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STRENGTHENING OUR CRIMINAL JUSTICE SYSTEM: THE JOHN R. JUSTICE PROSECUTORS AND DEFENDERS INCENTIVE ACT OF 2007

HEARING

BEFORE THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

ONE HUNDRED TENTH CONGRESS

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STRENGTHENING OUR CRIMINAL JUSTICE SYSTEM: THE JOHN R. JUSTICE PROSECUTORS AND DEFENDERS INCENTIVE ACT OF 2007

TUESDAY, FEBRUARY 27, 2007

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The Committee met, pursuant to notice, at 2:03 p.m., in room SD–226, Dirksen Senate Office Building, Hon. Richard J. Durbin, presiding.

Present: Senators Durbin, Cardin, and Whitehouse.

OPENING STATEMENT OF HON. RICHARD J. DURBIN, A U.S. SENATOR FROM THE STATE OF ILLINOIS

Senator DURBIN. Welcome, everyone, to this meeting of the Senate Judiciary Committee. The topic of our discussion today is "Strengthening Our Criminal Justice System: The John R. Justice Prosecutors and Defenders Incentive Act of 2007." I want to thank Chairman Senator Leahy for scheduling this hearing, and I also want to thank Ranking Member Senator Specter, Senators Kennedy, Biden, Kohl, Feinstein, Feingold, Schumer, and Whitehouse for their support of this legislation. We are honored to welcome as well the distinguished panel of witnesses whom I will introduce shortly.

This bill seeks to address a serious problem with our criminal justice system. Prosecutor and public defender offices across the country are having major difficulties in recruiting and retaining qualified attorneys. According to the Department of Justice, in 2005 one-fourth of State and local prosecutor offices reported problems with recruiting new staff attorneys and over one-third reported problems with retention. The problem is particularly severe in large offices. Over 60 percent of offices that serve populations of 250,000 or more reported problems with attorney retention. In every State, we hear exactly the same story from prosecutors. They simply cannot keep enough talented and experienced attorneys on the staff.

The same is true for public defender officers. Here I want to give special recognition to the Appellate Public Defender in Illinois, Ted Gottfried, from my home town of Springfield, who brought this matter to my attention many years ago. As we all know, State and local governments are obligated to provide indigent defense serv-

ices in order to satisfy criminal defendants' constitutional right to counsel.

A recent survey found that over 60 percent of public interest law employers, including State and local public defender offices, reported difficulty in attorney recruitment and retention, and it is no secret why. Just look at the math. The average law school tuition in 2005 was nearly $29,000 per year for private law schools, approximately $23,000 for out-of-State students, and over $13,000 for in-State students at public law schools. Those are just tuition costs. They do not include food, lodging, books, fees, or expenses.

Over 80 percent of law students now take out loans to pay for their education. The average debt for a law school graduate is approximately $51,000 for those going to public schools, $79,000 for those attending private schools. Many law students graduate with well over $100,000 in law school debt. Two-thirds of law students also carry additional debt from undergraduate studies, which is not included in the totals I just gave you. Now, the average starting salary for State prosecutors or public defenders is around $45,000 a year. It is not easy to make large monthly payments on that kind of salary. In contrast, the median first-year salary in 2005 for private sector law firms was $100,000 a year. A starting salary of many big-city law firms exceeds $150,000 annually.

Now, many attorneys will tell you part of the reason they went to law school was because they weren't very good at math. But even an elementary school student could add these numbers up and understand why we have a problem. If you want to work as an attorney in the criminal justice system, it is tough to pay off your student loan.

I have heard from many dedicated young prosecutors and defenders in Illinois who work second and third jobs to make ends meet. I met an Assistant State's Attorney in the Cook County Office that Ms. Bergeman works in who also works—and he says he waves at me from time to time—at O'Hare. He is a freight handler when it is not serving as an assistant prosecutor in Cook County. Derrick Smith is that man. He drives a forklift at O'Hare to pay his $120,000 in student loans. Or Aisha Cornelius from the South Side of Chicago, first in her family to graduate from college, let alone first from law school. She still owes $110,000 in law school loans. She sells cosmetics at night to pay for the bills for her and her daughter. Jessica Bergeman is here from Skokie, and she is going to tell us about her own personal situation.

But despite their desire to serve their communities and criminal justice systems, many young attorneys who start out as prosecutors or defenders find they have to leave after a few years. They just cannot afford to keep going. Our communities pay a severe price when these law graduates are shut out from pursuing criminal justice careers. Prosecutors and public defenders offices find it hard to attract new lawyers and keep experienced ones. Our witnesses today will talk about that in some detail.

I introduced the John R. Justice Prosecutors and Defenders Incentive Act to try to address these problems. The bill is named after John Justice, former solicitor for the Sixth Judicial Circuit in South Carolina, President of the National District Attorneys Asso-

ciation, and a strong supporter of loan repayment for public sector attorneys.

The bill would establish a student loan repayment program for qualified attorneys who agree to remain employed for at least 3 years as State or local criminal prosecutors or public defenders. These attorneys would receive up to $10,000 per year in loan repayments. After the 3-year commitment is up, participants can sign up for a second 3-year commitment, for a total of up to $60,000 in loan repayments over 6 years. If an attorney does not complete the required period of service, they have to pay the money back.

This program is modeled after existing loan repayment programs currently available for Federal employees that have been used to recruit and retain hundreds of attorneys in the Department of Justice, the Securities and Exchange Commission, and other agencies. Our bill complements these existing repayment programs, which currently cover Federal prosecutors, by making loan relief available to Federal public defenders as well.

The John R. Justice Prosecutors and Defenders Incentive Act will strengthen our criminal justice system. The bill will bolster the ranks of qualified attorneys in that system, enhancing the system's efficiency and public confidence. Prosecutor and defender organizations do not agree on much, particularly not in courtrooms, but they are united behind this bill. They recognize that the quality of our criminal justice system begins with those who serve in it.

I understand that Senator Specter may be on his way and may be delayed. I would ask unanimous consent, and hearing no objection, that his opening statement be included at this point in the record.

Now we are going to turn to our witnesses for their opening statements. I will note at the outset that one of our scheduled witnesses, Michael Judge, chief public defender of Los Angeles County, recently suffered an injury and was not able to be with us today, but his written statement will be submitted for the record, and we certainly wish him a speedy recovery. Each of the witnesses here today will be given 5 minutes for oral testimony, and their complete written statements will be included. And I am going to ask now if all the witnesses would please stand and raise your right hands to be sworn.

Do you solemnly swear that the testimony you are about to give before the Committee will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. LOGLI. I do.

Mr. SHEPHERD. I do.

Ms. BERGEMAN. I do.

Senator DURBIN. Thank you. Let the record reflect that all three witnesses responded in the affirmative.

Our first witness is a friend of mine from my home State of Illinois, Paul Logli, the elected State's Attorney in Winnebago County. Mr. Logli has served as State's Attorney—that is Rockford, Illinois, for those who would like to know where the county seat is, but he has been in that capacity for 20 years. Prior to his current position, he served as Assistant State's Attorney, a lawyer in private practice, an associate circuit judge for Winnebago and Boone counties. He is the immediate past president of the National District Attor-

neys Association, currently serves as Chairman of the board of that association. He is also a member of the faculty of the National College of District Attorneys, past president of the Illinois State's Attorneys Association, a native of Rockford, a graduate of University of Illinois College of Law, and one of the more highly respected prosecutors in our State.

Paul, thank you for being here today. The floor is yours.

STATEMENT OF PAUL A. LOGLI, WINNEBAGO COUNTY STATE'S ATTORNEY, AND CHAIRMAN OF THE BOARD, NATIONAL DISTRICT ATTORNEYS ASSOCIATION, ROCKFORD, ILLINOIS

Mr. LOGLI. Thank you, Senator. It is a pleasure to be here on behalf of America's prosecutors, and we want to thank you for your leadership in bringing to the Senate this critical bill, the John R. Justice Prosecutors and Public Defenders Incentive Act.

John Justice was a friend of mine. He was a solicitor, as you mentioned, from South Carolina, and he began the inquiry back in 1998 into what we could do to encourage the brightest and the best young persons to come into the prosecution area. He quickly identified at that time the law school and college debt as a major barrier to bringing people into the public service of prosecution, and let me just add also into the area of the public service as defender, both critically important to our system of justice.

As State and local prosecutors, Senator, we are responsible for handling about 95 percent, prosecuting 95 percent of the cases in this Nation. And in order to ensure that these cases are handled competently, it is critical that prosecutor offices as well as public defender offices are able to not only recruit the best and brightest attorneys, but to also retain those qualified and experienced attorneys in their offices. Without these assurances, the safety of victims and the safety of the community, as well as the integrity of the criminal justice system and the rights of those persons who stand accused, are compromised.

The reason for these recruitment and retention hurdles, both prosecutors and public defenders, is that they are paid less, much less than attorneys in the private sector, and they both graduate from law school with incredible burdens, staggering student loan debts—mortgage size student loans, as you have characterized it, Senator. Our annual starting salary is approximately $44,000 on the prosecution side and about $43,000 on the defense side. And this is up against the debts that from a private law school come to about $80,000, from a public law school over $50,000. And in some cases, the prosecutors and defenders are carrying six-figure loan amounts.

We believe that the John R. Justice Prosecutors and Public Defenders Incentive Act will provide a solution to these challenges, very similar to that which is already provided to attorneys who work in the Federal sector.

We struggle daily with the recruitment and retention of lawyers. We struggle daily to keep these offices fully staffed with trained and experienced attorneys. My jurisdiction, Winnebago County, Illinois, as one example, has a population of about 280,000 people living in a diverse community. The county seat is Rockford, which is the third largest city in the State. We face a daily challenge, just

like every other jurisdiction, to provide effective prosecution of criminal and serious traffic cases. As arrests and prosecutions increase in number and complexity, we also face difficulty in holding onto younger prosecutors long enough to see them become experienced career prosecutors.

In the last 30 days, in my office alone I have lost two prosecutors for one reason, and one reason only: they couldn't afford to work in the public sector. They both took jobs in the private practice. They both left before they had served in my office for 2 years. What a loss. They had just really started to become effective lawyers in the courtroom, tremendous promise.

Several years ago, I had an attorney in my office who worked every night, 4 hours a night, at the UPS sorting hub at the Greater Rockford Airport in order to make her student loan payments. I don't know how she did it. I don't know how she took on the incredible load of a public prosecutor and at the same time worked 4 hours every night at the UPS hub.

All the criminal cases from both sides, prosecution and defense side, have a serious impact on victims, the safety of the community, and the rights of the defendant. A recent survey showed that in 64 percent of prosecutors' offices that responded to our survey, they were affected by the attrition, the departure of good lawyers from their offices. In addition, 53 percent of the prosecutors that responded to the survey told us that the student loan debt, law school student loan debt, was a very significant factor in their ability to retain staff. And 62 percent of the chief prosecutors reported that student loan debt is a very significant factor in their ability to recruit staff.

Beyond recruitment and retention difficulties caused by the high costs of attending law school and the low salaries paid to local prosecutors and defenders, the chief prosecutors and supervisors cited other effects in their offices, such as increased caseloads per prosecutor, increased costs for training, decreased morale, and increased risk of prosecutorial error. And when you look at the defense side, it is the same problem. If you cannot attract and retain good defenders, your caseloads will increase per public defender. You will have an incredible expense of training and retraining, not to mention ineffective assistance of counsel, not because it is intentional but because we put defenders and prosecutors on difficult cases before they have had the opportunity to really develop the skills.

I don't know how in good conscience we as chief prosecutors and chief defenders can ask young people to make the sacrifices they make. Our survey also indicated that more than 50 percent of the respondents who responded to our survey indicated that this student loan indebtedness not only affects their jobs, but it affects their personal decisions—when to start a family, when to buy a home.

I understand that when somebody comes to work for me, it is a 50-, 60-hour week. I understand that. But it is not right that we ask them to make that kind of a sacrifice in order to work in a prosecutor's office or a defender's office. And it really does impede the ability of us to accomplish our mission.

Let me just conclude. I am extremely appreciative, Senator, of your leadership on this in introducing this Act. I appreciate the opportunity to discuss the importance of the student loan repayment assistance for prosecutors and public defenders. Without this relief, it is clear to me that the administration of justice and the safety of our community and the welfare of victims will continue to suffer.

Thank you for this opportunity.

[The prepared statement of Mr. Logli appears as a submission for the record.]

Senator DURBIN. Thank you very much, Mr. Logli, for your testimony.

Our next witness is Professor George Shepherd, Emory University School of Law in Atlanta, Georgia. Professor Shepherd is a graduate of Yale University and Harvard Law School and expects to receive his Ph.D. in economics from Stanford University this year. Prior to joining the faculty of Emory, Professor Shepherd served as law clerk to Judge Alice Marie Stotler of the U.S. District Court for the Central District of California and also worked in private practice. At Emory, Professor Shepherd has taught courses in corporate law, evidence, civil procedure, law and economics, and is the author of several books and numerous articles in law journals and periodicals.

Professor Shepherd, thank you for joining us today, and the floor is yours.

STATEMENT OF GEORGE B. SHEPHERD, PROFESSOR OF LAW, EMORY UNIVERSITY SCHOOL OF LAW, ATLANTA, GEORGIA

Mr. SHEPHERD. Thank you for the opportunity to testify before your Committee, and also I am here to support with great enthusiasm passage of the John R. Justice Prosecutors and Defenders Incentive Act.

My main point today will be the following: If we limited or even eliminated the accreditation requirements for law schools, we could substantially reduce the costs of implementing the Act, and we could do this while at the same time improving the training of lawyers.

Many of the participants in the accreditation system are public-spirited and selfless, and the system may provide some benefits. However, my research shows that the system has also imposed large harms. It has increased the cost of legal education substantially. It has suppressed potential new schools that would be cheaper, and sometimes also better. The system has excluded many from the legal profession, particularly the poor and minorities. It has raised the cost of legal services, and it has, in effect, denied legal services to whole segments of our society.

Today, I will focus on one of these harms: how the accreditation system substantially increases the costs of legal education. The Act is excellent and essential legislation. However, we need to recognize that passage of the Act is necessary partly because of the accreditation system. Without the system, many more students would graduate from law school with no loans or much smaller ones so that they would not need to use the benefits that the Act provides. With the accreditation system, the Act will, in effect, transfer much

taxpayers' money from the Federal Government to overpriced law schools.

Strict accreditation requirements are a relatively recent phenomenon, having begun in the Great Depression. What seems normal now after 70 years was, in fact, a radical change from a much more open system that had functioned well for more than a century before then. Until the Great Depression, no State required an applicant to the bar to have attended any law school at all, much less an accredited one. Indeed, 41 States required no formal education whatsoever beyond high school. Similarly, bar exams were easy to pass, and they had very high pass rates.

Often, the best lawyers did not go to law school. For example, my great-grandfather was Henry Russell Platt. He was a founding name partner of what is currently a leading law firm in Chicago, which until recently was called Mayer, Brown, and Platt. He never went to law school.

During the Depression, State bar associations attempted to eliminate so-called overcrowding in the legal profession. They attempted to reduce the number of new lawyers in two ways: first, they decreased bar pass rates; second, they convinced courts and State legislatures to require that all lawyers graduate from ABA-accredited law schools.

The ABA's accreditation requirements, in turn, increase the cost of becoming a lawyer in two ways:

First, they increase law school tuition. They do this by imposing many costs on law schools. For example, accreditation standards effectively raise faculty salaries; they limit faculty teaching loads; they require high numbers of full-time faculty rather than cheaper part-time adjuncts; and they require expensive physical facilities and library collections. The requirements probably cause law schools' costs to more than double, increasing them by more than $12,000 per year, with many schools then passing the increased costs along to students by raising tuition. The total increase then from the system for the 3 years of law school is more than $36,000.

One example of the many expensive accreditation requirements is the ABA's requirement that an accredited school have a library and extensive library collection. Insiders confirm that the ABA requires a minimum expenditure on the library of approximately $1 million per year. This is more than $4,000 per student per year in the average size school.

The second way that the ABA requirements increase student costs of entering the legal profession is as follows: The ABA requires students to attend at least 6 years of expensive higher education—3 years of college and 3 years of law school. Before the Great Depression, a young person could enter the legal profession as an apprentice directly after high school. Now a person can become a lawyer only if she can afford to take 6 years off from work after high school and pay 6 years of tuition. The total cost of the 6 years of tuition and 6 years of lost income easily exceeds $300,000.

The student has to pay for the increased costs from accreditation somehow. Unless the student is wealthy, large student loans will be necessary. Under the Act, for students who will become prosecutors or public defenders, the taxpayers will pay for the loans.

To reduce the costs that the Act imposes on taxpayers, the accreditation system's restrictions should be loosened. For example, law schools might be permitted to experiment with smaller libraries, cheaper practitioner faculty, and even shorter programs of 2 years rather than 3, just like business school. Or the requirements might be eliminated completely. Students without a degree from an accredited school would be able to practice law.

Reducing or removing the flawed, artificial accreditation bottleneck would create many benefits but few harms. The current system's high-end qualities would continue, while a freer market for variety would quickly open up. To Rolls-Royce legal educations would be added Buicks, Saturns, and Fords.

Reduction or elimination of the accreditation requirement is a modest, safe proposal. Even if accreditation were completely eliminated, it merely re-establishes the system that exists in other critical professions, a system that worked well in law for more than a century before the Great Depression. Business and accounting provide comforting examples of professions without mandatory accreditation. In both professions, people may provide full-quality basic services without attending an accredited school. A person who seeks to manage a local McDonald's franchise or to prepare tax returns need not attend business school or become a CPA first. Yet there is no indication that the level of malpractice or fraud is higher in these fields than in law. Likewise, there is no indication that malpractice and fraud were any more frequent during the century before accreditation and the bar exam when lawyers like Abraham Lincoln practiced. Lincoln never went to law school.

The John R. Justice Prosecutors and Defenders Incentive Act is superb legislation. However, the ABA accreditation system increases the Act's costs. Limiting or eliminating the accreditation requirements would produce few harms and many benefits. The benefits would include making the Act much cheaper to implement.

Thank you very much.

[The prepared statement of Mr. Shepherd appears as a submission for the record.]

Senator DURBIN. Thank you, Professor Shepherd.

Our final witness is Jessica Bergeman, Assistant State's Attorney in Cook County, currently serves the 2nd Municipal District of Cook County in Skokie. She prosecutes misdemeanor cases involving DUI, assault, theft, and domestic violence. A native of Boyertown, Pennsylvania, 2003 graduate of Temple University's Beasley School of Law in Philadelphia, she was one of Temple's first students in the Beasley's Scholars Program, and she received a scholarship that paid for her first year of law school education. When she graduated, she had approximately $65,000 in student loan debt from law school. According to a recent survey, the average law school loan debt assumed by prosecutors is around $65,000. So, Ms. Bergeman, I am sorry to say that in this category you are only average. But it could have been worse. However, in every other category of professional and personal accomplishment, it is clear you have been exceptional, and your public service has been an asset to Cook County and our State of Illinois.

Glad to have you here today. The floor is yours.

STATEMENT OF JESSICA A. BERGEMAN, ASSISTANT STATE'S ATTORNEY, COOK COUNTY STATE'S ATTORNEYS OFFICE, CHICAGO, ILLINOIS

Ms. BERGEMAN. Thank you, Senator Durbin. Allow me to express my thanks in having this opportunity. I have been shouting at the wall for so long, it is nice to have a voice in this forum. Thank you very much.

There are ten misdemeanor Assistant State's Attorneys in my division. I would like to just introduce a few. In addition to the two exceptional Assistant State's Attorneys Senator Durbin already mention in Derrick and Aisha.

Mark has been with the office for several years, and he has rotated through each of the assignments in our office, from petty tickets to Class A misdemeanors to domestic violence, preliminary hearings, and felony review. Mark walks to work whenever the weather permits, even though it takes him 40 minutes each way, because leg power is cheaper than putting gas in his car. He pays $500 a month in student loans, and he has $70,000 to go. When I talked to Mark about coming here today, he said to me that all he wants to do someday is to be able to own his own home.

Laura is uniquely situated to both investigate criminal charges and respond to the needs of the victims of crime. She came to the office after receiving undergraduate and graduate degrees in psychology, and she had top-secret clearance in the FBI's Organized Crime Division. She owes a minimum of $150,000 in post-graduate loans. She, like me, makes $52,000 a year. She lives for payday so she can pay her bills and use almost everything that is left to buy groceries and put a full tank of gas in her car.

And then there is me. I was raised by my mother, a single parent and a secretary for more than 35 years. I grew up, as Senator Durbin mentioned, in Boyertown, Pennsylvania, an area that until recently was a hotbed of neo-Nazi and Ku Klux Klan activity. It was there that I learned about both power and fear. On the one hand, I was the golden child. I was the honor roll student, the cheerleader, the Junior Miss Congeniality Award winner, and the nationally ranked public speaker. But, on the other hand, I was tormented and harassed because of my color, and my cousin was chased home by a truckload of Klansmen.

It was then that I decided that I hated bullies, and I decided to become a prosecutor because of it. Nothing infuriates me more than watching someone wield power without compassion or, worse, vindictively or with hatred.

Crime, as I have learned, is at its essence about power—the power to forcibly or by deception take something not rightfully yours, the power to cause fear through the swinging of a fist or seeing the glint of steel flash before you. And yet I also recognize that members of the judicial system, prosecutors in particular, wield significant power themselves.

Prosecutors hold the power to control the fate of cases and determine in which instances the people, whom we have sworn to represent, have actually been harmed and would demand redress, or in other instances where no harm is done and the criminal is, in fact, a criminal only because of circumstance. I will give you an example.

If one's old semi-dilapidated car, like my 10-year-old Explorer, fails to pass an emissions test, the Secretary of State will suspend the driving privileges of the registered owner of the vehicle. Driving on a suspended license is a Class A misdemeanor, punishable by up to 364 days in the county jail, a fine of up to $2,500, or some combination of the two.

Many defendants are too poor to fix the car, certainly too poor to buy a new one, and have unreliable or no public transportation option, yet they need to get to work to maintain their income, however limited it may be. That is an untenable position.

If the prosecuting attorney standing on the far side of the bench has never wondered, much less lost sleep over, how to make ends meet financially, how much compassion will they have for the defendant's dilemma? And will they seek justice in that situation?

My car personally has been in the shop four times since October, and even though I am very grateful for my credit cards in those instances, when the bill comes I wonder how many times I am going to be left eating Cup O Noodles for dinner because I cannot afford to buy groceries.

Moreover, I keep the heat in my apartment at 62 degrees, and, Senator Durbin, as you know, Chicago is not warm in the wintertime. I cap the temperature at the level because if I set it any higher, my heating bills are more than $200 a month, and even the budget plan requires a $100-a-month payment all year long.

Finally, my student loans total just under $400 a month. My last one is due on February 20, 2030. I will be 55 years old.

I understand financial dilemmas, but beyond just the economics, out of the 26 Assistant State's Attorneys in my district, I am the only African-American prosecutor. I have been mistaken in court for the interpreter, the clerk, the public defender on a regular basis. And yet when I tell people who I am, even if they want to hate me, I can see the respect in their eyes when they look at me.

I believe it is good for the communities of Chicago to see Assistant State's Attorneys of color. Unfortunately, it is often we who are most burdened with educational debt. And when people like me are forced to leave their position, it cannot just be considered a personal career setback. Their leaving has the potential to further the divisions between the prosecutors and the majority of the people that they prosecute.

The word "justice" has a definition. The search for justice in the criminal system that bears its name requires a variety of perspectives and experience. And without bills in place like this one, the perspectives of the people entrusted with administering justice will be narrowed, their experiences homogenous, and justice itself more and more elusive.

Thank you.

[The prepared statement of Ms. Bergeman appears as a submission for the record.]

Senator DURBIN. Thank you for your testimony, and thanks to all three of you.

I just let Senator Whitehouse know that we have a vote that just started. He is going to race over to the floor and vote, return, and during that period of time I will ask questions. Then he will ask,

and I will try to return after that. So if it looks like a tag team match, it is.

Before I ask specific questions of witnesses, I would like to place in the record statements from the following organizations: the National District Attorneys Association, Conference of Chief Justices, a letter from 62 State and local Chief Public Defenders, National Legal Aid and Defender Association, National Juvenile Defenders Center, a letter from 30 State criminal defense lawyer associations, the Defenders Association of Philadelphia, the Oregon Office of Public Defense Services, the King County, Washington, Office of the Public Defender, the New York State Defenders Association, the National Association of Criminal Defense Lawyers, and the Metropolitan Public Defender Services of Portland, Oregon. And, without objection, they will be included in the record in support of the legislation pending.

Ms. Bergeman, I have noticed when talking to private law firms that they put a premium on minorities. Many of them are anxious to have a diverse work force, particularly women, because many women who are talented and come to the law firm do not stay for long periods of time, make other decisions with their lives, have interrupted service in private practice and such. So it strikes me as an unusual situation here to learn of the sacrifice you are making to stick with public employment when the potential on the private side may be substantially greater.

I have listened to your life story that you told us in brief here. How many others in the Cook County State's Attorneys Office are in similar circumstances that you know?

Ms. BERGEMAN. There are far too many to mention, but what I think is so important to realize is that those of us who are in the office are there because of a true commitment to public service. We all recognize that we could walk out the front door of the Cook County State's Attorneys Office into a major law firm, and have all of our debts paid in a very short amount of time. But the long-term commitment for us is seeking justice in the justice system. And so many of us, whether it is women or people of color, feel that the most impact they can have is from working within that system, and that is why we are willing to give up all of those benefits, all of those perks.

Unfortunately, so many people end up having to make the decision to leave public service because they need to be able to pay for the basic necessities of life. No one is running out to buy a Ferrari. They just want to pay their bills.

Senator DURBIN. It goes without saying that many of the defendants in these criminal trials are minorities as well. Is that not correct?

Ms. BERGEMAN. It is the reality of the city of Chicago.

Senator DURBIN. The reality mainly of our country.

Ms. BERGEMAN. Absolutely.

Senator DURBIN. And I happen to believe—and I take it from your testimony you feel the same—that for people in the courtroom to see diversity on both sides is a good indication of a justice system that is trying to be balanced in its approach. And if we lose that diversity, then we lose something in our justice system.

Ms. BERGEMAN. That is unquestionably true. When someone walks into a courtroom and sees me as the prosecutor, they may suddenly feel that there is a chance for true justice for them; whereas, if I was not there, or if I was there in a different role, like the interpreter, they would not necessarily feel that way.

Senator DURBIN. Paul Logli, when it comes to your search for Assistant State's Attorneys in Rockford, has the territory or area that you have had to start searching in expanded over the years?

Mr. LOGLI. Certainly. We could always rely on homegrown talent, and now we are reaching into the Chicago law schools or downstate. We go to law schools more often to recruit. We try to develop more networks. Thankfully, the State of Illinois had the wisdom to startup the Northern Illinois University Law School several years ago, and that has provided us.

But the real challenge is I am spending more and more of my time interviewing the candidates for Assistant State's Attorney almost trying to talk them out of it, in a way. I have in front of me the net pay figure of what they are going to start with. And I say, "Now, this is what you are going to get every 2 weeks. Are you going to be able to pay the bills? Because I do not want you to start and then get frustrated and quit before you can really get to the point where you are enjoying the job and handling the major cases." That is the reality that we have been faced with.

I was at an event the other night. One of my young assistants was there with his parents. Here is a man who went to a good undergraduate school out East, went to one of the Chicago law schools. We are paying him $42,500 a year. He is still living at home because he has substantial law school debt that just does not permit him to be independent. What is going to happen when he falls in love and wants to get married and start a family? He is not going to be able to stay in that office. He has already told me that even without that, next year the private loans have to start being paid. He cannot defer the payments any longer.

He does not know what he is going to do, and it is a stress on him right now. And he is a bright young man from Rockford who turned down a job with a major Chicago law firm because he wanted to make a difference in his community. If I cannot attract and retain that person, we are significantly losing an important part of our prosecution efforts.

Senator DURBIN. What impact has this had on the diversity of Assistant State's Attorneys?

Mr. LOGLI. A negative impact. I am fortunate to have several assistants that represent diversity, but certainly not enough to represent the population of my community, and that is troublesome. And as you referred to earlier, a minority graduate from a law school with substantial debt is going to get paid an incredible amount of money and is really sought after by the downtown firms on LaSalle Street. And I cannot compete with that. They are coming out of law school and getting $130,000, $140,000 a year. We start them at $42,500.

Senator DURBIN. Professor Shepherd, first thank you for endorsing the bill. I am glad you did. And you raise a very interesting question, which I think should be addressed, not just at law schools but across the board: Why are we paying so much more in tuition

at universities and professional schools? Way beyond the increases in cost of living, way beyond increases in personal income.

I know these are related, but I am not sure they are directly connected. It is as if we are dealing with the high gasoline bills people are paying, but saying before we can help you with your high gasoline bill, we have got to address the question of mass transit planning at the Federal level. People are still worried about filling that gas tank, and I think that we are talking about the practical side of it. So thank you first for endorsing the bill.

But let me ask you a few particular questions because I think you raise some interesting points that I had not thought about before your testimony. As I understand it now—and let me make sure I get my numbers correct here—each State is responsible for its process for admission to the bar. As part of that process, States are not required to recognize graduation from an ABA-accredited school as fulfilling the requirement, but all 50 States currently do so to some extent.

So are you calling for Federal legislation that would dictate to the States the standards they must set for admission to the bar?

Mr. SHEPHERD. Well, I have not fully thought through this, but we must recognize that if States insist on requiring compliance with the accreditation standards from the ABA, that does increase the cost of law schools and, therefore, increases the obligations of the Federal Government under the Act. And so one thing that could be done is to condition provision of such aid with loosening up of the accreditation standards.

There are some States with looser accreditation standards, for example, California. There are unaccredited law schools there. If you graduate from them, you are permitted to practice law within the State of California, and the schools are half the price of accredited schools. And those schools impose half the financial burden under the Act on the Federal Government.

So I have not thought through exactly the vehicle for doing this, but maybe there is some way for the Federal Government to insist that its money be spent wisely.

Senator DURBIN. The ABA and the National Conference of Bar Examiners' Guide to Bar Requirements notes that not all States require that bar exam applicants graduate from an ABA-approved law school. Only 21 States or jurisdictions limit eligibility to take the bar exam to graduates of ABA-approved law schools. Three States do not require that a law school be ABA or State approved, and seven States permit law office study.

Is there evidence that law school tuitions are lower in States that do not require bar applicants graduate from ABA-accredited law schools?

Mr. SHEPHERD. Well, for example, California, as I just indicated. The unaccredited law schools there are about half the price of the accredited ones. Similarly, in Massachusetts, there is a school called Massachusetts School of Law which has a special dispensation that its graduates can practice law in several States in New England. Its prices are substantially below the prices of accredited law schools. The numbers require that, because the ABA accreditation standards impose costs on law schools, they need to be passed along if the school is not to fail.

Senator DURBIN. You have taken us beyond that suggestion to a brave new world, perhaps a return to a brave old world, which would allow people to read for the bar, I suppose, as Abraham Lincoln did. And you use an analogy of someone starting a business, a McDonald's, with no requirement that they have a business degree.

But it strikes me that there is a significant difference. A person lacking talent who opens a business and fails loses his investment. An attorney lacking talent may lose a case and his defendant go to jail for life.

Isn't that a little different?

Mr. SHEPHERD. It is different, but first we need to look at the other professions which have similar requirements, for example, accounting. One can be an accountant without having to become a CPA. My mother works for H&R Block without having gotten a CPA and works for about $20 an hour or $15 an hour, and she is hired at H&R Block because she is not representing defendants in capital cases.

Similarly, the market would sort things out such that you would not have inexperienced people without law degrees representing people either in capital murder cases or representing large companies in large transactions. The market would sort things out just the way it did 80 years ago. And, similarly, you can see this in other fields such as engineering. Many States do not require that someone go to an accredited school to become an engineer, even though engineering, of course, failure in that area can result in people being killed by buildings falling down.

So I think—

Senator DURBIN. I do not doubt that the market would sort it out. I just wonder how many customers in that market would have a miserable life experience while the sorting is taking place. That is my concern if we do not have some standards for law school and standards for admission to the bar. But I appreciate your testimony. It is challenging, and I am going to think about it myself as I proceed to rush over for a vote because I have 4–1/2 minutes left.

I am going to turn it over to Senator Whitehouse, who was here first, to ask questions, and then Senator Cardin, and I will try to return. Thank you for your testimony.

Mr. SHEPHERD. Thank you.

STATEMENT OF HON. SHELDON WHITEHOUSE, A U.S. SENATOR FROM THE STATE OF RHODE ISLAND

Senator WHITEHOUSE. Well, I thank you all for being here. I appreciate it. This is an important issue, and I want to commend Senator Durbin for having taken the lead on it. I do not know how familiar you are with my background, but I have served as United States Attorney and led prosecutors in the Federal system. I have served as a State Attorney General and led prosecutors who are State officials, Assistant Attorneys General and Special Assistant Attorneys General. And I began my career as a staff attorney in the Attorney General's office many years ago, and I distinctly remember we were working very late hours because there was all sorts of stuff we had to do. And I was working for an Attorney General—I see our public defender Barbara Hurst in the audience. She

will remember Attorney General Violet, who was the Attorney General at the time, and she insisted that the staff members keep track of their hours. So it was very late one night, and I was filling out my weekly report of the hours that I had been at the office. And I happened to have my paycheck as well. I do not know what compelled me to do this, but I figured I would do a little simple division. And the number that I came up with was below the prevailing minimum wage in Rhode Island at the time.

[Laughter.]

Senator WHITEHOUSE. It had more to do with long hours than it had to do with low wage, but it was a deadly combination of the two. And I come from fortunate circumstances so I did not have college loans. I had been able to pay my way through college and law school.

The idea that somebody could have stepped into that position and given that job the attention that it needed for that level of remuneration, who also had had to pay for college and carry the weight of those loans, it just could not happen. It just could not happen. So I am really glad that we are doing this, and I really applaud Senator Durbin for thinking about it.

Jessica, I appreciate your testimony. You seem to have had some similar experiences. We know where it comes from.

One concern that I have in the legislation that I think we are going to address later on is that it appears at this point that there would be a question whether it would cover prosecutors who work in the juvenile area. And I would want to make sure that this legislation covers prosecutors who were operating in the juvenile arena as well. I know that there are semantic distinctions. It is not technically prosecution. It is not technically criminal. But it is very similar, and I want to make sure that we reach out to the entire community, and people should not feel separated between the two, particularly with the sort of crimes that juvenile prosecutors nowadays have to face.

Mr. Logli, I did not have the chance to hear your testimony. I have just arrived here. Would you mind giving me the 2- or 3-minute version?

Mr. LOGLI. Absolutely, Senator.

Senator WHITEHOUSE. My apologies for this, but we have been all scrambled today with the vote going.

Mr. LOGLI. That is absolutely not a problem. We appreciate you being here, and we appreciate your support for this.

Basically, Senator, we have been dealing with this—we identified this as a major issue back in 1998 and 1999, and we started to observe a very disturbing trend, and that was that more and more of the young men and women that we were trying to hire were coming to us with substantial student loan debts, both undergraduate and law school, but especially the law school debts.

We have since discovered that the average amount borrowed in law school by the class of 2005 was nearly $80,000. It was $78,763 on average. And that was if you graduated from a private school. If you graduated from a public school, the average law school debt was $51,056.

These are mortgage-size debts. These are much bigger than the mortgage I had on my first home, and they are just debilitating.

They discourage people from even considering coming into the public sector. And even if they do come with the best of intentions, they do not stay very long. They cannot stay. If they want to start a family, buy a home, get a new car, it becomes a real impediment.

So in my office's example, the number of Assistant State's Attorneys in my office has increased in the last 10, 15 years. But what has not increased is the number of career prosecutors. I just have more prosecutors coming and going in larger numbers because they cannot afford to stay in the office.

We look for those persons that are really driven to come in and make a difference in their community. And at the same time, when I am interviewing them, I have to really grill them on whether they can afford to work there. I show them the net on a typical check and say, "Are you going to be able to live on this? Because, otherwise, you are going to be frustrated."

Senator WHITEHOUSE. So they do not have to face buyer's remorse afterwards when they get that first paycheck?

Mr. LOGLI. Well, sometimes they do, Senator. But in the last 30 days, I have lost two fine young prosecutors who left for one reason, and one reason only: economics.

Senator WHITEHOUSE. Senator Cardin has got a tight schedule, so if you do not mind, I will interrupt for a second.

Mr. LOGLI. Sure, absolutely.

Senator WHITEHOUSE. I will yield the floor to the Senator from Maryland.

STATEMENT OF HON. BENJAMIN L. CARDIN, A U.S. SENATOR FROM THE STATE OF MARYLAND

Senator CARDIN. Thank you very much. First, let me thank all of you for your testimony.

As a way of background, I chaired the Maryland Legal Services Corporation for about 6 years, and I also chaired a commission in the State of Maryland for public interest law. So I am very sympathetic to this bill, and I am very concerned about the fact that student loan debt is impacting decisions made by law school graduates, that they have to look at the economic realities rather than perhaps what they really want to do in life. But that is true beyond just the public defender's office or the prosecutor's office. It goes into a whole range of public interest areas.

So I guess my question is whether—this goal is certainly one that I support, helping the prosecutors. There is a dire need in the civil areas to get young attorneys willing to work in those areas. Some of our States have programs that provide for loan forgiveness and other programs dealing with those who go into public interest law. But with the Federal Government intrusion into this area, I am just somewhat concerned as to whether this is broad enough and whether we should be looking at other areas in addition to prosecutors and defenders, defense attorneys. Any thoughts?

Mr. LOGLI. Well, obviously, the National District Attorneys Association is primarily concerned about the prosecutors and defenders because we are primarily concerned with the criminal prosecution. But I have got to tell you, I understand the problems of which you speak. Prairie State Legal Services is a corporation in Illinois that provides just the type of services you are talking about, Senator.

It helps the indigent people with the problems they have in the civil courts. If there is a group of lawyers that are paid even less than what I pay my lawyers, it is Prairie State Legal Services. And as lawyers, I know that we contribute to it, we raise funds for it. Many of the lawyers in the private sector volunteer their time to take the load off those attorneys.

At the risk of making the pool so broad that we dilute whatever money the Government may put into it, I would be hard pressed to say, no, do not include them. They are in there performing a valuable function.

Senator CARDIN. Here is the problem. Here is the problem. There are certain constitutional protections in our criminal defense system, and we know that we will always be able to put public pressure to prosecute—maybe not at the level we want to. In the civil areas, there is no such protection. And surveys have shown that the amount of adequate representation to indigent or low-income individuals in our civil justice system is very, very low.

One of the problems is that you cannot attract experienced attorneys to work in this area. They may work a year or two, and they leave. The first recommendation I made as Chairman of the State commission was to increase the salaries of those in legal aid because the salaries were unbelievably low, much lower than your entry levels in the prosecutor's offices in our State.

So I am sympathetic to what this bill is trying to do, but I do think there is a desperate need out there to deal with access to our justice system in which too many attorneys are foregoing because they cannot afford to go into those fields.

Mr. SHEPHERD. I was here to testify about how the ABA accreditation system has increased the costs of legal education, and my calculations and my own research indicate that if one goes to a private ABA-accredited school and one does not have family means to support you during that education, to be able to pay your loans you have to earn about $55,000 or $60,000 per year afterwards. If you earn less, you cannot make a go of it.

So, really, what the system has done is created a situation in which only those with private family means can engage in legal services or can become prosecutors or public defenders, and it is just wrong.

Senator CARDIN. I am somewhat concerned, though, with the limited aspects of this legislation. I just think it—I am not sure it is the right signal for the Federal Government's participation.

Ms. BERGEMAN. I would simply suggest, Senator, that with the criminal justice system, you are talking about a penal interest, and to some extent, I think there needs to be more protection provided there because we are talking about potential loss of liberty.

Senator CARDIN. If a person loses their home or cannot get health care or cannot get access to social services, that is pretty tragic.

Ms. BERGEMAN. It is absolutely tragic. It is absolutely tragic without a doubt. And I simply draw the distinction between that and a loss of liberty in terms of incarceration.

Senator WHITEHOUSE. I think, Senator, the even more practical distinction is that there is a CBO number attached to this with respect to its application to those involved in the criminal justice sys-

tem. And if we get beyond that, we get into new budget realms. So perhaps that is for a later day.

Senator CARDIN. We shall see.

Senator WHITEHOUSE. We shall see.

Senator CARDIN. Thank you, Mr. Chairman.

Senator WHITEHOUSE. Well, I appreciate all of your testimony. This has been very, very helpful. I note that a number of organizations have already sent in letters of interest and support. I hope we will hear from the National Association of Attorneys General at some point and maybe even NAFUSA, the National Association of Former United States Attorneys, although I think on the Federal side, the salary issues are less compelling. But I think anybody who has been in this world of law enforcement has witnessed the enormous sacrifice and dedication of people who work at the State level and in some cases at the municipal and county level at what really is a pittance of their earning capacity because of their love for what they do and because of their dedication to the principles that part of the legal practice is dedicated to upholding. So I am very grateful to all of you.

If there are no further comments, I will bring this hearing to a close. The hearing record will remain open for 1 week for additional materials from interested individuals or organizations to be submitted. Written questions for the witnesses—you may end up having homework—must also be submitted by the close of business 1 week from today, and written questions may be submitted to our absent witness, Michael Judge. We will ask the witnesses to respond to those questions promptly so we can complete the record.

I hope that this hearing has helped impress on everyone the importance of facilitating the continued dedication of the best and our brightest young lawyers to this vital part of our legal profession and this vital part of our society. And I appreciate everybody's attention today.

Thank you. The hearing is adjourned.

[Whereupon, at 2:58 p.m., the Committee was adjourned.]

[Submissions for the record follow.]

SUBMISSIONS FOR THE RECORD

TESTIMONY OF JESSICA A. BERGEMAN
ASSISTANT STATE'S ATTORNEY, COOK COUNTY, ILLINOIS
U.S. SENATE JUDICIARY COMMITTEE HEARING
"STRENGTHENING OUR CRIMINAL JUSTICE SYSTEM: THE JOHN R. JUSTICE PROSECUTORS AND DEFENDERS INCENTIVE ACT OF 2007"
FEBRUARY 27, 2007

Thank you Senator Durbin, Chairman Leahy, Ranking Member Specter, and other members of the Committee for inviting me here to testify today about the John R. Justice Prosecutors and Public Defenders Initiative Act of 2007.

There are 10 misdemeanor assistant state's attorneys in my division. Allow me to introduce a few:

Mark has been with the office for several years. He has rotated through each of the assignments in my district—from petty tickets, to Class A misdemeanor court calls, to domestic violence, to preliminary hearings, to felony review. Mark walks to work whenever the Chicago weather permits regardless of the fact that it takes him almost 40 minutes each way to do so because leg power costs less than gas for the car. He pays $500 a month in student loans. He still has $70,000 to go.

Laura is uniquely situated to both investigate criminal charges and respond to the needs of the victims of crime. She came to the office after receiving both undergraduate and master's degrees in psychology and having interned at the Organized Crime Division of the Federal Bureau of Investigation with top-secret clearance. Laura owes a minimum of $150,000 in post-grad loans. She, like me, makes $52,000 per year and lives for payday when she can pay her bills and use almost everything left for groceries and a full tank of gas.

And then there's me. I was raised by my mother, a single parent and secretary for more than 35 years. I grew up in Boyertown, Pennsylvania, an area that until recently was a hotbed of neo-Nazi and KKK activity. It was there that I learned about both power and fear. On one hand, I was the golden child—honor roll student, cheerleader, Junior Miss Congeniality award winner and nationally ranked public speaker; but on the other, I was mocked and harassed because of my color while my cousin was chased home by a truckload of klansmen.

I decided to become a prosecutor because I hate bullies. Nothing infuriates me more than watching someone wield power without compassion or, worse, vindictively or with hatred. Crime, at its essence, is about power—the power to forcibly or by deception take something not rightfully yours; the power to cause fear through the swinging of a fist or seeing the glint of steel flash before you. And yet, I recognize that the members of the judicial system, particularly prosecutors, wield significant power themselves.

Prosecutors hold the power to control the fate of cases and determine in which instances the People, whom we've sworn to represent, have actually been harmed and would demand redress. Or the other instances in which no harm is done and the criminal is, in fact, a criminal only because of circumstance. For example, if one's old, semi-dilapidated car (much like my 10 year old Explorer) fails to pass an emissions test, the Secretary of State will suspend the driving privilege of the registered owner of the vehicle. Driving on a suspended license is a Class A misdemeanor punishable by up to 364 days in the Cook County Department of Corrections, a fine of up to $2,500 or some combination of the two. Many defendants are too poor to fix the car, certainly too poor to buy a new one, and have unreliable or no public transportation option; yet need to get to work to maintain their income--however limited. That is an untenable position.

If the prosecuting attorney standing on the far side of the bench has never wondered--much less lost sleep over--how to make ends meet financially, how much compassion will they have for the defendant's dilemma? And will they seek justice in the situation?

My car has been in the repair shop 4 times since October and while I'm thankful for my credit cards in those instances, my heart leaps into my throat when the bills arrive because I wonder how many times until my next paycheck I'm going to be eating Cup O' Noodles for dinner.

Additionally, I keep the heat in my apartment set at 62 degrees, which if you've ever visited Chicago in the winter you'll know isn't warm. But I do it because if it is set any higher, my heating bills exceed $200 per month and even the budget plan requires a monthly $100 payment all year long.

Finally, my student loan payments total just under $400 per month. My last one is due on February 20, 2030. I will be 55 years old. I understand financial dilemmas.

But beyond just the economics, out of the 26 assistant state's attorneys in my division, I am the only African-American prosecutor. I have been mistaken in court for the interpreter, the clerk and the public defender—on a near daily basis. Yet when I explain who I am, even those people who want to hate me have a grudging respect showing in their eyes.

I truly believe that it is good for the communities of Chicago to see Assistant State's Attorneys of color. Unfortunately, it is often we who are most burdened with educational debt. People like me who are forced to leave the office because they cannot afford to stay cannot be categorized as just a personal career set-back, but rather it has the potential to further the divisions between the prosecutors and so many of the people they prosecute.

The word justice has a definition. The search for justice in the criminal system that bears its name requires a variety of perspectives and experience. Without bills in place like the John R. Justice Prosecutors and Public Defenders Initiative Act, the perspectives of the people entrusted with administering it will be narrowed, the experiences homogenous, and justice itself more and more elusive.

Thank you again for bringing me here to speak to you today.

CONFERENCE OF CHIEF JUSTICES

Resolution 4

In Support of Federal Legislation to Create Incentives to Law Students to Participate in Public Service Occupations After Graduation

WHEREAS, the 109th Congress considered legislation designed to encourage qualified individuals to enter into and continue employment for at least three years as criminal prosecutors and public defenders by means of providing U.S. government payment of a portion of that individual's student loan for each year of such employment; and

WHEREAS, the 110th Congress is also likely to consider legislation to assist the repayment of student loans of qualified individuals who commit to employment as prosecutors and public defenders; and

WHEREAS, the Association of American Law Schools, Equal Justice Works, the National Legal Aid and Defender Association, and the American Bar Association have expressed support for the above-described legislation; and

WHEREAS, lawyers who engage in civil legal services to enhance access to justice by low income persons render valuable public service that is comparable to that provided by criminal prosecutors and public defenders;

NOW, THEREFORE, BE IT RESOLVED that the Conference of Chief Justices hereby urges the Congress to adopt legislation to give financial incentives to law school graduates to commit to sustained public service as prosecutors and public defenders; and

BE IT FURTHER RESOLVED that the Conference also encourages Congress to develop and adopt separate legislation providing similar relief for qualified individuals who engage in employment as civil legal aid attorneys.

Adopted as proposed by the Government Affairs Committee and the Professionalism and Competence of the Bar Committee of the Conference of Chief Justices on February 7, 2007.

THE CITY OF NEW YORK
OFFICE OF THE MAYOR
OFFICE OF THE CRIMINAL JUSTICE COORDINATOR
MUNICIPAL BUILDING • ONE CENTRE STREET • TENTH FLOOR NORTH
NEW YORK, NEW YORK 10007
(212) 788-6810 • FAX (212) 788-6847

JOHN FEINBLATT
Criminal Justice Coordinator

March 2, 2007

The Honorable Richard Durbin
Chairman
Subcommittee on Human Rights and the Law
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Durbin:

I am writing to express my support for a bill currently pending in the Senate that provides loan repayment for lawyers who make a commitment to public service.

S. 442, entitled the "John R. Justice Prosecutors and Defenders Incentive Act of 2007," will help state and local agencies, as well as nonprofit organizations attract and retain highly qualified lawyers by helping them pay off their federal student loans.

I urge you to vote for S. 442 as it is currently drafted. This bill provides relief for those dedicated, qualified lawyers who wish to serve their communities by working as prosecutors and public defenders. In New York City, several nationally recognized not-for-profit organizations serve our residents as public defenders. As such, providing loan repayment for these lawyers in addition to government prosecutors is vital to our criminal justice system.

Sincerely,

John Feinblatt

cc: Senator Patrick Leahy, Chairman, Senate Judiciary Committee
Senator Arlen Specter, Ranking Member, Senate Judiciary Committee
Senator Charles E. Schumer, Senate Judiciary Committee
Senator Tom Coburn, Ranking Member, Subcommittee on Human Rights and the Law
Senator Hillary Clinton

Russell Feingold

Statement of U.S. Senator Russell D. Feingold
Senate Committee on the Judiciary
Hearing on "Strengthening Our Criminal Justice System:
The John R. Justice Prosecutors and Defenders Incentive Act of 2007"
Tuesday, February 27, 2007

Mr. Chairman, we know that a healthy criminal justice system is a necessary component of keeping our communities safe. A healthy criminal justice system, however, does more than just grant us security; a healthy criminal justice system is the foundation of a society organized by law and committed to justice.

Such a system can only be as strong as the people who make it up, and today we consider the needs of our local prosecutors and public defenders. Prosecutors are crucial to bring those who commit crimes to justice. Equally important is the role that public defenders play, ensuring that every accused individual—even those who cannot afford their own attorneys—has an effective advocate in the process. We expect these lawyers to work tirelessly toward these ends, for the efficacy and accuracy of our adversarial system depends upon their work.

Currently, however, we are not giving these public servants the financial support they need. Paul Logli, Chairman of the National District Attorney's Association, tells us in his testimony that approximately 95 percent of criminal cases go through our state courts, with young local prosecutors and public defenders handling much of this caseload. So I was deeply concerned to learn that it is common practice for young prosecutors and public defenders to decide they must take a second job in order to make their student loan payments. This illustrates in a very concrete way the significant financial pressure facing these individuals. It is no surprise, then, that local prosecutor and public defender offices struggle with attrition rates in the 30 percent to 50 percent range. That is very troubling. Our system of justice, and all of us, are harmed when these offices must constantly recruit and train new lawyers because some of the dedicated individuals who choose this work simply cannot afford to remain in the public sector.

More than ever, we need an effective criminal justice system that is ready to take on the challenge that the rising crime rate poses. The 2005 FBI Uniform Crime Report detailed a startling increase in violent crime, with 2005 showing the largest single year percent increase in violent crime in fourteen years. The Midwest has been particularly hard hit, so while violent crime increased 2.3% overall at the national level, in the Midwest the increase was 5.6%. Wisconsin was even worse off, reporting a 15.8% increase. Unfortunately, preliminary figures collected by both the FBI and by groups like the Police Executive Research Forum indicate these increases are not mere blips but instead represent a trend that should concern us all. I raise these facts to illustrate that there is real urgency behind what we are considering today.

As our criminal justice system is called upon to respond to the rising crime rates, it is essential that the women and men responsible for prosecuting and defending these cases have the support they need. These public servants should be able to come to work each day without constant worry about educational debt, and without having to take on a second job. They should be paid well enough to allow them to remain in the public sector and develop the expertise and experience to make our criminal justice system the best it can possibly be. The John R. Justice Prosecutors and Defenders Incentive Act of 2007 will provide new resources, so that local prosecutor and public defender offices not only can recruit the best and the brightest, but also can retain them.

Moreover, as Assistant State Attorney Jessica Bergeman points out, by providing loan repayment to these public servants, this bill supports the development of a truly diverse cadre of prosecutors and defenders. Without this sort of financial support, those most burdened by education loans—those who needed those loans to be able to attend law school and often college in the first place—are less likely to be able to remain as prosecutors or public defenders. To have a criminal justice system that produces justice for all Americans, we need a criminal justice system that reflects the wisdom and experiences of all Americans.

I applaud the work that Senators Durbin, Specter, Leahy and others have done on this bill. I believe that S. 442 is an excellent piece of legislation, and I am proud to be a cosponsor. The attorneys who work as local prosecutors and public defenders serve all of us, and as the testimony before us today illustrates, often at great personal sacrifice. It is not too much to ask that the federal government step in and help lighten their financial burdens. In so doing, we strengthen our criminal justice system, and our communities. Thank you.

NEW YORK STATE DEFENDERS ASSOCIATION, INC.
194 Washington Avenue, Suite 500
Albany, New York 12210
(518) 465-3524, FAX: (518) 465-3249

February 22, 2007

The Honorable Richard J. Durbin
United States Senate
Washington, DC 20510

Dear Senator Durbin:

I write to make clear the identical nature and responsibilities of contract defender offices and county public defender offices under New York State law.

When New York State established its institutional public defense system in 1965, a county was empowered under our County Law to establish an office of public defender or to contract with a legal aid society, a 501(c)(3) not-for-profit corporation providing legal services.

Unlike many other states, New York had a long and rich history of providing counsel to the indigent and had done so from the time New York was a British colony. Indeed, our primary historical provider of public defense services – the New York City Legal Aid Society – was actually established in the 19th century, and by the time of *Gideon* had provided representation to the poor in New York City for almost 90 years. New York delegated the responsibility to localities to choose the type of system desired, and simultaneously delegated the administrative obligation to oversee those services to counties and the city of New York. While this unfunded mandate has made it difficult to maintain an adequate system of public defense services, it is clear that the intent of the state legislature in 1965 was to be deferential to localities in their choice of system.

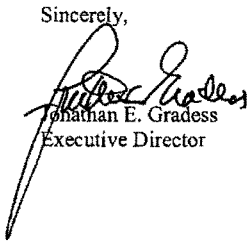
Today, New York has 20 contract defender offices and 40 public defender offices, each functioning as institutional defender offices in their respective counties. There is no distinction under New York State statutory law between these two types of defender offices; they bear the same legal obligations, handle the same types of cases, have the same reporting obligations, and are funded by the same state aid program. There are a myriad of reasons why localities might choose a contract legal aid society over a county office of public defender to deliver services. In some jurisdictions, history will dictate. Several offices in New York State have long histories in their counties; some were founded by historical leaders of the bar; others predate *Gideon* and were incorporated in our statutory scheme as a consequence of already being in existence at the time our state's system was established. A locality might also choose a legal aid society because it appreciates the independence provided to the defense function by a not-for-profit board of directors. Contracting with a legal aid society may also provide a level of flexibility not available

in the administration of a county office. In some cases, legal aid societies have proven themselves to be more cost efficient, and in other places they are preferred because they keep the size of the government budget and the associated benefits within that budget at a reduced level. New York's diversity of delivery mechanisms does not diminish the fact that the services provided by contract legal aid societies and county public defender offices are identical; the obligations imposed on them by state and county law are the same; each performs identical services under our state and federal constitutions.

From the perspective of New York, there should be no differentiation in the federal loan forgiveness legislation between county public defender offices and county-based contractual legal aid societies. Indeed, to differentiate between them would be unfair, undermining current local choice in deciding the most appropriate delivery mechanism and allowing for an untoward involvement of the federal government in that decision making.

Please feel free to contact me if you have questions or if I can provide further information. On behalf of this state's young public defense lawyers, I thank you for introducing this very important legislation.

Sincerely,



Jonathan E. Gradess
Executive Director

JEG/bb

xc: Senator Charles E. Schumer

DEFENDER ASSOCIATION OF PHILADELPHIA

1441 Sansom Street
Philadelphia, PA 19102-3004
(215) 568-3190

ELLEN T. GREENLEE
DEFENDER

February 26, 2007

Senator Richard Durbin
309 Hart Senate Office Building
Washington, DC 20510

Senator Arlen Specter
711 Hart Senate Office Building
Washington, DC 20510

RE: John R. Justice Prosecutors and Defenders Incentive Act of 2007

Dear Senators Durbin and Specter:

I write to urge your continued support of loan forgiveness for all full-time public defenders, as well as prosecutors. I specifically request, on behalf of the Defender Association of Philadelphia, a non-profit association that contracts with the City of Philadelphia, that we be included with those defenders who are state or local government employees. We are the only institutional defender in Philadelphia, providing representation to indigent adults and juveniles charged with criminal offenses.

The Defender Association of Philadelphia has, for almost 40 years, provided legal representation to approximately 70 percent of those arrested in the city. In 2006 we received 65,000 new court appointments. In addition to trial representation, we have the largest criminal defense appellate practice in Pennsylvania, handling misdemeanor, felony, homicide and death penalty appeals.

Senator Specter, a former Philadelphia District Attorney, is very familiar with the high quality, professional operation that is the Defender Association. We represent our poor clients with skill, zeal and compassion and have been recognized by the National Legal Aid and Defender Association as one of the best public defender agencies in the country. We work everyday to ensure that there is no difference in the quality of representation afforded the poor and that available to those able to afford private counsel.

There surely is no rational distinction between defenders who are employed by state or local government and those of us who work for non-profit provider. All public defenders should be permitted to benefit from loan forgiveness as it will facilitate hiring and retention of qualified young attorneys to serve our poorest citizens.

Thank you for your consideration of this particular request and for your continuing support of fair treatment for those working in public service and public interest. If I can provide additional information please contact me.

Sincerely,

Ellen T. Greenlee

ELLEN T. GREENLEE
Defender

ETG:cma

JAMES D. HENNINGS
Director

METROPOLITAN PUBLIC DEFENDER SERVICES, INC.

February 26, 2007

Hon. Gordon Smith
United States Senator
404 Russell Building
Washington, D.C. 20510

Re: S. 442: The John R. Justice Prosecutors and Defenders Incentive Act of 2007

Dear Senator Smith:

The Board of Trustees for the Metropolitan Public Defender in Portland, Oregon submits this testimony to urge the Senate Judiciary Committee to pass S. 442 and to work to ensure its full funding. This measure is crucial in guaranteeing that lawyers can afford to enter and remain in staff attorney positions in America's criminal justice system. As this Committee is aware, effective criminal defense is a constitutionally mandated aspect of that system. If law school graduates can no longer afford to serve, the system as a whole suffers.

I. The Metropolitan Public Defender Board of Directors

The Metropolitan Public Defender (MPD), which was established in 1971, is Oregon's oldest and largest full-service public defender. It is organized as a non-profit law firm under the direction of the independent Board of Trustees which is providing this testimony. The office employs 60 full-time attorneys, who provide services to over 18,000 clients annually in the two counties in Oregon which include Portland and most of the surrounding metropolitan area.

The Board, which is responsible for policy, oversight and selection of an Executive Director, is composed of the following five individuals:

Stephen Houze (chairman): selected by the President of the Oregon State Bar. Mr. Houze is one of Oregon's leading private Criminal Defense Attorneys. Mr. Houze began his career in the 1970s as a staff attorney at MPD.

Jonathan Ater: selected by the Chief Justice of the Oregon Supreme Court. Mr. Ater, a civil attorney, is a founding partner of Ater Wynne LLP, a major Oregon law firm.

630 S.W. FIFTH, SUITE 500 • PORTLAND, OREGON 97204-1405 • (503) 225-9100

Elise Marshall: selected by the Chair of the Board of County Commissioners for Multnomah County. Ms. Marshall, who is not an attorney, has extensive experience in Portland city government, including service as an aide to the Mayor of Portland with special liaison responsibilities to law enforcement.

Kristine Olson: selected by the Chair of the Board of County Commissioners for Washington County. Ms. Olson is the former United States Attorney for the District of Oregon.

Professor Susan Mandiberg: selected by the Board of Trustees. Prof. Mandiberg teaches courses in criminal law and procedure, among others, at Lewis and Clark Law School. She is the Chair of the committee that oversees the law school's Loan Repayment Assistant Program for graduates in public-interest law. She began her career in the 1970s as a staff attorney at MPD.

II. The Importance of S. 442

A. Summary of Testimony

It is common knowledge that most public service jobs come with low salaries. This is especially true of staff attorney positions in public defender offices. Low starting salaries make it difficult or impossible for recent law-school graduates to take public defender jobs. Even when they can take such jobs right out of law school, low continuing salaries make it difficult or impossible for staff attorneys to continue in their positions for more than a few years. These difficulties are caused by the immense debt burden carried by today's law graduates. S. 442 can make it easier for young attorneys to enter and remain in public service by reducing the crushing weight of debt service.

The inability to attract and retain the most talented lawyers creates a problem for the criminal justice system as a whole. Effective criminal defense is a constitutionally mandated service. The absence of experienced attorneys in public defender offices makes it more likely that injustice will occur in fact and in the perceptions of the public. Thus, passage of S. 442 is in the interests of the criminal justice system and the country as a whole.

B. Testimony

Most public service jobs come with low salaries, and public-defender salaries tend to be even lower than those for prosecutors.[1] In Portland, Oregon, salaries for entry-level staff attorneys at MPD begin at $41,000 a year; beginning prosecutors in Multnomah County make $ 56,167.20, and those in Washington County make $54,924. The salary differential makes it difficult for public defenders to attract a large, diverse pool of applicants for staff attorney

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[1] Equal Justice Works, FINANCING THE FUTURE: RESPONSES TO THE RISING DEBT OF LAW STUDENTS iv (2d ed. 2006) (available at www.equaljusticeworks.org/financing-the-future2006.pdf)

positions. Idealism will not pay the bills, and even public-spirited young lawyers with staggering student-loan debt need to maximize every cent of income possible.

The challenge for young lawyers becomes clear upon examining the economics. Assume a recent graduate with a law-school debt of $77,000. (This figure is slightly less than the national average for graduates of private law schools[2]; it does not include any still-outstanding college debt.) The yearly debt service for this recent graduate is likely to be in the neighborhood of $5,916.00.[3] The impact of this reality on an entry-level staff attorney at MPD is dramatic. This attorney's after-tax income will be about $32,00.00.[4] When the law-school debt service is deducted, this new lawyer will have about $28, 284.00 a year to live on: $2,347.00 a month. The situation is actually slightly worse for the entry-level lawyers presently at MPD, as their average debt load is higher than the one in the example. In fact, a recent survey revealed that the ten lawyers who began work at MPD in the last year are paying, on the average, 15% of their salaries to service their student loans. The economic realities make it challenging for MPD and other defender organizations to attract a large pool of high-quality candidates for staff attorney positions; the realities make it especially challenging to achieve our goals of increasing ethnic and racial diversity in our professional staff.

The problem does not disappear after a year or two of work, however. The debt and the debt service continue unabated, but the demands on the young lawyer's finances increase. Some already have children to support, and others desire to start a family; many yearn to live the relatively comfortable life an advanced degree normally bestows. Our experience indicates that these pressures cause many public-interest lawyers to move to the private sector in three to five years after law school. However, the problem is more acute for public defenders than it is for prosecutors, as the salary differential between career prosecutors and defenders persists and even worsens. Thus, as compared to prosecutors' offices, it is correspondingly more difficult for public defenders to retain experienced lawyers who can handle serious cases and train their more junior colleagues. MPD is acutely aware of this problem: Several attorneys have informed the office that although they want to continue the work, which is necessary and personally rewarding, they will have to leave the office in the near future because of lack of money.

The impact of the student-loan debt problem goes beyond the personal lives of public defenders and the ability of defender programs to provide consistent, high-quality legal representation to their clients. Our understanding is that public defenders represent upwards of 60% of the defendants in criminal courts in the United States; in Oregon, the figure likely exceeds 90%. If the public-defender bar lacks a substantial core of experienced lawyers,

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[2] *Id.*

[3] This figure is taken from information available to Prof. Mandiberg in her administration of the LRAP program at Lewis & Clark Law School

[4] This figure is calculated using the standard deduction, resulting in federal and state income taxes of approximately $6,800.00.

criminal justice – and the perception of justice – will suffer in the United States. Experienced lawyers have traditionally trained new lawyers: This is the model used in major law firms, in the United States Department of Justice, in county prosecutors' offices, and in public defender agencies. Learning through trial and error should not be the mode for lawyers who hold the lives of clients in their hands. However, lack of relief for student debt is rapidly imposing this reality on the criminal justice system.

The money available through the program established by S. 442 will make a significant impact on the problems caused by student-loan debt. The additional relief provided will enable attorneys to join and remain at MPD and other public defender organizations. This will allow knowledgeable professionals to practice law efficiently and effectively with a resulting increase in justice and public safety for the community. This will become critical in the next few years as long time defenders (who had much lower school debts which are now fully repaid) start to retire. Their replacements are not joining or remaining in the field. It becomes harder for attorneys seeking justice to continue when they and their families cannot receive justice of compensation. The Board of Trustees of The Metropolitan Public Defender urge that you pass and fund the John R. Justice Prosecutors and Defenders Incentive Act of 2007.

Sincerely,

BOARD OF TRUSTEES:

Stephen Houze, Jonathan Ater, Elise Marshall,
Kristine Olson, and Susan Mandiberg

King County
Office of the Public Defender
Department of
Community and Human Services
Walthew Building, Fourth Floor
123 Third Avenue South
Seattle, WA 98104
206-296-7662 Fax 206-296-0587
TTY Relay: 711

February 23, 2007

The Honorable Richard Durbin
United States Senate
309 Hart Senate Office Building
Washington, DC 20510

The Honorable Arlen Specter
United States Senate
711 Hart Senate Office Building
Washington, DC 20510

RE: S. 442 Prosecutors and Defenders Incentive Act of 2007

Dear Senators Durbin and Specter:

I am writing in support of the Prosecutors and Defenders Incentive Act of 2007. I am the King County Public Defender, directing the administrative Office of the Public Defender in King County, Washington. King County is the fourteenth most populous county in the nation. This office provides for the trial level public defense services for indigent persons in death penalty cases, felony, misdemeanor, sexually violent predator commitments, juvenile offender and dependency matters, juvenile status offenses, contempt of court matters, and involuntary commitment cases in the King County Superior, District and Juvenile Courts. This office also provides for public defense services in specialty and therapeutic courts such as drug diversion and mental health courts in King County.

Public defense services in the state of Washington are ninety-five percent (95%) provided for and funded by the counties, and not the state. Different counties in Washington use different models of providing public defense services, including use of independent contractors, private bar, and in-house county employed public defenders. The Washington State Bar Association (WSBA) adopted contracting and public defense standards in 1990, including caseload standards, support staff and supervision ratio standards, attorney qualifications and compensation standards.

Approximately ninety percent (90%) of King County public defense services is provided through independent contracts with not for profit agencies formed for the specific purpose of providing legal defense services to the indigent. The balance of these services is provided by individual private bar attorneys on an hourly rate basis. King County has provided for public defense services by use of independent contractors for over thirty years. The most recent contracting model was adopted by motion of the King County Council in 2005, a copy of which is enclosed for your review. The model outlines the rationale for providing the services in this manner, as well as an overview of the contracting model itself. Legal services to be provided by the independent contracting agencies include all necessary legal services to provide effective assistance of counsel in the matters to which they are assigned.

King County has been pleased with the quality of services provided by the use of independent contracts with not-for-profit agencies. The attorneys and the independent contractor agencies for which they work provide a great public service to their clients, King County and the State of Washington. It would be a great disservice to the many attorneys providing public defense services in King County to exclude independent contractors from the benefits of S. 442. This would work to the disadvantage of the clients and families served by public defenders in the criminal and juvenile courts, eroding the services able to be provided by this office. I urge you to include all attorneys providing public defense services, regardless of the nature of contract under which they are employed, in the benefits included in S. 442.

Please feel free to contact me with any questions you may have in this regard.

Sincerely,

V. David Hoffaffer
The Public Defender

Enclosure

cc: The Honorable Maria Cantwell, United States Senate
The Honorable Patty Murray, United States Senate
Richard Goemann, Director, Defender Legal Services, National Legal Aid & Defender Association
Daniel Swanson, Office of Senator Richard Durbin
Juria Jones, Office of Senator Arlen Specter

KING COUNTY

1200 King County Courthouse
516 Third Avenue
Seattle, WA 98104

Signature Report

July 18, 2005

Motion 12160

Proposed No. 2005-0092.2 **Sponsors** Gossett

1 A MOTION adopting the public defense payment model,
2 establishing a framework for budgeting indigent legal
3 defense services in King County, and requesting the
4 executive to transmit for council approval by motion a
5 business case justifying the need to contract with a new
6 agency to handle conflict cases.
7
8
9 WHEREAS, it is declared a public purpose that each citizen is entitled to equal
10 justice under the law without regard for his or her ability to pay, and
11 WHEREAS, King County makes publicly financed legal services available to the
12 indigent and the near indigent person in all matters when there may be a likelihood that
13 he or she may be deprived of liberty pursuant to the law of the state of Washington or
14 King County, and
15 WHEREAS, it is the intention of King County to make such services available in
16 an efficient manner which provides adequate representation at a reasonable cost, and

17 WHEREAS, in Washington state, the cost of providing indigent defense services
18 is primarily the responsibility of counties and cities, and
19 WHEREAS, for over thirty years, King County has provided public defense
20 services by contracting with nonprofit defender organizations formed for the specific
21 purpose of providing legal defense services to the indigent as well as other independent
22 contractors, and
23 WHEREAS, the thirty years of providing indigent defense services by contracting
24 with nonprofit defender organizations and independent contractors has provided King
25 County with sufficient information to understand an appropriate payment model for the
26 provision of such services, and
27 WHEREAS, prior to 2004, the office of the public defender developed its annual
28 budget using budget information provided by the defender organizations. This practice
29 resulted in different payments to each agency for the same type of work, and
30 WHEREAS, in 2004, the office of the public defender developed a funding model
31 that created a uniform payment structure for salaries, benefits and administrative costs
32 across the defender agencies, and
33 WHEREAS, the funding model was used for the first time in the 2004 annual
34 budget and updated for the 2005 budget, and
35 WHEREAS, the defender agencies were not fully informed of the basic
36 assumptions of the funding model, and
37 WHEREAS, during the 2005 budget process, the budget and fiscal management
38 committee heard testimony from the defender agencies expressing concerns regarding the

39 funding model including the lack of transparency and inadequate funding for salaries,
40 benefits and administrative expenses, and
41 WHEREAS, the 2005 executive proposed budget for the office of the public
42 defender included a plan to solicit proposals for a new defender agency to provide
43 indigent defense services for cases that cannot be assigned to existing contract agencies
44 due to an ethical conflict of interest, and
45 WHEREAS, the budget and fiscal management committee heard testimony from
46 members of the public, members of the assigned counsel panel and the defender agencies
47 at four public hearings on the 2005 executive proposed budget expressing opposition to
48 the plan to contract with a new defender agency, and
49 WHEREAS, Ordinance 15083, adopted by the King County council on November
50 22, 2004, encumbers five hundred thousand dollars until the office of the public defender
51 has submitted and the council has approved by motion a report that describes the model
52 used to develop funding levels for public defense contracts and describes an option for
53 the provision of indigent defense services for cases that cannot be assigned to existing
54 contract agencies due to an ethical conflict of interest, and
55 WHEREAS, the motion and the report required by Ordinance 15083 was due on
56 January 14, 2005, and submitted to the council on February 23, 2005, and
57 WHEREAS, Ordinance 15151 adopted by the King County council on April 18,
58 2005, approved a supplemental appropriation for the office of the public defender in the
59 amount of $2,116,095 solely for one-time 2005 transition funding for public defense
60 contract agencies, and

61 WHEREAS, since January 2005, the directors of the defender agencies have been
62 meeting weekly with staff of the office of the public defender to discuss and provide
63 input on refinements to the financial model for 2006 and beyond; and
64 WHEREAS, in April 2005, staff from the council and the office of management
65 and budget have attended the weekly meetings and have been working collaboratively
66 with the defender agencies to refine the funding model for 2006 and beyond.
67 NOW, THEREFORE, BE IT MOVED by the Council of King County:
68 1. **Model Adoption.** The council hereby adopts the Public Defense Payment
69 Model set out in Attachment A to this motion. The Public Defense Payment Model is the
70 analytical framework for calculating the costs to provide indigent defense services in
71 order to guide preparation of the proposed annual appropriation for public defense and to
72 structure contracts for indigent defense services. The Public Defense Payment Model is
73 not intended to and does not in any way alter the relationship between King County and
74 the nonprofit agencies with which King County contracts, namely that the agencies are
75 independent contractors to King County. The annual proposed budget for indigent
76 defense services shall be developed based on the Public Defense Payment Model. The
77 financial components of the model and any executive-proposed changes to the model
78 shall be submitted with the proposed appropriation ordinance for the ensuing budget year.
79 2. **Model Policies.** The council hereby approves the following policies of the
80 financial model contained in Attachment A to this motion.
81 A. **Uniform Cost Structure.** The purpose of the model is to provide a
82 framework for creating a uniform basis of payment that is consistent across all contract
83 agencies providing indigent legal defense services. The model results in four basic

84 payment points: (1) a price per credit that includes salaries for attorneys, supervisors and
85 support staff, FICA, benefits, and case-related overhead costs; (2) an administrative and
86 overhead rate that covers administrative staff and operational costs; (3) a rent allocation
87 and 4) calendar costs represented as a cost per specific calendar assignment.

88 B. **Parity.** The model shall budget payment for public defender attorney
89 salaries at parity with similarly situated attorneys (where positions budgeted in the model
90 are in comparable classifications with comparable duties and responsibilities) in the
91 office of the prosecuting attorney. For the purposes of the model, "salary" means pay
92 exclusive of benefits. Parity means that public defender attorney salaries shall be
93 comparable to the salaries of those similarly situated attorneys in the office of the
94 prosecuting attorney. The office of the public defender shall be responsible for tracking
95 and updating public defender attorney salaries annually in the Kenny Salary Table. The
96 Kenny Salary Table shall be updated annually to account for cost of living adjustments,
97 step increases for non-senior level attorneys and parity increases for all attorney levels
98 including seniors and supervisors.

99 C. **Transparency.** The model's detailed framework is intended to make clear
100 how the proposed budget for indigent legal defense services is developed. It is not
101 intended that the detailed components of the model establish expenditure requirements by
102 the independent contract agencies. Each independent contractor has discretion to use the
103 monies provided under contract with the county in any manner as long as they are used to
104 execute the contract. It is intended that the model be updated every three years follows:
105 2006 is Year 1; 2007 is Year 2; 2008 is Year 3. The model shall be updated and revised
106 as needed for the 2009 budget.

107 3. **Assigned Counsel Costs.** The council acknowledges the escalating
108 expenditures for assigned counsel and the need for the county to implement measures to
109 control these costs. The council hereby requests the executive to delay soliciting
110 proposals for a new agency to accept conflict cases until the executive has transmitted
111 and the council has approved by motion a business case that provides a description of and
112 a justification for a new agency. The business case shall include actual assigned counsel
113 expenditures from 1998 to 2005, targets for 2006 to 2008, a review of cases assigned to
114 counsel outside the public defender agencies to determine if the cases were assigned
115 because of an ethical conflict or for some other reason and a cost/benefit analysis that
116 shall analyze if savings can be achieved by contracting with a new agency to handle
117 conflict cases. The motion adopting the business case shall be transmitted to the council
118 no later than May 1, 2006.
119 The motion and business case must be filed in the form of 15 copies with the clerk
120 of the council, who will retain the original and will forward copies to each

121 councilmember and the lead staff of the budget and fiscal management committee or its

122 successor.

123

Motion 12160 was introduced on 2/28/2005 and passed by the Metropolitan King County Council on 7/18/2005, by the following vote:

Yes: 13 - Mr. Phillips, Ms. Edmonds, Mr. von Reichbauer, Ms. Lambert, Mr. Pelz, Mr. Dunn, Mr. Ferguson, Mr. Hammond, Mr. Gossett, Ms. Hague, Mr. Irons, Ms. Patterson and Mr. Constantine
No: 0
Excused: 0

KING COUNTY COUNCIL
KING COUNTY, WASHINGTON

Larry Phillips, Chair

ATTEST:

Anne Noris, Clerk of the Council

Attachments A. Public Defense Payment Model for General Fund Expenses for Indigent Public Defense Services in King County, dated July 13, 2005

ATTACHMENT A
July 13, 2005
12160

Public Defense Payment Model for General Fund Expenses for Indigent Public Defense Services in King County

This model shall be used as the framework to develop the Executive's proposed annual budget for indigent legal defense services. An indigent defendant is a person determined indigent by the County, the County's Office of the Public Defender or Court as being eligible for a court-appointed attorney, pursuant to RCW 10.101. The purpose of the model is to create uniform rates to be paid to contract agencies providing indigent legal services for direct expenses including salaries and benefits and indirect expenses including overhead and administrative costs.

STEP 1: Project the Annual Caseload Credit Volume
The model begins with an annual estimate of the number of case credits in six case areas. Each type of case shall be assigned a number of case credits. A case credit represents the amount of attorney work required. The total number of credits that each attorney is expected to perform annually, known as the "caseload standard," is listed below.

Case Area	Caseload Standard
• Complex felony (e.g. death penalty, homicide cases)	150 credits
• Regular felony	150 credits
• King County misdemeanor	450 credits
• Juvenile	330 credits
• Dependency	180 credits
• Contempt of court	225 credits

STEP 2: Calculate the Price Per Credit for Each Case Area
The model budgets for legal services on the basis of a price per credit for each of the six case areas. The components listed below are calculated to arrive at the price per credit:

A. Salaries
  1. Attorney Salaries
  2. Supervisor Salaries
  3. Non-legal Professional Support Staff Salaries
  4. Clerical Staff Salaries
B. FICA (Social Security + Medicare Taxes)
C. Benefits
D. Direct Overhead Costs Related to Legal Practice
  1. Legal Staff
  2. Non-Legal Staff

A. Salaries

ATTACHMENT A
July 13, 2005
12160

1. **Attorney Salary**: The model budgets public defender attorney salaries at parity with similarly situated attorneys (where positions budgeted in the model are in comparable classifications with comparable duties and responsibilities) in the Office of the Prosecuting Attorney. For the purposes of the model, salary means pay exclusive of benefits. Salaries are tracked and updated annually by the Office of the Public Defender in the Kenny Salary Table. The attorney salary price per credit is based on the weighted average of salaries for attorneys in the 2005 system taking into account parity increases, an annual COLA[1] increase, an annual step increase for public defender level attorneys through level 4.6 and an annual attrition rate. The weighted average of attorney salaries shall be re-calculated every three years with 2006 as Year 1; 2007 as Year 2; 2008 as Year 3.

$$\frac{\text{(Weighted Average Attorney Salary)}}{\text{Caseload Standard}} = \text{Attorney Salary Price Per Credit}$$

2. **Supervisor Salary**: The model funds the contract requirement of each defender agency to provide a ratio of 0.1 supervisors for each attorney. The supervising attorney salary price per credit calculation is based on the weighted average of salaries for supervisors in the 2005 system, salary parity and an annual COLA increase. The weighted average of supervisor salaries shall be re-calculated every three years as indicated above.

$$\frac{\text{(Weighted Average Supervisor Salary)} \times 0.1}{\text{Caseload Standard}} = \text{Supervisor Salary Price Per Credit}$$

3. **Non-Legal Professional Support Staff Salaries**: The model funds the contract requirement of each defender agency to provide sufficient professional support staff (social worker, investigator and paralegal) for each attorney. The non-legal support staff salary price per credit is based on the average market rate for paralegals, investigators and social workers taking into account the percentage distribution of FTEs in the three non-legal staff categories in the 2005 system. The model payment standard is 0.5 professional support staff per attorney with an annual COLA increase.

$$\frac{\text{(Weighted Average Non-Legal Staff Salary)} \times 0.5}{\text{Caseload Standard}} = \text{Non-Legal Salary Price Per Credit}$$

4. **Clerical Staff Salaries**: The model funds the contract requirement of each defender agency to provide sufficient clerical staff for each attorney. The clerical staff salary price per credit is based on the average market rate for clerical staff taking into account the salary distribution of clerical staff in the 2005 system. The model payment standard is 0.25 clerical staff per attorney with an annual COLA increase.

$$\frac{\text{(Clerical Staff Salary)} \times 0.25}{\text{Caseload Standard}} = \text{Clerical Salary Price Per Credit}$$

[1] COLA = Cost of living adjustment. The model uses the same COLA rate applied to most County employees; the COLA increase is 90% of the change in the September to September national consumer price index (CPI-W), with a floor of 2.00%.

B. FICA (Social Security + Medicare Taxes): Employers are required to pay 6.2 percent in Social Security and 1.45 percent in Medicare payroll taxes for each employee, for a total of 7.65 percent.

(A1+A2+A3+A4) x .0765 = FICA Cost Per Credit

C. Benefits: The model budgets for benefits based on the 2003 benefit amount per agency FTE inflated annually at the rate of inflation experienced by the county flex benefit plan. The model does not prescribe the type of benefits contract agencies provide to their employees.

1. **Calculate the Benefit Allocation per FTE.** The projected inflation rate will be adjusted in the following year to reflect the actual inflation rate.

(2003 benefit amount per FTE) x (2004 actual inflation rate) x (2005 actual inflation rate) x (2006 projected inflation rate) = 2006 Benefit Allocation Per FTE

2. **Calculate the Benefit Price per Credit.**

$$\frac{\text{(Benefit Allocation per FTE) x (1.85}^{2}\text{)}}{\text{Caseload Standard}} = \text{Benefit Price Per Credit}$$

D. Direct Overhead Allocation Related to the Practice of Law

1. Calculate the Legal Staff Overhead Allocation and Price per Credit: The model budgets this allocation on a rate-per-attorney basis using 2005 system costs as a baseline taking into account the following categories: liability insurance, licenses, continuing legal education, memberships and dues, library costs, computer desktop replacement, and parking and mileage for investigators and attorneys. A COLA increase is applied annually.

A. $\frac{\text{Legal Staff Allocation}}{\text{Number of Attorneys}}$ = Legal Admin Rate per Attorney

B. $\frac{\text{Legal Admin Rate per Attorney}}{\text{Caseload Standard}}$ = Legal Admin Rate Price per Credit

2. Non-Legal Staff Overhead Allocation and Price per Credit: The model budgets this allocation on a rate-per-FTE basis for investigators, social workers and paralegals using 2005 system costs as a baseline taking into account the following categories: liability insurance, licenses, training and education, memberships and dues, library and desktop replacement. A COLA increase is applied annually.

A. $\frac{\text{Non-Legal Staff Admin Allocation}}{\text{Number of Non-Legal FTEs}}$ = Non-Legal Staff Admin Rate per FTE

B. $\frac{\text{Non-Legal Staff Admin Rate per FTE}}{\text{Caseload Standard}}$ = Non-Legal Admin Rate Price per Credit

STEP 3. Calculate the Total Price Per Credit

[2] 1.85 = 1 attorney; 0.1 supervisor; 0.5 non-legal staff; and 0.25 clerical staff.

A separate price per credit is calculated for each case area taking into account differing attorney levels assigned to each case area.

Salaries (A1+A2+A3+A4) + FICA (B) + Benefits (C) + Legal and Non-Legal Staff Administrative (D1B + D2B) = Total Price Per Credit

STEP 4. Indirect Administrative and Overhead Allocations

For indirect administrative/overhead costs including office operations, capital equipment purchases and leases and other agency-related costs and for agency administration, the model uses a percentage rate which is to be derived from the 2003 rate of administrative/ overhead costs to total direct expenditures (caseload and calendar related salaries, benefits, FICA, and legal-related administrative expenses). Adjustments may be made to the rate to accommodate for business process changes which may occur from time to time. Each contract agency will be allocated a percentage share of the total allocation based upon the agency's share of the total system direct costs.

(Total direct expenditures) x % Rate = Total Indirect Admin/Overhead Allocation

STEP 5. Rent Allocation:

A. Calculate the number of FTEs required to manage the annual caseload volume as follows:

1. Attorneys: calculated directly from the caseload standards and calendar tables
2. Supervisors = (# of attorneys) x 0.1
3. Non-legal professional and clerical support = (# of attorneys) x 0.75
4. Administrative staff

B. Calculate the estimated square footage per contract agency as follows:

1. Assign each personnel category above in A1-4 an appropriate square footage allocation not to exceed the Executive's 2004 proposed county space standards. For the investigator position, the model uses the City of Seattle space standards, Version 1.2000;
2. Multiply the FTE in each category by the square foot allotment;
3. Apply an allocation for special spaces such as storage, lunch rooms, and conference rooms; and
4. Calculate the circulation allowance for commons areas, restrooms and hallways not to exceed current county policy of 0.25 percent as follows: (B2 + B3) x 0.25.

(B2 + B3 + B4) = Total Square Footage

C. Calculate the total rent allocation:

1. The cost per square foot shall be based on a rolling three-year market average cost per square foot (including operating costs) for Class B office space in two locations (the model may take into account market fluctuations or escalator provisions in existing leases):
   1) Downtown Seattle – Central Business District; and
   2) Kent – within reasonable proximity to the Regional Justice Center.

(Average Cost Per Square Foot) x (Total Square Footage) = Total Rent Allocation

2. Each contract agency will be allocated a share of the rent amount based upon the agency's share of the total system FTEs in each of the two locations.

STEP 6: Calendar Attorney and Staff Allocation

A. Compile the list of court calendars to be assigned to each attorney.
B. Calculate the costs for salaries, FICA and benefits for attorneys, supervisors and non-legal staff assigned to calendar duty as follows:
   1. Number of Attorney FTEs x Attorney Salary per FTE = Total Attorney Cost
   2. Number of Supervisor attorneys x Supervisor Salary per FTE = Total Supervisor Cost
   3. Number of Staff FTEs x Non-Legal Support Staff Salary per FTE = Total Non-Legal Staff Cost
   4. (Total Attorney Cost + Total Non-Legal Staff Cost) x .0765 = FICA Cost
   5. (Total Attorney and Non-Legal Staff FTEs) x (Per FTE Benefit Allocation) = Benefit Cost

B. Calculate the total cost for calendar attorneys and staff as follows:

(A1) + (A2) + (A3) + (A4) = Total Calendar Allocation

Each contract agency will be provided with an allocation directly related to the specific calendars they have been assigned.

United States Senate
Committee on the Judiciary

Hearing on "Strengthening Our Criminal Justice System: The John R. Justice Prosecutors and Defenders Incentive Act of 2007"
February 27, 2007

Testimony of Michael P. Judge
Chief Public Defender
Los Angeles County

Thank you Senator Durbin, Chairman Leahy, Senator Specter, and members of the Committee for having me here today to talk about the John R. Justice Prosecutors and Defenders Incentive Act.

I am in my 38th consecutive year as an attorney practicing in the field of criminal law in the State of California, including 13 years as the Chief Public Defender of the Los Angeles County Public Defender's Office, the largest and oldest local Public Defender's Office in the nation.

I appear before you today representing the California Council of Chief Defenders, the California Public Defenders Association (an organization comprised of almost 4,000 criminal defense attorneys), the American Council of Chief Defenders of which I am a founding member, and the National Legal Aid and Defender Association.

The critical issue that prompts us to address you is the deteriorating capacity of local criminal justice systems to effectively provide essential public safety protections and assure integrity and accuracy in outcomes for your constituents.

There is now an unprecedented dangerous situation in which recruiting and retention of qualified prosecutors and defenders has been undermined by crushing student debt burdens that deter talented law school graduates, who otherwise would apply, from entering the field, and forces others who have been carefully selected and trained to resign upon attaining the skills necessary to properly handle the serious cases that are of the greatest concern to the communities we all serve.

I see this situation in defender offices throughout California. For example, 83% of California Chief Defenders surveyed reported that recruiting has been negatively impacted because of student loan burdens. The residents of Riverside County, California are saddled with 59 vacancies out of 149 authorized deputy public defender positions. In Los Angeles, the number of deputies citing financial reasons for their decision to leave the Public Defender's Office has almost tripled in the past 3 years, and the number who reject job offers has increased by almost 2½ times in the past 3 years.

Why are we in this situation? In part, it is because tuition and expenses for undergraduate programs and law schools have exploded, rising far more rapidly than

other costs of living. The San Francisco Chronicle reported on February 18, 2007, that the total cost of an undergraduate education at Stanford University has risen to approximately $49,000 per year. It should be noted that tuition alone for in-state students at public law schools in California such as U.C.L.A. now exceeds $25,000/year. Nationally, the American Bar Association Commission on Loan Repayment and Forgiveness, in a report published in 2003, found that between 1992-2002 the cost of tuition for public law schools increased 134% whereas the cost of living went up 28%.

The ABA report also established that 87% of law students borrowed to finance their legal education, and that the amount borrowed doubled during the 1990's. Therefore, it should come as no surprise that a survey conducted by the California Public Defender's Association in November 2006 disclosed that the average student debt load for California defenders who graduated in the past 4 years exceeded $93,000.

As a result of these financial barriers, the ABA reported, high student debt bars many law graduates from pursuing public service careers. Moreover, many graduates who take public service jobs must leave after they gain 2 to 3 years of experience. The ABA concluded that public service employers are experiencing serious difficulty recruiting and retaining lawyers, and that repayment assistance programs help law graduates to take and keep public service jobs

Private firms can afford to pay salaries sufficient to account for such debt and other living expenses. The Los Angeles Daily Journal reported on January 25, 2007, that the "going rate" offered by law firms to first year associates (brand new lawyers) had been raised to $160,000.00/year. That is close to triple what most local prosecutor and public defender offices are likely to offer. There is no reason to expect the compensation for such public safety lawyers to increase by an appreciable amount. Instead, there are prosecutor and defender offices who are suffering from vacancies. That places pressure on such offices to lower their standards, risking botched prosecutions or inept defending, neither of which is acceptable to local communities.

We know that prosecutor offices throughout California and across the country are also facing recruitment and retention problems. Jim Fox, President-elect of the National District Attorney's Association, revealed that vacancies in prosecutor offices are likely to result in the filing of more, rather than less criminal cases.

At first blush that seems counterintuitive, but Mr. Fox explained that with insufficient staff prosecutors have less time to thoroughly screen cases, and instead of demanding additional investigation at the outset or rejecting a filing, the cases are filed to avoid the possibility of a guilty perpetrator going free, with the expectation that the matter will be sorted out later.

Such an increase in criminal case filings puts more pressure on defender offices. In the absence of lowering standards within defender offices to fill vacancies, such defender programs would be obligated to divert clients to appointed private counsel to avoid an excessive workload. In my experience, such a diversion produces unacceptable

capriciousness in the quality of representation, generates complaints from clients, their families, public officials and judges. Moreover, it also causes significant increases in costs.

There is of course one other disagreeable possibility. Some defender offices with deficient staff may not divert the cases but instead undertake excessive workloads, resulting in an increase in the conviction of the innocent and substantial delays in case processing. This causes some persons accused of crimes to languish and suffer in custody well beyond the juncture their cases should have been resolved, causing unnecessary human misery and exorbitant costs of detention and liability to local communities.

Conversely, prosecutor offices with vacancies face the likelihood of otherwise valid cases being dismissed due to speedy trial violations, cases being settled on much more lenient terms than normally warranted and cases being lost due to insufficient time and resources to properly prepare.

The John R. Justice Prosecutors and Defenders Incentive Act tightly defines a distinct limited group of lawyers essential to both public safety and confidence in the criminal justice system, which is of high value to local communities and their residents. Public defenders stand together with prosecutors in support of this legislation, and we hope that it will pass the Senate and be enacted into law.

Thank you again for the opportunity to testify today. I would be happy to answer any questions you have.

Statement of Senator Edward M. Kennedy
Judiciary Committee Hearing on
Prosecutors and Defenders Incentive Act
February 27, 2007

Our communities suffer when the criminal justice system has an inadequate number of experienced prosecutors and public defenders. Without them, caseloads become unmanageable, and can be delayed or mishandled. Serious crimes may not be prosecuted. Mistakes inevitably happen, and the wrong person is sent to jail. The problem is becoming increasingly serious as education debts rise, and capable and gifted attorneys become less willing to choose public service careers.

The Prosecutors and Defenders Act is an important step in providing relief for prosecutors and public defenders. The issue of adequate compensation for public service attorneys continues, but this bill helps to offset the burden of increasingly high debt for education.

It establishes a program to repay student loans up to $10,000 a year for borrowers who agree to remain employed, for at least three years, as state or local criminal prosecutors or as federal, state, or local public defenders in criminal cases. This relief will encourage qualified individuals to enter and continue employment in the criminal justice system as either prosecutors or defenders.

To understand the necessity of this bill, it is helpful to look at the difficult situations facing these attorneys. A sample of prosecutors in Massachusetts found an average education debt for new prosecutors of $170,000. These attorneys are devoted and enthusiastic lawyers who work to protect their communities, but their average salary is $44,000, and it is difficult for them to make ends meet if they have to repay a large debt incurred to pay the cost of their education.

Daniel Cappetta is a Juvenile Court Assistant District Attorney in Middlesex County who considers his work both rewarding and fulfilling. He is doing his part to keep his community safe. He works with minors every day to help them develop a successful probation plan, so that those he helps don't end up back in prison. For his efforts, he makes $38,000 a year, and he has a $141,000 debt for his education. A little under half of Daniel's salary goes directly to repay his student loans. His living situation is sustainable today, but he is concerned that if he decides to raise a family he will have to seek other employment.

Daniel's concern has become a real issue for Aaron Mango, an Assistant District Attorney who handles the full range of cases and jury trials in Northwestern County District Court. Each month, he struggles to pay off his $178,000 education debt on his salary of $40,000. Aaron understands

that prosecutors are often under-appreciated and underpaid, but he continues in his job, because he feels he is making a difference in the world.

Eitan Glodberg is another example. He struggles to balance his public service commitment against his law school debt burden as a prosecutor in Essex County District and Juvenile Courts. He makes monthly debt payments of about $1,100, but fortunately his law school has a program which assists attorneys in public interest jobs. Even with this assistance, however, Eitan still can't make ends meet.

The burdens of law school loans do not affect only new attorneys. Assistant District Attorney Barbara Young in Suffolk County has spent ten years as a prosecutor handling Sexually Dangerous Persons cases – and she still faces $21,000 of debt. Barbara has a key role in keeping track of registered sex offenders. Each day, she evaluates 400 case files to identify offenders whose records indicate such a high risk of repeating their crimes that the Commonwealth files a civil petition to detain them as sexually dangerous persons. Like other prosecutors, she lives modestly and is forced to make financial sacrifices that affect both her and her family in order to do the work that she loves.

Nor is this problem felt only by prosecutors. Public defenders also feel the heavy weight of educational debt, and they deserve assistance. A

sample of Massachusetts public defenders shows educational debt ranging from $113,000 to $197,000. With an average annual salary of $40,000, it is difficult to attract and retain such attorneys, because of the heavy stress caused by the debt. Kristen Ray is a Public Defender in Bristol County who is proud to be the voice of clients who may not have anyone else speaking on their behalf. She is fortunate not to have undergraduate loans, but her law school debt is nearly $ 200,000. She's working with her loan provider to try to reduce her re-payments, but she will still be unable to save money for a home or retirement.

Like Kristen, Lynsey Heffemen feels the anxiety that comes from high educational debt and a low salary. Lynsey is a recent graduate of Brooklyn Law School and represents indigent children in delinquency cases in Worcester County Juvenile Court. On average, this devoted attorney represents children between the ages of 7 and 17 who have been accused of committing acts of delinquency in violation of Massachusetts criminal laws, and she goes above and beyond what is required of her. She is an advocate for her clients in and out of the courtroom. When her clients have issues in school, she helps them in the proceedings. She loves her job and wants to continue to represent her clients, but it is difficult for her and her husband to plan a future together when they face such extraordinary debts.

Maks Milstein, a Hamden County Public Defender, can't think of a place he would rather practice law than as a member of the Committee for Public Counsel Services. But so far, he can only make payments of the interest on his loan, and hasn't even touched the principal. Maks is single and lives with two roommates. Even living as he does, he can hardly afford anything but his loan payments and living expenses. His concern is that if he decides to get married and have children, he could not afford to stay in his current position.

Finally, Erin Steadman has been working as a Bristol County Public Defender for only 6 months, after waiting to be a defender for most of her life. She entered law school financially stable and virtually debt free. Now, at 37, she earns $37,500 a year and has nearly $200,000 in law school debt. Even with such a huge burden, Erin can't wait to go to work every day, because she knows that people are desperate for help and too often receive none. Erin sees this legislation literally as a way to change her life, and the lives of other public defenders and prosecutors. Most important, she sees it as essential for improving the criminal justice system by retaining these dedicated public defenders.

The struggles faced by these attorneys make clear that something needs to be done. I commend Senator Durbin's leadership on this important

bill, and I hope it will be passed quickly by Congress and signed by the President, so that current and future attorneys are able to keep our judicial system running well and our citizens fairly represented.

STATEMENT OF THE HONORABLE PAUL A. LOGLI
STATE'S ATTORNEY, WINNEBAGO COUNTY, ILLINOIS
CHAIRMAN OF THE BOARD, NATIONAL DISTRICT ATTORNEYS ASSOCIATION
BEFORE THE COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE
CONCERNING S. 442, THE JOHN R. JUSTICE PROSECUTORS AND DEFENDERS INCENTIVE ACT OF 2007
PRESENTED ON FEBRUARY 27, 2007

Introduction

Chairman Leahy, Senator Specter, Senator Durbin and Members of the Committee on the Judiciary:

My name is Paul Logli and I am the elected state's attorney in Winnebago County, Illinois, and have served in this capacity for over 20 years. Prior to being elected as state's attorney I served as a judge of the local circuit court for approximately six years. I am very grateful for the opportunity to address the committee regarding the "John R. Justice Prosecutors and Defenders Incentive Act of 2007" on behalf of the nation's prosecutors.

I would like to extend a thank-you to Senator Durbin for inviting me to speak on this issue and for re-titling the bill as, the "John R. Justice Prosecutors and Defenders Incentive Act." John Justice served as the solicitor for the 6th Judicial Circuit in Chester, South Carolina, and on the National District Attorneys Association Board of Directors until his death last year. Mr. Justice was the president of the association from 1998-1999 and it was during this time that he began inquiring about ways to assist young prosecutors

with the burden of law school student loan debt in an effort to shore up the criminal justice system.

I currently serve as the chairman of the board of the National District Attorneys Association, which is the largest and primary professional association of state and local prosecuting attorneys in the United States with a membership of approximately 7,000. My comments here today represent the views of prosecutors across this nation.

To put matters in context, I think it is helpful to remember according to the Bureau of Justice Statistics (National Survey of Prosecutors, *Prosecutors in State Courts*, 2005, Steven W. Perry, July 2006, NCJ 213799) there are about 2,344 state court prosecutor offices in the United States employing approximately 26, 500 criminal attorneys. These attorneys are responsible for handling about 95% of the crime in this nation. In order to ensure that these crimes are handled competently it is imperative that prosecutor offices are able to recruit the best and brightest attorneys and retain those qualified and experienced prosecutors in their offices. I believe that the "John R. Justice Prosecutors and Defenders Incentive Act" will provide that incentive.

PUBLIC SAFETY IS A PRIORITY
The Law School Student Loan Debt Problem for Prosecutor and Public Defender Offices

In June 2002 I had the honor of testifying before the House Subcommittee on Crime, Terrorism and Homeland Security regarding the Innocence Protection Act. At that time I noted that "we [prosecutor/public defender offices] cannot compete with the private sector in recruiting and retaining attorneys. When we have continual turnover it impacts

on our ability to serve justice. It adversely affects our entire system, from our most junior prosecutor, or public defender, to our supervisory attorneys and division chiefs."

It is important for me to note that prosecutors and public defenders are united in this effort to ensure that their offices are fully staffed with trained and experienced attorneys; that undesirable case outcomes are minimized; and that the public's confidence in the criminal justice is at least maintained and hopefully raised to a much higher level.

I would also like to briefly describe my jurisdiction in order to place my remarks in context. Winnebago County is located about 70 miles west of Chicago. It has a population of approximately 280,000 people living in a diverse community. The county seat is Rockford, which is the third largest city in the state.

Like any other jurisdiction of similar size, we face a daily challenge to provide effective prosecution of criminal and serious traffic cases. As arrests and prosecutions increase in number and complexity, we also face increased difficulty in holding on to younger prosecutors long enough to see them become experienced career prosecutors. In the last month my office said goodbye to two promising prosecutors who went into private practice solely for economic reasons after less than two years in the office. Although I have been able to increase the overall number of lawyers in my office, I am not increasing the number of career prosecutors. That means more and more of our serious, complex cases in our felony courtrooms are being prosecuted by less experienced attorneys who are only a few years out of law school. I cannot assign every major felony

case to a senior career prosecutor. The people of the State of Illinois and the victims are not receiving the representation they deserve in our criminal courts.

During the five years that have elapsed since my testimony on this issue my experience with the recruitment and retention of attorneys in my office unfortunately is essentially the same. The reasons remain: prosecutors continue to be paid low salaries compared to those in the private sector, in addition to being burdened with staggering student loan debt from undergraduate and graduate studies. In 2006, Equal Justice Works reported in *Financing the Future, Responses to the Rising Debt of Law Students* that state and local prosecuting attorneys starting salaries were approximately $44,000.[1] Furthermore, "[t]he average amount borrowed in law school by the class of 2005 was $78,763 at a private school and $51,056 at a public school.[2]

This unfortunate combination inevitably causes high turn-over rates which result in inexperienced and untrained prosecutors in courtrooms across this country. It bears remembering that sitting in America's courtrooms every day are families that have lost a loved one to an alcohol or drug impaired driver; children who have been physically and sexually abused; women who are beaten by their husbands but are too paralyzed by fear to testify – the list of victims is really too numerous to recite. The point is that these are all serious cases with serious consequences for the victim, the safety of the community and the defendant. It is inexcusable for untrained and inexperienced prosecutors to handle

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[1] Heather Wells Jarvis, *Financing the Future, Responses to the Rising Debt of Law Students*, 2nd Edition, Equal Justice Works, 2006, *citing* National Association for Law Placement (NALP) 2006 Public Sector and Public Interest Attorney Salary Report.
[2] Id. at iv.

any of these matters. It is equally unacceptable that the same economic forces place untrained and inexperienced public defenders in the courtroom as well. The safety of victims and the public should not be short-changed while a new prosecutor or public defender "learns the ropes."

I would also like to draw the Committee's attention to the testimony of Stuart A. Van Meveren, then NDAA president & district attorney, Fort Collins, Colorado, who testified in June 2000 before the House Committee on the Judiciary concerning the "Innocence Protection Act." I would like to supplement my statement with Mr. Van Meveren's observations regarding the recruitment and retention problem encountered by prosecutors across the country:

> An unspoken crisis we have in the local criminal justice system is our inability to recruit and retain new attorneys as prosecutors and public defenders. The genesis of the problem rests with our assistants; those most likely to have recently graduated from law school and who are making choices regarding a career in public service. Facing debts amassed from both undergraduate studies and law school, they are hard pressed to choose relatively low paying work as prosecutors or defense counsel. In South Carolina, for instance, starting prosecutors make $32,000 a year, while in larger jurisdictions, such as Chicago or Los Angeles; the starting salary is between $35,000 and $46,000 annually.
>
> With school loans frequently in the range of $100,000, aspiring prosecutors and public defenders face a crippling debt burden that, for economic reasons, drives them to other career choices. I suspect that this financial burden hits minority students even harder and makes their choice to enter public service that much more difficult.
>
> In contrast starting salaries for attorneys in the civil sector in most areas of the nation range significantly higher then we can pay our attorneys. I would note that in the Washington area even legal secretaries frequently make more than do many of our assistant

> prosecutors. A recent article in the *Washington Post* depicted the plight of the federal government, and even our armed forces, in attracting and retaining attorneys and I can assure you that the salaries in those sectors is appreciably higher than at the local government level. In fact many of our young attorneys are hired by the Department of Justice or other federal agencies at double their local salary. This constant loss of experienced attorneys seriously erodes the competency of the entire system of criminal law at the state level.
>
> It is crucial that we have the ability to attract, and retain, the best from our law schools – our citizens deserve nothing less. We cannot do this unless we offer some degree of financial equity with the private sector and forgiveness of school loans for those entering the public sector in a law enforcement position is a great boost towards this goal.

Survey of the Nation's Prosecutors Regarding Student Loan Debt

In 2005 the National District Attorneys Association's Office of Research and Evaluation and the National Association of Prosecutor Coordinators conducted a national survey of prosecutors on law school student loan debt and the associated issues. Researchers received 2,119 responses from prosecutors all over the country, most of who graduated from law school between the years 1998 and 2003 and had worked as prosecutors for an average of four years.

Analysis of the survey results revealed that more than 50 percent of the responding chief prosecutors and supervisors had between one and five prosecutors leave their offices in 2005. This may seem like an insignificant number, however, it becomes quite significant when you learn that 64 percent of prosecutors' offices that responded to the survey were

comprised of ten or fewer assistant prosecutors. The end result is that attrition was 50 percent or higher in the responding small offices.

In addition, 53 percent of the chief prosecutors reported in the survey that law school student loan debt was a very significant factor in their ability to retain staff and 62 percent of the chief prosecutors reported that student loan debt is a very significant factor in their ability to recruit staff. Chief prosecutors reported on average that low salaries and student loan payments were the causes for nearly a third of the prosecutors who left their offices. Two-thirds of the responding prosecutors advised that law school student loan debt is an important consideration in deciding to become a career prosecutor. More than 55 percent of the respondents reported that they would continue prosecuting for 20 to 30 years if law schools loans were forgiven.

These unfortunate retention figures signify that inexperienced attorneys are handling cases beyond their capabilities and training. There are numerous criminal cases that are particularly difficult because of the dynamics involved. To name just a few – child abuse, elder neglect, domestic violence, identity theft and public corruption. The stakes are simply too high to allow any attorney other than experienced prosecutors to handle them. A memo from an assistant district attorney to a deputy district attorney in Pennsylvania illustrates this very problem as he writes:

> "Nearly half of the ADAs in the Major Trials Unit and in the Family Violence and Sexual Assault Unit were hired in 1995 or after. In the Felony Waiver Unit, our most experienced ADA has been in the unit for approximately 4 months, and we have 8 lawyers who have been in the office 15 months or less. For the first time since I have been chief of the Felony Waiver Unit, there is not one lawyer currently

> assigned here who is ready to try a Majors case (one will be ready in another month or so). There is no question that the departure of a significant number of lawyers with 3-5 years experience would have an adverse impact on this office, especially since most of the ADA's in this unit are 6 months or more away from being capable of trying the complex and serious cases in the more advanced units."

A recent article in the *Sun-Sentinel* stated that in South Florida the starting salaries for prosecutors and public defenders are around $38,000; the median housing costs are close to $400,000; and, not surprising, the attrition rate in prosecutor and public defender offices is about 30 percent annually. Another newspaper article in the *Daily Business Review* in November 2006 revealed that in 2005, 64 out of more than 300 assistant state attorneys in the Miami-Dade County State Attorney's Office left for other jobs.

Beyond recruitment and retention difficulties caused by the high cost of attending law school and the low salaries paid to local prosecutors, chief prosecutors and supervisors cited other effects in their offices such as increased caseloads per prosecutor, increased costs for training, decreased morale, and increased risk of prosecutorial error.

PERSONAL STRUGGLES

The Law School Student Loan Debt Problem for Individual Prosecutors and Public Defenders

According to Equal Justice Works tuition costs at state law schools is still lower than private institutions, however, the difference between the two is becoming smaller.[3] For 2005-2006 the average annual tuition and fees for an in-state resident at a public school

[3] Heather Wells Jarvis, *Financing the Future, Responses to the Rising Debt of Law Students*, 2nd Edition, p.1, Equal Justice Works, 2006. "On average; students at private law schools pay $15,000 more in tuition per year than in-state resident students pay at public schools. In 1995, public resident tuition was nearly 70 percent less than private school tuition. By 2005, the tuition gap had narrowed and public resident tuition was only 55 percent less than private tuition.

was $13,145; for an out-of-state resident at a public school the average was $22,987; and at a private institution the average was $28,900.[4] As a result of these exorbitant costs it is not shocking that the 2005 National District Attorneys Association/National Association of Prosecutor Coordinators Law School Loan Forgiveness Survey found that

- 89 percent of respondents assumed a loan to cover the costs of law school tuition.
- The average law school student loan assumed by respondents was $66,422.
- The majority of prosecutors have student loan debt ranging between $45,000 and $90,000.
- The majority of respondents reported having assumed a 30-year loan to pay tuition costs.
- A quarter of prosecutors who have been prosecuting for less than two years held a second job (10-20 hours per week) in order to repay student loan debt.

The questions then become "How can society, in good conscience, ask prosecutors and public defenders to sacrifice so much for so little pay?" How long should they be required to postpone purchasing a home, getting married, starting a family, or buying a car? In some instances prosecutors are sacrificing even more. Some may be unable to purchase safe housing. Some may be driving unsafe cars because they cannot afford repairs or replacements. Some may even be unable to pay for necessary medical/dental care. Falling behind in their loan payments due to inadequate salaries leads to accrued interest, making the task of paying the debt off even more daunting. Trying to pay off student loan debt may also leave many unable to pay for utilities, food, and clothing. In

[4] Id.

the end, there is simply no solution to the impending financial disaster except a move to the private sector. As Molly Miller, special assistant attorney general, Traffic Safety Resource Prosecutor, Mississippi Office of the Attorney General said during a recent presentation during the NDAA Capital Conference – "I am not looking to get rich, I just want to be able to pay my bills."

Following are just some of the comments from New York prosecutors made during a student loan survey conducted by the Office of the Queens County District Attorney's Office, Information Services (March 2001)[5] that illustrate their dire financial situations:

"My wife and I live paycheck to paycheck …"

"I can only afford to pay $400 a month … this payment does not cover the interest. Therefore my balance keeps going up!"

"I currently have all of my loans in forbearance because of an inability to pay due to inadequate earnings. Forbearance will cause my total indebtedness to increase as interest accrues."

"I have had to obtain a waitressing job on the weekends to supplement my income."

"… I am forced to choose between paying rent or paying off my loans. I cannot afford to live in an area where I feel safe and pay off my loans at the same time."

"I had to obtain part-time employment in an effort to make sufficient money to remain an ADA."

"Please make sure this bill is passed. I'm currently living in poverty."

[5] A Survey of Assistant District Attorney Student Loan Indebtedness in 16 New York State Counties, The Office of the Queens County District Attorney, Information Services, March 2001.

"Nearly half of my take home pay goes towards my loans."

"… I am treading water until I can make more money."

To further illustrate the struggle a prosecutor in Tennessee writes:

"For the first two and a half years as an Assistant District Attorney, I worked nearly every Friday night and every Saturday during the day. I also often worked a night or two during the week. During the nine months I was in General Sessions, it was never any problem since I was most always able to prepare my dockets during work hours at the office.

It became more difficult after I moved up to Criminal Court. In early 2005, it seemed like I was in trial all the time. In reality, I had seven trials between the last week of January and the first week of May. During that period I once worked twenty-seven days without a day off, followed closely by a period of twenty-five days without a day off. Looking back I have no idea how I pulled that off. I was definitely exhausted, and I definitely had no social life other than at work."

An assistant prosecuting attorney from the Wayne County Prosecuting Attorneys Office (Detroit, Michigan) writes:

"I am no longer able to defer my loans and must make monthly payments. My payments each month is over a thousand dollars. Even with my current salary of $65,000, it is difficult for me to pay my loans and all my other bills. It is very difficult to see family members in need and not be able to help them because of your own financial situation.

In addition, my current salary makes it difficult to find housing in safe neighborhoods. If it were just me, it would be fine to live in an unsafe neighborhood. I chose this job, but my family should not be put into harm's way because of my decisions."

Other Personal Decisions: Buying a Home; Raising a Family; Taking a Vacation

According to the National District Attorneys Association/National Association of Prosecutor Coordinators Law School Loan Forgiveness Survey, prosecutors struggle with many of life's decisions because of the student loan debt that they have assumed. More than half of the responding prosecutors reported that many of their life choices are significantly influenced by their student loan debt. According to the figures:

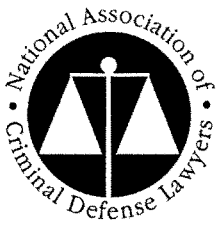
- More than 80 percent of the respondents reported that their student loan debt impacts their decisions about buying a home or new car.
- Two-thirds reported that their student loan debt influences their decision about taking a vacation.
- More than 50 percent of the respondents reported that the student loan debt influences decisions about starting a family.

THE SOLUTION
A Proven and Sound Loan Repayment Assistance Program

The "John R. Justice Prosecutors and Defenders Incentive Act" is modeled after a similar program currently used effectively by many federal agencies as a recruitment and retention tool. The program would allow the repayment of up to $10,000 of student loan debt per year for state and local prosecutors and public defenders with a limit of $60,000 imposed. Because the program requires that a recipient commit to employment for at least three years, the problems with attrition and inexperience will certainly be alleviated.

Conclusion

I am extremely appreciative of this opportunity to discuss the importance of student loan repayment assistance for prosecutors and public defenders. Without this relief the administration of justice and the safety of the community and victims will continue to suffer. Additionally, prosecutors and public defenders across this nation will continue to struggle with their debt while they work part-time jobs, forego necessary medical care, live in unsafe communities and agonize over how to remain in a career that they love while avoiding financial ruin.



Written Statement of
Martin S. Pinales, President

NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS

before the
United States Senate Committee on the Judiciary

Re: "Strengthening Our Criminal Justice System
John R. Justice Prosecutors and Defenders Incentive Act of 2007"

February 27, 2007

The past twenty years have witnessed a sea change in the public's perception of the criminal justice system. Since 1989, lawyers and innocence projects from around the country have brought to light 195 wrongful convictions, mostly through DNA. While the importance of DNA analysis for purposes of exonerating the innocent and identifying the actual perpetrators cannot be denied, its usefulness as a forensic tool is limited to a small percentage of cases and crimes. Nonetheless, studying these wrongful convictions and their causes has helped to elucidate the problems in the criminal justice system that can lead to errors. By taking advantage of this learning moment, we can institute reforms that prevent future errors, thus enhancing public safety.

Law student debt helps explain one piece of a serious problem in our criminal justice system: the often-inadequate representation of people who are accused of a crime but cannot afford an attorney. Most public defenders are burdened with huge caseloads and a lack of basic resources. Couple these systemic problems with constant staff turnover caused by low salaries and high educational debt, and even the most dedicated public defender organizations will find it hard to provide quality representation. Such inequities guarantee that injustice will be done and innocent persons will be wrongly convicted, leaving the actual perpetrators at large.

The John R. Justice Prosecutors and Defenders Incentive Act (S. 442) represents a bipartisan effort to address this problem by providing education debt relief to lawyers who serve as public defenders and prosecutors for at least three years. The Act will help solve the problem of errors by making it easier for prosecutor's offices and public defender organizations to recruit and retain the best and brightest attorneys.

With today's young lawyers often carrying $100,000 or more in education debt upon graduation from law school, many simply cannot afford to enter and continue employment as public defenders. Consider the following figures:

Public defender salary (average):	$43,000
Monthly take-home pay (after tax):	$2,606
Cumulative education debt (private, average):	$78,763
Monthly loan payments (120 month/6.8%):	$906
Amount left for living expenses:	**$1700**

It is easy to see that housing, food, transportation and other basic necessities will

swallow up the remaining take-home pay -- making home ownership, parenthood, and retirement saving beyond the reach of the average public defender. As a result, lawyers carrying even the average education debt load are effectively priced out of public service, and prosecutors' and public defenders' offices have serious difficulty attracting the best-qualified candidates and retaining experienced attorneys. Indeed, many offices have vacancies that they cannot fill.

Student loan debt is consistently cited as the overwhelming reason why attorneys decline or leave positions as prosecutors and public defenders. According to a survey conducted by the National Association for Law Placement, law school debt prevented two-thirds of law student respondents from considering a public service career. As the Senate Judiciary Committee has recognized, "The barrier is greatest for low-income students with the highest loans, consisting disproportionately of minorities." Senate Rpt. 107-315.

Perhaps worse, the low salary makes it incredibly difficult for offices to retain attorneys. Even attorneys willing to make the sacrifices necessary to enter public service cannot continue to do so forever. As a result, many attorneys leave these offices after only a few years. Recruiting experienced attorneys to take their places is almost impossible because of the salary. As a result, the justice system is left operating with a dearth of experienced attorneys, and less experienced, less qualified attorneys are forced to handle complicated cases, with the accused and the community suffering the consequences.

Frequent staff turnover also creates inefficiency in the justice system. Cases are frequently delayed because of turnover, and office must constantly expend precious resources recruiting and training new staff. For this reason, the Department of Justice Office of Justice Programs has concluded that loan forgiveness is "an important means of reducing staff turnover and avoiding related recruitment/training costs and disruptions to the office and case processing." Improving Criminal Justice System through Expanded Strategies and Innovative Collaborations: Report of the National Symposium on Indigent Defense, NCJ 181344, February 1999.

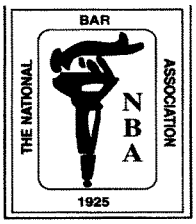
"Nowhere in public service is it more important to encourage the recruitment of competent lawyers and the retention of experienced ones than in the disciplines of prosecution and public defense, where people's lives and liberty hang in the balance." Senate Rpt. 107-315. A reliable, fair, and efficient justice system requires

competent attorneys representing the interests of government, protecting the rights of individuals, and ensuring that mistakes are not made. Skilled lawyers in the courtroom are the best safeguard against wrongful convictions of innocent people – "the most unthinkable corruption of a justice system that is held out as a model to the world." Senate Rpt. 107-315.

Competent, experienced defense lawyers and prosecutors are essential to America's time-honored adversarial system of justice. A revolving-door system, where new lawyers leave just as they begin to hit their stride, wastes tax dollars and denies us the talents and dedication of those attracted to a lifetime of public service. The John R. Justice Prosecutors and Defenders Incentive Act would help ensure public safety and fundamental fairness, as well as increasing efficiencies, by making it possible for the most qualified lawyers to choose and continue these noble and essential legal careers.

* * *

NACDL is the preeminent organization in the United States advancing the mission of the nation's criminal defense lawyers to ensure justice and due process for persons accused of crime or other misconduct. A professional bar association founded in 1958, NACDL's 12,500 direct members -- and 80 state, local and international affiliate organizations with another 35,000 members -- include private criminal defense lawyers, public defenders, active-duty U.S. military defense counsel, law professors and judges committed to preserving fairness within America's criminal justice system.



NATIONAL BAR ASSOCIATION'S 2006-2007 LEGISLATIVE AGENDA

1. PROSECUTORS AND DEFENDERS INCENTIVE ACT
   a. The National Bar Association ***supports*** the passage of the Prosecutor's and Defender's Incentive Act.

2. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION BUDGET
   a. The National Bar Association ***opposes*** a $4M cut to the EEOC's budget that was proposed by the President in 2006. Further, the National Bar Association ***opposes*** any revisions to the process by which federal employees file discrimination complaints.

3. LAW SCHOOL ADMISSIONS
   a. The National Bar Association ***supports*** legislation requiring that law school admissions and accreditation practices, which have a disparate impact on the enrollment of students of color, be valid, reliable, and supported by published studies correlating those practices with increased professional competence in the practice of law.

4. FUNDING FOR DRUG COURTS
   a. The National bar Association ***supports*** the creation and funding of a federal drug court system and increased funding to state drug courts.

5. LIFE WITHOUT PAROLE FOR JUVENILE OFFENDERS
   a. The National Bar Association ***supports*** the repeal of, or opposes, life without parole statutes for juvenile offenders.

6. EDUCATION CONSTITUTIONAL AMENDMENT
   a. The National Bar Association ***supports*** ratification of an amendment to the Constitution of the United States stating that all persons shall enjoy the right to a public education of equal high quality.

7. HEALTH CONSTITITIONAL AMENDMENT
   a. The National Bar Association ***supports*** ratification of an amendment to the Constitution of the United States stating that all persons shall enjoy the right to health care of equal high quality.

The National Bar Association encourages it members to support the legislative agenda items above. As new legislation or policy initiatives are adopted by the Board of Governors or the Executive Committee they will be added to this list.

Prepared by the National Bar Association Legislative Committee
Revised February 2007

National District Attorneys Association
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703.549.9222/703.863.3195Fax
www.ndaa.org

February 26, 2007

The Honorable Richard J. Durbin
309 Hart Senate Office Building
Washington, DC 20510-1304

Dear Senator Durbin:

The National District Attorneys Association (NDAA) on behalf of the nation's prosecutors strongly supports S. 442, the "John R. Justice Prosecutors and Defenders Incentive Act of 2007," and is hopeful for action on the legislation in early March.

It is extremely difficult for local prosecutors and public defenders to not only recruit the most distinguished law school graduates but also to retain the competent, well-trained and experienced attorneys currently employed in their offices. This problem is, in part, due to the disparity between the salaries and benefits offered by private firms and those available to individuals wishing to enter public service as a prosecutor or public defender.

The other leading contributor to the economic hardship for prosecutors and public defenders is an almost crushing debt burden from student loans that many are forced to assume in order to cover the costs of law school tuition. A 2005 survey conducted by the National District Attorneys Association's, Office of Research and Evaluation found that 89 percent of the respondents assumed debt during law school to pay tuition costs and 85 percent advised that they still owe money on their loans. The average amount of law school loans assumed was $66,422 with the majority of prosecutors having loans between $45,000 and $90,000.

Those law school graduates who do become local prosecutors or public defenders are often forced to leave, for economic reasons, just as the public begins to really benefit from their training and experience. The attrition rates in prosecutor and public defender offices across the country seriously undermine the integrity of the criminal justice system and the safety of the community. Offices that are fully staffed with competent and experienced attorneys reduce the risk of undesirable outcomes in court and increase the public's confidence in the criminal justice system.

For those prosecutors and public defenders that remain committed to public service, they often are forced to work second jobs to pay tuition loans and basic living expenses. It is not uncommon to hear of a prosecutor waiting tables or bartending in the evenings in order to make ends meet. Unfortunately second jobs can detract from their primary job as a prosecutor thereby compromising again the criminal justice system and the safety of the community.

The provision of student loan repayment assistance in return for continued service over several years would be a critical incentive for younger prosecutors and public defenders to serve the criminal justice system and for those currently employed to continue in public service. The loan repayment assistance program outlined in S.442 is modeled after existing student loan repayment programs that have been used effectively by the United States Department of Justice and other Federal agencies to recruit and retain attorneys.

We strongly support the passage of S. 442, the "John R. Justice Prosecutors and Public Defenders Incentive Act," and are extremely appreciative of all your efforts on this important issue. We stand ready to support you in your future efforts in making this a reality for those prosecutors burdened with insurmountable student loan debt.

Sincerely,

Thomas J. Charron
Executive Director

Mathias H. Heck, Jr.
Prosecuting Attorney
Dayton, Ohio
NDAA President

James P. Fox
District Attorney
Redwood City, California
NDAA President-Elect

Paul A. Logli
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Kevin J. Baxter
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M. David Barber
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Margaret Dorer
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Advisory Council

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Chief State's Attorneys Office

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Colorado District Attorneys'
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John E. Murphy
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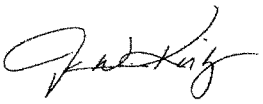
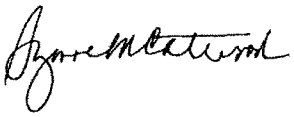
Sandee Meyer
Executive Director
Idaho Prosecuting Attorneys
Association

Mary-Jo Mullen
Executive Director

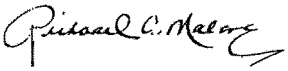
Pennsylvania District Attorneys
Association



James W. Kirby
Executive Director
Tennessee District Attorneys
General Conference



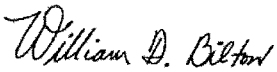
Suzanne McClain Atwood
Executive Coordinator
Oklahoma District Attorneys
Council



Rick Malone
Executive Director
Georgia Prosecuting Attorneys
Council

Bob McMahan
Prosecutor Coordinator
Arkansas Prosecutor
Coordinator's Office

Carolyn Norris
Coordinator
Oregon District Attorneys
Association



William Bilton
Executive Director
State of South Carolina
Commission on Prosecution
Coordination

Ara M.Crowe, Jr.
Prosecutor Coordinator
Maryland State's Attorneys'
Association

Mary-Jo Mullen
Executive Director
Pennsylvania District Attorneys
Association

National Juvenile Defender Center

1350 Connecticut Avenue NW, Suite 304 | Washington, DC 20036 | Phone: 202.452.0010 | Fax: 202 452 1205 | Email: inquiries@njdc.info

February 6, 2007

Senator Richard Durbin
U.S. Senate
309 Hart Senate Office Building
Washington, DC 20510

cc: Senator Arlen Specter

Dear Senator Durbin:

On behalf of the National Juvenile Defender Center, I write regarding the John R. Justice Prosecutors and Defenders Incentives Act of 2007. The NJDC strongly supports alleviating the financial burden that is often taken on by lawyers who dedicate themselves to public service by becoming prosecutors or defenders. The services provided by these lawyers are indispensable to individuals and society. The Prosecutors and Defenders Incentive Act would ensure this as a viable career choice for the best and brightest lawyers of the future, contributing greatly to criminal and juvenile justice systems of excellence and, therefore, to public safety.

It has been well-documented that a significant barrier to providing quality indigent defense is the lack of resources that so many juvenile defenders face. Many talented and dedicated lawyers graduate from law school saddled with hundreds of thousands of dollars in educational debt. Many students with a desire to devote their careers to public service face a stark choice when faced with the low starting salaries of public defender offices. Juvenile defenders are often in even more strained financial circumstances, as many offices require moving to adult felony level trials in order to obtain salary increases. For a dedicated juvenile defender, such a career choice could mean sacrificing more than just financial well-being, but also the chances of promotion and career advancement, since juvenile units are often considered entry level positions.

Promoting quality counsel among juvenile defenders does not only benefit the recipients of such grants, but communities, society, and the judiciary, as well. Scarcity of resources does not only affect clients, but also impedes the ability of the judiciary to function in a fair and just manner. Having the highest quality defense counsel is crucial to maintaining an effective, fair, and accountable juvenile justice system. The vital necessity of well qualified, adequately resourced defense counsel is recognized in the National Council of Juvenile and Family Court Judges' *Juvenile Delinquency Guidelines: Improving Court Practice in Juvenile Delinquency Cases*, which mandates "youth charged in the formal juvenile delinquency court must have qualified and adequately compensated legal representation." Another set of standards, the American Council of Chief Defenders and National Juvenile Defender Center's *Ten Core Principles for Providing Quality Delinquency Representation through Indigent Defense Delivery Systems* requires that "the indigent defense delivery system supports quality juvenile delinquency representation through personnel and resource parity," and suggests this can be accomplished by encouraging "juvenile representation specialization without limiting attorney and support staff's access to promotional progression, financial advancement or personnel benefits."

Our society relies upon a court system that is adversarial and protects the due process rights of those brought before it. Ensuring that capable defenders and prosecutors are able to dedicate themselves to these noble careers supports and promotes this adversarial system. Forty years ago, with the *In re Gault* case, the Supreme Court of the United States made it clear that juveniles are to be afforded the same due process rights at adjudication as adult defendants at criminal trials. Passing the John R. Justice Prosecutors and Defenders Incentives Act of 2007 is an important step in fulfilling the promise of that case, such that juveniles brought before the court would have access to quality counsel and would be an important step in advancing our society's interest in a fair, just delinquency court system.

Thank you for your consideration of this legislation. If you have any questions, please do not hesitate to contact Rashida Edmondson-Penny at 202-452-0010 x106 or rashida@njdc.info.

Sincerely,

Patricia Puritz
Executive Director
National Juvenile Defender Center

NATIONAL LEGAL AID & DEFENDER ASSOCIATION
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F: 202.872.1031
www.nlada.org

February 26, 2007

The Honorable Richard Durbin
United States Senate
Washington, DC 20510

Dear Senator Durbin:

I am writing to commend you on your sponsorship of S. 442, the John R. Justice Prosecutors and Defenders Incentive Act of 2007. This legislation, which would provide law school loan repayment assistance to public defenders and prosecutors, recognizes the important contributions of these lawyers by opening doors to the practice of public service law.

At the National Legal Aid & Defender Association (NLADA), we are continually committed to finding incentives for attorneys to practice law in the public service. Public service law, while boasting opportunities for unparalleled legal experience, does not lay claim to the most attractive salaries in the legal profession. Too often, staggering student loan debt discourages qualified lawyers from entering public service employment in favor of higher-paying jobs in the private sector.

The choice between the private sector and the public service, rather than a lifestyle choice, is often a question of possibility – is it even possible for a newly minted lawyer to make payments on over $100,000 in student loans while earning just $43,000 per year, the current median entry-level salary for public defenders? S. 442 attempts to bridge this gap via loan repayment assistance (up to $10,000 per year) to lawyers who commit to three years in public service law. Though this legislation would not put public defender salaries on par with those in the private sector, it would make the practice of public service law more affordable. And it would make salaries in the public service more competitive with those in the federal executive branch, where a similar program is already in place.

Our mission at NLADA is to secure equal justice by supporting excellence in the delivery of civil legal aid and indigent defense services. Your leadership in the Senate on S. 442 represents a commitment to facilitating the highest quality in the practice of public service law.

NLADA thanks you and your co-sponsors for promoting this important policy.

Sincerely,

Jo-Ann Wallace

Jo-Ann Wallace
President and CEO

Testimony of Professor George B. Shepherd
Senate Judiciary Committee Hearing
"Strengthening Our Criminal Justice System: The John R. Justice Prosecutors and Defenders Incentive Act of 2007"
Feb. 27, 2007

Thank you for the opportunity to testify before your committee, and to support with great enthusiasm passage of the John R. Justice Prosecutors and Defenders Incentive Act. I am currently Professor of Law at Emory University School of Law in Atlanta, Georgia. I have training in both law and economics. I am the author of two books and dozens of articles. Specifically, I have written three articles and several op-ed pieces on the impacts of law-school accreditation.

My main point today will be the following: if we limited or even eliminated the accreditation requirements for law schools, we could substantially reduce the costs of implementing the Act, while at the same time improving the training of lawyers.

Many of the participants in the accreditation system are public-spirited and selfless, and the system may provide some benefits. However, my research shows that the system has also imposed large harms. It has increased the cost of legal education substantially. It has suppressed potential new schools that would offer legal education that would be cheaper, and sometimes also better. The system has excluded many from the legal profession, particularly the poor and minorities. It has raised the cost of legal services. And it has, in effect, denied legal services to whole segments of our society.

Today, I will focus on one of these harms: how the accreditation system substantially increases the costs of legal education. The Act is excellent and essential legislation. However, we need to recognize that passage of the Act is necessary partly because of the accreditation system; without the accreditation system, many more students would graduate from law school

with no loans or much smaller ones, so that they would not need to use the benefits that the Act provides. With the accreditation system, the Act will, in effect, transfer much taxpayers' money from the federal government to overpriced law schools. The Act is essential. But the accreditation system increases the cost of implementing it.

Strict accreditation requirements are a relatively recent phenomenon, having begun in the Great Depression. What seems normal now after 70 years was in fact a radical change from a much more open system that had functioned well for more than a century before then. Until the Great Depression, no state required an applicant to the bar to have attended any law school at all, much less an accredited one. Indeed, 41 states required no formal education whatsoever beyond high school; 32 states did not even require a high school diploma. Similarly, bar exams were easy to pass; they had high pass rates.

Often, the best lawyers did not go to law school. For example, my great grandfather was Henry Russell Platt. He was a founding name partner of what is currently a leading law firm in Chicago, which until recently was called Mayer, Brown, and Platt. He never went to law school.

During the Depression, state bar associations attempted to eliminate so-called "overcrowding" in the legal profession; they felt that too many new lawyers were competing with the existing ones for the dwindling amount of legal business. They attempted to reduce the number of new lawyers in two ways. First, they decreased bar pass rates. Second, they convinced courts and state legislatures to require that all lawyers graduate from ABA-accredited law schools.

The ABA's accreditation requirements increase the cost of becoming a lawyer in two ways. First, they increase law school tuition. They do this by imposing many costs on law schools. For example, accreditation standards effectively raise faculty salaries; limit faculty

teaching loads; require high numbers of full-time faculty rather than cheaper part-time adjuncts; and require expensive physical facilities and library collections. The requirements probably cause law schools' costs to more than double, increasing them by more than $12,000 per year, with many schools then passing the increased costs along to students by raising tuition. The total increase for the three years of law school is more than $36,000.

The impact of the increased costs from accreditation can be seen by comparing tuition rates at accredited schools and unaccredited schools. Accredited schools normally charge more than $25,000 per year. Unaccredited schools usually charge approximately half that amount.

One example of the many expensive accreditation requirements is the ABA's requirement that an accredited school have a large library and extensive library collection. Insiders confirm that the ABA requires a minimum expenditure on library operations and acquisitions of approximately $1 million per year. This is more than $4,000 per student in an averaged-sized school.

The second way that the ABA requirements increase students' cost of entering the legal profession is as follows. The ABA requires students to attend at least six years of expensive higher education: three years of college and three years of law school. Before the Great Depression, a young person could enter the legal profession as an apprentice directly after high school, without college or law school. Now, a person can become a lawyer only if she can afford to take six years off from work after high school and pay six years of tuition.

The requirement of six years of education is expensive. The sum of the tuition payments and foregone income can easily exceed $300,000, or more. For example, a conservative estimate is that attending a private college and law school for six years would cost approximately $25,000 per year for a total of $150,000. In addition, let's assume conservatively that a student who

could qualify for college and law school would have earned only $25,000 per year if the student had not attended college and law school. The amount of income that the student sacrifices for six years to become a lawyer is $150,000. The total is $300,000.

The student has to pay for the increased costs from accreditation somehow. Unless the student is wealthy, large student loans will be necessary. Under the Act, for students who become prosecutors or public defenders, the taxpayers will pay for the loans.

To reduce the costs that the Act imposes on taxpayers, the accreditation system's restrictions should be loosened. For example, law schools might be permitted to experiment with smaller libraries, cheaper practitioner faculty, and even shorter programs of two years rather than three, like business school. Or the requirements might be eliminated completely; students without a degree from an accredited law school would be able to practice law.

Removing the flawed, artificial accreditation bottleneck would not in fact be a drastic change, and it would create many benefits but few harms. The current system's high-end qualities would continue, while a freer market for variety would quickly open up. To Rolls-Royce legal educations would be added Buicks, Saturns, and Fords. The new system would develop a wider range of talent, including lawyers at $60, $40, and even $25 an hour, as well as those at $300 and up. This would fit the true diversity of legal needs, from simple to complex. With cheaper education available to more people, some lawyers for the first time would be willing and able to work for far less than at present.

The addition of many more lawyers would produce little additional legal malpractice or fraud, and the quality of legal services decline little, if at all. Private institutions would arise within the market for legal services to ensure that each legal matter was handled by lawyers with appropriate skills and sophistication. For example, large, expensive law firms would continue to

handle complicated, high-stakes transactions and litigation. However, law companies that resembled H&R Block would open to offer less-expensive legal services for simple matters. Accounting and tax services are available not only for $300 per hour at the big accounting firms, but also for $25 per hour at H&R Block. The new law companies would monitor and guarantee the services of their lawyer-employees.

Elimination of the accreditation requirement is a modest, safe proposal. It merely reestablishes the system that exists in other equally-critical professions, a system that worked well in law for more than a century before the Great Depression. Business and accounting provide comforting examples of professions without mandatory accreditation or qualifying exams. In both professions, people may provide full-quality basic services without attending an accredited school or passing an exam. Instead, people can choose preparation that is appropriate for their jobs. A person who seeks to manage a local McDonald's franchise or to prepare tax returns need not attend business school or become a CPA first. Yet there is no indication that the level of malpractice or fraud is higher in these fields than in law. Likewise, there is no indication that malpractice and fraud were any more frequent during the century before accreditation and the bar exam, when lawyers like Abraham Lincoln practiced. Lincoln never went to law school.

The John R. Justice Prosecutors and Defenders Incentive Act is superb legislation. However, the ABA accreditation system increases the Act's costs. Limiting or eliminating the accreditation requirements would produce few harms and many benefits. The benefits would include making the Act much cheaper to implement.

February 26, 2007

Honorable Richard J. Durbin
United States Senator
309 Hart Senate Office Building
Washington, DC 20510

Re: S.442: John R. Justice Prosecutors and Defenders Incentive Act of 2007

Dear Senator Durbin:

We, the undersigned, are writing to express our unqualified support for S. 442, the John R. Justice Prosecutors and Defenders Incentive Act of 2007. Overwhelming student loan debt has created a shortage of qualified applicants for prosecutor and public defender positions and unsustainable losses of existing well trained, effective prosecutors and defenders. The result is a dangerous situation that impacts the safety of our communities and the integrity of the criminal justice system.

For public defense agencies, the increasingly difficult task of hiring and retaining qualified lawyers means a higher risk of wrongful convictions of the innocent, ineffective assistance of counsel, and legal malpractice. Substantial delays in case processing causes clients to languish in custody well beyond the point their cases should have been resolved. The result is unnecessary human misery and exorbitant costs of detention.

Such deficiencies also affect successful prosecution, creating situations where neither the prosecution nor defense is adequately prepared, leading to pleas or settlements inappropriate for the case at hand. Lack of qualified prosecutors and defense attorneys also increases the likelihood that cases will be dismissed because of a violation of the right to a speedy trial. In the end, it is the safety of our neighborhoods and communities that is compromised either because the innocent are convicted or the guilty go free.

However, there is hope and reason to be optimistic. The John R. Justice Prosecutors and Defenders Incentive Act (S. 442) constitutes a prudent investment, at a modest cost, to ensure that the effectiveness of our criminal justice system is not comprised by overwhelming educational debt.

In California for example, the results of recent surveys (November 2006) of California Chief Public Defenders and of more than 400 individual Deputy Public Defenders (DPDS) revealed the following:

- More than 83% of Chief Defenders believe that recruiting has been negatively impacted by student loan burdens.

- DPDS who graduated in the past four years have an average student debt burden of $93,300. A sizable percentage face debt in excess of $120,000.

A number of California District Attorneys have also reported vacancy rates ranging from 10-20%, though such vacancies are not due to a lack of qualified attorneys but because such attorneys cannot afford to accept salaries that don't allow them to meet their student loan debt responsibilities.

The hardship stories of overworked public defenders taking second jobs to make ends meet, risking malpractice and disability are not uncommon. Deferrals of massive student loan payments compound the problem and often force good defenders out of the justice system. Once again, it is the safety of our neighborhoods and communities that is compromised. It is in the best interest of all who value justice to take sensible steps towards rectifying the problem of overwhelming student loan debt for prosecutors and public defenders promptly.

Very truly yours,

Charlene Davidson Henry
Deputy Chief Public Defender, Arkansas Public Defender Commission, Little Rock, AR

Jay Saxton
Chief Public Defender, Benton County Public Defender's Office, Bentonville, AR

John Digiacinto
Chief Defender, Private Defender Program, San Mateo County, Redwood City, CA

Paulino Durán
Chief Public Defender, Sacramento County Public Defender's Office, Sacramento, CA

Lauri L. Ferguson
Chief Deputy Director, San Bernardino County Public Defender, San Bernardino, CA

Michael P. Judge
Chief Public Defender, Los Angeles County Public Defender, Los Angeles, CA

Fern Laethem
Executive Director, Sacramento County Conflict Criminal Defenders, Sacramento, CA

Avis Buchanan
Director, Public Defender Service for the District of Columbia

Lawrence P. Sullivan
Chief Public Defender, State of Delaware Public Defender's Office, Wilmington, DE

Bennett H. Brummer
Chief Public Defender, 11th Judicial Circuit of Florida, Miami, FL

Julie A. Burkhart
Chief Assistant Public Defender, Law Offices of Julianne M. Holt, Public Defender for the 13th Judicial Circuit of Florida, Tampa, FL

Nancy Daniels
Chief Public Defender, 2nd Judicial Circuit of Florida, Tallahassee, FL

Earl D. Loveless
Chief Assistant Public Defender, Florida 1st Judicial Circuit, Pensacola, FL

Elliot Metcalfe
Chief Public Defender, 12th Judicial Circuit Public Defender, Sarasota, FL

Thomas Becker
Chief State Public Defender, Des Moines, IA

Alan E. Trimming

Chief Public Defender, Ada County Public Defenders Office, Boise, ID

Theodore A Gottfried
Chief State Appellate Defender, State of Illinois, Springfield IL

David E. Cook
Chief Public Defender, Marion County Public Defender Agency, Indianapolis, IN

Larry A. Landis
Executive Director, Indiana Public Defender Council, Indianapolis, IN

Patricia A. Scalia
Executive Director, Board of Indigents' Defense Services, Topeka, KS

Erwin Lewis
Chief Defender, Department of Public Advocacy, Frankfort, KY

James H. Looney
Executive Director, Louisiana Appellate Project, Covington, LA

David W. Price
Director, Baton Rouge Capital Conflict Office, Baton Rouge, LA

William Leahy
Chief Counsel, Committee for Public Counsel, Boston, MA

John Stuart
Chief Minnesota State Public Defender, Minneapolis, MN

J. Marty Robinson
Director, Missouri State Public Defender System, St. Louis, MO

Jeremy Bosler

Chief Public Defender, Washoe County Public Defender, Reno, NV

Michael Coleman
Executive Director, New York County Defender Services, New York, NY

Robert S. Dean
Attorney in Charge, Center for Appellate Litigation, New York, NY

Jonathan E. Gradess
Executive Director, New York State Defenders Association, Albany, NY

Richard Greenberg
Attorney in Charge, Office of the Appellate Defender, New York, NY

David C. Schopp
Executive Attorney, The Legal Aid Bureau of Buffalo, Inc. Public Defender Unit, Buffalo, NY

Lisa Schreibersdorf
Executive Director, Brooklyn Defender Services, Brooklyn, NY

Robin G. Steinberg
Executive Director, The Bronx Defenders, Bronx, NY

Yeura R. Venters
Director, Franklin County Public Defender Office Columbus, OH

Ann Christian
Oregon Criminal Defense Lawyers' Association Substantive Legislative Representative, Portland, OR

Thomas J. Crabtree
Executive Director, Crabtree & Rahmsdorff, Defense Services, Inc., Bend, OR

Gregory Hazarabedian
Executive Director, Public Defender Services of Lane County, Eugene, OR

James Hennings
Executive Director, Metropolitan Public Defender, Portland, OR

Herbert Putney
Managing Attorney, Southern Oregon Public Defender, Inc., Medford, OR

David Crowley
Chief Public Defender, Centre County Public Defender Office, Bellefonte, PA

Ellen T. Greenlee
Chief Defender, Defender Association of Philadelphia, PA

John Hardiman
Chief Public Defender, Office of the Public Defender, Providence, RI

Patton Adams
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John I. Mauldin
Chief Public Defender, Greenville County Public Defender, Greenville, SC

Traci Smith
Chief Public Defender, Minnehaha County Public Defender, Sioux Falls, SD

Donald Dawson
Chief Post-Conviction Defender, Office of the Post-Conviction Defender, Nashville, TN

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Chief, Bexar County Appellate Public Defender, San Antonio, TX

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Executive Director, Washington Defender Association, Seattle, WA

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Chief Public Defender, King County Office of the Public Defender, Seattle, WA

William A. Jacquette
Snohomish County Public Defender Association, Everett, WA

Michael Kawamura
Director, Pierce County Department of Assigned Counsel, Tacoma, WA

Katherine S. Knox
Director, City of Spokane Public Defender's Office, Spokane, WA

Floris Mikkelsen

Director, The Defender Association, Seattle, WA

John Rodgers
Director, Spokane County Public Defenders, Spokane, WA

Nicholas Chiarkas
Wisconsin State Public Defender, Madison, WI

John Rogers
Executive Director, West Virginia Public Defender
Services, Charleston, WV

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www.opds.state.or.us

February 26, 2007

Senator Richard Durbin
309 Hart Senate Office Building
Washington, DC 20510

Senator Arlen Specter
711 Hart Senate Office Building
Washington, DC 20510

Re: S. 442, The John R. Justice Prosecutors and Defenders Incentive Act of 2007

Dear Senator Durbin and Senator Specter:

I would like to express my support for the current language in S. 442 which would include employees of private non-profit defense organizations in the loan forgiveness program. In Oregon, as in other states, we are experiencing a critical shortage of new attorneys choosing careers in public defense. Our system is different from other states, however, in that the great majority of all trial level public defense representation is provided by private contractors. This has proven to be a cost-effective approach to the delivery of public defense services in our state. Many of these contractors are non-profit corporations that contract exclusively with the state to provide public defense services. Their attorneys generally devote 100% of their time to public defense representation. While these attorneys are not public employees they are, in every other sense, "public defenders." If anything, they are more in need of loan repayment assistance than other public defenders because we provide them none of the benefits of public employment. We would certainly like to see Oregon public defenders included among those eligible for S. 442's loan forgiveness program.

Thank you for your support of public defense, a critical component of our state's public safety system.

Sincerely,

Ingrid Swenson
Executive Director

cc: Daniel Swanson (PDF)
Juria Jones (PDF)

February 27, 2007

The Honorable Patrick Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

The Honorable Arlen Specter
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Re: John R. Justice Prosecutors and Defenders Incentive Act (S. 442)

Dear Senators Leahy and Specter:

The undersigned voluntary bar and allied associations from thirty-two states and Puerto Rico write to express our strong support for the John R. Justice Prosecutors and Defenders Incentive Act (S. 442). Our members are private and public lawyers who represent persons accused of criminal offenses and juvenile delinquency.

Many of our members are struggling to repay mortgage-size education loans from their low public defender salaries. As a result of their decision to devote their careers to public service and their enormous debt, they are forced to sacrifice home ownership and other basic opportunities. Many are eventually compelled by financial circumstances to leave public defenders' offices, depriving their clients of years of training and experience.

It is not just the attorneys and their clients who suffer – high turnover among experienced public defenders wastes taxpayer money and jeopardizes public safety. As public defenders' offices lose their most experienced attorneys to more lucrative jobs, they must continually expend resources on recruitment and training. Cases are delayed due to attorney turnover, inexperienced attorneys are forced to handle complex cases, and public defenders' offices are less equipped to provide effective representation in a high caseload environment. Some of our members are the chief defenders and supervisors within public defenders' offices, who know well the difficulties of recruiting qualified attorneys and the inefficiencies that result from high turnover.

The John R. Justice Prosecutors and Defenders Incentive Act would strengthen the criminal justice system and enhance public safety by encouraging qualified attorneys to choose careers as prosecutors and public defenders and to continue in that service. We are confident that S. 442's program of student loan repayment assistance will greatly improve the reliability, fairness, and efficiency of the criminal justice systems in our states. We urge you to support quick passage of this important legislation.

Sincerely,

Melinda Morgan Austin
President
Alabama Criminal Defense Lawyers Association

Christopher B. Dupont
President
Arizona Attorneys for Criminal Justice

Dana P. Hlavac
Mohave County Public Defender
Law Offices of the Mohave County Public Defender

Richard Hutton
President
California Attorneys for Criminal Justice

Jeff Harris
President
Florida Association of Criminal Defense Lawyers

David Oscar Markus
President
Florida Association of Criminal Defense Lawyers – Miami Chapter

J. Michael Cranford
President
Georgia Association of Criminal Defense Lawyers

Teresa Hampton
President
Idaho Association of Criminal Defense Lawyers

Larry A. Landis
Executive Director
Indiana Public Defender Council

Robert R. Rigg
President
Iowa Association of Criminal Defense Lawyers

Melanie S. Morgan
President
Kansas Association of Criminal Defense Lawyers

Mark A. Bubenzer
President
Kentucky Association of Criminal Defense Lawyers

John Digiulio
President
Louisiana Association of Criminal Defense Lawyers

Walter F. McKee
President
Maine Association of Criminal Defense Lawyers

Anne C. Goldbach
President
Massachusetts Association of Criminal Defense Lawyers

John Brink
President
Minnesota Association of Criminal Defense Lawyers

Paula Brummel
Executive Director
Minnesota Association of Criminal Defense Lawyers

Scott Hamilton
President
Missouri Organization of Defense Lawyers

Bob Lindemeier
Lincoln County Public Defender
Past President
Nebraska Association of Criminal Defense Lawyers

Michael J. Iacopino
President
New Hampshire Association of Criminal Defense Lawyers

Rebecca Reese
President
New Mexico Criminal Defense Lawyers Association

Henry J. Steinglass
President
New York Criminal Bar Association

Daniel N. Arshack
President
New York State Association of Criminal Defense Lawyers

Lisa Rasmussen
President
Nevada Attorneys for Criminal Justice

Glenn Gerding
President
Dan Pollitt Criminal Defense Bar (North Carolina)

Barry Wilford
President
Ohio Association of Criminal Defense Lawyers

J. David Ogle
President
Oklahoma Criminal Defense Lawyers Association

John Connors
President
Oregon Criminal Defense Lawyers Association

John Potter
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Oregon Criminal Defense Lawyers Association

Joseph M. Cosgrove
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Pennsylvania Association of Criminal Defense Lawyers

James Karl
President
Public Defender Association of Pennsylvania

Mariángela Tirado-Vales
President
Puerto Rico Association of Criminal Defense Lawyers

James Brown
President
South Carolina Association of Criminal Defense Lawyers

Harry A. Dest
Chairman
South Carolina Commission on Indigent Defense

Randall E. Reagan
President
Tennessee Association of Criminal Defense Lawyers

Paul C. Saenz
President
Laredo Webb County Bar Association (Texas)

Robert Lerma
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Texas Criminal Defense Lawyers Association

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Amanda E. Lee
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Teresa Mathis
Executive Director
Washington Association of Criminal Defense Lawyers

Peter McKeever
Executive Director
Wisconsin Association of Criminal Defense Lawyers

cc: Senate Judiciary Committee

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