

MOLES

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“As we deliberated, I felt that we would have found Mr. Moles not guilty on all counts — but all of a sudden one young man ... decided to make a statement that really was global to the years mentioned in the trial (not specific to the ‘on or about March 31st date’). He got everyone riled up and we did more discussions with a result of an 8-4 vote of guilty. Then a woman juror ... started loudly saying that she wasn’t going to be part of a ‘hung jury’ like the last trial.”

Gingrich said she didn’t know anything about the first trial. The woman juror then “truly bullied” two women into changing their votes from not guilty to guilty, Gingrich said. The outcome of the trial “bothered me greatly,” she said in her letter, and she wanted something to be done before sentencing.

“When it’s after 8 p.m. and jurors were exhausted, some were actively bullying others, people weren’t thinking clearly, this vote was all wrong,” she said.

Another juror in the second trial, Marla Compton, said in her Jan. 30 letter to Cramer that she voted not guilty and stood by that decision.

With that said, Compton noted, “I do feel that with the amount of information and the time of night that there was pressure from some of the jurors to just get it over with. I feel that if we would have adjourned and reconvened

the following day that Moles would have been found not guilty.”

Glass characterized the situation described in the two letters as a “classic deadlocked jury” and referred to an American Psychological Association article on how jury pressure could lead to unfair verdicts. The issue of a “hung jury” was never mentioned during the second trial, Glass claimed, so the reference to it was a case of jury misconduct. He asked that Cramer “make an inquiry of these jurors on the record.”

Victim’s testimony

Glass also said that the victim attempted multiple times to recant to the judge, to family members, to the Department of Human Services and to the defendant’s attorney.

The victim was not pressured by family members into writing a recantation letter to Cramer, Glass said, but she was pressured by DHS staff to bring the allegations against Moles. When the recantation letter was produced on the morning of the trial, one or more pages were missing, Glass said.

Glass said the victim was not believed by jurors or family members.

“This is a case that involves a girl who wanted to date inappropriate and risky boyfriends at a very young age, with a protective and strict father, and who wanted to live with her more permissive mother, who was unable to parent due to her drug abuse problems,” Glass said.

Glass also said the evidence pre-

sented at trial did not support a verdict of sexual abuse.

“The court heard and ruled on the defense motions alleging that all the prosecution was presenting was hearsay upon hearsay with no actual testimony from the purported victim,” Glass said.

Glass also suggested an op-ed piece written by Carpenter and Grant County Deputy District Attorney Mara Houck that appeared in the Feb. 7 Blue Mountain Eagle across from an article reporting on Moles’ 75-month sentence “may have the effect of quashing jurors’ concerns in a controversial case which still has matters pending before Grant County Circuit Court.”

State’s response

In his response to Moles’ motion for a new trial, Carpenter cited State v. Jones on the protections afforded juries during deliberation: “There is a strong policy in Oregon to protect jury verdicts from attack. Only limited kinds of juror misconduct justify a new trial. The kind of misconduct that will be considered in an attack on a verdict is misconduct that is extrinsic to the communications between jurors during the deliberative process or that amounts to fraud, bribery, forcible coercion or any other obstruction of justice that would subject the offender to contempt of court or criminal prosecution.”

The actions described in the two letters sent to Cramer were examples of intrinsic communications between

jurors, Carpenter said. As to the instance of a juror bringing up the hung jury in the first trial, Carpenter noted that “any error here was invited by the defendant,” as Glass “repeatedly referred to the first trial throughout the second trial.”

Carpenter said that the two letters came from jurors who voted in the minority to acquit and “appear to be venting their disappointment.”

Carpenter also suggested that each letter provided to the court followed the publication of a story about the Moles case in the Jan. 19 Blue Mountain Eagle, stating that the charge Moles faced carried a 75-month mandatory minimum sentence.

“Only after being informed of and considering any punishment that the court was likely to impose, were challenges made by a minority of the jurors,” he said.

Again citing State v. Jones, Carpenter noted that jurors are not perfect and may want to cut deliberations short: “Our system of justice is not a perfect system, because it is administered by imperfect human beings ... Even if (the jury in the Jones case) abrogated the duty to deliberate because its members wished to go home early, we are not at liberty to invade the sanctity of their deliberations and order a new trial because of the countervailing policy concerns.”

Carpenter characterized Glass’ arguments that the district attorney, Court Appointed Special Advocates and DHS staff hid documents from

the defendant as “a rehash of defendant’s argument” at trial. He also noted that Circuit Court Judge Lane W. Simpson found that no misconduct had occurred in the first trial.

As for Carpenter and Houck’s op-ed in the Feb. 7 Blue Mountain Eagle, Carpenter said it was published “well after the second trial and had no bearing on jury deliberations or the trial itself.”

Judge’s ruling

The state’s response to Moles’ motion was submitted to the court on Feb. 22, the scheduled date of a hearing on the matter, and Glass was given 10 minutes to read the 12-page motion.

Cramer noted that Moles’ motion did not provide any new evidence and asked Glass to explain his allegations of prosecutorial misconduct. Glass said the district attorney allowed the victim to provide differing testimony during the two trials.

Carpenter said the victim testified to what she testified, and it was up to the jury to decide if she was credible. Glass responded by noting that prosecuting for the state was not a “sporting contest.”

Cramer agreed that dealing with witnesses could be difficult and said he would take Moles’ motion for a new trial under advisement.

He issued his opinion Feb. 23.

“Having considered the filings and applicable law, motions for a new trial and in arrest of judgment are denied,” he wrote.

BUDGET

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The department provides the highest rate of police coverage in Eastern Oregon at 2.6 officers per 1,000 residents and at a cost per officer comparable to other cities in the region. The total cost for police service in fiscal year 2017 was just over \$1 million, with a net cost to John Day taxpayers of \$572,106.

This cost, however, has increased on average by more than \$10,000 per year, from \$250,000 in 1998 to about \$432,000 in 2017. Spending on police services exceeded John Day property tax receipts in 2017 by 150 percent, presenting an “unsustainable fiscal forecast,” the report states.

Contract service to Canyon City was discontinued in 2003. Revenue from contracts with Prairie City and the Grant County District Attorney’s Office declined in 2017 and are expected to decline further in 2018.

“Costs for police services have grown significantly faster than revenue over the past 20 years, with funding deficits some years in excess of \$367,000 over program revenue,” the report states.

The John Day Emergency Communications Center is also facing financial shortfalls. With 5.5 employees on staff in 2017, the local 911 center saw its highest call volume ever, increasing by 12 percent from 7,758 in 2016 to 8,657 in 2017.

All users other than the fire department saw increased calls for service. The Grant County Sheriff’s Office saw the largest increase, as the number of calls increased 16 percent from 2,566 in 2016 to 2,976 in 2017.

The cost to run John Day’s 911 center increased from



Eagle file photo

John Day Police Chief Richard Gray

\$406,100 in fiscal year 2016 to \$425,224 in fiscal year 2017. The center’s costs have increased by about \$12,000 per year for the past 20 years as a result of rising payments to the state Public Employees Retirement System, health insurance and personnel expenditures, the report states.

Oregon’s 43 dispatch centers are partially funded by a 75-cent tax on monthly telephone bills, but payments to John Day fell for seven straight years, from 2008 to 2015. A significant drop in these payments in fiscal year 2004, caused by a missed quarterly payment, was made up in fiscal year 2008 when the fund was transitioned to the state’s Military Department, but the payments to



Eagle file photos

John Day Police Department

John Day declined after that from about \$340,000 in 2008 to about \$250,000 in 2015 before rising slightly to about \$275,000.

“The net effect of the declining state tax revenue on top of continuing cost escalation from PERS, health insurance and personnel expenditures has resulted in a significant cost-revenue imbalance, one that grew from approximately \$30,000 in 1998 to more than \$145,000 today,” the report states.

The city obtained a

\$420,000 payment from the Legislature through House Bill 5006 to make up for the shortfall through the next biennium, but a ballot measure intended to provide a regular funding source was turned down by Grant County voters.

Last November, the John Day City Council voted to discontinue providing 911 call service by June 30, 2019. Meanwhile, a task force considered three options – consolidate the local 911 center with Frontier Regional 911 in Condon, create a joint service



A John Day police vehicle

with an adjacent county or replace the current center with a new countywide agency.

“Over the past 20 years, the annual cost to provide police and emergency communications services increased 3.5 times faster than the city’s property tax base,” the report stated, a situation that was unsustainable going into the future.

“The year 2018 will bring significant changes for our public safety departments as we move forward with the 9-1-1 Center transition

process and restructuring our police force to closer align spending with tax revenue,” the report concludes. “Though the City faces difficult financial choices, these should not overshadow the exceptional work of our public safety employees. Throughout a difficult year, our staff have maintained their commitment to making our community safe. They will continue to provide the highest level of service possible for our residents and visitors.”

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FUTURE

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to support the Grant County Sheriff’s Office and Oregon State Police according to mutual aid agreements.

Third, police scheduling changes would need to be negotiated with the Grant County Peace Officers Association and coordinated with the sheriff’s office and state police.

Fourth, the city should evaluate the operational effectiveness of the smaller three-person department through 2018 and 2019 and explore the possibility of converting to a Department of Public Safety by shifting the emphasis from traditional law enforcement toward a broader public safety focus.

Green also provided an update on the

transition of the city’s 911 center to one of three options being explored by a 911 Task Force with representatives from the city, county, Blue Mountain Hospital, Rural Fire Defense Board and the Forest Service.

An engineer from Day Wireless made a site assessment and concluded that contracting with Frontier Regional 911 in Condon or forming a joint center with Harney County were technically viable options, Green said.

Harney County was still interested in discussing a joint center with Grant County, Green said, but they were not interested in relocating here. Harney County was already in talks with the Forest Service about creating a joint center, which would need new equipment and a new location, he said.

The 911 Task Force created a cost

model that would charge \$10 per call for local user agencies and \$25 per call for ambulance. The balance of the 911 center’s cost would be paid by cities and the county based on assessed property taxes. According to this model, Grant County would pay 58 percent, John Day 22 percent, Blue Mountain Hospital 8 percent and the county’s small towns 11 percent, Green said.

In the event there is a staff reduction at John Day’s 911 center, a severance package would be negotiated with the Grant County Peace Officers Association. To avoid disruptions to current 911 center staff, Green called for agreeing on a transition option by April.

The 911 User Board, comprised of 17 users such as cities and agencies, will further discuss options at a March 20 meeting.