You've got several memos from Heather Reynolds on this subject. I think at one point she indicated -- make sure I find this -- in her memorandum of December 9, 2005, which is attachment 5 to Mr. Derickson's May 8th memo, she concludes by saying, "There is no statutory requirement that the district attorney administer his office, attend meetings of county staff or elected officials, or perform any of the tasks normally performed in county government by a department head. It would seem fair that if a district attorney is required to perform county administrative tasks, he should be compensated for it." And it goes on to talk about county counsel work.

Specifically what we do in addition to purely criminal work that we have to? We've been doing -- and I say we because I'm not the only one who does it, although I do it -- is civil commitments, which used to be contracted out to county counsel at a cost of approximately \$10,000 a year. But that has generally not been tied to my supplement. It was generally a discussion. In fact, the year that we agreed to do it, it was sort of a quid pro quo for getting a fifth deputy DA, if I remember, about six or seven years.

JEFF HAZEN: I thought it was tied. I assumed it was tied to like the civil commitments and those things that you did for us.

JOSH MARQUIS: It hasn't been in the past and it isn't in most other counties.

JOE BAKKENSON: If you go back further than before Josh got here, the district attorney operated very much as legal counsel. He attended meetings, gave opinions. Now I guess all you have are commitments, isn't it?

JOSH MARQUIS: No.

JOE BAKKENSON: And mental health or something?

JOSH MARQUIS: We do dependencies, we do commitments, we administer the medical examiner program. We do forfeitures when they're appropriate. Let's see what else. And Mr. Brown.... The habeus corpus don't come up very often. Those are lawsuits where the inmates file against the sheriff personally, so it's Joe Criminal vs. Tom Bergin. It's a civil lawsuit. We have been handling those just for free, because Ron has the knowledge about how to do that. Again, that's not been a quid pro quo for my stipend or supplement in the past.

JEFF HAZEN: The civil commitments, do you work on those yourself or does staff?

JOSH MARQUIS: I do most of them, but staff also does them. It's a pretty particularized area of the law.

MAN: How many are there a year? Ballpark.

JOSH MARQUIS: Thirty. Fourty.

MAN: They take quite a bit of time.

JOSH MARQUIS: No, not really. They're on an emergency basis. You have to get up to speed very fast. We usually get the civil commitments less than 24 hours before they happen, and the hearings usually take between two and four or five hours.

JOE BAKKENSON: Are you doing those yourself or is staff doing them?

JOSH MARQUIS: I do most of them but my staff also does them.

DAN BARTLETT: If I may?

JOE BAKKENSON: Mr. Derickson?

DAN BARTLETT: Again from my county experience, we used to have what was called a class comp policy. In the material that came out with the opinions from county counsel, it shows that basically I understand what Mr. Marquis is saying about having the chief deputy at 84,200. I assume that's with the COLA in there, the cost of living increase?

ASSISTANT COUNTY ADMINISTRATOR DEB KRASKE: For the chief?

DAN BARTLETT: Yeah. The chief deputy.

DEB KRASKE: That's correct.

DAN BARTLETT: So do you have a policy based upon span of control and difference between a supervisory, in other words, the department head and the chief staff?

DEB KRASKE: Nothing formal.

SCOTT DERICKSON: Yeah. You mean like a percentage spread?

DAN BARTLETT: Yes. Yeah.

SCOTT DERICKSON: Uh...no. Not formal. No, we don't.

DAN BARTLETT: Because I see here your public works director administers a \$12 million budget, has 47 FTEs that he supervises. And I've generally operated most of the organizations I've managed off what's called a class comp plan that establishes those benchmarks.

SCOTT DERICKSON: Uh, well, I guess I would say that the stipend established for the district attorney has been a policy of Clatsop County, and given that the district attorney is a state employee and not a county employee, it hasn't occurred to me to think of it in

those terms because a stipend, although we list it as salary, he's not really a county employee, for example.

DAN BARTLETT: I was just thinking when I was with Benton County we always tried to make the district attorney fitting comparable to the county department heads with span of control; and as Josh has mentioned, the difference between the chief deputy and the sheriff and the public works director and the assistant public works director. And I also had forgotten the opinion, but now, having read what Heather wrote, remember that it is the purview of the board of commissioners to establish that supplement. So, I'm thinking that maybe that's something that the human resources department should look into and make sure that you've got yourself a good class comp plan.

SCOTT DERICKSON: Oh yeah, we do....

DEB KRASKE: We do have one, and all of the department heads are placed within it at certain ranges based on a variety of factors, including the things that you mentioned and some other issues -- complexity, things like that.

However, the district attorney's stipend and his state salary have never been reflected there.

JOSH MARQUIS: If I can, Mr. Bartlett, since Scott's the fourth county manager since I've been district attorney. We've had these discussions before and although there's not a formal policy, my understanding is that generally, to avoid what they call compression, which you know better than I, the general rule of thumb has been that there was to be a 10 percent buffer, if you will, between the top person and the department chief. So, if Mr. Brown was making \$82,000 a year, then the idea would be that the district attorney would make ninety.

I would also urge you.... The budget committee, as I understand it, can recommend anything. They can recommend things and the commissioners can ultimately decide.

This isn't merely what you pay me, although it's very personal and obviously it's important to me. It's what you pay the district attorney. If I get hit by a bus tomorrow, then the question is how many people would be interested in doing that job for that amount of money.

JOE BAKKENSEN: Perhaps we should approach our representative, Mr. Witt, about maybe getting the state to start paying adequate compensation for the district attorneys. I don't think any of them do very well, do they Josh?

JOSH MARQUIS: Joe, I'm on the committee. We've been lobbying.... The basic conflict and frustration that counties have about the fact that the state puts burdens on the counties and then doesn't give you money to do it, creates state officers and then doesn't pay them adequately, is a big problem.

We have formulated a proposal that would basically take the county out of the supplement business. It would tie DA's salaries to a percent of the judges' salaries, and we've been pitching this year after year. I pay money out of my pocket to hire a lobbyist

every year, and every year we try to get this done. We're hoping at some point that we'll succeed.

JEFF HAZEN: Has there been any movement on that this year in the legislature?

JOSH MARQUIS: Yeah. I wasn't able to go -- I was working -- so I listened on the Internet. It sounds like they're going to take three DA's from the tiniest little counties that have like less than 2,000 people and raise their salaries from 59,000 to what I get paid, which is I think 77,000. But that's the extent of what's going to happen in this legislature.

PATRICIA ROBERTS: Didn't you just receive a raise?

JOSH MARQUIS: Two years ago, yeah. I received an increase along with that of about 19 others.

JOE BAKKENSON: Maybe you can take a job in selling to let the legislature know maybe what you're worth. They don't obviously pay much attention.

JOSH MARQUIS: Well, the attorney general of Oregon, for example, makes \$77,000 a year and the chief deputy attorney general makes 138. It's a problem.

JOE BAKKENSON: Okay.

JEFF HAZEN: Yeah but you know, I don't buy into that argument that much. The company I work for, the president of the company, actually his salary is less than some of the vice presidents. That's set by his own policy or desire, because he doesn't feel he needs to be a multi-billionaire.

I'll be honest: It frustrates me that the county has to supplement the state in something that they're providing.

JOSH MARQUIS: If it's the intention of the county to end that supplement, that's something I'd sure like to know about.

JEFF HAZEN: I think we're discussing it right now.

JOE BAKKENSON: Any further discussion?

MAN: It says upon the request. . . . In the December 9, 2005 memo, it says, "Upon the request of a county officer, the deputy attorney and deputies of the district attorney shall advise the county court and other county officers on *all* legal questions that may arise." How much of that do you do?

JOSH MARQUIS: Virtually none. That's ancient language from the original incorporation of the district attorney. I think somebody -- Joe -- mentioned traditionally, even 30, 40 years ago, the DA also acted as county counsel. The DA did all of the county counsel work. In almost every county in Oregon, because county counsel work has

become so specialized, county counsel is either the way you do it here, where you contract with a series of lawyers, or there's a separate office of county counsel. In your salary survey you'll see generally county counsels tend to be paid better than the district attorneys.

JOE BAKKENSON: I think the change came here about 20 years ago.

JOSH MARQUIS: It's been ongoing, but yeah, I think you're right.

JOE BAKKENSON: Any other questions or comments?

JEFF HAZEN: What if we lighten the load by taking those civil commitments and giving them to county counsel? Has that happened before in this county?

JOSH MARQUIS: Yeah.

DEB KRASKE: I think it's gone back and forth.

JOSH MARQUIS: Well, yeah. Like I said, the quid pro quo.... I was pitching for another deputy DA, I can't remember exactly when -- I think it was about seven years ago -- and part of sweetening the pot was that we agreed to take over mental commitments, and that was going to save the county, I remember, at the time, about \$10,000 a year that they would otherwise have to pay county counsel.

JEFF HAZEN: So we're paying you thirteen-five to save 10,000.

JOSH MARQUIS: No, Commissioner Hazen. It was never tied to my stipend. When I say "quid pro quo," it had nothing to do with me. It had to do with the amount of money that Clatsop County was paying to fund the DA's office.

[long pause]

JOE BAKKENSON: Any further comments. [pause] If not....

MAN: Actually, I do have a.... Actually, no, we've gone beyond the budget, so, forget that.

JOE BAKKENSON: Okay. Should we go to child support? Page 11.

SCOTT DERICKSON: Mr. Chair, the child support organization collects monies owed parents of custodial children. The district attorney is still here and I'm sure would be happy to comment or answer any questions, any questions which the committee might have. Oh, I do recommend that the budget be approved as proposed.

JOE BAKKENSON: Are there any comments or questions about the motion? Do you have anything to say about it, Josh?

JOSH MARQUIS: Child support. I just want to warn you that there is legislation in the federal government to decrease. At the moment we get compensated at the tune of 66 percent for every dollar that you spend, and there is a move to reduce that over the next couple of years to 50 percent. So it's possible that the general... At the moment I think the general fund transfers about \$45,000 a year to do that and it's possible that in the next budget cycle or the one beyond that, that might have to go. The question then that the county would have to answer would be: What is the value of having locally prosecuted child support? There are counties that have gone out of that business. What that means is that there is nobody for local people to come to. They call an 800 number and are serviced by the state of Oregon, and the state of Oregon does very minimum collection efforts. One of the performance measures I've given you is the amount of money that we collect and the percentage we collect versus other counties. We're slightly better in terms of that than they are.

NAME: _____ reducing the funding of it?

JOSH MARQUIS: The proposal is from a 66 percent reduction, in stages down to a 50 percent reimbursement.

PATRICIA ROBERTS: Fifty percent of what? I'm sorry, I'm not following.

JOSH MARQUIS: If it costs \$159,000, we get to send a bill and we get 66 percent of that back, with a little something called incentive monies, but that's complicated.

PATRICIA ROBERTS: Okay. Thank you.

JOE BAKKENSON: Any further discussion on that item? If not, let's go to Liquor Law Enforcement, page 17.

SCOTT DERICKSON: Mr. Chair, this is a statutory program ____ at the discretion of the district attorney. Money is automatically collected and deposited into this account from the liquor-related offenses. Budget officer's recommendation is that the budget be approved as presented.

JOE BAKKENSON: Any discussion? Questions?

PATRICIA ROBERTS: Yes, I have one. So, how is it used to assist in liquor... alcohol-related law enforcement effort.

JOSH MARQUIS: Well, it should be used for that but we don't. As you can see, what we do is we've been pumping it back into the general fund to help support the victim assistance program, and that was traditionally because 10 or 11 years ago, when the grant ran out for victim assistance and the backfill policy was instituted, it was a choice between losing victim assistance people or the liquor law money. Before that I was able to dole it out into local police agencies for special projects like stings and capital things.

Since alcohol is related to.... DA's have complete discretion, fortunately. Some DA's offices use it for training. We basically pump it back into the general fund.

PATRICIA ROBERTS: I just wondered what the history was.

JOSH MARQUIS: Sure.

DEB KRASKE: And as I recall, the alternative was to cut the program, so Josh offered that.

JOE BAKKENSON: Okay. Medical examiner.

SCOTT DERICKSON: Mr. Chair, the medical examiner program provides a physician investigation and follow-up to certain deaths, to determine if the death might be criminal and require further investigation. Budget committee will note that in previous years...the history is not complete. That's because the program was re-housed from health and human services to the district attorney's office. This is actually a pretty straight-forward budget. I think that we, and Josh will affirm this, have excellent services provided by our contract physician, and I recommend that this budget be approved as requested.

JOE BAAKKENSON: Any questions or discussions? If not, Sheriff's Support Division, page 25.

JEFF HAZEN: Chair? Chair Bakkenson.

JOE BAAKKENSON: Mr. Hazen.

JEFF HAZEN: As much as I hate to, I want to go back to the stipend, because it really bothers me. This is a personal opinion and it's nothing against anybody. It bothers me that the county is subsidizing a state elected officer, and I have a real problem with that stipend, you know, especially when we're hearing of cuts of other state funded things. When does it end? When does the county have to pay for everything?

Well, I'm gonna make a motion that we take the district attorney's stipend down to zero.

JOE BAKKENSON: Is there a second?

PATRICIA ROBERTS: For the sake of discussion, I'll second.

JOE BAKKENSON: Motion's been made and seconded to eliminate the stipend, in effect to take it to zero. Is there any discussion?

JEFF HAZEN: Again I would say I don't believe it's the role of the county to subsidize a state-operated position.

JOE BAKKENSON: Anyone else? Motion's been made to eliminate the stipend for the DA. That it should be provided for by the state along with his salary.

JEFF HAZEN: I guess I would add along with that, we talked about the civil commitments. Because of taking that stipend away I would be in favor of taking that back to county counsel and to contract it out. So....

SAM PATRICK: Roughly how many hours would that be?

DEB KRASKE: Depends on the number.

MAN: Could you speak up a little bit because I couldn't hear.

JEFF HAZEN: Oh, I'm sorry. I was commenting about I would be willing to take the civil commitments back away from the district attorney's office and contract those out to the county counsel. And then Sam asked how many hours that was, and that's....

JOE BAKKENSON: Sam, what was your comment?

SAM PATRICK: I was wondering how many hours that would be? How much per hour would it cost us?

DEB KRASKE: Well, county counsel's rate is 150 an hour.

SAM PATRICK: Hundred and fifty an hour?

JEFF HAZEN: Mr. Marquis guessed it's about 10,000 a year.

JOSH MARQUIS: That's what it was about eight or nine years ago.

MAN: Mr. Chairman? As I understand the memo from county counsel, the effect of a budget committee's recommendation would be advice to the county commissioners, is that correct? And so this would be a budget committee recommendation to the county commissioners, and I would imagine then through the budget process and adoption the county commissioners would have to take separate action?

MAN: Or it can be written into the budget like the other one was.

DEB KRASKE: Yeah.

MAN: Okay.

DEB KRASKE: If they adopt the budget _____. But I think that essentially is approving it at the adopted level.

SCOTT DERICKSON: Uh, I think I would agree, if I can clarify. So the proposed budget, or the budget committee would forward its recommendation reflecting the change to the district attorney's office. Is that?

DEB KRASKE: In the approved budget.

MAN: In the approved budget? Okay, I understand now.

JOE BAAKKENSON: Any further discussion? If not, ready for the question? All those in favor, signify by saying Aye. [Ayes] Opposed.

COMMISSIONER CHAIR RICHARD LEE: I agree with Jeff In principle. I agree that we shouldn't do it. So I agree with Jeff in principle that we should not be funding the district attorney's office. I also agree that if we do that we should take away any responsibility he has to the county for the work. I also think that the...I will oppose it on the fact that I think it's unfair that he has been able to raise the people's salaries in his department. I think the state has the responsibility. I think the county should write a letter to the state pointing out this discrepancy and pointing out the unfairness of what it has put our county in the position of doing.

MAN: Josh, is there actually a bill?

JOSH MARQUIS: No. There's no legislation. The governor's recommended budget has...proposes raises three of the most junior...the smallest counties, and has a three-percent.... The best-case scenario would be that district attorneys would get a cost of living adjustment.

Point of order. I want to make sure I understand that the motion was carried eight to one?

DEB KRASKE: Seven to two.

JOSH MARQUIS: And the two Nos were?

MAN: Patrick and Lee were Nos.

MAN: The co-chair's budget. Is there anything in the co-chair's budget?

JOSH MARQUIS: The co-chair budget took it down to zero. Took away all money at all. I want to make sure I understand this because you're making a major lifestyle change for me. The majority of the board of county commissioners has decided to eliminate my stipend entirely -- is that correct?

MAN: The vote was seven to two.

JOSH MARQUIS: Just make sure I want to understand.

JOE BAKKENSEN: Okay. Next item. Sheriff's Support Division. Page 25.

####END