

**SAN BENITO COUNTY  
BOARD OF SUPERVISORS  
REGULAR MEETING MINUTES  
MARCH 9, 2004**

The Board of Supervisors of San Benito County met in the Board Chambers on the above date in regular session. Supervisors Loe, Scagliotti, Monaco, Kesler and Cruz were all present. Also present was County Administrative Officer Terrence May, County Counsel Karen Forcum and Senior Board Clerk Linda Churchill. Chairman Bob Cruz presided.

**9:30 a.m. CALL TO ORDER:**

- a) Pledge of allegiance.
- b) *Upon motion duly made, seconded and carried, acknowledged Certificate of Posting.*
- c) **Public Comment:** There was no public comment.
- d) **Department Head Announcements:** There were no announcements.
- e) **Board Announcements, Introductions and Presentations:** There were none.

**CONSENT AGENDA:**

*Upon motion duly made, seconded and carried, approved Consent Agenda Items 1 through 13.*

**ADMINISTRATIVE BUSINESS:**

- 1) Approved budget augmentation for installation of San Benito County medallion to the Building & Grounds Maintenance budget #1001-160. (Management Analyst) *File #119*

**AGRICULTURAL COMMISSIONER:**

- 2) Approved agreement with Ryerson, Master & Associates re: San Benito County Agricultural Engine Conversions project with a contract term of January 6, 2004 through January 6, 2006. *File #1.1*

**AUDITOR:**

- 3) Approved Departmental Claims.

**CLERK OF THE BOARD:**

- 4) Approved the minutes of the meeting of March 2, 2004.

**COMMUNITY SERVICES & WORKFORCE DEVELOPMENT (CSWD):**

- 5) Adopted **RESOLUTION NO. 2004-20** Acknowledging The Celebration of Forty (40) Years Of Community Action Agency Programs. *File #939*
- 6) Awarded construction contract to Paul T. Beck Contractors re: rehabilitation work at the Unaccompanied Adult Farm Labor Camp. *File #750*
- 7) Approved agreement with Labor Consultants of California re: labor standards enforcement and review services related to rehabilitation of the Unaccompanied

Adult Labor Camp with a contract term of March 9, 2004 through December 31, 2004 and authorized CSWD Director to sign said agreement. *File #750*

HEALTH & HUMAN SERVICES AGENCY (H&HSA):

- 8) Approved In Home Supportive Services (IHSS) provider rates. *File #130.1*

MENTAL HEALTH:

- 9) Approved request to purchase used vehicle and amend FY2003/2004 Fixed Asset Schedule. *File #810*
- 10) Approved agreement renewal with Nusrat Malik, M.D. re: psychiatric evaluation services with a contract term of July 1, 2003 through June 30, 2004. *File #810*
- 11) Approved agreement with the State Department of Mental Health Services re: Block Grant reporting requirements with a contract term of January 20, 2004 through June 30, 2004. *File #810*

PUBLIC WORKS:

- 12) Approved amendment to requirements contract with LSA Associates, Inc. re: CEQA Compliance services extending the contract term to March 11, 2005. *File #105*

PLANNING DEPARTMENT:

- 13) Adopted **RESOLUTION NO. 2004-21** approving Certificate of Compliance 01-19 acknowledging five (5) legal parcels for T.M.V. Lands. *File #790*

**9:30 a.m. PUBLIC HEARING** (or as soon thereafter as the matter may be heard):

PLANNING DEPARTMENT - R. Mendiola:

- 14) **Hold public hearing to consider a resolution and an ordinance re: Amendment to Zone Change 90-80A to reconfigure and expand the existing Pacheco Creek Estates Planned Unit Development (PUD), in order to create four more 2-acre residential parcels, and to increase the size of the agricultural preserve parcel (Parcel A) from 23 acres to 38 acres. The project involves three parcels containing 47 acres and would require subsequent approval of a Lot Line Adjustment (LLA 03-435) and Minor Subdivision (MS 1139-03) to enact the PUD. Location: Pacheco Creek Drive (APNs: 16-06-46; 47; & 48). Applicant: Casa de Fruta Orchards. Zoning: Agricultural Productive/PUD.**

*(A request for continuance has been received from the Applicant)*

Susan Heiser, Senior Planner, came forward. Ms. Heiser reported that this was a request for zone change amendment to the original Casa de Fruta Planned Unit Development (PUD). Ms. Heiser stated that the Planning Commission heard this item on February 18, 2004 and recommended approval to the Board of Supervisors (BOS); however, there is one significant piece of information that the applicant needs to obtain before the BOS can hear this and the applicant has not had the opportunity to get that information yet and has asked that this item be continued to April 27, 2004.

*Upon motion duly made, seconded and carried, continued the public hearing to April 27, 2004. File #790*

**9:40 a.m. REGULAR AGENDA:**

HEALTH & HUMAN SERVICES AGENCY (H&HSA) - M. Coppola:

15) **Consider extension of the Agricultural Health Care / Chronic Disease Awareness project to June 30, 2004.**

Health & Human Services Agency Director Marilyn Coppola came forward. Ms. Coppola reported that this was a request for an extension of the Agricultural Health Care / Chronic Disease Awareness Project noting that this is a grant that we have been receiving which ended at the end of February this year. The funder, California Endowment, and our collaborators on this grant, the San Benito Health Foundation, have granted us a no cost extension on this grant and we have \$50,000 left of the funds that were awarded. Ms. Coppola said they planned to use those funds to continue the program through the end of June. In order to do that approval is needed for a budget augmentation. Ms. Coppola explained that they had not budgeted the whole amount because the grant ended in February and we didn't have exact expenditure data on how much money we had left. Ms. Coppola said that there is \$50,000 remaining in the grant that they would like to spend which requires an augmentation. Ms. Coppola also requested an increase in FTE's for Health Education Associates and that is to continue the existing staff in that program with these funds.

Ms. Coppola stated that this has been a really good program and we've done the outreach and the education and the Foundation has done the medical piece and the target population has been the agricultural workers and their families. Ms. Coppola said they have had a lot of success with this program and primarily the focus was Diabetes education and awareness and they identified a lot of people in the community that have Diabetes and it was undiagnosed. Ms. Coppola stated they are looking for funding from other grantors to continue something like this program.

Chairman Cruz asked if they had any information from potential grantors because this really does help the community.

Ms. Coppola said they had heard back from the California Endowment which was the original funder and they are not going to be able to continue to help out but there are couple of other feelers out but we don't know anything at this point. They are still working on it.

*Supervisor Kesler made a motion to extend the Agricultural Health Care/Chronic Disease Awareness Project including 1) Augment the H & HSA revenue \$50,000 (2214-424 Public Health Services); 2) Augment H & HAS expenditures \$50,000 (2214-424 Public Health Services); and 3) Authorizing increase of .625 FTE Health Education Associate I/II through June 30, 2004. Supervisor Monaco seconded the motion. The motion passed unanimously. File #420*

DEPARTMENT OF EMERGENCY SERVICES:

16) **Consider request to transfer vacant Emergency Medical Services (EMS) position from contract to employee status.**

Margie Riopel, Director of Emergency Services, came forward. Ms. Riopel stated that this was a request for a transfer of an EMS position that has contract status to a regular full time staff member. Ms. Riopel said that the position is now vacant and the transfer is being requested within the EMS budget unit. Ms. Riopel stated that she was seeking this transfer for three reasons. 1) The cost factor has been projected to be more expensive to hire a consultant; 2) There is less opportunity to interface with a consultant and provide direction and; 3) Because of the increased workload of the position.

Ms. Riopel reported that the duties of this position are defined within the report to the BOS and a job description is attached. The position was responsible for day to day

administration, clinical level oversight and policy direction for emergency response agencies and healthcare service organizations within the county.

Ms. Riopel further reported that the Human Resources Department has provided a salary range recommendation of 22.1 and that is only after an internal and external adjustment alignment study has been done and that study was provided in the report to the BOS along with the job description. The budget unit requires no General Fund contribution and it is funded entirely by CSA (County Service Area) and other outside revenues. Ms. Riopel noted that there was no request for additional funding for this position and the position can be absorbed through existing revenues in the budget unit. The full year cost of the salary can also be absorbed in the following years with the existing proposed budget and revenue and there will be no cost to the General Fund.

Ms. Riopel summarized the actions as recommended on the Agenda Item Transmittal.

*Supervisor Scagliotti made a motion to 1) Transfer the EMS position from contract status to regular full time status; 2) Approve the job description for the Emergency Medical Services Coordinator; 3) Amend the FY 2003/2004 Schedule of Authorized Positions to reflect and approve the addition of 1.0 FTE Emergency Medical Service Coordinator; 4) Amend the County Class Title and Pay Plan to add the Emergency Medical Services Coordinator Salary 22.1 at \$51,816 to a maximum of \$66,144 on the County's Salary Matrix; and, 5) Authorize the Human Resources Director to begin recruitment for the Emergency Medical Services Coordinator and authorize the Director of Emergency Services to appoint and fill the position subject to confirmation by the Board of Supervisors. Supervisor Loe seconded the motion. The motion passed unanimously. File #75.5*

#### ADMINISTRATIVE BUSINESS:

17) **Consider options for Indigent Criminal Legal Defense Services and provide direction to the County Administrative Officer. (CAO)**

CAO Terrence May provided background information stating that counties in California are charged with a state mandate to provide criminal legal defense services to indigent persons who are charged with crimes of misdemeanors and felonies. This is a county responsibility under state law and the county is liable to pick up the entire cost of providing for the defense of criminal indigents. Mr. May stated that we spend approximately \$600,000 a year in meeting this mandate to provide legal representation to indigent persons charged with crimes in the county. Of that \$600,000 expenditure we have a fixed price contract with Gregory M. LaForge, a former prosecutor from the District Attorney's office, for a fixed price of \$260,000 per year. That contract is now in the final six months of a three-year contract. Mr. May said that contract was awarded to Gregory M. LaForge by the Board of Supervisors (BOS) in 2001 following a competitive proposal process where the county solicited proposals from interested attorneys and law firms in the area to provide primary, and/or conflict-level defense services. Mr. LaForge's proposal was selected by the BOS as being the most responsive and a contract was awarded to him with an effective date of July 1, 2001 and that contract has a fixed price of \$260,000 per year. The balance of expenditures in the Indigent Defense Services Budget, which are approximated at about \$600,000 per year for total expenditures so the balance -- the difference between the \$600,000 and the \$260,000 that we pay to Mr. LaForge on a fixed price basis -- goes to things such as conflict attorneys in single party conflict cases or multiple conflict cases, as well as for certain extraordinary defenses including private investigator services and the use of court-appointed attorneys. Mr. May stated that Mr. LaForge's contract with the county is due

to expire this coming September 30, 2004 and he provides what we call primary indigent defense services to the county so that the majority of cases that the court assigns to the Public Defender are assigned to Mr. LaForge and he represents those clients.

Mr. May said that according to statistics provided by the Courts, Mr. LaForge handled approximately 700 cases in the past year. So if you were to look at the \$260,000 expenditure that works out to roughly \$300 per case. Mr. May stated that for the conflict attorneys that are appointed by the Court, which happens when there are two or more defendants in a case, the Court appoints conflict attorneys to represent those individuals because the same attorney cannot represent multiple defendants in the same case. The defendants may have a different interest. In the case of court-appointed attorneys that we are using now for first level and multiple conflicts the Courts pay the attorneys \$65 per hour plus certain incidental expenses. That of course is well below the going rate charged by attorneys locally, but, nonetheless it is a pretty significant cost when compared to what we pay per case to Mr. LaForge to handle the primary cases.

Mr. May stated that we are at a point now where the BOS is faced with several options. The first option would be to continue to contract with Mr. LaForge at a fixed price of \$260,000 a year, a price that has remained constant over the past three years. To solicit proposals from interested attorneys to provide first level conflict representation services, and the purpose of doing that would be to explore the possibility that the county going out to bid for those first level conflict services could save money, as opposed to continuing the status quo which is the court appointed attorneys at \$65 per hour. Mr. May stated that the idea with this option would be to continue the contract with Mr. LaForge on the same terms and conditions that now apply for a period of one more year and to solicit proposals from attorneys to provide first level conflict representation also for a period of one year. This would give us the ability to evaluate in nine or six months time whether that arrangement, the fact that we go out and contract with the conflict attorney, has made an impact in terms of significantly reducing our costs. Mr. May reiterated that the big cost factor in the indigent defense budget is not the primary contract with Mr. LaForge that is fixed at \$260,000 a year. It is the \$300,000 to \$350,000 worth of other expenses, most of which go to the conflict attorneys. Mr. May indicated that if the BOS were to proceed with this option then we would simply negotiate a one year extension with Mr. LaForge on the same terms and conditions in place now and there would be no increase in compensation. We would, however, go out immediately and solicit proposals to see whether there are local attorneys that would be interested in bidding on a fixed price contract to provide conflict attorneys. Again, after six to nine months we could see whether that approach has yielded any cost savings as compared to the current method of using court appointed attorneys who are compensated at \$65.00 per hour and expenses. This would then give the BOS the ability, later this year or early next year, to make a decision whether to continue with that arrangement or to solicit proposals for both the primary and the conflict level attorney services starting from July 1, 2005.

Mr. May continued by stating that the second option he was proposing would be for the County Administrative Office to develop draft request for proposals now and return to the BOS on March 23<sup>rd</sup>, or in early April, with proposals that would solicit proposals from any and all interested attorneys to provide both the primary level services that Mr. La Forge is performing now as well as to submit a proposal to provide conflict level services. In other words that option says we open the whole thing up -- the primary Public Defender or indigent defense contract as well as the conflict indigent defense services contract and see what is out there and see what would be the most cost effective proposal or combination of

proposals. It might be to continue contracting with Mr. LaForge as a primary Public Defender or to contract with another law firm to perform that service. Mr. May stated that also under this Option 2 would be that Monterey County, or for any other adjacent county, that would be interested in making a proposal to provide either primary indigent defense services or conflict defense services, or presumably both, could submit a proposal along with local attorneys that the BOS would be able to consider within the next few months and then make a decision as to who the BOS would want to award contracts to starting July 1<sup>st</sup>. Mr. May stated that Option 2 means that we would move now to explore the full range of responsibilities for the delivery of indigent legal defense services. This would include Monterey County being able to submit a proposal that the BOS could consider or any other county for that matter.

Mr. May noted that he had written a detailed and lengthy report to provide the BOS with as much background and historical information on this subject as possible. There are certainly other options that he did not include in his two recommended options that would be available to the BOS as well. One option would be to maintain the status quo which would be to continue the contract with Gregory M. LaForge and allow the court to continue to appoint attorneys to handle conflict cases, but again those conflict attorneys are compensated on an hourly rate plus expenses and are more costly than a fixed price contract. Another variation would be to take advantage of Government Code Section 27700 which would allow the BOS to go directly to Monterey County or another county and ask them to prepare a proposal for a contract for that County to operate our indigent defense services program for us. Mr. May said the BOS could do that without having to go out to bid because that is an option that is expressly allowed by state law.

Mr. May stated that there were preliminary meetings last year with the Monterey County Public Defender, Michael Lawrence, and he felt very confident that they could provide a high level of quality representation to clients in our county and that they could do so at a significant, but as yet undetermined, cost savings. The only hesitation here is that we have received communication from the judges, which are attached to the staff report, wherein Monterey County's proposal is predicated on them providing both the primary Public Defender service and the conflict defender service. Mr. May stated that the judges concern is that the so called "ethical wall theory" advanced by the Monterey County Public Defender to explain how their office could represent both co-defendants in the case without there being a conflict of interest is something that our judges have a certain degree of skepticism about. As they have stated in their memo their concern would be that if the County were to pursue that arrangement with Monterey County providing both levels of coverage, that co-defendants who are convicted here could potentially appeal their cases to a higher court that would throw out the so called "ethical wall theory" and a number of our cases could be overturned on conviction. This is sort of an extension of the argument raised about the Brady issue that we heard about before where certain alleged improprieties and how previous cases were prosecuted could result in those cases being open to appeal now. Mr. May noted that the judges haven't said that no way they won't consider it, but, they have expressed some concerns. So if the County were to go with Option 2, which is to say that we will put the whole thing out there, the primary coverage and the conflict attorney coverage, for any and all interested parties to submit proposals for Monterey County, or any other county, would be welcome and encouraged to submit proposals and those would be brought back to the BOS to consider.

Mr. May asked if there were any questions that he could answer.

Chairman Cruz asked about the caseload from Day 1 three years ago. Chairman Cruz asked about the crime rate and how high has it gone from three years ago when this contract was awarded to Mr. LaForge and up to the present time.

Mr. May said he has been getting that information from Alex Calvo, the Chief Executive Officer of the Court, because he felt that for any attorney or for Monterey County to be able to submit a realistic and responsible bid, they would need to know what level of resources they would have to commit to adequately perform the functions of crime and conflict representation. So it would be the objective of the CAO to accumulate that information and include that in the body of the request for proposals so that everybody would have access to that information. Mr. May stated that according to the Court Executive Officer, who he talked with on very general terms, indicated that the workload has been fairly constant over the past several years. Mr. May further stated that he dug up some information yesterday from Mr. Calvo that shows that Mr. LaForge took on about 700 cases during the past year and that includes a mix of felony cases and misdemeanor cases. Mr. May said he did not have the breakdown of the two types of cases, but felt he could get that. Generally more time is spent preparing for felony cases.

Mr. May further stated that Mr. LaForge had indicated that in the past, and he wasn't sure whether this was a nine month or one year period, but, he has had to conflict out of 17 cases because the clients were defendants that he had previously prosecuted as a Deputy District Attorney. But, that 17 represents a very small number out of the 700 cases assigned. Mr. May said that we knew going into the contract with Mr. LaForge that having had a long career in the District Attorney's Office as a prosecutor that there would be situations where he would ethically have to conflict out of a case because he would be called upon to represent a previous defendant that he had prosecuted although the expectation would be that the number of those types of cases would diminish over time because time has elapsed since he was a prosecutor. Mr. May said that certainly the fact that he was one of the senior prosecuting attorneys in the District Attorney's office was given to the BOS at the time the contract decision was made three years ago that he had considerable knowledge and expertise and could provide for effective, competent, ethical legal representation of indigent clients.

Chairman Cruz said that as time goes on the number of 17 cases should go down. Chairman Cruz stated that one of the figures Mr. May had given was 100 cases per month and that amounts to 1200 per year.

Mr. May said that he had only briefly looked at some statistics that Mr. LaForge had provided and actually the cases that he is assigned do vary on a monthly basis and so Mr. May has a year's worth of data and that is the information that he had to work on when he prepared the BOS letter. Mr. May said that yesterday (March 8<sup>th</sup>), however, he had received information from the Court Executive Officer showing that within the past year there had been 700 cases. Mr. May said he would have to reconcile those numbers.

Supervisor Loe said that Mr. May had mentioned that there were 17 cases because of conflict and asked what happens when it is not the immediate case that maybe he prosecuted, but, maybe it is the same person. Supervisor Loe asked if there would always be a conflict because he prosecuted this person.

Mr. May answered that it was his understanding that it was based on the individual. If the defendant in a case now was previously the subject of prosecution by Mr. LaForge then he would have to disqualify himself from representing that client.

Supervisor Loe said then it doesn't matter what the actual case was. It is the person that triggers the conflict.

Mr. May answered yes that was his understanding and that over a nine-month period the total of such cases amounted to 17. Mr. May stated that the conflict cases arise when there are co-defendants charged in the same crime. For instance if six people robbed a bank and four of those people stole the car then each of those defendants is entitled to separate representation. Mr. LaForge can represent one of them, but, the other defendants have to be represented by separate counsel and the current practice is for the judge to assign counsel in those cases and those attorneys are compensated at the rate of \$65.00 per hour plus incidental expenses. Clearly those costs are more on a per case basis than if you were to take LaForge's fixed price contract, which is \$260,000, and if you use 700 cases as having been his caseload in the past year then you are looking at somewhere in the neighborhood of \$400.00 per case.

Supervisor Monaco asked about the issue where both judges have raised a concern on the "ethical wall". Supervisor Monaco said he was concerned that as expressed by judges there is a concern that we could enter into an arrangement which would have the appearance of being less expensive and have no way of really of assessing the possibility that it could become very expensive. Supervisor Monaco said he would like some clarification on the issue of the "ethical wall". Supervisor Monaco said he understands that it is basically to keep separate but he can envision who would oversee that or who would assess that and that was his concern.

Mr. May said he could follow up with the judges and try to restructure the question. Maybe we could be more point blank and ask whether the idea of having Monterey County be both the primary Public Defender and the conflict Public Defender would be entirely unacceptable to them or whether they would be willing to consider it, but, provided first that they look at the mechanics and the structure of how Monterey County proposes to do that. Mr. May said that at this point they haven't seen a proposal from Monterey County setting forth in detail how that would work so that may be something that they would want to look at. Mr. May said the judges did suggest that even if the County went ahead and did that they didn't necessarily have an issue with it. Their concern was that in cases where there are co-defendants who are convicted that those convicted co-defendants could have an argument that they could present to a higher court on appeal and have their convictions overturned. That is where they are saying that if that happens, in the long run, it could be more costly. Mr. May said he could certainly attempt to get more clarification from the judges on that issue as to whether it would be a make or break.

Mr. May further stated that Monterey County, for all he knows, may be willing to submit a proposal that would give the BOS the option of contracting with them for primary services only and he thinks that in either case our two Superior Court judges would have no problem with that. Again, their concern is that if Monterey County were to propose, as they did last year, to perform that dual function.

Supervisor Monaco stated that it seemed to him that we don't have real clarification of how much this would cost if we contracted. It seems as though Monterey County has said we can save you money but we don't know how much it is going to cost and ultimately without having clarifications of these issues it could wind up costing us more money.

Mr. May answered that in fairness to Monterey County they were given very preliminary information by us last year because we really haven't accumulated a lot of detailed caseload and workload figures. That is mostly maintained by the courts, but, it is not that easily retrievable. Mr. May said that last year when we talked to Monterey County it was a very preliminary kind of a discussion and they looked at some numbers based on caseload information that we had and they felt that they could provide the two services to us



at significantly reduced cost. Mr. May said in particular, he thought their position was that it may cost us more to provide the primary Public Defender contract than what the County is currently spending; however, if we do that and the first level conflict portion of it, that is where we can save the County significant sums of money over and above the additional cost of providing the primary service. Mr. May said they didn't commit to a certain dollar figure because at the time it was very preliminary and there were some unknowns out there. Mr. May said he felt they were waiting to see how serious San Benito County was about considering contracting with them before they would actually expend a lot of effort in putting together a very detailed and precise proposal; and, at the time we indicated to them that we were already in the second year of a three-year contract so we wouldn't be in a position to make a move until this year.

Mr. May said that if the BOS were to go with Option 2, which would essentially open this whole process to attorneys, local and out of town, and Monterey County to submit proposals, then all of the various parties would be put on the spot to develop a pretty thorough proposal and give us a firm cost estimate and we could then compare the costs.

Supervisor Monaco said if we went with Option 1 we would still have time to provide service but also explore the possibility of looking at other options.

Mr. May said that was true. Option 1 is kind of predicated on getting off to a late start and part of the reason for that is that we have had a turnover in the County Administrative Office. Gil Solorio left in early January and he (Mr. May) took over and he has not backfilled his position so we haven't been able to move as quickly as we would like. Mr. May said he felt it was true that we are spending roughly \$600,000 a year on indigent defense services. The piece of it that we are spending on LaForge's contract has been a fixed price all three years and he would continue on the same terms and conditions for a fourth year. That cost is fixed at \$260,000 and it represents the majority of the cases that are assigned to indigent defense. It is a fixed cost and we know what it is and it is contained. Mr. May stated that what we don't have any control over, or little control over, are the assignment of the court of local attorneys to handle first level conflict cases and multiple defendant conflict cases and in those cases where the court appoints those local attorneys they are paid at the rate of \$65.00 per hour. Mr. May said that if we were to look at what it costs for a court appointed conflict attorney to handle a case being compensated on an hourly basis it is significantly more than taking LaForge's fixed price of \$260,000 and divide that by roughly 700 cases for an average cost of \$350 or \$400 per case. In other words LaForge's costs have remained constant over three years, but, it is the other costs for conflict attorneys, extraordinary expenses such as expert witnesses and consultants that we have to bring in to testify, lab tests, private investigator services – that is really where we see the fluctuation and the year to year increase in cost. So the theory behind Option 1 is why don't we take a look at this conflict component and see whether if we go out to bid we can get somebody in the community, or Monterey County, who would submit a fixed price proposal to provide that service and then we would be able to contain that cost. We would be able to see six or nine months down the road whether we have achieved any kind of significant cost savings or not and to see whether or not that is the solution to our problem. Mr. May said he was proposing that in that scenario we would extend the contract with Mr. LaForge for only one year and that if we select a contract attorney to handle first level conflicts that would also be a one-year contract. Again, this issue would come back later this year, or earlier next year, and we'd have some track record behind us to see if that made any impact on containing costs. At that time the BOS can decide whether to continue with that arrangement if it

appears to be working, or the BOS can say to the Administrative Officer go ahead and put together the RFP's and let's solicit proposals from everybody for both services.

Mr. May stated that admittedly in his case, and because of this late date and because we are working on a budget right now and he didn't have an assistant working for him at the time, it was going to take a lot of effort. Mr. May stated that he did not want to use that as an excuse and if the BOS wanted to put this out to bid and get proposals now then he is perfectly willing to expend the time and energy to do that. Mr. May said if the BOS thinks that Monterey County is worth considering and believe there is a potential for cost savings there and want to explore that potential now then we can get those proposals out there and Monterey County can have a shot at it as well as other local attorneys and Mr. LaForge and out-of-town attorneys.

John Sarsfield, District Attorney, came forward and handed out a memo to the Board of Supervisors along with a report. Mr. Sarsfield noted that this was additional information to go along with the letter he sent yesterday. Mr. Sarsfield stated that Mr. May was correct in one sense that the county is responsible for providing indigent legal defense services. The current practice that we use here today in San Benito County is that we contract those services out to the private law firms (Mr. LaForge's firm) to provide those services. Mr. Sarsfield said that his own office was not requested to provide statistics so he took the liberty to do that. One of the questions the BOS wanted to know is how many cases we handled. The last calendar year we handled roughly 2400 new cases charged. There are old cases that are still in the system on top of that. Mr. Sarsfield indicated that in the packet there is a copy of the current contract that is in effect. There are breakdowns on the budget submitted for payouts under fiscal year 2003 and the current numbers to date. Interestingly it appears that the Public Defender services contract account is going to bust its budget this year if it remains on current track. It is approximately \$30,000, at least, based on expenditures and while that is no one persons particular fault it is something that the BOS needs to consider.

Mr. Sarsfield went on to say that in California the law provides several ways to provide Public Defender services. One way is to have the current situation in which we have a private law firm handling these cases. Another way to do it is to have a true Public Defender's office. Mr. Sarsfield stated that Public Defenders are defined by Government Code Section 27700. The authorization to have a Public Defender is by 27700. There are two types of Public Defenders in California according to law. One is to have an elected Public Defender, which we do not have here and some counties do have that, and the other is to have an appointed Public Defender. An appointed Public Defender is required by law to be an at-will employee of the BOS. He or she answers to the BOS just like any other at-will department head such as the County Counsel or OES or whomever. They are given a budget and they are required to operate within that budget and they are providing services that bring credit upon the County and do the best to provide services and has the fiscal authority of the County imposed upon them. Now if there is a case, where as a matter of constitutional right, they are required to expend additional funds to defend their clients then they are entitled to do that just as a matter of constitutional principles. If he were required to spend additional moneys to criminally prosecute a case that was an unforeseen, unanticipated budget then he would be able to do that as well. Mr. Sarsfield said that the point is that you have somebody that you can hold accountable for cost overruns, for quality of services delivered and the like. This type of scenario is used by a majority of counties (roughly 60% to 65%) in California and the reason for that is because in the long run it saves a lot of money.

Mr. Sarsfield said that one of the options that Mr. May presented that he agrees with is Option 2. We need to have hearings meaning the BOS. Mr. Sarsfield said that his office can provide the BOS with estimates on the total number of multi-defendant cases filed last year. We can do a screen by policy report number. Mr. Sarsfield said he could tell the BOS with some certainty that it was 200 or 300 cases whatever the amounts would be. We can tell you approximately how many strike cases were filed. The strike cases are the types of cases that a former prosecutor might have a problem with because if he were alleging that somebody was prosecuted earlier and we are using that to enhance their sentence then it might be an inappropriate representation currently. Mr. Sarsfield said that scenario doesn't come up that much and the number 17 was batted about and that is probably accurate. But, there is a lot more information that can be provided. We can give you the total number of cases filed within the last three years and we can provide those numbers relatively easy and had he known that we were going to have this hearing he would have had that information for the BOS. Mr. Sarsfield said they track by calendar year and in the last calendar they did about 2400 criminal cases.

Mr. Sarsfield continued by stating that the first level Public Defender services contract pays the contract holder approximately a quarter of a million dollars a year, more or less, to handle approximately 800 year. Mr. Sarsfield noted that his top level Deputy District Attorneys doing the same caseload get about \$85,000 a year. Mr. Sarsfield said that was something to think about. There has to be some equity in the system. Additionally, and he understands that there are overhead costs and that sort of thing, but that is something that you need to know when making a decision on how to proceed here. Additionally, if you are going to create, or consider the creation of a true Public Defender's office, there are two ways that you can do it. You can have a stand-alone San Benito County Public Defender's Office or you can have a merged Public Defender's Office just like you have a merged Veteran's Services Offices and just like you have a merged Child Support office. You have merged the Child Support Office with Santa Cruz and he assumes that it is working quite well as he hasn't heard any complaints. Mr. Sarsfield said he knows that the Veteran's Services office is working reasonably well. So these are possibilities and under that scenario you would have somebody who would be standing here in front of the BOS at budget time, or at cost overruns, explaining why they did what they did. This gives the BOS much more ability to control expenditures in the Public Defenders contract. Mr. Sarsfield stated that the law does not require that the County spend unlimited amounts of money defending people. That is not the requirement under the law. The law requires that you provided a reasonable, competent defense. This doesn't mean that Public Defender's offices cannot suffer budget cuts just like everybody else. Mr. Sarsfield stated that his office lost a position last year and he now has nine people working for him. The County Sheriff has lost people and OES has lost people. Others have lost people because there is a hiring freeze. There is only one area of the County budget, as far as he knows, that has not suffered like budget cuts, and that is the Public Defender's service contract. There is no reason why law enforcement should have to suffer and yet the Public Defender's services contract providers be immune to that. That is just basic fairness.

Mr. Sarsfield further stated that additionally the contract itself should have a couple of things included and there are things that should be looked at. One of those things is the idea of sub-contracting. The fair interpretation of the contract is that the duties should not be sub-contracted so in order for the BOS to make an informed decision as to whether to continue with the existing relationship with this service provider or not then we need to find out how many cases have been sub-contracted or handed out and in the situation where

cases are sub-contracted or passed on to other attorneys – are they being done with the idea that these attorneys are employees being paid for the contract holder or are those attorneys then turning around and billing the county directly for those cases. Mr. Sarsfield said we don't know and we need to get the Auditor in here and tell the BOS because those are serious questions that need to be answered and we have absolutely no idea when that is being done. If you have a Public Defender office holder then the BOS would know the answers to those questions.

Mr. Sarsfield continued by stating that he was also concerned about what happens when the court appoints attorneys for second or third level conflicts. It is no secret that there has been some bizarre activities by County paid attorneys in the past. They are not employees to be sure. But, they are acting as agents, or least contractors of this BOS and he referred to the Orabuena case where deputies in his (D.A.) office were accused of crimes that they did not commit and one particular deputy was accused of tampering with a piece of evidence pertaining to the Solorio case (that is where Greg Thul was thrown through a window). One of his deputies was accused of tampering with a video tape which they had to take to the F.B.I. lab to show that it was not true. They had F.B.I. reports filed against them because of those baseless allegations. In the Orabuena case, the unfortunate homicide where Judy Ryder's brother was killed, his deputies were called or impuned to be racists because they were prosecuting somebody who killed somebody. Mr. Sarsfield stated that these were all cases that the BOS were paying the attorneys to represent. No responsible or reasonable Public Defender's office would allow that sort of conduct to happen. Mr. Sarsfield stated that we have a circus-like environment created because of this and if you have a Public Defender's office you would be able to corral this sort of conduct and protect the employees that work for the BOS. Mr. Sarsfield said that the BOS have an obligation to protect those people from baseless claims and this sort of harassing conduct; and, right now the current situation doesn't allow for that. Mr. Sarsfield stated that all he was asking for are full hearings. That is all he wants. He doesn't care what the BOS openly decides, but, the rough estimates and the amount of money that can be saved by a proposal by Monterey County or Santa Clara County, Siskiyou County – he did not care who. But, it looks like we could save about \$100,000 per year and that is a lot of money. Mr. Sarsfield stated that \$100,000 could get him another Deputy D.A., or get another two teachers, or a public health nurse. Mr. Sarsfield said these are Union jobs that we are talking about. Right now these jobs are being outsourced. Those are jobs in the Public Defender's offices that are done by Union members and they are not being done by Union members when they could be. It is in a rare alignment of the planets where the taxpayers win, the clients win and the Union workers win and that is what we potentially have here. Mr. Sarsfield said he felt that the idea has merit and needs to be explored and all he was asking for is that the BOS hold full hearings.

Mr. Sarsfield continued stating If there is a question about the legality of the Monterey County proposal in regards to having primary office and an alternate office then ask Ms. Forcum to research it. Mr. Sarsfield stated that it was wholly inappropriate for judges to give legal advice. They are not allowed to do that. They are judges and they don't get to give legal advice. If there are questions, then ask Ms. Forcum. She is an excellent attorney who will research it for you. Mr. Sarsfield said there are cases, and he would provide this to Ms. Forcum, that directly deal with the issue raised by Mr. May in regards to impermissible conflicts and the courts have said that it is perfectly fine. But, if there is a question ask Ms. Forcum to research it and we work with her and give her all of the

information that we have and she can give the BOS a definitive answer as to whether or not it is appropriate.

Mr. Sarsfield further stated that it is the same Court of Appeals that oversees Monterey County that oversees San Benito County; and, if the Court of Appeals hasn't said that Monterey County has a problem then there is a really good chance that we won't have a problem either. It all goes to the same place.

Mr. Sarsfield noted that he provided the total number of court trials that were done in the last calendar year and the total number of jury trials by attorney. This gives an idea of how many cases are actually going to trial. The vast majority of cases, roughly 99% end up with a guilty plea or no contest. Mr. Sarsfield asked that these numbers be considered.

Mr. Sarsfield stated that some of the conduct that we talked about on these County paid attorneys creates a circus like atmosphere and some of it borders on the outrageous. Mr. Sarsfield indicated that it showed in his report that one attorney was actually impersonating a member of the D.A. Office and the BOS is paying for this. Mr. Sarsfield noted the police reports (and he was not going to mention names) where actually a report was taken and was submitted to the Attorney General's office for prosecution. They declined and it is their right to decline if they choose to. Mr. Sarsfield reiterated that this was the kind of service that the BOS was paying for.

Mr. Sarsfield stated that he was concerned about the use of the title "Office of the Public Defender". Mr. Sarsfield said that when he does something on behalf of the County he is obligating the County to back him up and they are liable for the things that he does well and the things that he does not so well. When you have private vendors essentially high-jacking the county seal and the county title they are exposing this county to a potential liability and something needs to be done about this. Mr. Sarsfield pointed out that there was letterhead where the county seal is being used with the term Office of the Public Defender. Mr. Sarsfield stated that there is no Office of the Public Defender and Mr. May would verify this. There is no official, sworn in to uphold the law, answerable to the BOS as an at will employee who is the Public Defender. Mr. Sarsfield went on to say that it was his understanding that County Counsel requested that the practice cease and it was ignored and has continued on. And, in fact, another rung of letterhead indicating, erroneously, that the service provider is a county official has gone out. Mr. Sarsfield stated that this is the type of conduct that would not be tolerated if we had a real Public Defender's office. Mr. Sarsfield said it is not a reflection of the quality of legal services being provided because he had no comment on that at all. But, he felt that the BOS needed to know the full picture of what is going on here and the only way to find out is to have full hearings. Mr. Sarsfield stated that to simply blankly say that you are going to extend a quarter of million dollar contract plus another \$350,000 for incidentals for another year just because we are short staffed he felt was irresponsible. Mr. Sarsfield stated that he was short staffed too. He is supposed to have nine attorneys according to the workload and he has three. Mr. Sarsfield stated that no one is more short staffed in this county than himself.

Mr. May said there were four attorneys asking Mr. Sarsfield wasn't he an attorney.

Mr. Sarsfield said besides himself and that is what he said. Nobody is more short staffed than his office. Mr. Sarsfield said that they were prepared to pass out all of the information that the BOS may request so they could make an informed decision. But, what is going on right now isn't working and there has to be some accountability if you are going to hold law enforcement accountable for cost overruns then the BOS needs to hold the defense accountable as well. That is basic fairness and basic fiscal responsibility. Mr. Sarsfield reiterated that all he is asking for is that you have an open mind and you hold

hearings. That is all he is asking for and what the BOS decide after that is their business and he knows that they will do the right thing but they cannot make this decision without all of the information.

Mr. Sarsfield asked if there were any questions.

Chairman Cruz said he didn't want to put Mr. Sarsfield on the spot but asked if Mr. LaForge was doing a good job for District 5 which is 74.6% Hispanic as far as his constituents were concerned.

Mr. Sarsfield said he was not in a position to say, but, if Chairman Cruz wanted an answer to that question then he should probably contact the Sixth District Appellate Attorneys in San Jose. They oversee cases that come on appeal out of this county. They can give opinions as to the general quality of legal defense services in this county as compared to other counties in the region that all go to the same Court of Appeals.

Mr. May stated that maybe Mr. Sarsfield could make his position more clear to the BOS because yesterday morning Mr. Sarsfield told him in very clear and certain terms that whatever the BOS and the County does the "quote unquote" status quo is not acceptable to him. Mr. May asked Mr. Sarsfield if he would stand by that statement now?

Mr. Sarsfield answered that yes the status quo is not acceptable in the sense that the circus-like atmosphere that is going on is getting to the point where his employees are being impacted and it is just a matter of time before stress claims and the like will be coming in. Mr. Sarsfield said that when his attorneys and his employees have to start consulting private attorneys as to whether or not they should bring slander actions and liable actions against these people that the County is paying for to provide services then that is an unacceptable situation.

Mr. May said then was Mr. Sarsfield saying that the BOS should not consider continuing a contract or inviting a proposal from Mr. LaForge and that the court should not appoint Harry Damkar or Mr. Art Cantu as conflict attorneys and did he have a problem with that.

Mr. Sarsfield said that was not what he was saying. The court has the power. In the absence of county action the court can take power and can take action.

Mr. May said that is what has been done and was that not acceptable to him.

Mr. Sarsfield said if Mr. May would let him finish what he was asking was that the you hold hearings and that is all he was asking for. What you choose to do after you get all of the information is your business and he would support whatever decision that you make, but, what he was asking for is that you hold hearings and you can have all of these questions answered. Mr. Sarsfield said what he did not accept, of course you could do it anyway, but, what he finds unacceptable is taking action in the dark. There are too many unanswered questions that need to be looked at. First of all this is a lot of money we are talking about here and it is not fair to his employees that they have been subjected to the type of conduct that we all know has been going on.

Mr. May asked what was that conduct?

Mr. Sarsfield answered that it was impersonating members of his staff. He has one deputy who was threatened and it was sent to the Attorney General for review and he didn't know what was going to happen to that case. There have been accusations of racism and other types of liable and slander and that is the type of conduct that he is referring to. That is to say the least a hostile work environment.

Mr. May asked was Mr. Sarsfield saying then if the BOS decided to continue that arrangement after holding public hearings you would have no problems at that point?

Mr. Sarsfield answered that he was saying that he would support the Board on whatever decision it is they make if it is an informed decision. Mr. Sarsfield said it was not his place to override the decision of the BOS and nor would he attempt to do so. He is asking, and that is all he is doing, and he knew he was doing it forcefully but this is important to him and his employees.

Mr. May asked if he felt it was the District Attorney's role and responsibility to select his opponent in the courtroom.

Mr. Sarsfield said he was not selecting his opponent, as you know.

Mr. May asked if he thought he was trying to influence the Board's selection of an attorney to go against him in the courtroom.

Mr. Sarsfield said he was a resident of this county and his office has to interact with these people more than anybody and he finds it frankly peculiar that everyone in this county was consulted except his office.

Mr. May said then did Mr. Sarsfield feel that his office should weigh in heavily on who opposes him in the courtroom?

Mr. Sarsfield answered no. What he was saying was that his office has information that we could have provided to this BOS.

Mr. May stated that Mr. Sarsfield came in to his office on Friday, January 9<sup>th</sup> and told him that it was not acceptable for this County to employ any of the people that are currently opposing him in court. Mr. May stated that Mr. Sarsfield said to him that he didn't care who he appointed, whether it is Monterey County or it could be any other county in the state, but, it better not be LaForge. It better not be Cantu. It better not be Damkar.

Mr. Sarsfield stated that was not what he said.

Mr. May stated that was exactly what he said.

Mr. Sarsfield said then we have a disagreement as to what was said.

Chairman Cruz said he was letting this go on here because the BOS has a big decision to make. Chairman Cruz said he was interested in local people here in the County, and he didn't care who they are, and are they getting a first class treatment. Will this get better by going to Siskiyou County, or wherever? Are our locals that are living in San Benito County – and everybody gets in trouble once in a while –are they getting the best treatment?

Mr. Sarsfield said that was a fair question. Let's have hearings and find out.

Supervisor Loe asked Mr. Sarsfield about what he has mentioned several times about holding hearings. Are you actually talking about the budget process hearings or do you want these hearings expanded?

Mr. Sarsfield said it didn't matter to him. It is whatever the BOS thinks is appropriate. He did feel that the issue needs to be addressed though as to what way the County wants to go. Mr. Sarsfield said that what he said, before he was interrupted, he will support whatever decision the BOS makes, but, he would hope that they would like to make this decision on a fully informed basis. You may conclude that the status quo is fine but you have not had a chance to hear all of the information and that is all he was asking.

County Counsel Karen Forcum asked a question for clarification. She also had the question as to the purpose for the hearing. Would this be to further explore the options for this service?

Mr. Sarsfield answered yes.

Supervisor Monaco asked if we extended the contract for a year, couldn't we continue with that same process concurrently to explore those options?

Mr. Sarsfield said that question would be better directed to County Counsel or to Mr. May.

Supervisor Monaco said he would direct the question to Mr. May then. If we continued this contract for one year, couldn't we concurrently go along and continue with some kind of investigation as to cost savings, services, etc.?

Mr. May answered absolutely we could. That would be an option, or as Mr. Sarsfield suggested, and he himself also suggested as one of the options, that you could put the whole thing out there right now and ask any and all comers to submit proposals. But, I am telling you that in conversations that he has had with Mr. Sarsfield who yesterday morning said to me that the status quo is not acceptable. On January 9<sup>th</sup> Mr. Sarsfield came to my office with a letter requesting to add four attorneys to his staff which, of course, would affect the Public Defender workload, and Mr. Sarsfield told him at that time that Art Cantu, Harry Damkar and Gregory LaForge have to go and that is exactly what Mr. Sarsfield told him.

Mr. Sarsfield said he was not going to argue this. That is not what he said. We had a discussion about Public Defender services contract and this is not what he said.

Mr. May said Mr. Sarsfield came in and told him what was acceptable to him.

Chairman Cruz said he wanted to stop the discussion at this point.

Mr. Sarsfield thanked the BOS and appreciated their attention and stated that he did not want the BOS to misunderstand his zeal over this issue for any sort of anger towards the BOS because that is not the case at all. Mr. Sarsfield said he was trying to stand up for his employees who are being unfairly smeared and it needs to stop.

Joel Hill, Field Representative for SEIU, came forward. Mr. Hill stated that SEIU feels that the BOS does need more information and when considering these options he realizes that the BOS does have a tough decision. Looking at saving the County money and still maintaining quality service is important and obviously should be the principal factor when considering this; however, SEIU also wants to make sure that any decision regarding this issue does not mean the loss of jobs and if anything we would like to see a proposal that creates jobs. Mr. Hill said they believe that the best service provided is service provided by county employees, not the private sector. Contracting out does not give the BOS the control that they need. Mr. Hill stated that District Attorney Sarsfield has assured them that the intent behind his proposal is to address all of these concerns and we hope that the BOS will take into consideration SEIU's concerns as well as Mr. Sarsfield's when making this decision.

Supervisor Loe asked if Mr. Hill was talking about jobs in Monterey County or was he talking about opening up our own Public Defender's office in San Benito County. What are you specifically talking about?

Mr. Hill answered both. SEIU represents both counties and there are 7000 people. In their opinion from that aspect Union jobs are Union jobs and your public sector jobs as far as the people – some people look at it as Union jobs, but, these people are your neighbors. They live here and work among you and it is not just a Union issue.

Supervisor Loe said then he was basically saying we could even be looking into a Public Defender Office within San Benito County.

Mr. Hill answered that was right.

Chairman Cruz asked if there were any further comments from the public. Hearing none he brought it back to Board level.

Supervisor Monaco said he doesn't understand the conflict we are talking about here. His concern is it would disrupt services and if we can avoid doing that he would support that. It seems that what has been discussed with Option 1 is to continue with the existing contract for one more year and then taking that opportunity to explore the other possibilities that we may find such as cost savings or whatever else. Supervisor Monaco said that it was his concern that he hasn't been given a clear picture of how much money we are going to



save. No one has come up and said this is what Monterey County can provide for x number of dollars so he would prefer to look at this more carefully without disrupting what we already have in place.

Supervisor Kesler stated that to her this was a very confusing situation and she is not ready to stick her neck out there to say yes or no at this point.

Supervisor Loe said she really believes that what we heard this morning just shows the complexity of this whole issue and that we actually have to go into to deep studies on it. Supervisor Loe said she felt it was almost time to look into a Public Defender's Office right here in San Benito County. Supervisor Loe said she didn't know if that was financially possible and she doesn't know if that would save us money or not, but, she felt that they must look at all options.

Chairman Cruz stated that after hearing the conversation here he personally felt, and he was directing his comment to Mr. Sarsfield and Mr. May, with some of the comments that happened here this morning which he let happen because he wanted it to come out because that is the only way to find these things out. It is hard to sit here and say okay let's do this and we are going to save money, but, at the same time if these statements were made and if it did happen that in doing this we are going to save the County money that we desperately need, but, it meant cutting people out and names were used such as Harry Damkar, Art Cantu and LaForge, then he can't make a decision with that hanging over his head. Chairman Cruz directed to Mr. May that he would like to get more information and he wishes that he had that information in front of him. We have all different kinds of information here and Mr. Sarsfield's information that stated 2400 cases that were prosecuted. Chairman Cruz said he realized that the District Attorney's staff had been cut and he did know that he was short staffed when Supervisor Cruz first came aboard. Chairman Cruz said he also realizes that the Sheriff's office is short staffed and he has taken all that into consideration. But, 2400 cases and the Public Defender has looked at 1200 cases and his average is \$217 per case versus \$65 per hour and knowing that hours can add up pretty fast and you can really make up a lot of difference on that \$217 per case. The bottom line is that he would like to see a little more study on this. The main thing he would like to see is taking care of our people here. Yes, we could go to Monterey, Santa Cruz or whatever county, but, can you really come here and prosecute a case and then jump in your car and go home and then that case is over. But, when you are here, and we live here just like the District Attorney, or the Sheriff or the BOS, and we can't go anywhere because we live here and have to stay and take the criticism. This is a big decision and if we save a few bucks whose heart is really going to be in it when they go in and face a judge to protect one of our locals who was born and raised here. Chairman Cruz said yes, when you take the oath of office, it says you will protect everyone but personally he would like more study on this.

Supervisor Loe said she had more questions than answers at this point and she would really like to expand on what we are looking at and she wants to know financially what we are talking about and she didn't know if we could get it done in the next six months and that was her truthful opinion.

Supervisor Monaco directed his statement to Mr. May that without disrupting this process it seems to him that if we continue this contract for a year we would buy that much time to explore this without being disruptive. Supervisor Monaco asked Mr. May if this was an accurate statement?

Mr. May said that was true, but, you could also, by the same token, open this thing up now to proposals and Monterey County could then submit a proposal and local attorneys could submit proposals and out-of-county attorneys could submit proposals. That

information could come back to the BOS and as Mr. Sarsfield said maybe you could have a public meeting and you could weigh the pros and cons of those different proposals. But, you do have a valid point in that we have a very short time frame in order to accomplish a July 1 turnover of cases or clients to someone that we might select. Mr. May said however, Mr. LaForge might be amenable to continuing his contract on a month to month basis to give us a few extra months to sort that out. But, the only way that the BOS would really be able to ask the questions they have and look at a proposal in writing and see numbers and scrutinize that would be to go out and go through this whole proposal process and it will take a considerable time and effort, but, if the BOS is concerned and the D.A. is very passionate about this, that this is something that we do immediately then we can certainly get right on it.

Supervisor Loe noted that the current contract expires and we were talking about July 1<sup>st</sup> as a transition point.

Mr. May said that the contract with Greg LaForge expires on June 30<sup>th</sup> so unless that contract is extended and assuming the contract wasn't awarded, we would need to have another service provider in place at that time unless, of course, Mr. LaForge would be amenable to continuing his contract on the same terms and conditions for a period of several months so that we would have that time to get proposals out and get them to come back in and have the BOS review them and make a decision. But, as Supervisor Monaco said, it is a very tight time frame and Mr. May said he would assume there is a certain amount of disruption involved if we change providers and we have to move all the files and all of clients from one indigent defense services to another.

Supervisor Loe apologized for her misunderstanding of the term of the contract. She thought it was September 30<sup>th</sup> but it is in fact June 30<sup>th</sup>. Supervisor Loe said she did not know how we would get in done in that period of time.

Mr. May reiterated that if Mr. LaForge was willing to extend his contract on a month to month basis, although he can't speak for him, to accommodate the BOS so that the process could be conducted and assuming we were to work toward an October 1, 2004 start then it may very well be doable because you would have that lead time if you select another provider to get it in place. Mr. May said you then would certainly be able to see if Monterey County could come in and provide services at a substantial cost savings as they seem to believe. Mr. May said he did not think there was any question but that if Monterey County came in here and staffed a Public Defender's Office that they would provide competent, effective quality representation. Mr. May said he did not think that would be an issue at all, but, there is that issue of the so called "ethical wall" theory and if the Monterey County proposal is predicated on some kind of buy-in on that theory then our judges have reservations about that. Maybe our County Counsel or another attorney could review that matter and allay those concerns. Mr. May said he knows that the Public Defender from Monterey County, Mr. Michael Lawrence, is very confident that it should not be a problem because he says that two separate physical offices would serve as a conflict attorney and as a primary Public Defender and they would essentially be autonomous from each other and wouldn't be communicating with each other. But, if Monterey County were given the opportunity to develop a proposal and sort of fill in the blanks and sort of flush out that proposal, that would give us more to work with in terms of assessing whether the "ethical wall" theory holds up or not.

Chairman Cruz noted that the letters from Judge Tobias and Judge Sanders stated that the County should avoid any arrangements that appear less expensive for the short run but could be more costly in the long run. Chairman Cruz said that concerned him.

Mr. May said that frankly that is where he is coming from and he thinks philosophically that is where he and Mr. Sarsfield have an area of disagreement because when he met with Monterey County last year he was very intrigued by their proposal and they have a very professional run and top quality organization; but, when Mr. Solorio and himself put the issues to the judges and said Monterey County is pushing this as a package proposal and how did they feel about it then that is when we got back that memo in the middle of December from our two judges saying that they have some reservations about it. Mr. May said he did not think that the judges came out and said absolutely no way, but, he thinks that you can infer and read between the lines that they said they have some concerns about it. So, Mr. May said that he, as a responsible party, has to work with the courts to come up with an arrangement to provide indigent criminal, legal defense services that in the opinion of the courts is a workable and viable solution that will provide effective and competent representation and avoid any possibility of conflicts. Mr. May said that we have the Brady cases where the previous district attorney prosecuted some cases and allegedly they were tainted and the same issue could come up here where the defendants could contend that the multiple defendants didn't get adequate and appropriate representation because two offices of the Monterey County Public Defender represented them; and, while the two offices where one may be in Salinas and one in Hollister and each is headed by a senior level attorney then in both cases those staff members do report to Michael Lawrence the Public Defender. Mr. May said he certainly is no legal expert and can't pass any judgment on that but he is duty bound to consult with the courts and to present the BOS their concerns.

Supervisor Kesler asked if 30 days would be enough time for Mr. May to come back to the BOS with all of these questions answered by Monterey, Santa Cruz, Santa Clara and whatever other county.

Mr. May asked if Supervisor Kesler was saying she is giving direction just to contact Monterey County or Santa Clara County and ask them if they would be prepared to provide us with a proposal within the next 30 days and that then the BOS would make a choice between the status quo or contracting with one of those other two counties at the exclusion of opening up the proposal process to local attorneys or out-of-town attorneys.

Supervisor Kesler said that is what she was asking him to answer and would that give him enough time to do that or do it all.

Mr. May said that we were very fortunate in that sitting next to our District Attorney is the Administrative Services Officer from the Monterey County Public Defenders office and he would defer that question to him and he could probably tell you whether a month would be sufficient time for them, and he hoped he wasn't putting him on the spot, but he could certainly give the BOS an indication of that.

Duane Woods, Monterey County Public Defender's Office, came forward stating that he was not quite prepared to speak today and he was just here to see what basically was being said. Mr. Woods stated that basically their position in a nut shell is that there are already two counties that do what we are talking about and those are Orange County and Contra Cost County and both handle a Public Defender office and an alternate defender office. Mr. Woods said that currently Monterey County already has a Public Defender and an alternate defender office. Mr. Woods stated that with regards to the 30 days to submit a proposal in their opinion they can have it together, but, the real variable that is a problem here is accurate numbers as far as caseload, how many felonies and misdemeanors, how many juveniles and what kind of volume we are looking at. Mr. Woods stated that their position is not necessarily to be the least expensive but to be the best at the best possible

price and we are not here to try to take work away from any local attorneys. We were just approached and we thought that it is under the innovative idea and we thought that we would explore it with you. But, if the BOS is interested in exploring it they would be more than glad to come in a partnership and look at it. If it is something that San Benito County is not interested in then they are not pushing for it. Mr. Woods said they are here to work with the BOS or step back and let the BOS do whatever they want to do. Mr. Woods said that their analysis does prove that bringing the two functions together, the conflict first level and the primary, there does seem to be some statements but it would be dependant upon the volume of cases. Mr. Woods stated that he thought the volume could be found but most directly they usually keep their stats. They don't look to the courts for their stats because we need to know what comes to them because the courts has lots of cases and the Public Defenders only has a portion of those cases because of the private attorneys. So they would just need to know what the stats are that the County pays or how many cases they do.

Mr. Woods said he hoped he had answered the question about the 30 days. They could put something together, but, he thought in general what Mr. May is suggesting, Option 1 or Option 2, which is in fact that open it up to everyone and ask them to submit what they have and see what they want to do and then the BOS can look through it and decide.

Mr. May stated that the BOS does have the option of simply approaching Monterey County and asking them to submit a proposal and that is allowed under Government Code Section 27700. In other words, if the BOS was interested in getting a proposal from Monterey County that would in no way obligate the BOS to have to open this up to a competitive proposal process. You could approach the County directly under state law and ask them to submit a proposal and perhaps Mr. Woods, in working with Mr. Sarsfield, who has amassed quite a few caseload statistics, and also if you could work with Mr. Calvo our Court Executive Officer you may be able to get a better handle on those caseload numbers. It is knowing what the workload of the Public Defender function is and also the breakdown of cases, for example felonies versus misdemeanors, that his office will need to adequately determine what level of staffing you would need to provide and it is the level of staffing then that would determine the cost of the proposals. So if they have incomplete, or sketchy information, it is hard for them as it would be hard for anybody out there trying to submit a proposal to come up with a kind of apples to apples type comparison. But, you could go directly to another County and ask them to contract with you for joint operation of the Public Defender's office and Mr. May said he knows that Mr. Lawrence has expressed interest in that last year in talking to him and they did put together a preliminary proposal so it may be doable in four weeks or perhaps a little bit more.

Chairman Cruz asked if there were only two counties out of the 58 in California that do this?

Mr. Woods said he can't speak for all of the counties. Personally he knows of two that do it. Lots of counties, depending on how large the county is, like Los Angeles who has a Public Defender and alternate defender and there are some intricacies, but they have a little bit more volume so they can structure them differently with cost savings.

Supervisor Loe asked if Monterey County would be interested in giving two separate proposals, one to take over the whole picture and secondly just for the first level conflict?

Mr. Woods answered yes that as far as the proposal goes once you have the numbers you can submit a proposal. Mr. Woods said he was the Administrative side of their Public Defender's Office and then there is the legal side. I know that there is a concern about whether or not you have a cozy relationship (so to speak) with the District Attorney.

Administratively he does that and it is clearly numbers and this is how you run an organization. The adversarial relationship is on the attorney side and that is completely separate. As far as presenting proposals administratively definitely he can do it once he has the numbers as far as knowing exactly what the volume is for the primary then he can calculate that relatively simple because they are not in it to make a profit. We are doing cost. We are a government agency and we are not it in for a profit. The original interest that they did have was one of the concerns they had that Monterey County is going through cuts and if we could potentially bring some of our experienced attorneys over here and thereby reduce our cuts to our staff over there we would save jobs and provide great service for another county and that was their original interest beside it is a very innovative approach between two counties.

Supervisor Kesler stated that within five minutes we have found out that Monterey County may be interested and she didn't know why then 30 days isn't long enough to call Santa Cruz County or Santa Clara County or whatever.

Mr. May stated that Santa Cruz County contracts with a law firm to provide indigent defense services. We could contact Santa Clara County but Mr. May said he did not know if they would be interested. They would certainly, if they were interested, require a lot more preparatory work because as Mr. Woods will tell you the Public Defender of Monterey County approached us actually about a year ago and came up with a preliminary proposal and they have some idea of what caseload numbers are. Of course, with some coordination with Mr. Sarsfield's office and with Alex Calvo they could probably get what they need so we know Monterey County is interested so the chances of being able to get a proposal in a pretty near time frame would be better with Monterey County because Mr. May said he was assuming that in Santa Clara County it would have to work up several layers of management. It would have to go to a Board of Supervisors. The other thing that may be a possibility if we contracted with Monterey County is that if it was our goal, in the long run, to eventually establish our own county Public Defender's Office staffed with county employees by bringing Monterey County in here and tapping into their expertise that could lay the ground work down the road where the County could take over that function if that was an interest of the Board.

Supervisor Kesler said she assumed that 30 days would be enough time to put this all together.

Mr. May stated that he would not be the one putting it together. He would have to ask Mr. Lawrence and Mr. Woods if that is enough time for them to put together a proposal and they would need to collect information from the District Attorney and the Court Executive Officer and Mr. May said he was sure that Mr. Woods would want to check with Mr. Lawrence, the Monterey County Public Defender, to see if that is workable. But, we would get an answer to that question. Maybe it would be 30 days, maybe 40 or 45 days and if you want to go down that path then we can certainly extend the invitation and ask Monterey County's Public Defender to prepare a proposal and bring it back to you and then that would be an option that you could consider.

Supervisor Kesler asked Mr. May if it could be done in 30 days then?

Mr. May said he could not speak for Monterey County.

Supervisor Kesler asked Mr. Woods if it could be done.

Mr. Woods said he could tell the BOS that within 30 days if they are able, and he could not speak definitively for Mr. Lawrence, but administratively he can tell them if they are able to solidify some numbers that they could work up a dollar proposal. Although he felt that the Board was not asking for a commitment but only asking for a ball park figure so

you know whether its explorable or not. Mr. Woods said they could, within 30 days, work something up so the Board could sort of just “chew” on it and decide whether they want to do it. This is given the fact that we were already approached last year and talked about it and met with some people about it and have some kind of understanding of the operations over here in San Benito County. Mr. Woods said he felt it was doable for them if the BOS is interested in that. Mr. Woods stated that he felt that Mr. May was right with regards to going to someone like Santa Clara County. His assumption would be that it being very much larger they might not do it.

Supervisor Kesler said she just threw Santa Cruz County in there to give a little wiggle room.

Mr. Woods said if someone approached them and it was fresh it would be a kind of shock to their system and they would say that 30 days would not be enough but, for us its doable because they have a lot of background on San Benito County already.

Supervisor Kesler said it doesn’t take up a lot of time to talk on the telephone to one another.

Chairman Cruz stated that he felt very strongly that they keep in mind in the proposal would they let this County know where Monterey County stands because we did mention costs and we know here that Monterey County has either laid off 22 deputies or in the process of laying them off. Chairman Cruz said he hoped this is not a case where we’re doing it to save jobs there but put us in a spot here in San Benito County and that it would be more costly in the long run.

Mr. Woods said it was the last fiscal year that they were exploring it in hopes to possibly save some positions but through some budgetary maneuvers and some things that they did and thanks to the Board of Supervisors of Monterey County they didn’t incur any loss in Public Defender deputies. The 22 deputies are Sheriff deputies As far as the Public Defender Office they were not affected. Mr. Woods said that as it stands this current fiscal year we are looking at some more cuts and what those will end of being is unknown until the Board of Supervisors acts. Mr. Woods said he didn’t anticipate needing to move deputies over to San Benito County because of loss of jobs. What we are anticipating is now looking at an innovative approach and possibly their major goal is to provide good indigent defense services.

Chairman Cruz asked again about the 30 days asking is that what the BOS wanted.

Supervisor Monaco commented that it was rather unfortunate that we cannot go out to the community and ask them not to get in trouble over a period of time because we have less than 100 days before this contract is going to run out. Supervisor Monaco said his concern was that we were going to get in a situation where we are going to create a time crunch and it will be very disruptive.

Mr. May stated certainly one implication or factor that you may consider and he didn’t know how much value you would place on it, but in the legal community here in San Benito County we actually have very few attorneys who try criminal cases and Mr. LaForge obviously has a contract for \$260,000 and there are other attorneys who are assigned conflict cases by the court and if we did contract with Monterey County to come in and take over that work it would essentially displace some or all of those legal practices and he would assume those attorneys may have to move on to other communities. So you could lose what existing criminal defense attorneys you have in the community except of course, those who have paying customers.

Chairman Cruz asked by the same token are we talking about just having Monterey and no one else give us anything in 30 days?

Supervisor Monaco said that the concern that he has, and he hates to keep raising this question, but the clock keeps ticking here and we are going to wind up in a situation where he fears it will be very disruptive if we don't put some contingency plan in to allow us to buy some time to explore this under less pressure so to speak. Whether we extend the contract for a year or whether we talk to Mr. LaForge and extend it month by month, in any case, he is concerned that he didn't want to disrupt that process while we are in the process of exploring economic ramifications that we might have.

Mr. May said that Mr. Woods might echo this, but, if we were to report back to Michael Lawrence, the Public Defender of Monterey County, and say to him could you put together a fixed cost proposal in 30 days and would you be able, willing and ready to step in on July 1<sup>st</sup> that might allay your concerns there.

Chairman Cruz said that with what Mr. May is saying that nobody else has a crack at it.

Mr. May answered that was absolutely right.

Chairman Cruz said he couldn't buy that.

Supervisor Loe said she did not agree with Supervisor Kesler and she did not want to push this to happen in the next 30 days. Supervisor Loe felt that what came out today is a lot of frustration and it has got to be addressed. The money part of it is one part of it but it all has to be addressed. Supervisor Loe said that maybe the best way to go forward is to extend the contract. There is a clause in the contract that it can be terminated at any time. Supervisor Loe felt that we need to look into having a first line of defense though and we have to go forward with that. Monterey County said they would participate and give us a quote on that. Supervisor Loe said she really believed that we have to move forward but we have to open this whole thing up and really get to the bottom of the problems and find out what is going on, clear the air and then move forward and she did not want to rush it in the next 30 days because she felt it was going to be a lot longer process than that.

Supervisor Kesler said her idea of 30 days wasn't to go in and close it out in the 30 days. She was hoping that the 30 days would bring everyone interested, all of our local attorneys, Monterey County, our CAO and everybody can get into this ball of wax and straighten it out and bring it back to the BOS in 30 days with the information that you found and go from there. Supervisor Kesler said she didn't expect it all to be done in 30 days.

Chairman Cruz asked what would happen if we extended the contract for one year and work on this.

County Counsel Karen Forcum stated that one option also would be to continue this discussion as was addressed by Mr. Sarsfield in the context of a hearing to continue the discussion of all of the options and not just the Monterey County option and then consider negotiating an extension of the contract with Mr. LaForge at that point perhaps to a six-month extension as opposed to a year if the BOS decides that further time is necessary to address these options.

Supervisor Scagliotti stated that as Supervisor Loe pointed out if you extended the current contract you would have service and you have a 30-day termination clause in this contract so if you extended for an additional year you would have 30 days notification to get out of this contract. The contract is not binding for a full year and it would give you time to study the issues before making a decision. Supervisor Scagliotti said he believed that is where Supervisor Loe was going with this.

Supervisor Loe answered yes.

Supervisor Scagliotti asked if that was correct with respect to the 30-day termination clause noting that one of the recommendations was to extend the current contract that would allow that provision.

Mr. May answered that it would then give up to one year to make a decision or even a month, three months or whatever into the contract whatever is deemed appropriate.

Chairman Cruz said he would go along with that.

*Supervisor Monaco said he would like to make that in the form of a motion to basically extend the contract for one year, which is basically Option 1. Supervisor Monaco asked if he should read the entire recommended Option 1.*

County Counsel Forcum stated if Supervisor Monaco's motion is intended to include all of the elements of the recommended Option 1 then he could refer to it by reference but she noted that the recommendation is to negotiate the one-year extension so Mr. May would need to talk to Mr. LaForge about whether he is interested in that at the same price level.

*Supervisor Monaco said yes he would like to make that in the form of a motion.*

*Supervisor Loe seconded the motion.*

Under the question. Supervisor Scagliotti asked if there was going to be another motion brought forward to direct staff to prepare and RFP (Request for Proposal) so this Board has information brought back within the next six months for the conflict attorney or creating a whole new division or contracting out. Is that going to be another motion or is that going to be included in the existing motion?

Supervisor Monaco said that Option 1 the way it is listed which would return that part as mentioned.

Supervisor Scagliotti asked if that meant all of the recommended Option 1 including A, B, C, & D.

Supervisor Monaco said yes it would be A, B, C, and D of Option 1.

Supervisor Loe concurred.

Supervisor Scagliotti stated that he felt this should be addressed so the public can hear exactly what A, B, C & D is.

*Supervisor Monaco read the recommended Option 1 as follows:*

- A) Negotiate a one (1) year extension of the contract with Gregory M. LaForge to June 30, 2005 at no increase in cost; and*
- B) Return to the Board on March 23, 2004 with a draft RFP for First-Level Conflict Indigent Criminal Legal Defense Services only for services to commence July 1, 2004 for a period of one (1) year; and*
- C) Return to the Board following the close of the RFP process for the Board to consider selection of a First-Level Conflict Indigent Defense Services provider or continue relying on court-appointed counsel; and*
- D) Return to the Board in late 2004 or early 2005 to consider options for delivery of primary and conflict indigent legal defense services as and from July 1, 2005.*

*Supervisor Monaco said that was his motion.*

Chairman Cruz noted there had been a second to the motion and called for the question.

*The motion passed unanimously. File #149*

## **10:00 a.m. CLOSED SESSION AGENDA:**

### **18) Conference with Legal Counsel - Anticipated Litigation**



- a) Significant exposure to litigation pursuant to subdivision (b) of Government Code Section 54956.9. Number of cases: **3**  
*All three cases were withdrawn by County Counsel*
  - b) Initiation of litigation pursuant to subdivision (c) of Government code Section 54956.9. Number of cases: **3**  
*2 cases were withdrawn by County Counsel.*  
*1 case – No reportable action. File #235.6*
- 19) **Conference with Legal Counsel - Existing Litigation**
- a) Sandman vs. County of San Benito  
*No reportable action.*
  - b) Monteon vs. Richard Scagliotti, San Benito County Board of Supervisors, San Benito County Financing Corporation, et al.  
*No reportable action.*
  - c) California Farm Bureau Federation, et al. vs. California Department of Forestry and Fire Protection, et al.  
*No reportable action. File # 235.6*
- 20) **Conference with Real Property Negotiators**
- Property: APNs: 052-080-001, 052-300-001  
 Negotiating Parties: County of San Benito (Supervisor Cruz and Supervisor Monaco) and Gray Thorning Lumber Co.  
 Under Negotiation: Price and terms of payment.  
*No reportable action. File #235.6*
- 21) **Public Employment**
- Title: Agricultural Commissioner  
*No reportable action. File #235.6*

The vote of each member of the Board of Supervisors upon each matter at the foregoing meeting, unless otherwise stated, was as follows:

AYES: SUPERVISORS: P. Loe, R. Scagliotti, R. Monaco, R. Kesler, B. Cruz  
 NOES: SUPERVISORS: None  
 ABSENT: SUPERVISORS: None

There being no further business the Board adjourned to its next regularly scheduled meeting on Tuesday, March 23, 2004 at 9:30 a.m.

**BOB CRUZ, CHAIRMAN**  
 San Benito County Board of Supervisors

ATTEST:  
John R. Hodges  
 Clerk of the Board  
 BY:  
Linda Churchill  
 Senior Board Clerk