

Defender Association of Philadelphia

Testimony before the Senate Judiciary Committee  
Subcommittee on Crime and Drugs

Constitution Center, Phila., PA  
May 3, 2010

Thank you, Senator Specter, for inviting me to present testimony before the Senate Judiciary's Subcommittee on Crime and Drugs. While the hearing is titled "Helping Find Innovative and Cost-Effective Solutions to Overburdened State Criminal Courts", I have a particular viewpoint on the burden imposed on the poor who become embroiled in the Commonwealth's criminal justice system and want to take this opportunity to speak to that burden and what is a very real crisis in indigent defense, acknowledged by Attorney General Eric Holder, who convened a national symposium on indigent defense in February in Washington.

In my view, what would be the most surprising innovation today in the criminal justice system would be for the government (federal and state) to make real the promise of "equal justice for all" by funding adequately defense services for our poor citizens caught up in the system. This innovation would mean parity of resources for the government and the defense, oversight and monitoring of defense services, training and performance standards, as well as caseload standards to ensure quality, competent representation at all levels.

As brief background, the Defender Association of Philadelphia, unlike public defender organizations in all other Pennsylvania counties, is a non-profit corporation funded 99% by the City of Philadelphia. We have a staff of 480, including attorneys, investigators, social workers, paralegals, and administrative staff. We are appointed by the courts to represent indigent adults and juveniles charged with criminal offenses, ranging from misdemeanors to capital cases. We also represent indigent citizens in civil mental health hearings, and our Child Advocate Unit represents dependent and abused children in contested custody matters.

In calendar year 2009, we were appointed to 69,000 new cases. Our workload figures for attorneys show 396,000 court appearances. We represented clients at 34,000 preliminary hearings and at 87,000 misdemeanor trial listings. Overall we represent 70% of criminal cases, exclusive of homicides (20% of all court appointments).

The criminal justice system could not function without us as one of the stakeholders and active participants in courtroom trial representation, as well as an active participant in the many diversion programs in place, such as Treatment Court, DUI Court, Mental Health Court, Community Court, and specific programs for juveniles, among others.

As is the case throughout Pennsylvania, and, increasingly in all counties and states, public defenders, as well as private court-appointed counsel are overworked and grossly underpaid. The inevitable result of reduced funding and increased caseloads is representation that fails to meet the standards published by the



American Bar Association and the National Legal Aid and Defender Association. The weight of the criminal justice system falls most heavily on the backs of the poor and, disproportionately, on minority populations.

The indigent defense system is in crisis. It is not just those of us who work in indigent defense who realize this. Attorney General Holder, speaking at the Brennan Center in New York City on November 16<sup>th</sup> commented that our adversarial system requires lawyers on both sides who effectively represent their clients' interests, whether the government or the accused. Further, he said, the integrity of our criminal justice system aside, the crisis in indigent defense is also about dollars and cents. He cited the need to significantly improve the quality of representation provided to the poor and powerless. He has pledged to work in identifying potential funding sources, legislative initiatives, and to work with state and local partners to establish effective public defense systems. This is a start and a refreshing change from the policies of the previous administration.

The need for adequately financed public defense services has expanded so drastically that today public defenders represent defendants in more than 80% of criminal prosecutions nationwide. In many states diverse groups of middle and low-income people are being processed through courts as if they were identical parts on a conveyor belt. And the collateral consequences of criminal prosecutions include immigration consequences, the ability to vote or own firearms, access to student loans and professional licenses, and public housing eligibility, among other modern equivalents of the scarlet letter. Many of these disabilities impede a person's ability to

Successfully integrate into the community. It does appear that our society has relegated forgiveness and redemption to the scrap heap.

Pennsylvania has the dubious distinction of being the only state that provides absolutely no funding for indigent defense. (Utah, which had been in the same category, began to provide some state funding but is in the process of reneging on that promise). The Pennsylvania State Legislature has effectively ignored a 1985 State Supreme Court decision calling for such funding. So, it is up to each county to provide funding for indigent defense, and, as you can well imagine, few county commissioners rank indigent defense highly on their list of priorities. Representation of the poor is at best uneven, and, at worst, ineffective at times due to deficiencies of the county-funded systems.

On a somewhat optimistic note, there are stirrings in our state capitol around indigent defense issues. Out of the tragedy that is Luzerne County, where two corrupt judges sent hundreds of children into placement, often for trivial offenses and without the benefit of legal counsel, the Interbranch Commission will issue its report at the end of May, with serious recommendations aimed at upgrading juvenile defense practices. At the same time, I serve on a Joint Legislative Commission on Indigent Defense which is due to issue its report within the next couple of months. It, too, will offer recommendations for improvements in representation of the poor. Of course, we will then look to the Legislature to fund these initiatives, the same legislature that has ignored the Supreme Court order for funding for 25 years. At best, we are very cautiously optimistic we will see real change in the provision of defense services in Pennsylvania.



Ours is an adversarial system of justice which requires lawyers on both sides who effectively represent their client's interests, whether it's the government or the accused. When defense counsel are handicapped by lack of training, time and resources, we must wonder: Is justice being done? Is justice being served?

Will you join us in working to reform the criminal justice system so that it truly reflects the most basis of American values: equality and fairness?