

PROPERTY TAX
INTERIM COMMITTEE

CORRECTED MINUTES

(Approved by the Committee)

Thursday
June 30, 2008
Capitol Annex, Room 204
Boise, Idaho

The meeting was called to order at 9:32 a.m. by Co-chair Representative Jim Clark. Present were Co-chair Senator Brad Little, Senators Tim Corder, Lee Heinrich, Jim Hammond, David Langhorst, and Representatives Scott Bedke, Lynn Luker, Raul Labrador, Frank Henderson, Bill Killen and George Saylor. Senators Jeff Siddoway and Elliot Werk were absent and excused. Legislative Services staff present were Eric Milstead and Charmi Arregui.

Others in attendance were: Honorable Chief Justice Linda Cople Trout (Retired); Patti Tobias, Administrative Director, Idaho Supreme Court; Dan Chadwick, Sharon Burke, and Tony Poinelli, Idaho Association of Counties; Ken Harward, Justin Ruen, and Seth Grigg, Association of Idaho Cities; Dave Navarro, Ada County Clerk; Archie Banbury, Valley County Clerk; Sara Staub, Bingham County Clerk; Maggie Colwell, Caldwell Mayor Nancolas' Office; Russ Hendricks, Farm Bureau; Benjamin Davenport, Evans Keane; Ross Borden, Brent Davis, and Jef Faw, City of Boise; Valencia Bilyeu, Boise City Attorney; Teresa Molitor, CENTRA; Mike Nugent, Dick Burns, Ray Houston, and Amy Castro, Legislative Services Office; Representatives Mike Moyle and Steven Thayn; Dan John, State Tax Commission; Colby Cameron, Sullivan & Reberger; Randy Nelson, Associated Taxpayers of Idaho; Cameron Arial, Zions Bank; and Neil Colwell, Avista Corp.

Co-chair Representative Clark stated that the committee's charge was to address House Concurrent Resolution 45, calling attention to lines 27 through 41, a copy of which is available in the Legislative Services Office. **Co-chair Representative Clark** said that the last time work was done on the issue of property taxes and the court system funded by the state was in 1993, adding that the committee would first look at county and city budgeting.

The first speaker was **Mr. Dan Chadwick**, Executive Director, Idaho Association of Counties, who provided a general overview on county budgeting. He introduced **Sharon Burke**, Policy Analyst, Idaho Association of Counties; and three elected officials: **Dave Navarro**, Ada County Clerk; **Sara Staub**, Bingham County Clerk; and **Archie Banbury**, Valley County Clerk. **Mr. Chadwick's** handouts are available in the Legislative Services Office.

Mr. Chadwick referred to Idaho Code Title 31, Chapter 16, the primary budgeting statutes. He noted that the question is, is there sufficient funding for services of public safety, law enforcement and the courts, health care and social services, and administration of the property tax system. The Board of County Commissioners is the primary authority for budgeting at the county level and the County Clerk is the primary budget officer, performing the same functions as the executive and legislative branches of state government. The Board makes a determination on the budget based upon the requests, needs and available resources. Counties provide jails, courthouses, roads and bridges, and various infrastructure at the local level. The county budget process begins in May, presented as a preliminary budget to the Board of County Commissioners, and by the third week of August the County Clerk publishes the preliminary budget. In September, the Board of County Commissioners must have a public hearing and final adoption of the budget at the county level. County budgets are made up of salaries and wages (A budget); general and other expenditures including benefits, services and contracts (B budget); and the capital, land and equipment-type budget (C budget).

Senator Little asked if this was in Idaho Code and **Mr. Chadwick** answered “yes, it sure is; it is in Section 31-1604, Idaho Code.” The revenues making up the county budget come from various sources including property taxes which are one source, pointing out that levies are applied to property values consisting of a number of levies within the statutes.

Mr. Chadwick noted that annual increases to the property tax portion of the budgets are limited to 3% plus growth; he added that property taxes are not sufficient to fully fund required county services, causing counties to look to other revenue sources such as state shared revenues, giving examples of sales tax distributions, agricultural personal property replacement, circuit breaker, liquor distribution, and even the state lottery (money comes back to counties when there are big winners.) Counties also receive revenues from fees in the form of recording fees, filing fees, 911 emergency communication fees, planning and zoning, beer, wine and alcohol licenses, solid waste fees, etc., as well as indigent reimbursements becoming another source of revenue, a portion of which comes back to the county and to the catastrophic fund at the state level for services rendered. Counties receive federal revenues such as payment in lieu of taxes (PILT) which go to general purpose units of government and only to counties in Idaho, because there are public lands in Idaho, and counties receive compensation for services they provide on those public lands.

Representative Bedke asked about PILT funds and if that would be in lieu of the Craig-Wyden funds and the passage of a House bill that would take 70% of Craig-Wyden funds that PILT doesn't cover, asking if we will have a state disbursement to offset the Craig-Wyden money.

Mr. Chadwick answered they were two separate funds; the Craig-Wyden funds, or secure rural schools amount, will impact the available distribution for Idaho, so there will be an impact because of this on the amount of PILT that's available to the state of Idaho in future years.

Representative Bedke inquired about state legislation passed as a de facto safety net in case the Craig-Wyden money didn't show up and this PILT money that did show up would be used to count as that federal money. **Mr. Chadwick** responded that PILT was not even a factor in what the Legislature was considering in the last year; the safety net was for education only, and it was

a phaseout, having no relationship at all to PILT. These are timber receipts for Craig-Wyden dollars only and not PILT, that being the reason to treat them as two separate sources of revenue.

Representative Clark commented about the 3% plus growth, saying that foregone was left out, pointing out that always had to be added in. **Mr. Chadwick** said “yes, foregone is still available, that is the amount that is not collected in that particular year that a county or any other property tax district can go back and draw from in the future, should they need to use that.” **Mr. Chadwick** emphasized that required services must be funded, or else the courts will step in and require the services to be funded simply because it is a responsibility that the state requires counties to perform. County payments are sometimes deferred to another fiscal year, just like the state does, but it then affects the next fiscal year budget adversely, and the county fiscal year is October 1 to September 30, which is sometimes problematic since the state fiscal year runs from July 1 to June 30.

Mr. Chadwick said there are consequences suffered when there are limited revenues; some counties have had to reduce courthouse hours, layoff, or freeze salaries when budgets must be balanced. **Senator Little** asked for a brief tutorial on the counties’ ability to issue tax anticipation notes (TAN). **Mr. Chadwick** answered that there are two ways to borrow, short term, for county governments: (1) registered warrants, not used very often, where you issue a warrant and put into a registration book and it becomes due and payable if the money is available, and (2) tax anticipation notes, the county borrowing against future tax collections up to 75% of their expected collections in any one year, usually done if there is not much carryover, such as waiting for the distribution of property tax collections. **Senator Little** asked how that number was audited and who audits. **Mr. Chadwick** said that the County Commissioners will make that determination and will get the best interest rate, audited internally by the County Clerk, and the county is obligated also to have an outside auditor, adding that he suspects the Tax Commission would take a look at that as well. **Senator Little** asked if they arbitrage on those TANs. **Mr. Chadwick** said he was not aware of counties doing that, commenting that would be unusual; he suspected they were subject to the same limitations on TANs as they are on bond arbitrage at the federal level.

Representative Henderson asked about the authority of the District Court, the administrative judge in each district, and their authority to affect a county budget. He said that in Kootenai County there were two instances when this was an issue: (1) the Board of Commissioners, of which he was Chairman, had to freeze the budget because federal revenue sharing was cut off; the board issued a memorandum to all department heads that wages were frozen and the Commission got a memorandum from the Administrative Court Judge saying that certainly we were free to freeze the salaries of all other employees, but employees of the District Court would be allowed a raise or the Administrative Judge would issue a decree ordering the Commissioners to do so, and (2) in a courtroom building with an unfinished basement, this same Administrative Judge, in discussion, “threatened” to write an administrative decree ordering the Commission to budget the money to provide two courtrooms in that unfinished basement. **Representative Henderson** asked what the authority was for that Administrative Judge to make that kind of

demand upon the county budgeting process. **Mr. Chadwick** answered that he would give the “politic and unpolitic answer to that question” stating that an Administrative Court Judge can issue any decree or order they so choose and are well within their authority to say “I expect, I want and I need” and they are like any other department head when it comes to county budgeting. The courts and the counties should work together to resolve issues of the needs of the courts, but using administrative decrees and threats is probably not a good way to get a response from commissioners. **Mr. Chadwick** said he did not think a judge has that authority, but it has never been adjudicated and resolved by the Idaho Supreme Court.

Mr. Ken Harward, Executive Director, Association of Idaho Cities, spoke next giving a brief overview of city budgeting, understanding that the committee’s work relates to magistrate court funding. Cities have the same budget calendar as counties, that the City Council as the legislative body sets and adopts a proposed budget, publishes it two times, holds a public hearing, certain disclosures are made in the notice such as the amount coming from property taxes and other specifics, and the City Council may then reduce (but not increase) that budget as advertised. Property taxes are a main source of revenue for the cities, constrained by the 3% property tax cap plus growth factor for new construction and annexation. Other intergovernmental revenues for cities include a portion of the state sales tax, the highway distribution account, and by constitution and statute, are dedicated to roads and highways, and a variety of fees, depending upon the city.

Representative Bedke asked if cities were an electric or water provider, would it be against Idaho Code to use those fees as a “cash cow” to fund other governmental services. **Mr. Harward** said there is a constitutional provision that fees must be set *in proportion* to the cost of providing services, adding that cities are entitled to capture overhead costs for that enterprise or utility and treat it equivalent to a franchising fee that’s done for other private utilities.

Mr. Harward passed out two hand-outs: (1) “Cities & Magistrate Court Funding” and (2) “Examples of Court Fines and Costs,” both of which are available in the Legislative Services Office. He said that the preponderance of property tax revenues fund public safety, and are handled differently throughout the state. He explained that Idaho law provides cities with three different options for law enforcement: (1) Idaho Code Section 50-209 authorizes cities to establish their own police department, (2) cities may rely on the sheriff’s obligation to enforce state law throughout the county (Idaho Code Section 31-2227), or (3) cities may contract with the county sheriff for a higher level of law enforcement service, including enforcement of city ordinances, since a sheriff has no obligation to enforce city ordinances, unless there is a contract. Cities are responsible for prosecuting violations of city ordinances, state traffic infractions and state misdemeanors committed within city limits (Idaho Code Section 50-208A). County prosecutors are responsible for prosecuting all felonies, including all those committed within cities (Idaho Code Section 31-2604). Cities can determine whether prosecutorial services will be performed by a city attorney, by contract counsel, or by contract with the county prosecutor (Idaho Code Sections 50-208A and 31-2604). **Mr. Harward** said that cities are entitled to house persons charged with or convicted of violating city ordinances in the county jail, but must

reimburse the county for the cost (Idaho Code Section 50-302A). He said that cities receive 90% of fines and forfeitures for violation of state motor vehicle laws, state driving privilege laws, and state driving under the influence laws where the arrest is made or citation issued by a city law enforcement officer or a county officer under contract to provide law enforcement services for a city (Idaho Code Section 19-4705). Cities also receive 90% of fines and forfeitures for violation of city ordinances (Idaho Code Section 19-4705).

Representative Clark asked for clarification on how the 90% number was determined. **Mr. Harward** answered that back in the late 1960s, when there was a consolidated magistrate court system, it was imbedded in the provision and has been there ever since; he added that it was a deliberate decision by the Legislature to make that part of state policy from the outset.

Mr. Harward then referred to the “Examples of Court Fines and Costs” pointing out that 90% of the *fine* portion only, is what cities receive. **Senator Hammond** asked if sheriffs issue a citation out in the county, are they given back some kind of rebate. **Mr. Harward** answered: “If that sheriff has a contract for enforcement within the city, the distribution would go to the city; however, if a citation is issued in the unincorporated area of the county, then there is *not* a similar distribution back to the county.”

Representative Saylor asked what the total amounts were throughout the state for cities. **Mr. Harward** said those figures were included on his first handout entitled “Cities & Magistrate Court Funding” on pages 2, 3 and 4.

Representative Labrador asked about the example of a DUI (misdemeanor) stating that with the charge of a \$1,000 fine, there is also a minimum two-day or three-day jail sentence, asking if that takes away from the money coming in. **Senator Heinrich** responded that it was his understanding that in this example there would be no cost to the city, adding that the county would absorb that jail cost, believing there to be inequities in who pays the bills and who gets the revenue. **Mr. Harward** said he believed this was one of the reasons for the Legislature to be looking over this issue as a policy issue for the state. **Representative Killen** said that although it is technically not part of the fine, currently the residing jail imposes an additional charge as well, stating that in many instances there are also the services of a public defender involved in these kind of cases, frequently a reimbursement on the defendant too. He said he was simply suggesting this is only part of the issue here. He has often been curious about all the fines, costs and reimbursements that are imposed throughout the state, asking if there is any information on how much is actually collected back in each of these categories referred to. **Representative Clark** said the committee would get to that point.

Mr. Harward stated that the current method of allocating fines to cities is a legacy of the court reform movement of the late 1960s, which replaced justices of the peace, probate courts and city policy courts with the magistrate’s division of the district court. **Mr. Harward** again referred to a sampling of figures included on his first handout entitled “Cities & Magistrate Court Funding” on pages 2, 3 and 4, in alphabetical order. He added that the fines and forfeitures are a small

percentage of the total law enforcement and prosecution costs for cities.

Representative Henderson said that the examples shown caught his eye in three instances: Boise, Idaho Falls and Rexburg all of which list City Contribution to Court Funding, that contribution being about 25% of the fines and forfeitures, asking if that was by agreement or voluntarily. **Mr. Harward** responded that this particular issue is not applied uniformly in every city and county and suggested that others may be better able to respond as to the history of Boise and Ada Counties. He said that Idaho Falls had a negotiated-upon agreement, adding that what is not shown on this handout, is that 2-3 years ago, cities in Twin Falls County, particularly Twin Falls, were paying a negotiated amount to the county for magistrate court operations. He said that a panel of judges issued a decree that essentially said “thou shall pay x amount” and the city said they did not necessarily agree with that and that they didn’t know if the judges had that authority, so it went to the Idaho Supreme Court and it was ruled that those judges indeed did not have the authority, that it was a legislative act. He concluded that Twin Falls was not currently paying. **Representative Henderson** said that last year an agreement was negotiated with the city of Coeur d’Alene in which they refunded to Kootenai County 30% of the fine revenue from traffic violations, recognizing that the county had unusual costs for magistrate court, jail and serving the population. They were the fourth city that did that, although he doesn’t think they are currently doing this. **Mr. Harward** said there may be other agreements such as providing a building for the magistrate court or extra security for the court paid out of a city budget. **Representative Bedke** asked about the city of Downey’s fines and forfeitures being kept by the county. **Mr. Harward** said the city of Downey contracts with the sheriff for enforcement of city ordinances and fines, and the fines are remitted to the county, that being fairly common throughout small cities in Idaho.

Mr. Harward suggested a possible place to improve collection compliance might be a rough proposal to be presented at a future meeting and could give a very brief overview of that concept to the committee, deferring at this time to **Valencia Bilyeu**, Boise City Attorney.

Ms. Bilyeu said she had done research on best practices for collections for court costs and fees, adding that it appears from her perspective that, throughout the state of Idaho, many defendants are on their honor to pay fines. **Ms. Bilyeu** looked at several court systems throughout the country who are doing an excellent job of collecting fees and fines, those states being Michigan and Texas, and the first and foremost reason is they expect payment up front. Great enforcement tools are used in Michigan, giving a one-month amnesty period, when just starting out their hard collections, so for one month, anyone could pay. After that, they would have a show-cause hearing, tax garnishments, driver’s license revocation (needing statutory authority), and some were incarcerated for some violations. Using collection agencies was the last resort in other states. **Ms. Bilyeu** said that the 46th District Court in Michigan in the last three years has collected over \$2 million in outstanding fines and costs by spending \$35,000 for mailers and postage, hiring no additional staff, no extra judge or docket time.

Representative Labrador asked what Idaho’s percentage is of outstanding fines. **Ms. Bilyeu** answered that they have some numbers statewide, unsure of the percentage, and it would have to

be viewed from a collection rate versus how it is actually being quantified, but she knows Idaho's collection rate across the state for infractions is exceptionally good, because driver's licenses can be revoked. For misdemeanors and felonies, the percentage collected is not stellar, and she offered to get that percentage for the committee. Restitution for the victims is also not good.

Representative Killen inquired as to Michigan's collection percentage. **Ms. Bilyeu** answered that the courts in Michigan and Texas have done far better than Idaho, and the number is not small, but she did not have that specific information for the committee, but will get that for a future meeting.

Representative Labrador said that Canyon County has gone to collections for their fees, asking if that has improved their percentage of payments, and **Ms. Bilyeu** deferred to **Ms. Patti Tobias**, who offered to compile that information for the committee, dollars ordered versus paid in each of the major categories of infractions, misdemeanors and felony cases. She pointed out that they had been asked by the Council of State Governments to be one of two learning sites in the nation in instituting best practices for collections, and those meetings have begun, the incoming chairman of that Council being **Senator Bart Davis**. **Ms. Tobias** believes that there is certainly room for improvement, but she thinks that a fabulous job has been done to date.

The next speaker was **Honorable Chief Justice Linda Cople Trout** who provided an overview of a 1993 study entitled "Financing the Trial Courts: Future Directions," a copy of which is available in the Legislative Services Office. **Chief Justice Trout** said that back in the late 1980s and early 1990s there was a movement of courts to study the need to move from local funding to state funding. The Idaho Supreme Court in 1991 appointed this Committee comprised of elected clerks, representatives of cities and counties, sheriffs, judges, court administrators, and chaired by then **Chief Justice Robert E. Bakes**. The trial courts in Idaho are funded by a combination of both state and government moneys; generally state general fund money pays for salaries, education and travel expenses of all trial judges, court administrators and court reporters. The remaining expenditures are borne by cities and counties. The Committee focused on two areas, the first being improvements in court fine and fee distribution.

The second area was the broader examination of financing the structure of the trial courts in Idaho. The Committee articulated certain general principles which should govern the trial courts and the funding of trial courts. These four principles, she said, are as important and relevant today as they were back in 1993:

- (1) There should be no cash-register justice; in other words, the courts should not be benefitting directly from moneys they impose to avoid the appearance that judges are in court raising revenues for themselves.
- (2) Economics should not play a part in deciding whether or not to prosecute a crime; in other words, the county prosecutor should make decisions based upon the facts, the law and whatever appropriate considerations there are, but the cost of the prosecution should not be a factor.
- (3) Taxpayers should bear costs similarly so that the location where a crime occurs does not make a difference.

(4) Court services should be uniformly available throughout the state.

Although the report given to the Supreme Court was unanimously approved, the Committee believed it important to note that there was, nevertheless, significant disagreement. She said there were seven recommendations in the executive summary on pages 2-4 of the final report, some of which she did not believe were pertinent to this committee's work, but she said that several were important, those being:

Recommendation No. 1: Pursue state funding of the trial courts as part of continuing efforts at court improvement.

Recommendation No. 2: Move to state funding should not be done "piecemeal" and the Legislature and all the appropriate entities should come up with an overall vision of how to move to state court funding.

Recommendation No. 5: The Supreme Court should obtain a cost analysis of the court system funding to identify the full costs of state funding of the trial courts.

Recommendation No. 7: The courts should continue to collect annual data about court costs and revenues.

Chief Justice Trout said that in 1991 the counties paid about two-thirds of the costs, with the state paying slightly under one-third and the cities paying the rest. Again, in 1991, the courts brought in about sixty-eight cents of revenue for every dollar spent. The cost of operating the trial courts was estimated at \$60 million; of that, the courts collected \$20 million, and of that revenue collected, half went back to the state either to the general fund or an entity designated as a recipient of the fee, and the remaining half was split equally between cities and counties, so the counties paid two-thirds of the costs of operating the trial courts and received one-quarter of the revenue. The advantage of state funding was seen as uniformity in funding and services, and savings to county taxpayers in terms of property tax relief. She highlighted that the disadvantages would include a loss of local control and certain counties and their employees might not do as well under state court funding as they had done under local city and county funding. In conclusion, **Chief Justice Trout** said that the final report is an excellent foundation as this committee moves forward, even though the statistical information is out-of-date. **Chief Justice Trout** recommended the same Recommendation No. 5 that was in their final report, the consideration of obtaining a much more defined cost analysis of what the costs really would be to move entirely from county and city funding to state court funding of the trial courts.

Representative Killen stated that in looking at the 1991 data, it speaks to criminal and civil filing fees, and he thought it would be appropriate to separate those to know the impact.

Representative Bedke asked **Chief Justice Trout** if, in her mind, the mix of 68% collected from the court versus the 32% collected from other sources was proper, asking if this was an optimum target, and whether the court users should be paying more or less. **Chief Justice Trout** answered that her concern was what the consumer could bear; could they bear more than sixty-eight cents on the dollar, the answer being "perhaps," but from the court perspective she said they

were concerned about eliminating access to people. She believes this is something the Legislature needs to look at in terms of moving forward, asking if more could be collected. Part of the problem regarding collections is that frequently people who come into the court system simply don't have the money. She believes that perhaps more could be collected, but at some point in time, striving for 100% might eliminate the courts as a service that is provided to the people.

Representative Bedke asked if, when the numbers are updated, did **Chief Justice Trout** think that the numbers would be similar and have we reached that tipping point where the proper role of the court system in society is being limited because of the fees, believing that to be the line the committee needs to find and asked for her perspective on this. **Chief Justice Trout** responded that "no, the figures are not the same," in part due to things being done currently that were not being done in 1991 such as drug courts, family and children's services, evaluations and many other things. She said she could not speak to the second part of **Representative Bedke's** question other than to say she recently had opportunity to go back into the trial courts as a trial judge and her observation is that things have not changed much in terms of people's ability to pay, either in the criminal context or to participate in a court system; in fact, she thinks it is probably worse.

Senator Little referred to family courts, drug courts, mental health courts, asking if some of these services being provided are really social services and not part of the judiciary, wondering if in order to make the system totally self-sufficient, would the system implode. **Senator Little** asked whether there was some kind of "magic formula" to determine that something may not be part of the judiciary system and is a part of a social investment to try to save downstream costs. **Chief Justice Trout** said she knew of no such formula, confirming that many argue that the court has embarked on what are social services, in large part done to save costs in the corrections system.

Senator Heinrich asked if there was a way to determine who has picked up that tab. **Chief Justice Trout** answered that she thinks we can, using the example of drug courts; they can quantify where the money is coming from between participants in the program, the liquor surcharge and those kinds of things. **Chief Justice Trout** deferred to **Patti Tobias** who responded that they can track costs and expenditures, adding that what they cannot do is determine the cost-savings seen in prison costs or local jail costs. She said they do know they are reducing recidivism but they don't quantify all the places where savings show up. **Senator Heinrich** stated that counties get 20% of fines, and the additional cost in the court system is giving a lower cost to the state, expressing his concern about that being funded by local property taxes. **Ms. Tobias** said she believed that to be one of the purposes of this committee, to examine the impact on property tax and what property tax is paying in the funding of courts, and the courts' role in reducing recidivism and achieving better outcomes.

Representative Saylor pointed out that the resolution this committee is charged with is improving the administration of the state's current court system, asking **Chief Justice Trout** to

comment on her view of the relative importance today of court reform versus economics. **Chief Justice Trout** answered that she believes it to be important that the committee doesn't simply focus on cost-savings, that being the gist of the report, which drove many states to look at state funding, including Idaho, as property tax relief. She said that from a court's perspective what they should be concerned about is making sure that the court system is the very best. She warned that she would not want to sacrifice the quality of services provided, simply for the sake of property tax relief, if it would mean that under state funding services may be cut.

Representative Bedke asked **Chief Justice Trout** about the four principles she emphasized earlier, how we are doing 15 years later, and has the center moved toward or away from any of those issues brought up in 1993; what is the status of those things that the 1993 Committee advised being wary of. **Chief Justice Trout** followed up on what **Mr. Chadwick** said; she thinks we are sliding happily toward the "good side" away from cash-register justice, away from economics driving decisions, having made incremental progress going toward taking economics out of the picture on all four principles.

Representative Killen mentioned that as he practiced law in Valley County, he had the notion there was an untapped resource in the justice system, mainly the magistrates, since a lot of jurisdictional thresholds have remained essentially unchanged over 40 years in the civil and criminal area. He said that he used to wish that a magistrate judge could handle certain cases, instead of waiting for a district court judge in rural counties, asking if boundaries might be readjusted. **Chief Justice Trout** confirmed that had been looked at, pointing out that Valley County had articulated that very concern, having a magistrate judge limited in jurisdiction, and a district judge visiting periodically. The court, by rule, made some amendments in order to permit the magistrate more proceedings than previously allowed; in terms of generally revising what magistrates do, that has been looked at periodically.

Representative Luker asked if any action was taken on this report and, if not, why not. **Chief Justice Trout** answered that the court studied it for 3 months in 2004, with extensive discussion about the report and possible next step, the concern being that this is a monumental step to transfer all funding and facilities to the state. **Chief Justice Trout** said that this is not something that the Supreme Court alone should do; this should be something with the wide support of all the entities that would be impacted by such a change, recognizing that total unanimity will never be achieved. The courts studied Recommendation No. 5 about getting a more defined cost analysis and the feeling was that the majority felt that unless they are in a position that all the other constituent entities are ready to move forward and excited to pursue this, we ought not to be incurring a fairly significant expense to do that detailed analysis, unless it is going to lead somewhere. Not sensing strong buy-in by other entities, she said that the court did not take further action at that point.

The next speaker was **Mr. Archie Banbury**, Valley County Clerk. He said their biggest difficulty is budgeting because there are so many things unpredictable with regard to courts. He said the biggest struggle is with public defenders, budgeting \$150,000 in Valley County, but if

there is a conflict situation with multiple defendants they each require separate counsel, hiring a contract attorney for that defendant, which gets expensive, including travel costs at \$150 hourly. **Mr. Banbury** said that counties have no specialization or division of labor, stating that county court clerks have to do everything, and it takes about three years to train one, adding that it is slightly different in Ada County where they do have specialists, but are also generalists. He said that in small counties where they have one judge, it would be extremely difficult to have a drug court, family court or mental health court in that county. **Mr. Banbury** said another area of concern is collection of fines, fees and restitution, currently running about \$1.4 million and growing; their proposed solution is for their prosecuting attorney to hire a collector for their office. **Representative Killen** asked if the \$1.4 million figure was what was not being collected in Valley County and **Mr. Banbury** responded that it was the aggregate of fees, fines and restitution currently uncollected.

Representative Henderson asked **Mr. Banbury** his opinion about how well the need for a public defender is working, asking whether the current procedure is adequate to identify those truly in need and not allowing public support for those simply pleading poverty. **Mr. Banbury** answered that indigence for the defendant needs to be looked at more carefully, in his personal opinion.

Ms. Sara Staub, Bingham County Clerk, presented next and began by stating that Bingham County has a population of 44,000, and has experienced modest but steady economic growth and a very conservative Board of County Commissioners. As budgets and expenditures are discussed with regard to the court system, she asked the committee to keep in mind that there is very little wiggle room with regard to numbers, adding that they budget very closely, desiring to ease the burden of property taxes for citizens. **Ms. Staub** said the budget for Bingham County this year was \$25.3 million and \$8.2 million or 32% was obtained through property taxes, the balance coming from other revenue sources already mentioned. Bingham County has two sitting magistrate judges, one out-of-county magistrate judge, one sitting district judge, and one out-of-county district judge, and **Ms. Staub** gave an overview of the county administration, expressing the need for more deputy clerks; the salaries and benefits for these positions are their largest county expense. **Ms. Staub** said that law clerks have been a sensitive issue in counties and this has been discussed with the Supreme Court, counties having no control over law clerks, including the hours they work, but they are county employees. In Bingham County for FY 2007, the last completed fiscal year for which she had numbers, the sum of \$1,495,300 was used directly for the courts; taxpayer dollars accounted for more than one-half of the revenues received. This also represents 19% of the total property tax dollars; their justice fund is also pushing to the levy limit, their ability to tax is tempered by the cap. **Ms. Staub** said the costs and fees for training and certification, juries, witnesses, interpreters, evaluations, and mental holds have increased tremendously. She said the county by statute is required to provide services, and given certain amounts of money to do that, and services cannot be compromised.

Representative Luker asked why Bingham County has the distinction of having the highest levy rate for courts, wondering if they have compared with other counties or if there are special issues

unique to Bingham County that make the levy rate so high. **Ms. Staub** answered that salaries and benefits are difficult to handle, emphasizing that their deputy clerks stay a long time, are at higher salaries and take more vacation time, causing staffing difficulties at times, but she could not identify anything else unique, adding they only ask for what they need.

Representative Labrador asked about the “Justice Fund” column on her handout, asking where the revenue was coming from. **Ms. Staub** said some was coming from the state, some proportionate share of shared revenue such as from sales tax, agriculture exemptions, and a portion of interest on investments. **Representative Labrador** asked if the “District Court” column is the only one that receives property taxes. **Ms. Staub** said all three columns receive property tax, pointing out that is a proportionate share, in proportion to how much they spent of that budget for court related matters.

Senator Langhorst asked if law clerk positions were funded by the state, a potential bureaucracy being created “outside the county,” if this could become a problem or a solution. **Ms. Staub** did not see this as being a problem at all, adding that it has been a topic of discussion. She added that law clerks answer to the judge, working very closely with that judge, and she believes that most law clerks view themselves as a separate entity from other county employees.

Senator Little asked about the handout from **Mr. Chadwick** and the handout from **Ms. Staub** referring to the District Court 2007 approved property taxes. On **Mr. Chadwick’s** the amount was \$532,000 and in her handout it shows \$406,498, asking for clarification in those two numbers. **Ms. Staub** answered that the \$406,498 was actually 2006 property taxes and said the expenditures cover FY 2007, but the revenue from property taxes is actually from 2006. **Senator Little** asked if it went up \$132,000 in one year. **Ms. Staub** said this was the “collected amount.” **Senator Little** questioned the significant increase from 2006 to 2007 and asked what would account for that. **Ms. Staub** said that she did not have the answer to that question with her, adding that health insurance alone went up over 10%. **Senator Little** said that the county does not have the ability to pass that cost on with the 3% cap, asking if that was true. **Ms. Staub** answered that the county can raise more money, as long as they stay within the 3% cap and the levy limit. **Senator Heinrich** said that he did not know for sure, but he said **Ms. Staub** said that the \$406,498 was “collected” and **Mr. Chadwick** has \$532,000 which he said is the amount to be levied against for the next year. He thought the actual levying amount is usually 10-15% less, believing that would account for some of it, but if all of the 3% is needed, the total property tax in total budget being 32% or \$8 million.

Representative Killen asked **Ms. Staub** if any of these numbers include debt service or bond funding buried in these figures. **Ms. Staub** answered “no, Bingham County has no debt.”

Representative Killen asked if there were debt service, would it appear in her numbers. **Mr. Dave Navarro**, Ada County Clerk, answered that question, saying that it would appear separately, not under any one of these funds, and a separate levy for that.

Senator Heinrich asked **Ms. Staub** if there were not levy limits, would she have three different columns on her handout, or could she just have one column. **Ms. Staub** replied that if there was

sufficient money coming into the district court fund, they would only have the one, but fines and fees do not support a \$2.3 million total expenditure. **Senator Heinrich** said that if there was not a levy limit on district court, **Ms. Staub** could have it all in one column, surmising that what **Ms. Staub** is having to do is manage into other authorized levying limit funds to manage business. He asked **Ms. Staub** if she could do it all in district court without a levy limit, since it wouldn't affect money received. **Ms. Staub** confirmed that to be correct. She said that historically, she believes all counties have to use more than just the district court fund.

Mr. Navarro was the next presenter, giving his perspective and a picture of Ada County's budget process, stating that they budget for outcomes, focusing on and identifying the needs of citizens. He focused on the fact that when budgeting for outcomes, strategies are adopted, and the Ada County Commissioners' number one strategy or priority was to provide for an efficient and effective judicial system, second was to provide public safety, third to ensure government efficiency, provide excellent public service, provide growth and resource management, ensure regional collaboration and cooperation, and support a healthy economy. Ada County wants to have less reliance on property tax dollars by cutting budgets and being more creative.

Mr. Navarro provided a handout which may be obtained from Legislative Services. He talked about property tax in Ada County in broad categories. Ada County has a district court fund that supports mainly the trial court administrator and services such as jury, security, and law clerks. When you look at the total amount to fund the system it is about 66% total property taxes, using 2007 data. He said that this year the district court fund no longer has a fund balance. **Mr. Navarro** said that the commissioners have to levy for the continued support of the district court fund, bumping it from 48% taxes to 62% taxes, just to maintain the same level of service, emphasizing that sometimes the numbers are moving targets, depending on revenues and fund balance. He called attention to the revenues from court fines, fees and forfeitures in the amount of \$2,013,278 (district court only); the property tax amount was \$22,862,403; other revenue (anything not property tax, fines, forfeits) amount \$3,682,507; fund balance \$5,911,143; total revenue being \$34,469,331. He stated that if there is a fund balance, they deplete that first, which he finds fair to the taxpayers, keeping a reserve on hand for "rainy days."

Senator Little asked what direction that district court fund has been going and **Mr. Navarro** answered that it has been going down. **Senator Little** asked about the 66% property tax, is that total number taken from the total 34%, so in essence it is really higher yet because that \$22,862,403 is out of \$29 million, so your property taxes are an even higher percentage if the balance sheet item is taken out of the income statement. **Mr. Navarro** said that was a perfect observation. He went over Ada County's expenditures, contract costs, operational costs, facility/equipment costs, pointing out that they do not charge the trial court because by statute they provide courtroom space, but he said the \$1,939,748 includes all equipment costs, and square footage costs in their new building, total expenditures being \$34,727,390.

Representative Killen asked about the expenditures and operation costs, and if there was any breakout showing allocations between civil and criminal. **Mr. Navarro** replied that it was about

a 60% criminal court and about 40% civil court, offering to leave that detailed data with the committee.

Representative Labrador asked if the court interpreter cost was a contract cost, believing that Ada County has a full-time interpreter. **Mr. Navarro** answered that under salaries there is one person in the district court fund that provides interpretive services. There is a contract cost above the personnel costs, clarifying that the court interpreter cost does not capture the total cost because it is under contract.

Senator Langhorst asked about the fund balance being added into revenue; if you took this out, he asked what would you take out from public expenditures to have this budget be balanced since it looks like you are spending all that this year. **Mr. Navarro** answered that there are actual costs being spent this year and the first part are projected revenues for taxes. He said that the rest is offset, emphasizing that the fund balance of \$5,911,143 is built into those five budgets and most of the carryover was for the general fund current expense, and trial court had a million dollar carryover. **Senator Langhorst** asked if that meant there would be no fund balance after this particular fiscal year. **Mr. Navarro** said that was not correct; he said the district court fund does not have a sufficient fund balance, and that they are supporting it more with property tax balance than fund balance, the general fund having a good fund balance. He projected the general fund is about \$3.9 million carryover to support these operations and another \$800,000 in the trial court.

Representative Bedke asked about the \$34 per citizen from Bingham County to run the courts, asking for a comparison in Ada County. **Mr. Navarro** did not have that calculation but offered to get that for the committee. **Representative Bedke** suggested that information would be helpful statewide.

Mr. Navarro then talked about trends including high gas prices, expensive jury lodging, speciality courts, pointing out that they were asked to enhance drug and mental health courts. The judges were already in place, as was the clerk, so since recidivism is down, it is a social service but tough to measure, adding that costs for public defenders and prosecutors are high. To expand the number of drug court cases next year in Ada County will cost \$112,000. **Mr. Navarro** said Ada County next year will have no mixed court calendars, meaning the calendars will be either all civil or all criminal, but that will mean a \$345,000 increase with regard to public defenders and prosecutors; to expand the mental health court for a part-time secretary and prosecutor the cost will be \$55,000. He emphasized that in larger counties it is important to budget for outcomes because as the courts do well and expand, counties must provide for that expansion.

Representative Clark asked **Mr. Navarro** to confirm the figure of expanding the mental health court and he said \$54,000.

Representative Luker asked **Mr. Navarro** from his perspective at the county level if he sees the impact of mediation decreasing demands for court services, and how that plays out in the budget.

Mr. Navarro answered that mediation definitely does decrease demand for court, but causes increases in other areas, so it becomes a balancing act. He said mediation certainly does help with trials, but incurs costs to provide for that mediator and space for mediation.

Representative Labrador commented that drug courts decrease the cost of the administration of justice, believing that to be true, but the numbers heard today are confusing. **Mr. Navarro** stated that drug courts reduce inmate costs in jails and prisons; however, drug courts require costs for public defenders and prosecutors, adding that the costs are more, but with great benefits.

Representative Clark stated that a juvenile incarceration costs \$67,000 compared to \$6,700 for that juvenile in drug court; for prison, the cost would be \$22,000 compared to \$6,700 for an adult in drug court.

Representative Labrador said that if we are saving on the one hand, then the county budget should actually be going down, asking if he was missing something. **Mr. Navarro** used district court as an example, saying that the change in calendars with nine district judges going to a full-time calendar, requires them to be in various places throughout the state, as well as an increased caseload, and thus increased costs. **Representative Labrador** said he was not looking only at trial court funding, but the overall budget, mentioning the jail budget, asking if drug courts are so successful, then he would believe that jail budgets should be going down and that the overall county budget should follow suit. **Mr. Navarro** said that everyone left off sheriff costs, adding that jail costs will go down.

Representative Bedke said that the committee's mandate was, among other things, "to shift or not to shift." He said things should shift when there are needs not being met; he asked what, if any, needs are not being met that could be met in Ada County if the Legislature decided to shift something around. **Mr. Navarro** said that needs are being met; what it means in Ada County is a reduction in property taxes, adding that Ada County is unique in that respect.

Senator Heinrich asked if it was a common practice in most counties to use a fund balance to fill out insufficient revenues. **Mr. Navarro** confirmed that to be true, adding that it is a significant part of the budget. **Representative Clark** said that is why it is allowed by law, up to a certain percentage.

Senator Hammond said that it appears to him, that sometimes through drug courts, savings are not achieved at the court level, they are achieved at the state level because drug incarcerations are declining so savings occur in other areas, asking if that were true. **Mr. Navarro** said that was a fair assumption, adding that savings are more for the state than for local governments.

Representative Clark pointed out four issues for the agenda at the next meeting:

- (1) Update on percentages of fines collected or not collected (Patti Tobias);
- (2) Update on the 68% ratio reflected in the 1993 study;
- (3) Impacts of drug courts, mental health courts and other speciality courts on the system;

- (4) Input from states that have already changed from a property tax system to a state system (Representative Clark said he has a contact thanks to Patti Tobias) at the national level and possibly even a speaker;
- (5) 1993 House Bill 458 – Review at the next meeting;
- (6) **Dan Chadwick** is going to develop per capita cost.

Representative Killen said he thought it was important to differentiate between civil and criminal because there are hugely different costs involved.

Senator Heinrich asked if **Mr. Chadwick** could get the committee a list of levies by county, what their actual levy limits are compared to statutory rates, and then requested a brief review from somebody who could explain the current practices of collection now. **Representative Clark** said this was number one that was talked about, the spread between what is not collected.

Representative Bedke wants to quiz the “poster child county or local unit of government” whose needs are not being met. He wants to hear from the people who are saying that this system is broken and don’t like the way the system is working today. If the state took a greater responsibility, how would that change things for that county or unit of local government.

Dan Chadwick stated that was not the question being posed as they went down this road (unmet needs). **Representative Bedke** believes that to be the charge of this committee, to shift or not to shift against this backdrop of unmet needs, economic development, property tax relief and improvement in the criminal justice system.

Senator Langhorst said he did not know the scope of the committee’s work and how many meetings are planned, but at some point he hoped to see any county official, clerks, budgeting, whatever, commissioners, to testify before this committee and they could share their ups and downs. Representative Clark suggested looking at the numbers first, then calling those folks in for the third time.

Representative Killen said that per capita in Valley County might be skewed and that perhaps court filings might be more significant, especially on the criminal side of things. He said that court filings could be way out of proportion to base population in some counties.

Representative Bedke said he was looking at the math on Bingham versus Ada Counties, asking if they were at the cap. He wondered, looking ahead, if we could end up in situations where something like indigent care or like the catastrophic fund could possibly become a safety net for these “poster children counties” and then step up at that level. **Representative Clark** said the committee won’t know that until information is gathered; at that point, the members will have a lot clearer picture of problem areas.

Mr. Chadwick pointed out that the committee has a copy of the district court levy and where counties are with regard to the cap, a copy of which is available in the Legislative Services

Office. He said that there are other levies out there such as the justice fund levy and the current expense fund levy. **Representative Killen** asked why there are thirty-five counties represented on the list. **Mr. Chadwick** said that not every county would necessarily be levied.

The next meeting was scheduled for August 7, 2008; there will be a working lunch for the members.

The meeting adjourned at 1:20 p.m.