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HELPING FIND INNOVATIVE AND COST-EFFECTIVE SOLUTIONS TO OVERBURDENED STATE CRIMINAL COURTS

HEARING

BEFORE THE

SUBCOMMITTEE ON CRIME AND DRUGS

OF THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

ONE HUNDRED ELEVENTH CONGRESS

SECOND SESSION

MAY 3, 2010

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HELPING FIND INNOVATIVE AND COST-EFFECTIVE SOLUTIONS TO OVERBURDENED STATE CRIMINAL COURTS

MONDAY, MAY 3, 2010

U.S. SENATE,
SUBCOMMITTEE ON CRIME AND DRUGS,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Committee met, pursuant to notice, at 9:05 a.m., in Kirby Auditorium, The National Constitution Center, Philadelphia, Pennsylvania, Hon. Arlen Specter, Chairman of the Subcommittee, presiding.

Present: Senator Specter and Kaufman.

OPENING STATEMENT OF HON. ARLEN SPECTER, A U.S. SENATOR FROM THE STATE OF PENNSYLVANIA

Chairman SPECTER. Ladies and gentlemen, the Criminal Law Subcommittee of the U.S. Senate Committee on the Judiciary will now proceed. I first welcome my distinguished colleague, Senator Ted Kaufman, who has graciously come up from his home in Delaware this morning to join us on this panel. Senator Kaufman is a member of the Senate Judiciary Committee. And I welcome the witnesses here today, a very, very distinguished panel, to proceed with our inquiry into the criminal justice system in the city of Philadelphia in the light of disclosures made in an extensive series of articles in the Philadelphia Inquirer. This is the third in our series of hearings.

The first hearing focused on the problem of intimidation of witnesses, and at that time we heard from parents of two young people who were murdered because they were about to testify in a criminal proceeding. And, obviously, it is intolerable to intimidate witnesses because that is the way the case proceeds, on the testimony of the witnesses. We have taken action in the Senate on the introduction of legislation which would make intimidation of witnesses in a State court proceeding a Federal crime. Today it is not a Federal crime. It is a violation of State law, but it is very different to have a Federal charge possible which brings in the FBI and brings in the tougher judicial system of the United States Federal courts. We have also moved ahead passing legislation out of Committee which would increase the funding by the Federal Government for witness protection. The Federal Government has a witness protection program which works pretty well, and we really need to move ahead to get the States to have a similar program.

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The second hearing focus is on the problem of fugitives. Many people skip bail, and we found, much to our chagrin, that there was no system in place to report to a national clearinghouse the fact that somebody had jumped bail in Philadelphia so that if they were apprehended, illustratively, say in St. Louis, there was no way to notify Philadelphia authorities they were in St. Louis and could be brought back to Philadelphia for trial. We have moved ahead to have legislation for more Federal funding to help with detention of fugitives, and we have also gotten a response from the United States Marshal to assign additional Federal personnel to finding fugitives.

Today we have a distinguished panel: Justice Seamus McCaffery of the Pennsylvania Supreme Court. Chief Justice Castille has appointed Justice McCaffery to look into this situation with the Supreme Court's authority in the field. We have the distinguished former district attorney of Philadelphia, Lynne Abraham, who served 18 years, was the first woman to hold the position and the longest-serving district attorney.

I might say in passing, with some pride, Lynne Abraham was an assistant in my office, and a very able one. And I might say, also with some pride, that Chief Justice Castille, who appointed Justice McCaffery to look into this issue, is also an alumnus of my office. I will not go too far into the alumni society beyond the Governor and three colleges' presidents and the chief judge of the Federal circuit.

We have with us Ms. Ellen Greenlee, the Chief Defender. She has been at that job for some 19 years, and has some very important views to express.

We have Professor John Goldkamp from Temple University, who is the Chair of the Department of Criminal Justice, has served on advisory boards to both the State and the city, and had a hand in the analysis of the criminal justice system in Philadelphia in 1990. So he has a unique perspective.

I am now pleased to yield to my distinguished colleague, Senator Kaufman, whom I again thank for joining me in this hearing.

Senator Kaufman.

STATEMENT OF HON. TED KAUFMAN, A U.S. SENATOR FROM THE STATE OF DELAWARE

Senator KAUFMAN. Thank you, Mr. Chairman. Thank you very much for having me up here. But I have watched, when I lived in Philadelphia for many, many years when you were district attorney, but even more so when I was Senator Biden's chief of staff when he was Chairman of the Judiciary Committee, it is not hyperbole to say that on criminal justice issues for I do not know how many years, you are the person that everyone on the Committee looks to, and you are the person that people in the Senate look to. Your record of accomplishments, your ability to kind of get to the nub of the problem, any problem you face, has been something I have watched for many, many years. So I am really glad to come up here.

You know, Delaware is just to the south of here. It is like the old story, you know, when Philadelphia gets a cold, Delaware gets a fever. Many of our problems in Philadelphia, crime problems in

Philadelphia, relate to the fact that we are on I–95 halfway between Baltimore and Philadelphia. So when you have problems up here, it really comes down and affects Delaware. That is the first thing.

But the second thing is it is really important that we get this together nationally. This is not just a Philadelphia problem. I read all the testimony on the way up here and looked into these things. These are problems that cities are facing around the country, so it is a real Federal interest.

There is a special interest to us because Philadelphia is the source of so many of the drugs that go into Wilmington, Delaware, and so what happens here is extremely important to the people of Philadelphia. And we have seen in Philadelphia a lot of the same things you see up here.

We have seen witness intimidation, an anti-snitching culture, many of the difficulties that we see up here. And that is why I cosponsored your State Witness Protection Act of 2010 to help deal with this anti-snitch problem. I believe the threat of Federal prosecution could have real impact on witness intimidation in State court.

Mr. Chairman, the innovations you and these witnesses are discussing today should have impact far beyond Philadelphia. I look forward to listening to today's testimony.

Chairman SPECTER. Well, thank you very much, Senator Kaufman, for those cogent words.

We are honored to have Supreme Court Justice Seamus McCaffery with us today, a very unique career as well as a distinguished career. Justice McCaffery served in the Philadelphia Police Department for 19 years. You cannot get any better experience in the criminal justice system than that. He went to law school, is an attorney. He was on the municipal court of Philadelphia and became famous by having the so-called Eagles Court, which functioned during the Eagles football games, and he was able to adjudicate offenses right on the scene. Nothing like deterrence to have the judge right there to take action. Elected to the superior court and now on the Supreme Court, and as I said, the Chief Justice of Pennsylvania has designated Justice McCaffery to look into the overall situation. So we welcome you here.

The time limit is traditionally set at 5 minutes, which would leave us the maximum amount of time for dialog after the witnesses testify. So the floor is yours, Justice McCaffery.

STATEMENT OF HON. SEAMUS MCCAFFERY, SUPREME COURT JUSTICE, SUPREME COURT OF PENNSYLVANIA, PHILADELPHIA, PENNSYLVANIA

Justice MCCAFFERY. Thank you, Senator Specter, Senator Kaufman. Thank you so much for inviting me here today representing the Supreme Court of Pennsylvania on this very important matter, not only to Philadelphia but to the Philadelphia region.

Senator, as you pointed out, my first exposure to the Philadelphia municipal court and the criminal justice system was in 1970 when I got out of the Marine Corps and joined the Philadelphia Police Department. It was shortly after the creation of the Philadelphia municipal court, so I have many, many years of exposure to

both municipal court and the Court of Common Pleas here in Philadelphia County. And, gentlemen, I say this without exaggeration. What I have seen over the years, I have been very much dismayed.

The system has really gotten both overwhelmed and out of control. It has diminished, in my opinion, in the ability to give quality justice to all parties, both the accused as well as the victims of crime.

The municipal court, when I was first elected there in 1994, we had approximately 23 trials a day in a courtroom. That is trials, not preliminary hearings. And as such, we had, of course, motions practice, et cetera. So these were not just wham-bam, easy types of cases. By the time I left 10 years later, we were over 45 trials a day in a courtroom. We went from 35 to 40 preliminary hearings out in the districts to upwards of 70 and 75 preliminary hearings a day.

The volume of cases just continued to increase, and yet our budgets decreased. We did have an increase in members of the judiciary, but, quite frankly, we had so many additional charges put on us by the legislature that it increased the workload dramatically. Our judges were overwhelmed. Our defenders association was overwhelmed. Our district attorney was overwhelmed. We had young men and women coming into our courtrooms on any given day with 30, 35 matters a day they personally had to prepare for and handle, and then they would have to go back to their offices, work up their files, and last but not least, get another 35 for the next day. We have so many cases that were just being discharged because of time issues.

When I took over as the administrative judge, 66 counties in Pennsylvania had 180 days from the date of arrest for a misdemeanor to the actual date of trial. Philadelphia County, the largest county, had 120 days. Why, you might ask? I have no idea. We have since changed that. We petitioned the Supreme Court. Philadelphia County is now on an equal footing with the rest of the State. We now have 180 days.

But as you can imagine, Philadelphia, because of the magnitude of cases, the complexity of our system, the balancing, if you will, of problems between overtime constraints that the police department has to deal with and the courts trying to get cases on. One of the things I saw both as a police officer and the father of police officers was that when individuals were arrested, the police department tried to ensure that their officers would go to court on their day work tour of duty. Why? It was to cut down on overtime. But what we found were police officers with 5, 10, sometimes 15 court notices on 1 day. One day in a city, Senator, where we do not have, as you know, a centralized courthouse. We have courthouses throughout the city of Philadelphia, the county of Philadelphia, stretched as far as 55th and Pine all the way up to Academy and Red Lion, Broad and Champlost, et cetera. That means that these officers that are required to go to a trial for homicides, major crimes, and even the lower-level misdemeanor crimes, are now being required to travel all over Philadelphia. We have judges waiting, we have courts waiting, we have juries waiting. The system was just being clogged up by the morass that we saw.

We tried a lot of innovative things, including bringing all the satellite districts into the Criminal Justice Center. But as I am sure you remember, Senator, because of budgetary cutbacks, what was once a larger footprint for the Criminal Justice Center became a much small footprint, thereby causing us to have fewer elevators, bigger congested lines to get on the elevators. It was pretty much a mess. And as a result of it, again, more action had to be taken to lessen the problem.

So taking all of that into consideration, we tried our best to create a lot of different situations that would alleviate the congestion and get cases on.

What happened was more and more cases were just being discharged. Why? Because they were either unable to put them on, again, because of police officers not showing up, witnesses not showing up—and, again, we all have to understand we have a balance here. You know, we have the rights of the accused to be balanced against the rights of the victims. So the reality was that cases were being discharged in an inordinate—I mean, an extremely large number. But, again, as a result of the Inquirer articles, we are now in the process, the Supreme Court, of creating—we created a panel to go into this whole problem and make suggested changes, some of which have already been implemented, Senator.

Right now—or, recently, I should say, we found a study that was prepared in 1978, 10 years after the creation of the municipal court. That study pointed out incredible problems then, in 1978. This is 32 years ago. Those changes recommended by that study have still not been implemented.

One of the big problems we have here, Senator Kaufman, is in a municipal court, we have what is called a de novo court of appeal. By that, I mean witnesses—everybody needs to show up and the case has to be put on, and if the outcome is not to the benefit of the accused, then they have an automatic right of appeal. That includes bail, everything. These individuals are allowed to stay on the streets. These individuals are basically given one free bite at the apple.

In the 1978 report, it was recommended that we do away with de novo rights of appeal, then merge the court basically with the court of common pleas, make municipal court a division, because, remember, during the Constitutional Convention in the late 1960s, when the municipal court was originally created, it was created as a probationary court, and as such, it has really, really grown well beyond that. There have been no real serious changes since that time, and our court is looking to implement the changes that we feel are necessary to bring it in line with the rest of Pennsylvania.

In closing, Senator, I just want to point out something that I am sure you recall quite clearly. Back in the late 1960s and early 1970s, we had the LEAP program, the Law Enforcement Assistance Program. That LEAP program went a long way to help urban law enforcement communities to increase their police departments. I would suggest to you that what is needed today, not just in Philadelphia but nationally, is a Criminal Justice Assistance Program because, quite frankly, we do not have enough probation officers. We do not have enough warrant unit officers. Our probation offi-

cers are so—we are over 100 officers short right now. These officers are required to take their own vehicles and go out and check on their individual defendants.

Chairman SPECTER. Justice McCaffery, how much more time will you need?

Justice MCCAFFERY. I am fine. I can just shut down right now, if you would like. But the reality is, as I have said, we need some Federal help to make some serious changes.

Thank you.

[The prepared statement of Justice McCaffery appears as a submission for the record.]

Chairman SPECTER. Thank you. Thank you very much, Justice McCaffery.

We would ordinarily turn to D.A. Abraham as a matter of protocol, but she has requested to go last, and we are glad to oblige. So we turn now to Ms. Ellen Greenlee, who is the Chief Defender. She had worked in the Defenders Office as a trial attorney, supervisor, first assistant, went all the way up the line, and the last 19 years as Chief Defender. She received the prestigious Sandra Day O'Connor Award from the Philadelphia Bar Association, graduate of Chestnut Hill College and the Villanova Law School.

Before we began, I told her that I was in the Defenders Office for a month as a beginning lawyer. I will not cite the year.

Ms. Greenlee, we appreciate your being here, and the next 5 minutes are yours.

STATEMENT OF ELLEN GREENLEE, CHIEF PUBLIC DEFENDER, PHILADELPHIA, PENNSYLVANIA

Ms. GREENLEE. They still talk about your service, Senator, as a defender.

Thank you, Senator Specter and Senator Kaufman, for the opportunity to be here today. As you know, anyone probably who chooses the career of public defender has a bit of a maverick in them, so I have chosen today—in terms of the hearing of helping find innovative and cost-effective solutions to overburdened State courts, I have a particular viewpoint on the burden imposed on the poor who become embroiled in the Commonwealth's criminal justice system, and I would like to take this opportunity—I cannot pass it up—to speak to that burden and what is a very real crisis in indigent defense that was acknowledged by Attorney General Eric Holder, who convened a national symposium on indigent defense in February in Washington, D.C.

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

As brief background, the Defender Association of Philadelphia, unlike public defender organizations in all other Pennsylvania counties, is a non-profit corporation funded 99 percent by the city

of Philadelphia. We have a staff of 480 people, including attorneys, investigators, social workers, paralegals, and administrative staff.

We are appointed by the courts to represent indigent adults and juveniles charged with criminal offenses, ranging from misdemeanors to capital cases. We also represent indigent citizens in civil mental health hearings, and our Child Advocate Unit represents dependent and abused children in contested custody matters.

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

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

As is the case throughout Pennsylvania, and increasingly in all counties and States, public defenders, as well as private court-appointed counsel, are overworked and grossly underpaid. The inevitable result of reduced funding and increased caseloads is representation that fails to meet the standards published by the American Bar Association and the National Legal Aid and Defender Association. The weight of the criminal justice system falls most heavily on the backs of the poor and disproportionately on minority populations.

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

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

that our society has relegated forgiveness and redemption to the scrap heap.

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

On a somewhat optimistic note, there are stirrings in our State capital around indigent defense issues. Out of the tragedy that is Luzerne County, where two corrupt judges sent hundreds of children into placement, often for trivial offenses and without the benefit of legal counsel, the Interbranch Commission will issue its report at the end of May, with serious recommendations aimed at upgrading juvenile defense practices. At the same time, I serve on a Joint Legislative Commission on Indigent Defense which is due to issue its report within the next couple of months. It, too, will offer recommendations——

Chairman SPECTER. How much more time will you need?

Ms. GREENLEE. I only have a few lines, Senator. The Commission on Indigent Defense will offer recommendations for improvements in representation of the poor. Of course, we will then look to the legislature to fund these initiatives, the same legislature that has ignored the Supreme Court order for funding for 25 years. At best, we are very cautiously optimistic we will see real change in the provision of defense services in Pennsylvania.

Ours is an adversarial system of justice which requires lawyers on both sides who effectively represent their client's interests, whether it is the Government or the accused. When defense counsel are handicapped by lack of training, time, and resources, we must wonder: Is justice being done? Is justice being served? Will you join us in working to reform the criminal justice system so that it truly reflects the most basic of American values: equality and fairness?

Thank you, Senator.

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

Senator Specter. Well, it appears that the first question has gone to me, and the answer to "will I join you", is of course I will.

Ms. GREENLEE. I thought you might.

Chairman SPECTER. But I have been for decades.

Ms. GREENLEE. I know. That is why it was a good forum to raise this.

Chairman SPECTER. Well, that is why Senator Kaufman and I are here. We sit on the Committee which initiates legislation and funding.

We turn now to Deputy Mayor Everett Gillison, Deputy Mayor for Public Safety in the city, serves as co-chair of the Criminal Justice Advisory Board for the First Judicial District, was an Assistant

Defender in Philadelphia, has his bachelor's degree from the University of Pennsylvania and law degree from Syracuse College of Law.

We welcome you here, Mr. Gillison. These are issues that we have discussed extensively with the mayor and the former mayor and the preceding mayor and his predecessor, and we welcome you here as his representative.

STATEMENT OF EVERETT A. GILLISON, DEPUTY MAYOR FOR PUBLIC SAFETY, PHILADELPHIA, PENNSYLVANIA

Mr. GILLISON. Thank you, Senator, and thank you, Senator Kaufman, also for being here, and thank you for the opportunity to testify at this Senate field hearing, "Helping Find Innovative and Cost-Effective Solutions to the Overburdened State Courts."

I am just going to probably end up summarizing, plus I will read a couple pages of the prepared testimony, but the bottom line is that we live in a digital age and we need to act like it in State courts, and we need investments from both the Federal Government and—the State government, yes, but the Federal Government also, to invest in digital technology so that we can end up helping one another through this problem.

Technology is all around us. All manner of businesses take advantage of the latest technological innovations to increase production, save money, improve operations, and operate more efficiently. It would be unimaginable for a corporation with a $1 billion budget and 10,000 employees to still rely on paper and pencil to process their transactions. But that is essentially what we do in the criminal justice system.

The public safety portion of the city's budget is approximately $1 billion. Between police, courts, the prisons, we employ approximately 10,000 people. But every day in the city's criminal courts, transactions are recorded by hand on paper. That paper is then shuffled between different departments. And it is no surprise that mistakes are made and errors occur.

Now, I do not want to give a false impression that our criminal justice partners do not utilize technology. In fact, we do. But this technology is in many instances old, not adequately interfaced—and that is the key, interfacing—and many essential court functions are not automated. This makes the system vulnerable to mistakes.

Increases in the use of technology will help our overburdened State courts. Clearly, a lack of available resources is the impediment to having our systems modernized and adequately networked so that work flow and essential processes are automated. Local governments are already overburdened and unable to make the technology investments that are critical to enhancing court efficiencies.

Again, I do not want to give the wrong impression. Despite our collective lack of resources, the criminal justice partners in the city of Philadelphia have collaborated, especially over the past 2 years, to develop initiatives that have increased efficiencies in our State court system.

In Philadelphia, the various criminal justice system partners recognize the need to process cases as quickly as possible. One type of judicial proceeding that can impact the overall system efficiency

is a violation of probation or parole hearing. The need for a violation of parole or probation hearing results when a person is on probation and either fails to do something required or while on supervision does something not permitted under those terms. The judge supervising the probation or parole is authorized to hold or detain the individual until the judge has had an opportunity to decide if a violation has occurred and, if so, what action to take or sanctions to impose.

I will depart from the prepared testimony and say over one-third of the people that we have in our local county prisons are people who are being held simply on probation and parole matters. So if you can really understand how we would be able by having these kinds of technological investments, we would be able to process those matters a lot quicker. We would be able to have judges who would be able to use e-mail, BlackBerrys perhaps, even secure communications, to actual hold hearings at a time conducive to the judge's schedule, the defender's schedule, the D.A.'s schedule, and the prison's schedule, which obviously is available 24 hours a day, and depending on what judge you get, as I remember Justice McCaffery—you know, no one stops after 5 o'clock. People continue to work and can be available.

These are the kinds of things that technology make available, but, unfortunately, as a city, we are limited by the amount of money that we can actually put in these particular areas. And we need the help of the Federal Government.

I will actually submit—and literally, instead of just talking about this, I would just like to highlight the latter part of my testimony.

The additional efficiency that I would like to highlight and mention is the implementation of video technology in our courts. Every day literally hundreds of inmates are transported to the Criminal Justice Center for trial or other hearing. Often the matters for which inmates were brought to the Criminal Justice Center are given another date for which the inmate would be transported again. With the assistance of our criminal justice partners, we have begun the use of video technology to eliminate the need to transport inmates from their facility of confinement to the courts. The reason why we are doing that is because we do not really have to have them for anything really other than a trial. Hearings can be conducted by video, as long as everyone is working together and understands the security of the system. But, again, it needs an investment of dollars in order to make that happen.

I would just ask, in conclusion, that the Federal Government make the resources available to State courts to allow them to upgrade and modernize their technology infrastructure. These technological improvements will increase the efficiency with which the courts are able to process and dispose of cases. And hearing Justice McCaffery talk about the old LEAP program and the assistance program that did exist in the late 1960s, early 1970s, and into the first part of the 1980s, I would also agree that that is something that should be not only looked at as a model, but a way of actually being able to help the cities make those investments along with the States in order to bring the efficiencies we need.

I thank you for the opportunity to speak and send the greetings of the mayor to both of you.

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

Chairman SPECTER. Thank you, Deputy Mayor Gillison.

We now turn to Professor John Goldkamp, professor and Chair of the Department of Criminal Justice at Temple University. In the 1990s, Dr. Goldkamp worked with judicial system leaders under the mayor's task force in Philadelphia. In the fall of 2008, he was appointed by Governor Rendell to conduct a review of correctional and parole practices affecting violent crime by parolees. He has a Ph.D. from the School of Criminal Justice at SUNY Albany.

Thank you for being with us, Dr. Goldkamp, and we look forward to your testimony.

STATEMENT OF JOHN S. GOLDKAMP, PROFESSOR, AND CHAIR, DEPARTMENT OF CRIMINAL JUSTICE, TEMPLE UNIVERSITY

Mr. GOLDKAMP. Good morning, Senator Specter and Senator Kaufman. Thank you very much for this opportunity to speak about the problems that we face in the Philadelphia courts and justice system.

The search for constructive corrective measures for Philadelphia's justice process has implications not only for Philadelphia itself, but for other jurisdictions with similar problems, whether they happen to be receiving publicity or not. The problems faced by the Philadelphia justice system simply are not unique. Thus, from the outset, we can know that the lessons learned in other places may be instructive to the improvement of practices in Philadelphia, just as the strategies developed in Philadelphia may be helpful to the efforts of others seeking to devise similar solutions.

Although the Inquirer series has pointed out a number of areas of system dysfunction, perhaps four highlight the greatest challenges to system improvement: the problem of dismissals, the problem of backlog and delay, the problem of jail crowding, and the problem of fugitives. Each of these is interrelated, and their interaction is an example of an instance when the overall negative effect of a problem is greater than the sum of its parts.

These symptoms of dysfunction share in common that no one agency or system actor is responsible for any single one or all of these difficulties, and that no one agency or actor can fix the associated difficulties without cooperation and focused co-problem-solving from the other agencies. And this is key to the adoption of strong corrective measures.

For the purposes of brevity, I would like to focus in my comments on one of these problems—fugitives—because of the powerful undermining effect they have on the perception among victims, witnesses, the public, and even offenders, of the integrity of the judicial process.

The message that one can just walk away produces a message of reverse deterrence in which defendants and their associated public are taught that there are no real consequences to defying the orders of the court and the requirements of the justice process. The fugitive problem has a variety of causes, but a solution involves two parts: developing a multi-part differentiated strategy for cleaning up and disposing of past cases, of the fugitive caseload; and preventing or reducing the rate of the production of fugitives pro-

spectively. Fugitive prevention, quite simply, means strengthening the pretrial release and detention process under a comprehensive strategy.

Now the two most critical elements of a fugitive prevention strategy involve re-examining and strengthening the pretrial release decisionmaking structure and developing and supporting more effective methods of pretrial release that both ensure community safety and attendance in court and restore the belief in consequences and respect for the judicial process.

The pretrial release guidelines, which are judicially adopted policy in the First Judicial District in Philadelphia for more than a decade now, offer at least a useful framework and good foundation now for re-examining and strengthening the pretrial release decisionmaking process, and particularly targeting defendants according to risk of flight and crime and other appropriate criteria in considering the constitutional aims of pretrial release. Their neglect has played an important part in the size and the nature of the fugitive problem.

Actually, it is the second part of this fugitive prevention strategy, the development and empirical testing of effective community management methods to ensure safe release and high levels of appearance in court, that has been most neglected. An especially critical need in preventing absconding fugitives is for effective non-financial release methods, conditions of release targeted to categories of defendants according to the risks of flight and threat of public safety they pose.

The need to manage increasing numbers of defendants in the community in the coming future, not to mention probationers and parolees, should place this system need high on the list of public safety strategies of urgent need. I emphasize that the strengthening of targeted use of non-financial methods of supervision and management of defendants in the community should be given the highest priority because the dollar, the traditional currency of pretrial release in the U.S., has been shown in empirical studies to be a poor method for ensuring attendance at court and a still poorer means for protecting the community from potentially dangerous defendants. The role of the dollar in bail does allow defendants with financial resources on hand, such as drug dealers, prostitutes, and professional criminals, a simple way to purchase their freedom—a mere lost of doing business.

The symptoms of dysfunction in the Philadelphia courts involve more than the problems posed by fugitives or by the other categories I have mentioned. Without question, it is indispensable to craft effective interventions and strategies both (a) in reference to current and accurate data relating to system performance, and (b) based on substantive collaboration of the relevant justice agencies and key actors. It is particularly helpful to test or at least anticipate the impact of potentially helpful policies empirically before full-scale adoption. Yet, in addition, a great deal can be learned from systematic review of initiatives or strategies that may have been adopted or tested in other jurisdictions facing similar challenges and any evidence in the literature about advantages and disadvantages of such measures.

In the face of such crises as we seem to be experiencing in Philadelphia, there is extreme pressure to adopt ad hoc emergency measures that may or may not address the systemic problems and may produce unanticipated side effects that will exact costs to be paid later.

I opened my comments by mentioning that the Philadelphia court system risks being held up nationally as an example of a dysfunctional court system, courts "at their worst". There is in these circumstances, however, an opportunity for Philadelphia to demonstrate the value of a rational, comprehensive, and evidence-based problem-solving method that can serve as an example to other jurisdictions whose challenges have yet to surface and who soon may as well be looking for solutions. I thank you.

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

Chairman SPECTER. Thank you very much, Dr. Goldkamp.

We now turn to former district attorney of Philadelphia, Lynne Abraham, who has had really an extraordinary record. She was an assistant district attorney in my office—well, many years ago, let us put it that way.

Ms. ABRAHAM. Not that many.

Chairman SPECTER. Not that many? OK. I will go for that, too. Really a strong prosecutor. I recall one day she went over the weekend and conducted a personal investigation in West Philadelphia. That is kind of tough to do under any circumstances, but she came back with the witnesses.

She later served as executive director of the Philadelphia Redevelopment Authority, legislative consultant to the Philadelphia City Council, and then was on the municipal court for 4 years, Philadelphia Common Pleas Court for 11 years, and district attorney of Philadelphia for 19 years, and as indicated earlier, first woman to hold the position. She is now a partner in the prestigious law firm of Archer & Greiner here in the city.

We welcome you here, D.A. Abraham, and look forward to your testimony.

STATEMENT OF LYNNE M. ABRAHAM, PARTNER, ARCHER & GREINER, P.C., PHILADELPHIA, PENNSYLVANIA

Ms. ABRAHAM. Thank you, Senator Specter and Senator Kaufman. I am delighted to be here today with my colleagues to talk about things that have been on our agenda for years.

As I pointed out in my testimony—which needs a few little grammatical corrections, I regret to say; my fingers type faster than the computer—these problems and issues have been with us at least, Senator, since 1968. As a matter of fact, I quoted from your report to the people of 1968 verbatim in my notes. So there is nothing new under the sun, but they have become exacerbated and aggravated by a whole series of things, some of which I may cover in my first 5 minutes. But I am particularly irritated that many of these issues never would have come up if the city of Philadelphia had had the political will and the foresight to make needed changes when they became apparent.

The witness relocation/protection issue has been with us since the early 1990s. Every year, from the first year I became district

attorney, virtually, I appeared before our city council and almost begged for witness relocation money. We do not call it protection because we do not have the benefits of the Federal changing of identities. And every year, the city of Philadelphia failed and refused to put just a little bit of money toward the issue of witness relocation, a lot of hand wringing, a lot of, "Oh, terrible thing," "Isn't that awful?" But no money.

When you want to help witnesses appear in court, you need to have the resources to put them some place. It is not the only thing that we can do, but it is a glaring error.

If the court system had agreed to implement zone courts, which I had advocated after having visited Brooklyn, New York, in 1992, we would have saved millions of dollars in police overtime. We would have salvaged many more cases. We would have been more efficient, and we would have done the justice system proud. And what that essentially does is break down the court system, to make sure those police officers, as Justice McCaffery—one of my law students when he was a police officer, I might add; that is how far we go back. He was running all over to various courtrooms because they were not listed on the basis of geography. In other words, if he was in the 18th District, in criminal court, all he would have to do is go to a couple of courts next door to each other, where every case that arose in his district would have been disposed of. He would not have had to run all over the court system.

Now, there were some minor amendments that had to be made for juvenile court, which was at 1801 Vine, but the criminal court is in City Hall, and preliminary hearings could have been easily addressed by zone courts, everything done by geography, line prosecution, and efficiency. But the judges consistently decided that they were not going to do this just for one reason. They were afraid that their record and their names would be known by the public, and this was something that they wanted to avoid at all costs.

Failure of bail reform has been an issue that I have written to the mayors of Philadelphia—Rendell, Street, and Goode—sorry. Well, Rendell, Street, Goode was coming out as I was going in—and, of course, Mayor Nutter. The failure of bail reform also is a function of lack of political will. Everybody knew—everybody at this table who was in the criminal justice system, whether as a police officer or a defender or a prosecutor, knew that the bail system was a disaster, first started off by Wilson Goode when he agreed to a prison cap without any finding first that the prison conditions were inhumane or unconstitutional. And Professor Goldkamp and I worked on lots of things about bail. I have his letters here, by the way, from 1992 on the issue of bail and dealing with prisoners.

Mr. GOLDKAMP. I interviewed you in 1976.

Ms. ABRAHAM. Well, I have been around a long time.

So I can tell you that these problems are endemic. So I think efficiency in the court is not a good thing. I think just doing justice by numbers and statistics is never to be accepted as a substitute for a good system. But let me bring out in the few minutes that I have left some of the things that I need to bring out that others have not.

Our jurors fail to appear at astounding rates. Sometimes as many as 50 percent of subpoenaed jurors never show up for jury

duty. The fact that we have a Hobbs Act Task Force and Federal alternatives to State crimes, which have been in existence since you and I first dealt with that back in the early 1990s, is an indication that our judges are not taking crime seriously and not sentencing them to appropriate State prisons, but instead are clogging up the local—State prisons, but instead are clogging up our local prisons.

Our probation and parole officers have been decimated by these devastating cuts. Targeted social services and adequate oversight—can you turn that off, please?—probation and parole officers is really key to the end of recidivism and making sure that people get job training, services, mental health treatment, and the like.

Electric home monitoring and GPS systems, now that they are apparently—and I say "apparently"—tamper proof, are a great way to make sure that a defendant is known where he is at any given moment. It does not necessarily prevent a defendant from committing a crime. You can deal drugs with an electric home monitor, you can sexually assault women with electric home monitoring, you can commit crimes while you are on electric home monitoring, as long as you are in the geographic area that you are restricted to. But it does at least give a sense of where the probationer or parolee is without losing him.

We have lost many, many, many cases because we have, I think, been inundated by the impact of electronics on our court system—Tweeting, Facebook, all those electronic gizmos that are now going to infect our court system. You know, there are judges in New Jersey who make their jurors sign pledges every day that they will not Tweet, Facebook, look up lawyers' records, find out who the judge is, find out who is paying taxes, do their own investigations. I think that the electronic era as an influence on our courts to the detriment is something that really needs a tremendous amount of attention.

I also recommended changing the treaty with Mexico. We have many, many defendants who come from and flee to Mexico, as well as huge amounts of drugs coming back over our borders from Mexico, and guns and money going south. This narcoterrorism really needs to take a second look, and I recommended as one of the things that you may wish to look at from the Federal level, changes in the treaty with Mexico to reflect modern realities.

Another issue is that our prisons have become the residential mental health treatment facility of choice. I have to tell you, I know that you respected Judge Broderick, as I did. He was a great friend. Ray and Marjorie Broderick were friends of mine. I never agreed with him and still do not agree with his shutting down of mental hospitals in favor of an absolute prohibition on admission to mental hospitals, because it did not take into effect modern realities. And I will just end with this——

Chairman SPECTER. D.A. Abraham, I have asked other witnesses how much more time they would need.

Ms. ABRAHAM. Just one more minute. Just one more minute.

Chairman SPECTER. OK.

Ms. ABRAHAM. Maybe even less.

Chairman SPECTER. Fine.

Ms. ABRAHAM. I think that the fact that we are using our prisons as mental hospitals is a terrible disservice to our prisoners, the mental health system, and the prisons.

And, finally, I agree that I think that one of the things—well, most of these things that we are talking about today are local, and these are going to have to be solved locally. But one of the things, in addition to some of the things you and Senator Kaufman have already mentioned that you can do, is I believe that cameras almost everywhere are a great deterrent to crime and a great solution to criminal conduct. And you need to look at just two major cases:

One, the Oklahoma City bombing case, where cameras really helped to solve the case dramatically, quickly, and also to an appropriate ending.

But, more importantly, this past weekend in New York in Times Square. This case may be one of the most horrific cases that could have happened, but fortunately did not. But cameras are helping, and I believe that we need to do more with having cameras on the street all over the place to make sure that the public is safe and that criminals have less of a chance to be predators.

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

Chairman SPECTER. D.A. Abraham, when Ms. Linda Hoffman of my staff had talked to you extensively about the series in the Inquirer. You had wanted to state your side of it, and I would like to give you some more time now. A summary of the conclusions of the Inquirer series related to dismissals of so many people, the low conviction rate, the low guilty rate on gun assault cases. And I know you have reviewed those statistics in some detail.

Ms. ABRAHAM. Oh, I have.

Chairman SPECTER. And I think that it would be appropriate and fair to give you an opportunity in this forum to comment, if you care to do so.

Ms. ABRAHAM. Oh, no, I do. As a matter of fact, it is in my recorded notes, but not perhaps as extensively as I might because, you know, how much time does one have to discuss weighty issues? But I thought that and I think that the Inquirer series missed——

Chairman SPECTER. We ought to run the clock, timekeeper.

Ms. ABRAHAM. I think the Inquirer series did some good, and I gave them kudos where they deserved it. Where they do not deserve kudos, I also said so, and one of the issues was with regard to convictions. Because, as we pointed out to the Philadelphia Inquirer reporters, when they provided us finally with the information, they were comparing other places where felonies were 1 year with our felonies which are 5 years. And as a matter of fact, Mr. Gillison and Ms. Greenlee and I—well, I know Ms. Greenlee spoke out about it. We both agree that the Inquirer series did a tremendous disservice.

So what they were doing was they were comparing a Bureau of Justice Statistics result from an old study with what we do in our courts, and we proved to them using their own figures that actually our conviction rate is about 85 percent overall.

Now, I must say this, Senator. I never did justice by numbers. I never was interested in keeping statistics on wins or losses. I was

only interested in an individual case doing justice for the victim, for the accused, and for the system. But since we had to deal with numbers—and we do—on the basis of what we have been able to get from the courts and the police Department, our conviction rate is very high. Really where the problem is is in our municipal court, not in the courts of common pleas. The courts of common pleas have no backlog, and they have been handling cases appropriately. But in our municipal court, as I pointed out in my written testimony, we had judges who were interested in blowing out cases, according to Tom Ferrick of the Inquirer in his own article, because they were interested in making sure that they had the final word on what we should be doing as prosecutors. In other words, did we really overcharge? Which we never did, or almost never did. But what they did was they put us to the proof. First of all, they called the case early, so if a police officer was in another room, they blew out the case. If the witness was on his way, they did not want to wait; dismissal of the case. And this is because judges were interested in productivity, not justice. They had their own way of making us prove our case at a preliminary hearing beyond a reasonable doubt instead of just prima facie. You can get through 30 cases if all you have to do is prove ownership, non-permission, and that the defendant was in possession of something that the victim identified as his. But the courts would not accept the rules of evidence on hearsay. They had their own rules that they made up. Three strikes and you are out. If you could not get your case on in three appearances, even if it was in the time limit you had to try the case or bring the case, they dismissed it. That is productivity, but it is not justice.

The rules of when we could bring cases were also unfairly skewed, both to the defense and the prosecution-–3 to 10 days within the day of arrest. This has been changed, I am about—I think I am about to say prospectively, that now it will be at least 10 or 20 days after an arrest to have a case held at a preliminary hearing, because nobody can be ready. Discovery was never ready, and the defense always insisted on discovery, even to the weight of the drugs when it was not necessary for a preliminary hearing. More delay, more cases dismissed, and, of course, witness intimidation.

And I must say, sort of counter to what Justice McCaffery said, citizens of Philadelphia from outlying areas do not like to come into center city Philadelphia. They have a skewed version of what happens in the city of Philadelphia. People really want to be out in their own neighborhoods for their own preliminary hearings, so one of the reasons why the centralization of preliminary hearings at the criminal justice system did not work was because people did not want to come into town, they could not afford to come into town, they did not have the time to come into town. So between intimidation, transportation, baby-sitting, and other issues, they just failed to show up. And, of course, witness intimidation is a huge issue, the "stop snitching" culture, the "do not snitch" is just infecting our criminal justice system.

I think there are common-sense ways where, for example, people on the CJAB, which I was a member of before I left office, are com-

ing to grips with some of these issues, and I think that will be a very salutary way.

The Inquirer series did some things that were good. They got the quarter sessions clerk to resign. The Supreme Court has taken over the bail function, as it properly should. If we can get the bail situation as a system under control, we will go a lot farther in making sure we have fewer fugitives, a better bail system, a not-overcrowded jail system, and if we can especially get our mental health defendants out of our prison system, which are about a third of the population, and into appropriate treatment, properly funded, we will be going a long way.

Chairman SPECTER. Well, thank you, D.A. Abraham, for those comments. You noted that the Philadelphia Inquirer series was very helpful in getting the changes in the clerk of quarter sessions, and now there are proposals for legislation so that the modernization of that unit is now possible, computerization, et cetera, et cetera.

Ms. ABRAHAM. You are talking about the clerk's office?

Chairman SPECTER. The clerk of quarter sessions.

Ms. ABRAHAM. Yes, but, you see, here is what is wrong with this, Senator. This is not disrespectful to the Inquirer. This is something that I was writing Mayor Rendell about in 1998. It did not have to take these multiple stories, my multiple testimonies before city council to get this done. This should have been done. It was a lack of political will that would not get it done. The mayor did not want to do anything, council did not want to do anything, and, of course, as an elected official, I can understand that.

Chairman SPECTER. Well, D.A. Abraham, your letter to Mayor Rendell was not as heavily publicized as the Inquirer series.

Ms. ABRAHAM. Absolutely. But that is not the problem. I agree that the paper printed my letter, and I gave them the kudos they deserve. But that is not it. I am happy that the Inquirer is getting the discussion going, but it was unnecessary if we had the political will back in 1997 and 1996 and 1995 to make the changes that we need. That is all.

Chairman SPECTER. You made a comment a few moments ago that the Inquirer performed a disservice. Would you say overall that the Inquirer series has been helpful in focusing—let me finish the question—in focusing public attention on the issue and motivating the Supreme Court to get into the picture and motivating the State Senate to have the hearings and calling it to the attention so that my colleagues in Washington are willing to authorize hearings by the Criminal Justice Subcommittee? Overall, wouldn't you say that it is useful to have that focus, that your point—and this is just one aspect—in writing to the mayor and saying let us deal with the clerk of quarter sessions does not get a whole lot of attention, may not even be read? But the Inquirer buys ink by the barrel, as the old expression goes.

So how would you evaluate the value of the Inquirer series overall?

Ms. ABRAHAM. I think that if you are getting you and Senator Kaufman and other Senators and Congressmen in on this issue, this is nothing but good. Nothing but good can come of these hearings. I would not be here; you would not be here; all these panels

would not be here; and changes in the court system would not have come about.

The pity is that these are all stories that have been written about for years, and nobody was willing to change anything.

Chairman SPECTER. Well, I think you are right that it has been a motivating factor to get people to do things which, as you say, the clerk of quarter sessions could have ended a long time ago.

Let me ask my colleague's opinion on that because I think it is a key point, if you would care to comment, Senator Kaufman.

Senator KAUFMAN. Yes, well, I do not read the Inquirer regularly. I read the Wilmington News Journal. But I do think this is a problem. It is not just here in Philadelphia. I know wherever I go this is a problem and many of the same kinds of problems. You can literally take a laundry list. And I think Professor Goldkamp is right. I hate, you know, reinventing the wheel. I hate being the person that has to—I mean, I guarantee you there are places around this country where you can go—and we have done it, and we have done it on the Criminal Justice Subcommittee of the Judiciary Committee and brought in best practices and brought in things that worked everywhere. And Senator Specter has been one of the leaders in that, and my former boss, Senator Biden, when he was Chairman of the Committee, was a leader on that.

But it is one of the things in our time, and it is not—you know, it is like criticizing the weather. You know, more and more, media is playing an important part in setting the agenda for what we do. And I think that what the Inquirer has done with this series, which laid out, again, a problem that everybody sitting at this table and anyone who has been involved in the system—I mean, I would say without a shadow of a doubt, if we got your predecessors for the last 25 years, sat them down in a room, just as Lynne Abraham is saying, there is nothing new under the sun. But I tell you, I am going to be doing this—I leave in November, and sitting here listening to this and having listened to it so many times in the past for so long—now, the "no snitch" thing is new, but the digitalization and modernization of the computer system, the LEAP program, which was a great program, the discontinuing of the revenue sharing that went to help the justice system, the problems of the indigent not getting what they deserve, the problems of people just walking in and out of the justice system like a revolving door—it is scary, because I really think we are reaching a point where these things—we have let this grow and grow and grow, and I could not agree with you more. No money at a local level for prosecutors, for defenders, for modernization, for courts, for the things around the courts. I mean, this is just—it is very scary to me, because I have just heard it for so long. And I just hope—and I think that is the main point the Chairman wants to make, is we have got to deal with these things. We absolutely have to deal with them. It is going to eat us alive.

And so the idea that the Inquirer did a series on this is a good thing, and I am very sympathetic to Lynne Abraham because having watched these series develop, sometimes they—you know, to make a point, they stretch things. But I think the fact that they did this series is very, very important, and the fact that we are sitting here is very important.

I want to tell you, time is running out. We cannot do this again. We cannot come back here 10 years from now—I really believe it from the bottom of my being. We cannot come back 10 years from now and do this again. We have got to do some things about what has been raised by the panel, things we have to do in order to do the things that everybody agrees have to be done.

Chairman SPECTER. Thank you, Senator Kaufman.

We will now go to 10-minute rounds of questioning, and I will lead.

A theme which has been mentioned repeatedly has been funding, a request for the old LEAA, Law Enforcement Assistance Administration, revenue sharing. Senator Dole made a famous comment when revenue sharing ended. He said, "There is no more revenue to share." We have had the stimulus package, the Recovery Act, $878 billion, in Pennsylvania $16 billion paying for unemployment compensation now and Medicaid.

There was a lawsuit filed, Commonwealth of Pennsylvania, District Attorney Arlen Specter, in 1973, against Ralph Dennis. He was a magistrate. You remember him, Justice McCaffery. Magistrate courts were eliminated in the 1969 Constitution after the magisterial investigation, which I ran in 1964, and sought a writ of mandamus to require judges to remain on duty for 8 hours. We used to have trouble taking the judge's word. And it was dismissed; no clear right to the relief requested was the conclusion.

There have been mandamus actions brought to compel public funding, and the Supreme Court of the United States upheld the authority of the court to mandamus funding for education in Kansas City, Missouri, which surprised me in that the responsibility of taxing has been traditionally legislative, really loosely legislative.

But what do you think? I will turn to you first, Ms. Greenlee. You have a question about the adequacy of equality in the justice system, no doubt about that problem. It is sort of unthinkable that it was not until 1963 in *Gideon* v. *Wainwright* that there was a constitutional right to have a lawyer. If you are haled into court, Justice Black said you have a right to a lawyer. Before that, there was a right to a lawyer in a homicide case, charged with murder. *Betts* v. *Brady* gave us that.

Would you go so far as to mandamus the legislature, the city council, the Commonwealth? You said the General Assembly has ignored the mandamus order in the past. Before taking up how they got away with it, which I will ask you about, should we resort to that, compelling the legislative bodies to appropriate funds?

Ms. GREENLEE. If there is actually a way to do it, I think it is not a bad idea. I am really focused on Pennsylvania, although this is a national problem, and you see systems breaking down in Michigan and other States—Louisiana—throughout the country. There is not sufficient funding for indigent defense.

In Pennsylvania, though, the system is really, really in crisis because it is a county-funded system, and the counties really simply cannot afford to pay for the criminal justice system with the increase in what they have to handle.

Chairman SPECTER. How did the General Assembly avoid complying with the court order, which you referred to earlier?

Ms. GREENLEE. Beats me. I think they just simply ignored it all these years. They simply ignored it and——

Chairman SPECTER. Was there an application for a contempt citation? The court has the power to hold people in contempt who do not follow the judicial orders.

Ms. GREENLEE. I am not aware of that. I do not know whether Justice McCaffery knows anything about it. I am not aware of anything recent where the court, in effect, ordered the legislature, other than 1985—I think it did come up since, but there has been no——

Ms. ABRAHAM. They did. They did.

Ms. GREENLEE. Yes. There has been no action by the legislature.

Chairman SPECTER. Mr. Justice McCaffery, I am not going to ask you a question about that subject, but if you care to comment, I would be interested. I do not want to trespass on judicial prerogatives.

Justice MCCAFFERY. Senator, obviously I cannot comment on the case that is currently pending in front of our court dealing just with this very topic. As I am sure you are well aware, years ago when it first came up in the Allegheny County case, former Justice Matamura was tasked by the Supreme Court to come up with, if you will, a game plan for the assimilation of the county courts into the Administrative Office of Pennsylvania Courts. That did, in fact, start with the administrative officers and deputy court administrators. That was implemented. It was stalled, again, because of lack of funding. But to answer the question, there has not been any mandamus, and the court has been, quite frankly, trying to work with the legislature, but this year alone Chief Justice Castille was really handed a huge setback with a $31 million shortfall in the court budget. We are looking at a legislature now, Senator, that creates new judgeships, but yet fails to fund them. They create new programs, but they fail to fund them. And right now the new thing, if you will, are the problem-solving courts where I have taken a leading role. But as we keep pointing out, we are taking the judges and the court staff out of hide, and we are not getting new judges, we are not getting new staff personnel, nor can we open up new rooms because our friends in the Defenders Association and the district attorney, they do not have enough personnel to fund it.

One of the things that we are looking at now, Senator, is all of the things that the courts are doing—and we are doing a lot. A lot of things have been implemented since the Inquirer articles. And, by the way, no disrespect to our former district attorney, but just real fast on that topic, you know, remember, in 1978 there was a huge study done on the municipal court, and it became what is known as shelf art. Nothing ever happened with it. We have seen so many times, myself included, where we are asking for a change, asking for help, and nothing happened. But it was not until the Inquirer article came out that we are now doing things, and the Supreme Court is now implementing them. The Supreme Court is taking the action. But for—and just so you know, Senator, that very first day it came out, I went out and bought out every single Sunday Inquirer at the local Wawa and sent it to my colleagues all over Pennsylvania—in Pittsburgh, Dauphin County, Cumberland

County—so they could see firsthand. So that article, that series of articles, helped us.

Chairman SPECTER. You say the series of Inquirer articles has helped the issue by bringing it to the public forum?

Justice MCCAFFERY. Significantly. Whether or not you agree or disagree with the substance of the articles, but for that series of articles, the entire Supreme Court has now been motivated to make the necessary changes, and we are aggressively pursuing it with all parties involved—defense, prosecution, courts, prisons, bail. All issues will be addressed. We have also brought in outside consultants who are going to prepare a full report, and our Supreme Court is committed to implementing the changes, and not only as we go along but——

Chairman SPECTER. Let me turn to the city representative on the issue of funding. Right now, President Obama has appointed a commission to evaluate the entire funding issue nationally, the issue of revenues, the issue of entitlements. There is no doubt that—talk about a crisis. The country is in a crisis with the deficit that we have and the national debt in excess of $12 trillion. May the record show the D.A. shaking her head in the affirmative. And we really have to deal with the deficit and the national debt.

But how would you respond, as the mayor's representative, Deputy Mayor Gillison, with the issue of funding? What more can the city do?

Mr. GILLISON. Well, I think that the city is obviously handcuffed by the fact that the revenues that we have lost over the last 2 years put us in the position where we are trying to seek efficiencies everywhere. We have actually gone to Washington—the budget director and the finance director here, Rob Dubow and Steve Agostini have gone to Washington, have discussed with the administration there that the TARP funding and the way that the country rallied in order to save the banking institutions, we are saying that we should be saving cities that are—where the rubber hits the road, and to be able to use some of the monies that have been repaid under the TARP funding to help cities basically get themselves out and reallocated those dollars.

I can tell you that——

Chairman SPECTER. Absent Federal funding, Deputy Mayor Gillison, what can the city do?

Mr. GILLISON. The city can only beg, borrow, and basically borrow some more.

Chairman SPECTER. Beg, borrow . . . there was one additional comment.

Mr. GILLISON. I did not get to the last one because we cannot do that. But we are begging at the State level. We have been taxing ourselves trying to get down. We have been cutting. And criminal justice is one area where we took our first cut, and I have been saying that at this point we cannot cut any more because basically at this point all we would be cutting is bodies.

I cannot lay off police officers, really. I cannot lay off firefighters, really. I cannot go into the prisons where we have now prisons that are going on and lay those folks off. And——

Chairman SPECTER. Before my time expires, I want to come to Professor Goldkamp on a two-part question. You have a nice

phrase, Professor Goldkamp, "reverse deterrence." I had not heard deterrence used exactly that way in reverse. But the two-part question is: With respect to the so-called three strike rule and the dismissal of cases, I would like your comment on whether that can stand up, should stand up? And the second part is about the use of hearsay in preliminary hearings. We all know that hearsay is used in Federal grand juries. Would you think it appropriate to have hearsay in preliminary hearings so the police officer can testify from the report and establish a prima facie case?

Mr. GOLDKAMP. Well, we can get back to reverse deterrence, and I would like to be cautious about commenting on small pieces of strategies that we hear are emerging without knowledge of the full approach.

I agree that the problem of dismissals is a huge one, but it also has been a traditional one. In fact, this is a terrific example of a problem that exists in every jurisdiction and has been documented as a major concern since the 1920s, if not before. When you look at some of the commission reports from the 1920s and 1930s that were done, dismissals were one of the biggest issues involved. A principal cause of large numbers of dismissals is found at the charging stage and that function has a lot to do with the quality of cases that are sent forward into the court system. Weak cases do not survive the preliminary hearing stage. This can happen sometimes as a result of law enforcement initiatives, for example, when the system has to handle sweeps that produce large volumes of arrests. All of the resulting arrests are not the strongest cases. Often making strong cases is not the point of the law enforcement actions.

When it comes to ad hoc fixes such as hearsay and the three strikes, I certainly do share the system's impatience with difficulties experienced by both sides, including witnesses and victims, and defendants not showing up. However, I worry about the "downstream" side-effects of such short sighted measures: Are we making bigger problems in the long-run by putting off systemic changes today? Some of the causes of these problems have to do with this culture of alienation which we experience in Philadelphia. A real good start—with steps by DA Williams underway—is to review the charging function and to strengthen that. And if cases arrive in better shape, you will not see dismissals at the rate that we have been seeing them recently.

But I would step aside from discussing things that are being worked on without knowledge of the overall plan and proposals that are only being heard about piece by piece. I would like to get back to your question about the Inquirer and whether its coverage was worthwhile or not.

I think that opportunity comes in a time of crisis. Since I have been around here—and it has been a very long time—we get things done usually because of litigation or some other kind of crisis when all of a sudden we have to all get together and look at everything and come up with some good corrective ideas.

In the current environment what I am concerned about, however, is making the mistake of producing ad hoc emergency measures that then do not go away or do not get adjusted later when the din dies down. We have some such measures still in effect from the

days of the 1990s that need to be re-examined, as plenty of things do right now.

Chairman SPECTER. So you mentioned whether the Inquirer series was worthwhile. What is your bottom line?

Mr. GOLDKAMP. I think it was very worthwhile not necessarily because of its accuracy in all areas, but because of the scope of issues that the series raised. They are important issues. I think the issues and discussions of dismissals, fugitives particularly, backlog, and crowding. I know there are those that think we have cured jail crowding in Philadelphia. I advise that we take advantage of the little breathing space that we have regarding jail crowding, to put reforms in place before the next tidal wave engulfs us one more.

So the inquirer has pinpointed and made very public some of our most difficult challenges. Court systems are among the least funded and most overlooked function in the justice arena, if you take the court system to mean a broad collection of various functions and agencies. Everybody just expects them to work—with or without sufficient resources. Everyone expects them to accept whatever business shows up at their doorstep, and yet criticizes them when, all of a sudden, we have difficulties because we cannot staff the things that we need to staff to make the system function effectively. Well, that's where we are.

Chairman SPECTER. Thank you, Professor Goldkamp.

Senator Kaufman.

Senator KAUFMAN. Yes, first off, on hearsay, the evidence is that it works very well in Delaware, having hearsay in preliminary hearings. And I really do believe going around and checking with other folks and seeing what works is very effective, so I would recommend that. And deficits, I discussed in a minute, Senator Specter and I both really, really, really care about the deficits. But we are not going to solve the deficit. If we eliminated all non-defense discretionary spending, which is about $500 billion, it would not solve a $1.4 trillion deficit.

So there is a lot of stuff going on in Washington talking about we are going to eliminate this program—if we eliminated all the criminal justice programs, if we eliminated the Coast Guard, if we eliminated the highway fund, if we eliminated all those things, that is not going to solve the problem. We have to do something about, as the Chairman spoke about, we have got to do something about entitlements—Medicare, Medicaid, and Social Security. We have to do something, figure out where the money is, defense.

And I will tell you what has been the biggest growing thing in the deficit is interest on the debt, which interest rates are low now, it is going to go through the roof. So we need a major decision on this. I think we have to watch every penny we spend. But this is a crisis, and this is a national security crisis. And I think that at some point we are going to have to get into it.

So what I would like to do, every one of you has spoken a little bit about what you would like the Federal Government to get involved in terms of money. What I would like to do is talk about the budget and then be thinking about some non-budget things, as Ms. Abraham said about a treaty with Mexico.

So, Justice McCaffery, you talked about the LEA Program, a new criminal justice program. What would be the very, very high priority things you would like to see in that?

Justice MCCAFFERY. Quite frankly, I would like to see some statutory help requiring the proper funding in every State for the court systems. I think that that is something that obviously the U.S. Supreme Court has looked at, and I agree with that, because, quite frankly, the judiciary—even though we are a co-equal branch of Government, we are treated as a subsidiary, and we are the ones that go hat in hand at the end of the day to the budgetary process where our Chief Justice has to walk into our friends in the legislature, after they have already, you know, made up their mind on the budget, and then we get, by the way, less than 1 percent of the State budget. Less than 1 percent. And I think that it would be only right if the Federal Government could step up to the plate and mandate reasonable funding for all criminal justice partners in every State, because then it would eliminate the requirement for us to politicize ourselves by walking in and almost begging for financial support.

Senator KAUFMAN. Yes, one of the problems we have, I think it is—and it is not a problem—it really is a problem, and that is, unfunded mandates. I mean, I think it is very difficult to get—and the Chairman can comment—I think it is very difficult these days to get something through the Congress that is an unfunded mandate where you mandate that the States have to do something but you do not put the money in it to pay for it.

Justice MCCAFFERY. Senator, I have spoken to other Justices from other States, and they have in their States—Ohio is an example. If the legislature creates a judgeship, it must be funded.

Senator KAUFMAN. Right.

Justice MCCAFFERY. Pennsylvania just created 11 new common pleas judges—11 new, not filling old, 11 new. That is $1 million apiece. That is $11 million that we do not have.

Senator KAUFMAN. Is there anything else that you—in terms of anything else the Federal Government should be doing that you——

Justice MCCAFFERY. I really think that if we could look back on the LEAP program, really, the Criminal Justice Assistance Program would go a long way to help all of our—especially our urban areas because, remember, even though it is Philadelphia, it is regional. It is Bucks, Montgomery, South Jersey.

Senator KAUFMAN. It is Delaware.

Justice MCCAFFERY. Exactly. It is a regional issue, and we really need to look at—one-third of our defendants in the criminal justice system in Philadelphia were not from Philadelphia.

Senator KAUFMAN. Mr. Gillison, you talked eloquently about the need for digitalization and things. What would be the top priority if, in fact——

Mr. GILLISON. There are two, and technology is at the root of both. Obviously, digitalization, technology improvements. I know the Federal Government likes to invest in things that it can not only touch but see and see the effect.

The other thing is that we have to start really talking about an interconnected way of dealing with how you advise people on their rights.

One of the things that you have to be sensitive to is what Ms. Abraham was talking about when she said that the mental health situation in the prisons is because there is no funding in the mental health courts—or the mental health situations outside of the prisons, so they are becoming the de facto place.

So we have the mental health situation impacting on prisons where prisons have really not guide—you know, they're to be there. So I would end up looking at how do we end up interconnecting those particular agencies—mental health, the prisons, and be able to use release of information forms so people's rights are protected, but if you happen to be in a prison, if you happen to be there, you can still get what you need and funding for it that goes with it. So that the place that you get the treatment should actually—the money should actually follow the person rather than just artificially saying that because I am not in an outpatient facility I cannot access certain dollars. If you are inside and you are getting help, why should your dollars be cut off?

So that is something that the Federal Government actually has and stands in the way right now, and if we could get that kind of cooperation, I think that would help us as well.

Senator KAUFMAN. Ms. Greenlee, do you want to give a little bit of the indigent problem, what the Federal Government should do in indigent defense?

Ms. GREENLEE. Well, I think the main thing for me would be to have parity of resources between prosecution and defense. I think that is the main issue. For instance, in the area of digital technology, we have for years tried to get funding for our computers to get up to speed, to be able to have electronic files. We are still in the paper stage in terms of our files, passing files around. We have been turned down by the Pennsylvania Commission on Crime and Delinquency and actually turned down by the city of Philadelphia repeatedly in the last 20 years.

So I think that raises that issue of parity of resources, and I think also to give some life to the idea of loan forgiveness for people who are serving in public interest jobs would encourage people to be able to work in our jobs. We ask our young lawyers for a commitment of 3 years, and it is really a struggle for them, with the loans that they bring with them, to be able to do this job. So I would lump it under the issue of parity of resources both for prosecution and for defense.

Senator KAUFMAN. Mr. Goldkamp, you talked about fugitives, but I have a feeling there are some other areas of interest that you might have where the Federal Government should be involved.

Mr. GOLDKAMP. Sure. I would say two areas. First, the courts—and the whole justice system but principally the courts—have become the social service institution of last resort, and I have had lots to do and been involved in the development of what you call special courts over the years. They all start with little grants, and then you walk off, and you say, Do a good job and go get a big target population and make a difference, but funds are out because you have used your three things and that is all you get. And now

the courts are stuck with all sorts of different kinds of very good special courts, but talk about an unfunded mandate. So I think that is an issue.

But here is the big one that is very broad, and it is the wave of the future. We are going to be managing larger numbers of defendants and offenders in the community. There is no help for it. Parolees, probationers, and defendants. We lack hard-nosed methods that have been tested, tried and true. The district attorney has mentioned a few of those, but there are a whole variety of kinds of things that we need. So we better learn pretty soon how to manage safely—and this does take resources because it involves public safety, people in the community, appropriately. And that is—I would say that fugitives, however, we do not even know how to measure fugitives. When we think of the problem of fugitives, in Philadelphia, we have peeked under the skirt of fugitives. It is a secret thing, and all sorts of other places. It is something that is not known in the country. We need to learn how to measure that.

And, finally, I would say there is one thing—and I agree with the district attorney on this—that is not about funding, and that is political will. And often we substitute crisis for political will to make change that we already know needs to occur. So if you could give us a little political will, I think we would all greatly benefit. Thank you.

[Laughter.]

Senator KAUFMAN. I am not even going to touch that.

Ms. Abraham.

Ms. ABRAHAM. Well, could I speak to it and then I will—I am always in an alternative universe, so let me bring up some things that have not yet been touched upon.

Obviously, with all the hoo-ha about the Arizona law that recently passed, we are forgetting that one of the most important issues facing the criminal justice system is how do we protect our borders from a national security point of view, but also immigrants who are here illegally. I do not care what you call them—undocumented. They are not here lawfully. They are illegal immigrants. How do we handle the issue of criminal justice issues with illegal immigrants? Never mind the—and the language barrier and the cultural barriers and everything else.

I think that part of our criminal justice system of things that do not directly impact us locally—and I will get to a couple local things in a minute, but human body parts, a cadaver, illegal use of cadavers and transportation into this country, that is a huge issue.

Obviously, narcoterrorism has involved a tremendous amount of the Senate and the House's time and the President's time, which I, of course, support.

Another great issue coming along that is going to hit us in ways that we do not even contemplate are the massive computer hacking issues that come from countries that not even the Federal Government can handle, from China to Nigeria, to Australia, to wherever it is, the massive computer hacking that violates not only our national security and imperils our very safety, but also because its global scale has direct relation to criminal conduct, whether it is identity theft, fake passports, invasion of our privacy, whatever

that means under today's lack of privacy, credit card frauds, house stealing—you know, all kinds of fake documents including what is getting to be our national identity card, our driver's license.

Human trafficking of both adults and children is an unbelievable issue, and for us, probably more locally than globally, scientific enhancements.

You know, I remember that prosecutors used to go crazy when they first started to talk about DNA. And then we discovered that it was probably one of the best things to happen. DNA helps prosecutors. Now we are faced with the National Science Academy, NSA, coming up with all kinds of new scientific gizmos. If you think that the issues that Justice McCaffery and Everett and Ellen and John and I have been talking about are big, wait until we get hit with all this new kind of scientific stuff that is going to be required, not only that our labs be, let us say, ASCLD certified, but how are we going to be handling all this super-scientific stuff that nobody has the capacity to buy or learn or do, but which are going to be imposed upon us by the courts because that is the wave of the future?

It is sort of like the prison cap in reverse. The Prison Litigation Reform Act, which I lobbied for and my office helped to write, was great. It stopped judges from imposing prison caps. So what do the judges do? Now they started to change it. No more prison caps. We are going to change the conditions of imprisonment. We are going to insist that the prisons put this kind of program in, without a concern for what the cost, the human cost is. Ask Justice McCaffery. He is laughing over there.

I think that there are so many things that are going to be driven by just the irreducible minimum. Obviously, from my point of view, political will, the desire to change—I am a change agent. I am always throwing spears and trying to make changes. Political will is one thing, but when it is the irreducible minimum, it is all going to be in dollars. That is where the rubber meets the road. And whether you have a $12 trillion deficit or a $15 quintillion deficit, the problems are still going to be hanging around our necks until we have sufficient resources to address them in a humane and a comprehensive fashion.

Senator KAUFMAN. Thank you, Mr. Chairman.

Chairman SPECTER. Thank you, Senator Kaufman.

Ms. Greenlee, the issue about loans has been addressed to a very substantial extent in a recent reconciliation bill, which provides for loan forgiveness, and I am a cosponsor of the John R. Justice Prosecutors and Defenders bill, which specifies loan forgiveness for defenders.

Ms. GREENLEE. Right.

Chairman SPECTER. Well, thank you all very much. One final question. Is there anything specifically, aside from the funding issue, that you would like to see legislation on? Now is a good time with a couple Judiciary Committee members listening.

Ms. GREENLEE. No more laws. We have enough to see us into the next millennium.

[Laughter.]

Justice MCCAFFERY. Senator, can you get the SERVE Act passed for our veterans?

Chairman SPECTER. For veterans, yes, we can. I think we will move ahead on that.

Senator KAUFMAN. Let me tell you one thing about—you know, everybody talks about bipartisanship in Washington and how hard it is. There are a number of issues that you always get bipartisan support—I have never seen it in all the years I have been around the Senate—and that is veterans. I mean, you sit in a hearing, and it is just like, "What can we do more for our veterans?" And, you know, what our people do, what our folks are doing, especially in Afghanistan and Iraq right now, is—I mean, the sacrifices they are making, their families are making, and I am so proud of the Congress because we are putting out really good things to take care of veterans that come back but also take care of our veterans from previous wars. It is really a bipartisan issue. It goes right to the bone.

Justice MCCAFFERY. Senator Kaufman, Senator Specter held hearings in Pittsburgh. I flew out for the hearings in support of our veterans courts, serving veterans with post-traumatic stress disorder. Our district attorney's office, our public defender's office are working here in Philadelphia County, but they have opened in Allegheny County, Scranton, Pennsylvania, and here. And we are trying to get them statewide, but, again, it all comes down to funding. And I know—I believe both of you gentlemen were cosponsors of the SERVE Act, along with Senator Kerry, but we need that money into the States to help our veterans with the VA. And, by the way, the VA has been absolutely wonderful in supporting our programs. Thank you.

Chairman SPECTER. Justice McCaffery, I think that legislation has a good chance. For those who do not know the contours of it, it provides for a veterans court where the court has special sensitivity to what the veteran has gone through. A veteran comes into court with post-traumatic stress disorder might explain what goes on and that you need—it is very useful to have some expertise by the judge, by the court in dealing with that. I have legislation pending under the caption of a Veterans Bill of Rights which deals with a number of items. One of them is expanding the veterans court. Another is the plan to eliminate homelessness for veterans and the issue of tax credits to employ veterans. But as Senator Kaufman points out, that is a big, big issue, and that is one which is being addressed on a bipartisan basis.

Well, thank you, Justice McCaffery——

Ms. ABRAHAM. Could I just take a point of privilege, Senator, since you asked? I know that you and others on the Senate Judiciary Committee and elsewhere have supported Senator Webb's——

Chairman SPECTER. Crime Commission.

Ms. ABRAHAM. What is it called?

Chairman SPECTER. Crime Commission. I am the cosponsor——

Ms. ABRAHAM. The Crime Commission of 2010——

Chairman SPECTER. Webb-Specter.

Ms. ABRAHAM. Yes. The preamble to his putting this bill up for consideration got me a little bit nervous when he tried to compare China's imprisonment system to ours and Japan's. But let that go for the time being. The bill has been voted on, and there is going to apparently be a commission. All I am going to request is that

when the commission—which seems to be very, very small—is considered, it be enlarged because I do not think the commission membership number is broad enough to be a comprehensive review of the criminal justice system. And I will volunteer my services to be a member of the commission if you see me fit to serve.

Chairman SPECTER. OK. Thank you, Justice McCaffery, D.A. Abraham, Deputy Mayor Gillison, Ms. Greenlee, and Professor Goldkamp.

That concludes our hearing. Thank you all.

[Whereupon, at 10:39 a.m., the Subcommittee was adjourned.]

[Submissions for the record follow.]

UNITED STATES SENTATOR ARLEN SPECTER, UNITED STATES SENATE JUDICIARY COMMITTEE, SUBCOMMITTEE ON CRIME AND DRUGS

Testimony of former District Attorney of Philadelphia, Lynne M. Abraham, on "Helping Find Innovative and Cost Effective Solutions to Overburdened Courts."

May 3, 2010
National Constitutional Center
Philadelphia, Pennsylvania

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One day, long ago and far away, a chicken was eating her lunch when an acorn fell on her head. Alarmed, the chicked jumped up and ran all over town proclaiming to all and sundry animals, Henny Penny, Goosey Loosey, and so forth, that the sky was falling. A very clever fox, Foxey Loxy, agrees to help this hapless group of silly animals. Depending on which version you believe, the fox either eats the chicken or everyone but the chicken. The moral of the story is much clearer and all too familiar; the chicken jumps to an unwarranted conclusion, whips up the public into a kind of mass hysteria, which the fox uses to manipulate the situation to his own benefit. "The Fairy Tale of Chicken Little."

Thank you Senator Specter for inviting me to appear before the Senate Committee on the Judiciary Subcommittee on Crime and Drugs, to speak about "Helping to find Innovative and Cost Effective Solutions to Overburdened State Criminal Courts. I have, as you might suspect, much to say, but perhaps my first observation is that while other states may have overburdened courts, I maintain that, as I understand that term, while we in Philadelphia have a busy court calendar in the Criminal Courts, to my observation and experience no such problem presently exists in Philadelphia. In years past, when crime was off the charts, and the police were making 1300 to 1500 arrests per week, I would have had no dispute with the term "overburdened." Philadelphia has experienced the nationwide trend of crimes dropping appreciably. Make no mistake, crime and the fear of crime are a continuing, significant and menacing presence across this City, however, we are not talking here about what the citizens may be experiencing , but whether, instead the criminal courts are overwhelmed. I would be the first to admit the obvious; our courts and criminal justice system has serious issues, but overwork doesn't appear to me to be the heart of the issue.

I appear today as former District Attorney of Philadelphia and one of the longest serving District Attorneys in the history of the City, having been elected five times as D.A. by the citizens of this City. In addition, I have served as a Judge in both the Courts of Common Pleas and the Municipal Courts, having been elected three times by my fellow citizens to those positions. In addition, as you know, but the record does not, I worked for you for over five years as an Assistant District Attorney in a variety of divisions, the last being in the Homicide Division. For over forty years I have had first hand knowledge of, and participation in, virtually every facet of the Criminal Justice System.

With this forty plus years in-service background, I assert, without a moment of hesitation or equivocation, that the Criminal Justice System of this City is not now, as has been almost hysterically proclaimed, nor at any time that I have lived through, a "Broken System." To make such a declaration, is not only unsupportable by the facts, but, in addition, does a grave injustice to all of the criminal justice professionals across this country who, like me, and my more than three hundred and thirty Assistant District Attorneys, have dedicated our every breath, every single day to improving the safety and security of our homeland, our fellow citizens, and the integrity of our criminal justice system.

While I do not profess to speak for any prosecutor but myself, from my years of close association and affiliation with prosecutors both state and local, I know just how hard working and committed to justice these men and women are. Prosecutors around the country are struggling every day against a system which used to value prosecutors and celebrate their every

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innovation, but now are all too often marginalized, or worse, vilified. Prosecutors, while far from perfect in every instance, are some of the most innovative and creative people in the criminal justice system and readily seek changes to improve the quality, fairness and efficiency of the criminal justice system.

The reason I so strongly reject the notion of a failed criminal justice system, is that I have lived through monumental changes in our criminal justice system and seen it evolve from what might be said to have been a rather naive and simplistic view of how to "dispense justice," in which an accused could be charged, arrested, convicted and sentenced, first in the press, then in a courtroom, in a matter of weeks of a crime's commission, into a highly complex, ever changing and intricate array of court decisions, and statutory enactments, local, state and federal. Added to the revolution in criminal law, were new criminal procedural rules, trial and evidentiary practices and procedures, scientific and technical advances, any one ,or combination of many, could, and frequently did, challenge, change, or even eliminate decades of acceptable practices in the blink of an eye or literally a stroke of a Supreme Court Justice's pen. The expansions of defendants rights the chronicling of myriad judicial improprieties, defense counsel inadequacies, prosecutorial overreaching, jury selection practices and more, was titanic. All of these changes have happened over a relatively brief time period, and even if prosecutors, or others, didn't always welcome these changes, we adjusted our way of doing business in accordance with the laws, even as we sought to test their validity, interpretation or applicability.

No one can seriously assert that those of us who spent our lives in and around the criminal justice system were, or are, presiding over a "failed system," and, for our own narrow reasons, want it to remain that way, stubbornly resisting change for the "fun" of it. As violent crime and homicides increased at warp speed in the late 80's and 90's,in concert with the extraordinary explosion in drug manufacture, importation and distribution, and the proliferation of gun related crimes, our prosecutors routinely went to court in Philadelphia, and consistently and properly handled and disposed of sometimes sixty or seventy thousand cases per year. While arrests shot up to thirteen hundred arrests per week, our budget (and Federal Grants) were either slashed by millions, or not increased to keep up with the case loads, personnel shortages or complexity of the issues we faced every day.

I would be the last person to claim that our system works perfectly, nor do I think that systemic reviews, of our systems, resulting in new laws or better procedures should be eschewed, providing that all "players," views, and requirements are considered in a comprehensive and thoughtful manner. However, the perceived failures, which perhaps, motivated these hearings, were not caused by anything that was "broken" in the District Attorney's Office, but instead, were, in many instances, external to my office. Even the problems pointed out in the Inquirer don t add up to anything like an insoluble crisis, but they are deeply troubling. In my judgment, a well thought out, coordinated and targeted approach is preferable when improvements are called for. However, besides legislative or procedural or policy enactments, what really is needed is the guaranteed stream of financial resources adequate to see to it that whatever is decided has the desired and long term impact and effect. Without this, these hearings will be interesting, but of no real moment.

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Moreover, the things we are talking today, bail, witness relocation, and case dispositions, are not problems that have suddenly sprung up on us unawares. Instead, they are the same uncorrected local inefficiencies about which you noted in the 60's and 70's.

> "Delay in the trial of criminal cases is the most pressing and the most important problem facing the District Attorney of any large city.
>
> In far too many instances, the District Attorney's hardest job is not convicting the guilty but bringing a case to trial in the first place.
>
> Delaying a trial benefits only the guilty defendant. Delay harms (1) the community, which is subjected to the risk of repeat offenses by defendants on bail; (2) the defendant who is later found innocent; (3) the police and civilian witnesses who must come to court time and again at the expense of lost time and money; (4) the police witnesses whose repeated appearances in court drain manpower from other police duties; (5) the prosecutor, who sees strong cases grow weak as memories fade and witnessed lose their interest; and (6) the people of Philadelphia, who suffer the burden of increased taxes necessary as a result of repeated listings.
>
> Delay in the criminal courts also weakens the deterrent effect of punishment, for deterrence is based not only on the severity of punishment and communication to the community of that punishment but also on the swiftness with which the punishment is imposed."

1968 Report to the People of Philadelphia, by Arlen Specter, District Attorney of Philadelphia, Page 92.

Major Causes of Delay

"The major factors operative in causing trial delays are; (2) appellate decisions broadening the rights of defendants and thereby enormously increasing the amount of pre-trial litigation; (3) repeated unwarranted continuances of cases on the motion of defense attorneys; and (4) a concentration of too many cases ion the hands of a small number of defense attorneys."

1971 Report to the People of Philadelphia by Arlen Specter, District Attorney of Philadelphia, Page 92-93

The heart of the problems which bring us here are, among other things, is; (1) a lack of political will by successive mayoral administrations to have moved more aggressively to correct obvious, no, glaring, faults, the Clerk of Quarter Sessions, and the entire bail system was dysfunctional. The Clerk failed to maintain records; collect appropriate bails; account for the

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millions of dollars in bail monies put up each year by defendants or their families, and failed utterly to pursue Bail Order Sue Outs, when defendants became fugitives; (2) that the Philadelphia's Criminal Court System, has been under the direct supervision of a Justice of the Pennsylvania Supreme Court for almost three decades, the first being former Justice John Flaherty, but the problems we are facing today would never have been able to happen or continue, if the Justice assigned was truly "minding the store;" (3) judicial recalcitrance for over a decade and a half, to accept one of the most creative approaches to dispensing justice based on geography of the offense, the implementation of "Zone Courts," and the refusal of our Municipal Court Bench to accept the Rules of Evidence, prematurely dismissing charges, downgrading cases not based on prima facie evidence, and engaging in justice by the numbers; (4) the massive budget cuts over many years for some of the most important partners in our system, such as the Probation/Parole Officers, the District Attorney's Office, and others and; (5) the City's refusal to fund a witness protections/relocation program.

In the face of all of these and other problems, real, substantive progress has, nevertheless, been made because of a number of unique, meaningful and innovative programs and policies that I have spearheaded over the past eighteen years. Now, I didn't do this by myself, it was an effort by an array of CJ partners. These new approaches in the Philadelphia Court and prison system heralded new ways of dispensing justice: Community (Quality of Life) Court, Gun Court, Juvenile and Adult Drug Courts, Mental Health Court, Domestic Violence Court, Veterans Court, Drunk Driving Court. And other programs such as the Gun Violence Task Force funded entirely by millions of dollars in State Funds, obtained for my Office by former Pennsylvania Senator Vincent Fumo. This money for the first time allowed the Philadelphia District Attorney's Office to literally drive a significant wedge into the illegal sale and transfer of guns, called "straw purchasing" of Firearms. Then there is the Fugitive Safe Surrender Program, where non-violent probationers can turn themselves in at a community church and receive an immediate hearing, represented by counsel to dispose of that old bench warrant; the Youth Violence Reduction Partnership, a multi-layered approach to decreasing violent Juvenile behavior by offering school based programs, supervision, job training and parental help; and a Truancy Prevention Program and an entire Blueprint for a Safer Philadelphia, a 10 point plan for violence reduction, new legislation dealing with gun crimes, and Zone Courts. There is much more, but the Inquirer never wanted to mention that the District Attorney's Public Nuisance Task Force was started by me in 1992 which works with the community group to close nuisance bars, crack houses, etc. By the time I had left the DA's Office, thousands of these nuisance properties had been abated.

In addition, the story never mentioned the Criminal Justice Advisory Commission (CJAB) on which I served, prior to the Inquirer series, has completely revamped the way the pre-trial discovery, and consolidation of cases have been administered, nor did it mention the consolidation of every Violation of Probation Case in the entire system before a single judge. Nor did the Inquirer hail the lowering of our prison population by almost Fourteen Hundred Prisoners in the past year because of a Prison Reform Legislation Package passed in 2008 and written in significant part by Sarah Hart, of my Office.

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"The Judges and Justice By The Numbers"

Before we get to where we want to be, it might be useful to state where we have been. These hearings have undoubtedly come about because of a series of articles in the Philadelphia Inquirer about our criminal justice system. Unfortunately, the Inquirer essentially rehashed the same issues about which they had previously written, but with bigger headlines. Of course, in their zeal to falsely portray a system in disarray, or worse, collapse, the stories failed to note the true state of the system, troubled but functioning well. In addition, the Inquirer ignored all of the reforms, programs, initiatives and changes in the criminal justice system, some of which I alluded to above, arrived at by consensus of all of the participants. In addition, in an attempt to print the story as they wanted it to appear, they deliberately refused to admit that their own figures disproved their premise, of a "criminal justice system in crisis." This, in spite of the fact that members of my office and I proved that the Inquirer's own figures about the number of cases won and lost, dismissed and held for trial, clearly established the opposite of what they said they proved. Senator, I never believed in "justice by numbers." I believed then, and still do, in Justice because of law and facts.

Using the Inquirer's own numbers, the District Attorney's Office achieves convictions 89 percent of the time, in both the Common Pleas and Municipal Courts. These same numbers demonstrate that in the Common Pleas Courts, a conviction rate of 75% is attained. The results in the Municipal Court are a conviction rate of 85% of the cases actually heard, however, the dismissal rate is unacceptably high, but not due the "fault" in the District Attorneys Office, but because of the factors that I have complained about: the ridiculous bail system, witness intimidation, manipulation by the defense bar, and judges who are in to "productivity" or, if you will, "efficiencies," instead of allowing justice to have a chance. This latter term is a euphemism for judges who "blow out cases." See Tom Ferrick's Inquirer Column of April 30, 2000.

How do the judges do this? Well, they dismiss cases at the earliest time in the morning because a police officer is in another courtroom testifying, or a civilian witness has not yet arrived, or because they won't permit admissible hearsay in these prima facie proceedings. or they burn out the witness by granting unnecessary line-up requests This "disposes" or "blows out" meritorious cases without ever getting to the merits of thousands of cases. Good productivity, bad justice.

You might inquire; how was it that the Inquirer manipulated the figures? Easy. Using a Bureau of Justice Statistics study, they compared Pennsylvania's definition of a felony, a crime generally punishable by five years of imprisonment, with the definitions of felony in other jurisdictions, crimes punishable by imprisonment of one year, See also 18 U.S. 3559, and Federal Sentencing Guidelines Manual, Section 4A1.2(o) and then compared cases held in jurisdictions using the one year definition with Philadelphia's cases. What resulted was comparing our felony convictions with other jurisdictions misdemeanor cases, or comparing apples to oranges. In addition, the Inquirer looked at our guilty plea rates relative to all convictions, which in many other jurisdictions is higher than in the District Attorney's cases. The reason for this difference is that other jurisdictions offer more lenient negotiated pleas than were offered by me. The percentage of defendants who accept negotiated plea agreements is directly proportionate to the leniency of the offer. The more lenient the offer, the higher the

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percentage of defendants who accept such offers. If a prosecutor wishes to focus on conviction rates at the expense of appropriate sentences, it is possible to achieve a much higher conviction rate, maybe as high as 90%. All the prosecutor has to do is focus on conviction numbers, rather than "doing justice." The Inquirer didn't see fit to point this out.

What about the complaint by Municipal Court Judges that; if the District Attorney of Philadelphia believes that we Judges are doing something wrong by dismissing or downgrading charges and cases why don't you, Madam District Attorney, just re-arrest or re-charge? Well, we did just that, and more. The Criminal Procedural Rules Committee passed Rule 143, effective January 1, 2000. Prior to that date there was no state procedural rule that addressed re-arrests following dismissal at a preliminary hearing, although prosecutors followed the well established practice of re-arresting in the absence of such a rule. Besides taking more than two years to accomplish, the promulgation of this rule, that was just the beginning. When I began to implement Rule 143, I was sued in Federal Court by a coalition of criminal defense attorneys who directly benefited from these massive "blow-outs" See Stewart v. Abraham, Civil Action No.00-2425.filed in May, 2000. A Federal District Court Judge on July 17, 2000, held that the new Rule violated the United States Constitution, and issued an injunction preventing me from following PRCP143. I appealed. The Third Circuit Court of Appeals, stayed the District Court's Injunction and expedited our appeal. On December 27, 2001, the Third Circuit Court of Appeals, reversed the District Courts, Findings and Order holding that the decision below was fundamentally flawed and reaffirmed the prosecutor s power to re-arrest suspects immediately after a Municipal Court's dismissal of charges..

Now, for the bad news. With thousands of cases being wantonly dismissed, as thousands more cases come into the system each week what chance of success does that approach have? About as much chance as the Sorcerer's Apprentice. Because these same Judges compel us to put on the remaining cases and proves every crime, and every element ,beyond a reasonable doubt, instead of merely a prima facie case, even though we re-arrested as many defendants as possible given our resources, more cases were downgraded, or dismissed. The sum total of all of the foregoing, thousands of cases, dismissed, downgraded, eliminated. But not because of any failing on my part as District Attorney of Philadelphia, but because of the Municipal Court Judges. The Inquirer conveniently forgot about its own column by Tom Ferrick.

Instead of the chronicling needed changes that any criminal court system might find desirable, the Inquirer chose to make what really might have been a terrific, and substantive story, into a splashy, rehash of, well, yesterday's news. "Sound The Alarm," bleated one Editorial. (12-17-09). Sound the alarm, indeed...but for the Inquirer. For the past several years, the Inquirer cut back on reporters who actually sit in the courts every day, roam the halls and seek stories of human interest, and, instead, replaced all of these reporters, with some notable exceptions, with those who would call our office every day and ask; "What happened in court today?" Pathetic and a sad commentary on what passes for news gathering. Had they been in the Courts everyday, they could have named names of the Judges and any lawyer trying to game the system.

What could be their motive for doing this? Could this possibly be a vain attempt at trying to re-capture their former prowess as a news gathering organization? Stave off bankruptcy? Try

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to settle old vendettas? Who can say for sure? But one thing emerges quite clearly, that the newspaper tried to spread their position that the Criminal Justice System is "in crisis" or, put another way, that the criminal justice system is "broken." You know, Senator, everything now is "Broken" --- Washington, the United States Senate and House of Representatives, see The New York Times, February 21, 2010. The list is endless. It is a wonder how this Nation is still standing!

These declarations have some initial appeal to a narrow constituency, but cannot withstand intense scrutiny. No, these are just catchy phrases, not truth. Philadelphia's Chief Public Defender, Ellen Greenlee, who will be here today, and with whom I have some very sharp differences, proclaimed two weeks ago, as reported in the Inquirer, see Inquirer, April 20, 2010, that their stories were "...unreliable and driven to generate headlines" and that there new business was "...managing the courts." Judge D. Webster Keough, Administrative Judge of the Courts of Common Pleas states in the same article that;"... the conviction rate was 75% or more...that the Common Pleas Court System was not broken...not in crisis...and not dysfunctional," and President Judge Denbe last week testified that the Common Pleas Court system while busy, had no backlog for years. Legal Intelligencer, April 14, 2010.

The Bail System

The Federal Courts "take over" of local prisons ,via Federally imposed prison caps, such as the one Philadelphia, and Philadelphians suffered through for over ten years, were judge-created "remedies" which made our crime problems worse, not better. The only people that were "helped" by this Prison Cap Consent Decree were the criminals. This unwise, ill advised intrusion into local authority over prison management, created more crime problems than it helped to solve and was a serious threat to public safety. Fortunately, the Prison Litigation Reform Act, of 1996 which I personally lobbied for passage in our Congress, managed to pry control over prison population management from Federal Judges, and restore it to appropriate local control, but it took a decade to do it.

Because of this Prison Cap, and the capitulation to the pressure from the court cases by then Mayor Goode, Philadelphia's Bail system began to slip into disarray, which has persisted to this day. This situation had several components only two of which I will address because of the length of the history of this problem and the fact that the historical context need not be discussed at this time and in this forum. It was not even hiding, it was patent.

As soon as I took office in 1991, this city and its then Mayor W. Wilson Goode, were embroiled in the aforementioned prison litigation via at least two cases; Harris v. Levine, and Harris v Reeves. These suits set the stage for wholesale release of thousands of prisoners to relieve overcrowding in ancient Holmesburg Prison, 50% of whom never appeared again for court. Rather than fixing the prison conditions ,which would have cost money, the Mayor, instead opted to agree to the wholesale release of prisoners, and also agreed to place severe limitations on the number of pre-trial detainees who would be admitted to the prison. It was the "charges" that determined whether a person would be admitted to the prison, not the risks of crimes and violence upon our citizens, that a detainee posed. Crimes such as robbery, car jacking. vehicular homicide, gun charges, including semi automatic weapons, possession of no

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more that $100,000 of pot, etc were not admitted to custody. Judges were not permitted to consider a defendant's prior criminal record, failures to appear, immigration status, drug and alcohol dependency, mental health status, etc in granting bail. Not surprisingly, bench warrants for defendants who failed to appear for court, went from 18,000 to over 50,000. In one 18-month period, Philadelphia police re-arrested 9,732 defendants released to the streets under this Consent Decree. These defendants were charged with 79 murders, 959 robberies, 2215 drug dealing crimes,701 burglaries, 2,748 thefts, 90 rapes, 14 kidnappings, 1,113 assaults, 264 gun law violations, and 127 DUI charges. (Testimony of Lynne Abraham before the Subcommittee on Crime of the United States House of Representatives, Judiciary Committee, October 2, 2000)

When I and my staff and other prosecutors from around the state, opposed changes in the state bail guidelines, via the Pennsylvania Rules of Criminal Procedure, because of the implementation of "non-monetary bail," instead of cash or other bail security, and because the Rules assumed, without any basis for doing so, that the country probation officers would assure compliance with pre-trial bail release, the bail system's collapse started to seriously accelerate. I have already provided to your staff some of my letters, but I wanted this record to reflect that I have been speaking about Bail reform since the mid-1990's. Bail decisions are made by bail commissioners, not prosecutors, sentencing decisions, are uniquely in the hands of the judges, not the prosecutors, except in the case of negotiated guilty pleas, as are all pretrial decisions on the admissibility of evidence. An incorrect decision, pre- or post- trial, will takes years to be reviewed. All the while most defendants are on bail because it was generally perceived to be "unfair" for the defendant to be held in custody after a Court Ruling in his favor but which is legally flawed. By the time an appellate court rules, the witnesses have disappeared.

We may celebrate that an appellate court decided that the lower court erred, but the case disintegrates, nor is it the District Attorney's Office at fault, if the court dismisses a case prematurely because a witness is late or a police officer is testifying in another courtroom. Again, we can, and have, rearrested defendants because the judge is wrong, but we may never get the complainant back again

Our city government, instead of seeing the urgency of the problems, and then springing into action, saw the problems, decried and lamented them, then went right back into "inaction mode." This has been going on at least since the Prison Cap debacle of 1991. This, in spite of an alarming rise in bail jumping, and a corresponding rise in the mounting debt of uncollected bail monies owed to the city, now estimated to be over ONE BILLION DOLLARS. When defendants failed to appear for court, and inaction on Bail Order Sue Outs, escalated thousands of crime victims were frustrated and even the most determined crime victims gave up on our criminal justice system. In combination with the bail system, drastic cuts in bench warrant servers, and probation and parole officers; and an epidemic of witness murder and intimidation, emboldened criminals and lead them to believe that crime commission, witness intimidation, and discharged cases were the order of the day. Meanwhile, the City really swung into high gear engaging in excessive hand wringing, tsk-tsking, and expressions of deep concern.

Not even the constant thrum of press stories about these major failings stirred any real action. Like a disease that no one wants to confront, the course chosen instead, was "maybe if we don't talk about it, it will go away." Funding streams to the District Attorney's budget, and

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the budget process itself, was reduced to mere political theatre. Much of what is wrong could have rather easily been avoided, or ameliorated. Instead, failed programs, like "Safe Streets" and its sequel, "Safer Streets," and others, as expensive and ineffective as they were unsustainable, were hailed as the next crime fighting strategy, and fully funded. It is not that the Police didn't like overtime pay created by these two boondoggles, but arrests without the known certainty of swift and sure prosecution, is a failed effort.

The Clerk of Quarter Sessions Office, and the City Solicitor's Office, responsible for the paperwork, record keeping etc related to bail, etc., and the collection of bail monies and bail judgments respectively, took a snooze that would rival Rip Van Winkle's. Meetings were held between my Office and both of these Offices for over two years, when it became apparent that becoming a fugitive was a cottage industry within Philadelphia's Criminal Justice System. The letter I wrote on April 22, 1998 to then Mayor Edward Rendell, which prompted these meetings, resulted in, well, lots of meetings. The District Attorney's Office provided several easy improvements which could be made could be made with no expense which would improve the bail in the bail paperwork, provide clerks with guidance with regard to accounting for collections, and better record keeping with new procedures and policies, went no where because of a lack of political will. Two years of meeting on the Bail Order Sue Outs in both that Office and The Solicitor's Office when a bailed offender failed to appear. We did everything but draw them a treasure map. What happened? Nothing.

All of these, the prison cap, the bail rule changes, the lack of pre-trial monitoring of bailed defendants, lack of court probation officers, and lack of funding, when coupled with inadequate electronic home monitoring equipment, poor record keeping and fund oversight by the Clerk of Quarter Sessions and more, elevated Bail Jumping in Philadelphia to a high art form.

Imagine, I had to call the late Senator Jesse Helms to seek his help in passing the extradition treaty between The Republic of South Korea and the United States, which had been stalled forever, and call upon the late Congressman Tom Foglietta to use his best efforts with the Government of South Korea on extradition matters. Why did I have to do this? Because one of our judges allowed an accused killer facing life in prison, to be placed on bail after his attorney "guaranteed" the Court that he would see to it that his client appeared at every court proceeding. David Nam, who was accused of murdering a 76 year old retiree on his front porch during a botched armed robbery, was permitted to put up One Million Dollars to secure his freedom. His father put up his very expensive home as security, owned by the entireties with his wife, sounds good. But the Quarter Session clerk didn't bother to get the signature of both the wife and the husband on the bail bond. So, naturally, when Nam was released, his father and mother helped their son flee to South Korea, where even though Nam was born in America, Korea accepted as a dual national. Then the Nam's declared bankruptcy. Guess what? When we tried to sue out the bail, we had to go to Federal Court to try to get the bail money. However, the District Court Judge agreed with the elder Mr. Nam, that bail obligations cannot be collected as they are dischargeable bankruptcy debts. We then had to appeal to the Third Circuit which reversed the lower court saying that a bail bond is not discharged by Federal bankruptcy. So, success finally? No. Mr. and Mrs. Nam renounced their United States citizenship and fled to South Korea.

Did we get the bail money now that all of the Nams had fled? No! Why Not? Because the bail clerk's utter failure to follow fundamental principles of securing the release of prisoners

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by putting up real property as security. It took an unbelievable effort to get that extradition treaty to the Senate Floor for a vote, and then eleven more years to find Nam in Korea, where he was living under an assumed name, and bring him back to Philadelphia. I am pleased to say that just a few months ago, Nam was finally convicted of First Degree Murder and sentenced to Life in prison.

How about the infamous Ira Einhorn? He also was accused of murder and his lawyer, whom I believe you'll remember, managed to get him released on bail. Einhorn also fled after putting his mother's house up as security for his appearance. For the entire time I was District Attorney we chased him all over Europe finally finding him, through the efforts of Interpol, in a small village in Southwest France. Did that end it? No! For the next five years I was jumping through diplomatic and legislative hoops. First, the United States Department of State told me after meeting with the French Government, that I had to get a law passed in Harrisburg guaranteeing Einhorn, who had been convicted in absentia of first degree murder, a new trial because that's what the French do to their fugitives convicted in absentia After I accomplished that we had to submit written assurances that Einhorn would not be subject to the death penalty, even though his conviction occurred while there was no death penalty in effect in several states including Pennsylvania, because of the United States Supreme Court's decision in Furman v. Georgia. Then, we had to go through four more years of litigation in the French courts, including appeals all the way up to the Cour d' Appel, which included hiring a French attorney, sending our ADA's over to France two or three times along with the victim's family. In addition, I personally lobbied President Bill Clinton, and United States Attorney Janet Reno to get Einhorn back and also enlisted the help of Senator Joseph Biden and U.S. Ambassador to France, Felix Rohatyn.

After twenty-five years, Ira Einhorn was brought back to Philadelphia in chains and he was, once again, tried and convicted of first degree murder and is serving a life sentence. Did I mention, that the Clerk of Quarter Session never executed on the bail bond on Einhorn's mother's house? What a shock! We have had untold thousands of defendants flee every year. It is a rare event to ever have the bail sued out and a judgment entered and collected.

Here's the good news, the pot of gold at the end of the rainbow. The Clerk of Quarter Sessions has resigned, the Pennsylvania Supreme has exercise appropriate authority over all of Pennsylvania's Prothonotaries and Court Clerks and folded their duties into the Court, and City Council is poised to abolish this Row Office in due course. Appropriate kudos to the Inquirer.

Witness Intimidation

Retaliation against witnesses used to be primarily exacted against member of organized crime gang members who were known, or suspected of being informants, or "stool pigeons." Rarely if ever were family members of the suspected informant, or collateral relatives, or entire neighborhoods, threatened or murdered. The informant just disappeared never to be seen again, or they were murdered in public places to "send a message" or their bodies were carefully placed where law enforcement officers would be sure to find them. Money or objects were forced down the dead person's throat, or elsewhere, to let police know that this was the price gangsters paid for turning on their gang.

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This all changed in a dramatic way in the late eighties and especially in the drug wars of the nineteen nineties. It cannot be overlooked that communities began to stop cooperating with police partly in response to real or perceived mistreatment or inequities in the way police treated these community members. This however expanded dramatically with the culture of "stop snitching" which spread from community to community, the jails where defendants and witnesses were frequently housed, the courthouse, where associates of the defendant or family members show up with the intent of intimidating or threatening the witnesses for the prosecution either openly by their sheer numbers, by stares, bumps, or even outcries as the witnesses come into the hallway, or even the courtroom.

Two cases from the early 1990's illustrate the escalation and brazenness of witness retaliation by murder. In 1991, LaShawn Whaley identified Donyell Paddy as the man who murdered her cousin, John Rainey, and John Jackson in a playground in January of that same year. At the trial of Paddy in those two murders, Whaley failed to appear at the trial and charges against Paddy were dropped and he was released from jail with the stipulation that if Whaley were found, the murder charges would be reinstated. According to published stories, when police found Whaley in 1992, she told her attorney that the reason she failed to appear was because her family had been threatened. Whaley finally was persuaded to testify. However, on April 28,1993, as Whaley stood on a North Philadelphia street corner a car drove up in broad daylight, a man in a wig and wearing a dress stepped out and shot Whaley three times killing her instantly. A second eyewitness to the two earlier killings refused to testify after Whaley was murdered. All told, Paddy is suspected of killing or shooting others. All seven witnesses who agreed to testify against Paddy at his murder trial had to be placed into "witness relocation," but, we had to use Federal Dollars from a $10,000 grant for this purpose, and a small grant from the Pennsylvania State Police. No city money was available for witness protection.

Lest it be perceived that these cases are anomalies or two of the few cases, there are many more cases. Two of the most heart rending were; Kaboni Savage, a suspect in two witness murders, has recently been convicted in Federal Court of setting an arson fire that killed an entire household of a man suspected of being a Government "snitch" Eugene "Twin" Coleman. Coleman's mother, sister, two teenage grandsons, and two of his young nieces. And who can forget young Faheem Thomas Childs, 8, gunned down, by mistake on his way to grade school, when he and his mother were caught in the crossfire of two rival gangs as the pair crossed the street at 8;30 in the morning. His vital organs were donated to others just before he was taken of life support.

In August of 1993, three women were murdered in a housing development apartment in North Philadelphia, one of these, Tenisha Robinson, 18, was expected to be a witness in the trial of two men who were suspected of killing Pedro LaCort. At the Preliminary Hearing for these two men, Robinson was the sole witness who testified for the prosecution. She had testified that the two defendants shot LaCort ten times killing him in a dispute over the sale of a "gold" chain.

From that time forward, killing, threatening, or intimidating Commonwealth witnesses increased as the pace of violent crimes and homicides increased. In 1965 there were 205 homicides in Philadelphia. In 1995 there were 448. Similarly, with the escalation of killings and the escalation of witness retaliations, more violent crimes were either not reported or went

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unsolved. In 1965 15 homicide cases were unsolved. In 1994 139 cases were unsolved. Between 1994 and December 1995, the number of unsolved homicides rocketed to 339. At the end of 1997, the number of unsolved homicides went to 493. Put another way; in 1965 the homicide clearance by arrest rate was 93%. By 1995, the clearance rate plummeted to 58%.

As if the killing and threatening of witnesses weren't bad enough, a cottage industry of sorts sprung up in Philadelphia. Tee shirts which have a large red "stop sign" with a bar through it and the words "Stop Snitching" or "Snitches Get Stitches" became hot items, sold by vendors in the very communities where witness murder was the highest. Even "friends" who visited gunshot victims in Magee Rehabilitation Center came in wearing "Stop Snitching" tee shirts. Perhaps, even worse is a Web Page; "Who Is A Rat" disseminating the names and other important information of those whom the contributors think, or believe, or suspect of being an informant for the government, Federal, State or Local. But did all this mean anything to the powers that held the purse strings in Philadelphia, such as the Mayor? Was anyone moved to action?

It was clear in the early 1990s when I began to appear before City Council, after appealing to our Mayor, unsuccessfully, for witness relocation funds, that the need for immediate attention to witness relocation was critical for the integrity of the criminal justice system. What happened? Nothing. (Testimony of Lynne Abraham to City Council February 21, 1996, and February 25, 1997. Every year I asked for money for witness relocation. Every year the answer was the same from the Mayor and Council; This is really terrible! Oh, and by the way, no money.

As a statement of fact, in spite of the lip service, the hundreds of articles and stories in print, television and otherwise, this country wide phenomenon, never stirred a dollar bill out of the City for witness protection/relocation. Lots of gnashing of teeth, many "oh, this is terrible," tons of sympathetic sighs, but not even one dime. This is exactly where we are today. All of the witness relocation money I have received came from the Pennsylvania's Attorney General's Office, and even that funding was threatened with cutting by Governor Rendell last year. We have also offered testimony on this issue to the United States House of Representatives. See Hearings of the House Judiciary Committee -- Subcommittee on Crime, June 17,1997.

In 2006 City Councilman James Kenney proposed that a revolving fund of five million dollars be established and dedicated solely to witness protection/relocation, to supplement the campaign of "Step Up, Speak Up" sponsored by me, The Philadelphia Police Department and the United States Attorney for the Eastern District of Pennsylvania. Councilman Kenney pledged that he would urge his colleagues on City Council, and then Mayor Street to support this budget line item. The Councilman deserves praise and thanks, which I have offered him. He failed in his efforts. But, at least he tried.

Not one Mayor of Philadelphia during my almost nineteen years as District Attorney, Mayors Rendell, Street, or, to date, Nutter, has ever allocated money to combat witness intimidation by providing for a meaningful witness relocation effort. All it takes is some money and the political will to protect frightened, terrorized, and intimidated witnesses. Instead, these Mayors, citing "budget constraints" were content to allow the Attorney General of Pennsylvania,

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carry the load, even though, the generous amount we received from him, was inadequate to offer assistance to all who would want it.

I accept that money alone will not combat the "cultural" aspects of police distrust, lack of faith in the system, unwillingness, from fear or otherwise, to give truthful testimony about violent crimes, or even those who don't want to go into some witness relocation program no matter how much money is available. But, when victims see that their very own City Government , in its entirety, is out there in the streets proclaiming that the city is behind those who come forward, and if you are fearful, we can remove you temporarily from the places where you can be dissuaded from testifying fully and freely, that sends a powerful signal to our fellow citizens, that we understand what you have gone through, and we are your champions.

Here the Inquirer gets the credit they deserve for this aspect of the story, except for the fact that they haven't to any degree called the Mayor(s) out for not insisting that his/their Budget Director find the money to protect witnesses in the face on years of bloodbaths, street violence, and drug-gang dominance of whole sections of the City, including the murders of many witnesses, and the intimidation of countless thousands of others who never testify, or even come forward to offer help even as their own neighborhoods descend into chaos.

So, Where Do We Go From Here?

As you can undoubtedly tell, I have tremendous criticism, and some praise, for the Inquirer series, and also praise for any Daily News stories on similar topics, which I haven't mentioned. However, one thing to come out of it is a re-evaluation of the Criminal Justice Systems. I am willing to wager, is that there will be some needed, and constructive changes, but nothing revolutionary or earth-moving. Just the things that could, and should, have been done years ago, and for which I have been a passionate long time advocate. Oh, well, just because change comes late is no reason to be ungrateful. I have to ponder, however: Why, if the these changes are so easy to accomplish, did it take so long? See my earlier remarks about inertia, and lack of political will stand. Indeed many of these have begun to materialize in the past few months.

Since December, 2009, we now have so many different committees, groups, experts, panels and people reviewing CJ systems, they are fairly falling over each other. Some of the changes that will be pronounced were actually in the making well before the publication of the series. The CJAB, should get the credit due them for tackling the thorny issues that began from the inception of the committee, and of which I was then a member. Change through consensus of Judges, Prosecutors, Defenders, Prison Officials, etc work best, as I mentioned before. However, some things can't come about by or through consensus. Real Leadership should take place from those who previously have failed, or refused, to exercise it.

I love my country and our Constitution, and I recognize the need for Federal Intervention when the states cannot adequately deal with local issues and which threaten to bring citizens or local governments to their knees. It is my considered judgment, however, for the most part, that the areas which have been the subject matter of these Hearings are local, and they must be grappled with and solved locally. Where, of course, the local governments or subdivisions

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thereof, cannot, or will not, do so, then of course, the Federal Government should quite properly step in.

I have been the beneficiary, and avid proponent, of Federal Laws and Grants, including the Prison Litigation Reform Act, the Witness Protection Act and others too numerous to name here but they deal with a variety of subjects such as the Cops Act, mandatory sentences for armed career criminals, cyber crimes, and juvenile crime reform, to name just a few.. I have also received Federal money to investigate and vertically prosecute a number of crimes and criminals; the Domestic Violence, the Domestic Assault Response Team or D.A.R.T. for local prosecution of D.V. cases in the early 1990's, and the F.A.S.T. grants or Federal Alternative to State Crimes money, Project Cease Fire, to send local prosecutors to Federal Courts, to prosecute local cases there. Still, there is a pang in my heart when I have had to resort to Federal prosecution of State crimes, because the local courts failed in their duty to protect their citizens, and follow the law as it is written. Our local judges have been so lenient, and have consistently down-graded felonies, to non-mandatory status, because they "don't like" mandatory sentences. The Federalization of State Crimes has been our "ace in the hole," but the number of cases is small relative to the need. Moreover, Federal Judges are "unhappy" to be prosecuting local cased in their courts. Just this past week, another version of FAST was announced. The FBI and the Philadelphia Police Department will be sending cases into the Federal Courts several Hobbs Act Robberies. Why is this? For the same reasons I just mentioned. Local Judges in Philadelphia don't take these violent crimes seriously enough, don't impose long enough sentences, and look for any reason to avoid, or evade, appropriate convictions and sentences. It is for this reason, that I ,and my prosecutorial colleagues ,lobbied so hard for and accomplished a change in Pennsylvania's Constitution, to give prosecutors the power to veto a defendant's request for a non-jury trial before a known "lenient" judges.

These programs are and were all extremely helpful because while our budgets were being axed by the City of Philadelphia, we had a brief safety net. The only problem with all of these Federal Grant opportunities is that, like Pirandello's "Six Characters In Search of An Author," we were constantly scrambling around trying to catch a piece of Federal Grant money whenever a Federal Grant opportunity arose. We also had to expend an inordinate amount of time filling out volumes of grant applications, which were offered only for short periods of time and which put increasing monetary demands on local governments for the "local Share." We never knew if these grants would be terminated after a short time, which would disappear into the ether because the Federal Funding went elsewhere, and which were crushing us because of the onerous burdens on reporting of "results." While the amount of money allocated to localities was huge in the aggregate, the demand was even more huge, leaving localities like Philadelphia scrambling for small bits of money, which we could never be counted on for the long haul. This becomes a self defeating problem when cities are in financial crisis and can't, and in some instances won't, fund even the most meritorious program.

My suggestion is that good programs which are proven to work ought to be fully funded for the time the grant lasts, instead of in decreasing amounts, and then transformed into a series of "best practices" which serve as a template for localities to tailor to their particular needs. Of course, it won't feed the bureaucratic "beast," but I believe it will work better. There are plenty of experts who will work with you and other Senators to adopt a series of protocols which won't

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create havoc and which will, in the end, work better, and promise a guaranteed funding stream for longer periods of time. Pie in the sky? I don't think so.

What about Federal Enactment which have not been funded or where the money is available but not dispersed? I am given to understand that there are Four Billion Dollars in Victims of Crimes Act money in Washington, that has not been given to the States because it has been "earmarked" for other purposes because, in part, of the over $430 Billion Deficit, and other reasons. One cannot be serious about helping victims of crime when the government which promised help holds on to the very money that was promised to victims. How much can the people believe in the Federal Government for, say, witness protection, when the same government will not pay for older enactments, like V.O.C.A.? By all means, pass amendments to the Federal Witness Protection Act to protect, to the extent possible, local witnesses who are intimidated or worse, but fund it too.

Much fanfare was attendant upon the so-called Second Chance Act which was signed into law by then President George Bush in 2008. It promised $165 Million in annual Federal Grants to the States for re-entry programs. I have never heard of this act being funded. Did I miss something? Since so many localities are looking to offer re-entry programs to offenders coming out of custody, isn't the time well past to fund these programs.

Senator James Webb is proposing a new National Criminal Justice Commission Act of 2009., which has been approved for whatever process comes next. Do we really want to do this now? I know completely that our prison budget is high, and many states have let prisoners out to prey upon the same citizens they previously victimized. Is this "thoughtful"? Balancing the budget at the expense of victims of unspeakable violence is the wrong way to go. Just watch the finger pointing when a sexual predator, or wanton killer re-offends. Everyone points to someone else as deserving of the blame. Who let this guy out? Point, point. What is to be accomplished if hundreds of thousands of prisoners are turned out onto the streets of every city, town and village of this country, with no job skills, illiterate, and no history of meaningful employment, and no real hope of future employment. Given the crime rate, the national debt and the Federal deficit , two wars an, economy in crisis, millions of people out of work, and no funding for existing meritorious Federal Enactments. is this the best the United States of America can do?

The Extradition Treaty between the United States and Mexico

Let me start with a rather esoteric point revealed by, another, fault in the Clerk of Quarter Session's Office. Two prisoners were erroneously released from custody, when the court clerk mistakenly recorded a lesser sentence of imprisonment than the Judge actually imposed; three to six months, instead of three to six YEARS. One of them, Emilio Sanchez, fled to Mexico. When his extradition was sought to Pennsylvania so that he could serve the full sentence, our State Department informed the Commonwealth that the Extradition Treaty between the United States and Mexico provides for the extradition of those whose charges are "willful." See Article 2 Extraditable Offenses (1). Extradition Treaty of January 25,1980, between the U.S. and Mexico. The crime for which the defendant, Emilio Sanchez, was convicted was Vehicular Homicide while DUI. This is not a willful offense and therefore, Mexico, according to the State Department, denied extradition of Sanchez.

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Given the extraordinary explosion in cases between the various states, and our U.S. Government, and Mexican nationals, or by those who see Mexico as a convenient exit port when fleeing charges, or convictions, I am requesting that you and the Senate seek to change this Treaty to remove the word "willful," leaving the rest of that sentence the same, or, in the alternative, seek to make whatever changes will best effectuate the realities of crime which have been dramatically altered with the ascendancy of drug cartels, massive importation north into the U.S. of marijuana, cocaine, methamphetamine etc., the murders these businesses generate, and illegal immigrants, and the southern traffic in guns, and money. since this Treaty was negotiated and passed when President Jimmy Carter was President.

Zone Courts

Since 1991 up to and including December of 2009 I have been trying to get the Courts of Common Pleas to adopt a geographic, or Zone Court method of prosecuting criminal cases. It began in 1991 that I instituted a program in West Philadelphia which did both vertical prosecution of criminal cases in designated geographic cases with the input and help of local citizens and groups. It was called the L.I.N.E. program or Local Intensive Narcotic Crime. It was written up in the Bureau of Justice Assistance, Office of Justice Program at that time as one of the new ways of "community prosecution." Our efforts were so successful that the program spread to four other police districts. We had obtained a grant from the Pennsylvania Commission on Crime and Delinquency to do this.

At the same time I founded a program called the Nuisance Bar Task Force, (later called the Public Nuisance Task Force) which was enabled by an act of the Pennsylvania Legislature, shepherded through by then House Speaker Robert O'Donnell. He also gave me a grant to carry out our plans; to eradicate nuisance bars, clubs, speakeasies, crack houses, houses of prostitution, etc, by and with the help of community members and specially assigned vertical prosecutors. Another example of community prosecution. Thus far, as of the time I left the DA's Office fourteen hundred properties were seized, sealed and forfeited through the courts, and countless thousands more brought into total compliance with the laws by threats of confiscation. At every step of the way, nearby neighbors were our partners and community advocates. We even got the Philadelphia Bar Association Chancellor, Larry Beaser, to get us a host of volunteer attorneys who would work, pro bone, with out assigned geographic prosecutors. In addition, our Habitual Juvenile Offender Unit also began to geographically based prosecutions with vertically assigned ADA's. As I just mentioned, when the money ran out, we really had to scramble to save these programs because the City refused, even though all of them worked. Some were lost, but the P.N.T.F. was continued.

I began to look at what other jurisdictions were vertically prosecuting cases with geography where crime was the worst, as the basis for the choice and assignment of assets. I went to Brooklyn and spoke to District Attorney Joe Hynes and he told me about Zone Courts, geographically based prosecutions with judges assigned, as well as prosecuted, to hear cases which arose in specific police districts in Brooklyn. This was just what I was looking for. Not only prosecutors working vertically and in geographical areas to handle cases unique to that area, with the citizens' help, but Judges specifically assigned by the Court Administrators to sit is these specially designated areas.

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I returned to Philadelphia and tried to get our Common Please Judges to sign on. The Municipal Courts already sit geographically in Police Districts, for the most part. Not the CP Judges. I was met with howls of protest and objections by the car load most all of which revolved around the judges lament that they didn't want their names to be known and their records of work to a be able to be so easily watched. It didn't matter one bit, that this is what the public needed, that this was extremely cost efficient in that it eliminated many millions of dollars in police overtime. In addition "gamesmanship," practiced so skillfully by defense attorneys, and sometimes by prosecutors, because there was always a different judge assigned to a case as it went from continuance date to continuance date, instead of the same judge. This program also reduced witness intimidation, or harassment by repeated appearances in different courtrooms, eliminated "blowing out" cases by reducing or eliminating police officers running between courtrooms for cases they made arrest for in their "home" districts, and it made good use of judicial manpower, probation officers, etc, etc.

Over the next ten years we met with every administrative judge and court officials, and then Supreme Court Justice, Sandra Shultz Newman about Zone or Geographic Courts. I have many letters if you, Senator, want them. The same result occurred for the entire ten years. NO. This is inspite of the fact that the Pennsylvania Legislature in our joint effort to create a Blueprint For A Safer Philadelphia in 2005, included Zone, or Geographic based Courts in our Ten Point Program. I also testified about this program in City Council We did have a small victory in 2006 when the First Judicial District reluctantly agreed to implement my Zone Court Program in the Felony Waiver Program. Only recently has this Zone Court program become "hot." With the current District Attorney falsely asserting to Justices of the Pennsylvania Supreme Court that Zone Courts was "his idea." See The Legal Intelligencer of March 18, 2010.

Had this program been implemented, even in graduated stages beginning after discussions regarding implementation by an open minded and thoughtful judiciary, we would have saved untold millions of dollars in police overtime, saved thousands of cases from going "South," saved many witness lives, and effectively and efficiently done justice. We also might not be here today. Still, if it occurs I will be pleased, and it will prove worth all of my efforts over the past two decades.

Electronic Records

Here we are in the twenty-first century and the District Attorney and Defense Counsel don't have a computer terminal at their courtroom table? Isn't this an indication of just how fiscally foolish this city has been when it comes to dispensing justice? Moreover, we in the District Attorney's Office still use paper files. We have hundreds of thousands of them and, to date, no way of becoming part of the electronic age. Oh, we have been promised "electronic discovery" capabilities soon, but this is hardly thrilling news, decades after the electronic transmission of CJ records was made possible. We are still putting everything on paper; in formations, statements, police reports, etc, but why is this still the case? Why doesn't every Judge in the Criminal Justice Center, have a computer? Unless, and until, the entire criminal justice system is made electronic, we will continue to waste precious resources on time consuming make-work, when, instead, we can just push a button and the information is sent or received in an instant.

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"Legalizing" Marijuana"

A few weeks ago, District Attorney Seth Williams announced that he would not be prosecuting cases for defendants arrested in possession of thirty grams of marijuana, or less. Instead, these defendants would be treated as if they had been given a summons. and these offenders would be subject to only a fine and no criminal record. The Pennsylvania Supreme Court apparently agreed. See The Philadelphia Inquirer, April5, 2010. A truly de minimus amount of marijuana has never been prosecuted in recent memory. Thirty grams of pot is not de minimus. The District Attorney, with the apparent acquiescence of the Supreme Court of Pennsylvania's Chief Justice and Associate Justice McCaffery have, effectively, legalized marijuana without legislative enactment.

The drug cartels who import pot from Mexico are thrilled, and local gangs and. marijuana growers everywhere are positively overjoyed. "Welcome to Philadelphia Light Up A Joint," may just be our new slogan What is to be accomplished by this plan to divert, by his count three to five thousand cases into summary dispositions, when the Philadelphia Police Department says they are arresting, fingerprinting and photographing these defendants? Well, first it creates the distinct possibility of a class action law suit against police to stop arresting these defendants and, fingerprinting and photographing them. Instead, just give them a summons. Next, it artificially lowers the crime rate to make it look as though crime has gone down, when it hasn't. This at a time which has traditionally been the case where most of our defendants are either drug or alcohol addicted when they commit crime, and also may have mental health problems, as well. Additionally these criminals are not just mere possessors of pot, these defendants have already for ten years been placed in Drug Treatment Courts, either Juvenile or Adult, with expungement of their criminal records for this arrest only after successfully completing a court supervised treatment and job training program. It does make our judges happy, fewer cases to have to adjudicate. Oh, but there are the fines that are going to generate loads of money. We already have multiples; of millions of dollars of uncollected fines dating back thirty years, or more. What chance does this program offer? Are we going to send non-existent probation officers out to find these defendants when they don't pay? Incarcerate them when they have no money?.

These people who when arrested for 20-to 30 grams of pot, are not first time offenders for the most part. They frequently are the repeat offenders who have committed untold numbers of crimes, and have been arrested dozens of times. They are the same criminals who ruin the city's neighborhoods by aggressive, destructive conduct, engage in shoot-outs, commit violent crimes to support their habits, and they intimidate or kill witnesses. The Marijuana market is into the billions. Now we are going to encourage its growth. Just think of all those ICE Officers on the U.S.-Mexico Border trying to stem the tide of Marijuana Mules, who now will be welcomed to bring their product into Philadelphia.

There is already a very effective drug court program, as I have mentioned. No one should be given a "pass" for this kind of crime. They should be offered, instead, a chance to participate in drug treatment, where the case is appropriate, and be fully prosecuted when it isn't. We have been doing that for years. Just in case someone suggests that our jails are overflowing with non-violent prisoners, this is also untrue. Our jails are filled with prisoners who should not have been sentenced to local jail when they should have been sent to state prisons. Because of

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the Prison Reform Package, written by my ADA, Sarah Hart, fourteen hundred prisoners have been transferred to where they properly belong., or released on strict supervision, including electronic home monitoring which supposed to be tamper proof and which is monitored 24-7.

What we really need is thousands more of these electronic bracelets. Perhaps you can see to it that we get a grant to achieve that and the probation officers or pre-trial service officers to effectively monitor these people.

Early Plea Offers

Another way to achieve a false sense of crime dropping, when it isn't, while, at the same time, increasing "conviction rates" is to offer early plea agreements. What a windfall for defendants. As I alluded to earlier, the conviction rate is directly proportional to the leniency rate of the plea offer. Cheapen the crime, get more convictions, look like you're a "real" crime fighter, or that you are "smarter" on crime, when what you are really doing is selling out victims and their rights to be fully heard in court, for a "box score." Personally, this is exactly what a prosecutor should never do. Instead, plea bargains are to be offered only after the entire case is investigated and should be based, not on a desire to "dispose of cases" which is what the judges have been doing, and offer a plea bargain on what the case truly is, not on a desire to get a "win." Sure, it is expedient, but that is not why the people elect their prosecutors. Here again, it lowers the crime rate falsely, because a plea bargain to get an early acceptance, must necessarily be low enough to get the defendant to accept it without requiring the Commonwealth to be put to its proof. Voila! Instant conviction, but for a much reduced sentence to gain a "conviction."

This is precisely why we have, and still are using, the Federal Courts to incarcerate local criminals, because the local judges won't do what is demanded of them. Now we face the distinct possibility that the local prosecutor will join the judges, even as the police and the FBI join in the pursuit of longer prison sentences. This lessens, not enhances the regard that victims have for "the system." Why bother, victims will think, the prosecutor is only going to plea bargain my case away. This approach when coupled with "charge bargaining" is a slippery and dangerous slope to the degradation of the criminal justice system, in favor of the merely expedient criminal justice system.

Where Else?

Cameras on the street?

Shot Spotters?

More Community Courts?

Advances in Forensic Sciences?

You name it, and I will, to the best of my ability answer these or any other questions to improve how we dispense justice

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Statement of Everett A. Gillison, Esquire
Deputy Mayor for Public Safety

Thank you for the opportunity to testify at this Senate field hearing "Helping Find Innovative and Cost Effective Solutions to Overburdened State Courts."

We live in the digital age. Technology is all around us. All manner of businesses take advantage of the latest technical innovations to increase production, save money, improve operations and operate more efficiently. It would be unimaginable for a corporation with a $1 billion budget and ten thousand employees to still rely on paper and pencil to process their transactions. But that is essentially what we do in the Criminal Justice System. The Public Safety portion of the City's budget is approximately $1 billion. Between the Police, the Courts and the Prisons, we employee approximately ten thousand people. But every day in the City's criminal court rooms transactions are recorded by hand on paper. That paper is then shuffled between different departments. It is no surprise that mistakes are made and errors occur. I don't want to give a false impression, however. Our Criminal Justice partners do utilize technology. But this technology is, in many instances old, not adequately interfaced, and many essential court functions are not automated. This makes the system vulnerable to mistakes.

Increases in the use of technology will help our overburdened state courts. Clearly, a lack of available resources is the impediment to having our systems modernized and adequately networked so that work flow and essential processes are automated. Local governments are already overburdened and unable to make the technology investments that are critical to enhancing court efficiencies.

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Again, I do not want to give the wrong impression. Despite our collective lack of resources, the Criminal Justice Partners in the City have collaborated over the past 2 years to develop initiatives that have increased efficiencies in our state court system. In Philadelphia the various criminal justice system partners recognize the need to process cases as quickly as possible. One type of judicial proceeding that can impact overall System efficiency is a violation of probation or parole hearing. The need for a violation of probation or parole hearing results when a person is on probation or parole supervision and either fails to do something required of him or her while on supervision or does something not permitted under the terms of the supervision. The judge supervising the probation or parole is authorized to hold or detain the individual until the judge has had an opportunity to decide if a violation has occurred and, if so, what action to take or sanctions to impose. When a person is held on a violation of probation/parole (VOP), they are held on the VOP detainer and not eligible for bail. The problem is that there may be a significant period of time before the supervising judge is able to hold the VOP hearing and the individual will remain in county custody until the matter is heard. Many times the detention is for a minor violation for which the judge will not impose a significant period of jail time. Often, however, a significant period of time has already passed before the violation of probation hearing can even be held. The delay can be because of a number of factors not the least of which is crowded court dockets. Another factor resulting in significant time elapsing before an individual's VOP hearing can be heard is when the supervising judge has been moved to a different court division. When a judge is assigned to

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the criminal trial division, they have cases listed virtually every day often in the same courtroom in the Criminal Justice Center. However, when a judge has been assigned to a different division of the court such as the civil trial division it is necessary to specially schedule the VOP hearing. Usually, VOP hearings before judges not assigned to the criminal trial division are given longer dates for two reasons: first, the particular judge needs to be able to schedule around their existing schedule in the other division and, second, there needs to be an available courtroom in the Criminal Justice Center. Often judges who have a number of open VOP matters but are assigned to a different division will understandably prefer to list as many of these matters as possible at the same time. Working with the various criminal justice agencies, the First Judicial District began a program in February of 2009 which allows for the VOP hearings of judges not sitting in the criminal trial division to be reassigned to one judge. Violation of probation hearings for less serious or technical violations of probation are also scheduled before that same judge. The program is called the Accelerated Violation of Probation Program (AVOPP).

The criminal justice partners also sought to address another factor effecting System efficiency - that of multiple holds. Often when an individual is in custody in the Philadelphia Prison System it is for more than one reason. A person may have been recently arrested on a new offense and is unable to make bail. A person may be in custody for a violation of probation. A person may be in custody on a new offense for which he or she was unable to make bail while on bail for an earlier offense. It is not uncommon that there is more than one matter that results in the

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incarceration of an individual. The challenge this creates for the criminal justice system and especially the prisons is that each of the matters "holding" an individual usually has to work its way through the system on its own timeframe. This could result in even longer delays than for single holds. It is often the case that resolving one matter is dependent upon resolving the other. In an effort to begin to address the problem of multiple holds a protocol was developed to identify individuals with more than one open matter with a view towards consolidating them for one date before one judge. Court Administrators review files prior to the first listing in the Court of Common Pleas called arraignment. By checking the Common Pleas Case Management System (CPCMS), they can determine what other matters an individual has in the system. If the individuals have more than one matter, they will be listed before the appropriate pretrial judge. In addition, assigned court administrators have a view towards consolidating matters that are already in the Common Pleas system whenever possible. This program is called Advanced Review and Consolidation (ARC).

Another initiative, the Police Integrated Information Network, or PIIN, creates efficiencies System wide. The prosecuting attorney is required by law to turn over or make available to the defense various reports and other documents referred to as discovery. One can imagine that this can become a difficult task when one considers that there are about 40,000 Municipal Court and 15,000 Common Pleas Court cases each year. All of the agencies involved were literally handling piles and piles of paper on a daily basis. Rarely will a criminal case proceed to completion until all of the required paperwork has been turned over to the defense. Not doing

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so results in delay in court processing time. The paper system was extremely labor intensive for all of the criminal justice agencies and generated huge storage costs. In addition, with all of the effort put into it, the process was extremely inefficient at getting the paperwork where it needed to be. Cases were frequently continued to another date and sometimes even dismissed or otherwise hampered by discovery problems. Generally, cases would not be disposed until the discovery was provided to the defense attorney. There needed to be a more streamlined process to turn over the necessary discovery. PIIN, an electronic system designed to create and transfer discovery documents, was implemented in April 2009 and has remedied the problems associated with the old paper system.

An additional efficiency that I'd like to mention is the implementation of video technology in our courts. Every day literally hundreds of inmates are transported to the Criminal Justice center for trial or other hearing. Often the matters for which inmates were brought to the Criminal Justice Center are given another date for which the inmate would be transported again. With the assistance of our Criminal Justice partners we have begun the use of video technology to eliminate the need to transport inmates from their facility of confinement to the Courts. An increased use in video technology will not only result in costs savings as a result of reducing inmate transportation, but we will also realize an increased disposition of cases.

I've highlighted some of the projects that we have implemented that resulted in efficiencies in our court system to show that the Criminal Justice partners work collaboratively to improve our system, but to also underscore the extent to which technological advances can yield enormous improvements. The Federal

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Government needs to make resources available to state court systems to allow them to upgrade and modernize their technology infrastructure. These technology improvements will improve the efficiency with which the courts are able to process and dispose of cases.

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Defender Association of Philadelphia

Testimony before the Senate Judiciary Committee
Subcommittee on Crime and Drugs

Constitution Center, Phila., PA
May 3, 2010

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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