

COMMONWEALTH OF PENNSYLVANIA

HOUSE OF REPRESENTATIVES

HOUSE JUDICIARY COMMITTEE

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In the matter of: :
:
SENTENCING PRACTICES AND :
:
PROCEDURES IN DEATH PENALTY :
:
CASES :
:
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Pages 1 through 122

James C. Crumlish En Banc
Courtroom
Philadelphia, Pennsylvania

Thursday, August 21, 1986

Met, pursuant to notice, at 10:00 a.m.

BEFORE:

- H. WILLIAM DeWEESE, Chairman
- GERARD A. KOSINSKI, Majority Member
- JOHN CORDISCO, Majority Member
- KEVIN BLAUM, Majority Member
- ROBERT D. REBER, JR., Minority Member
- ANDREW J. CARN, Majority Member

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02-04-006

ALSO PRESENT:

**MICHAEL P. EDMISTON, Chief Counsel,
Judiciary Committee**

**JOHN J. CONNELLY, JR., Special Counsel,
Judiciary Committee**

**PAUL DUNKLEBURGER, Minority Staff,
Research Analyst**

WILLIAM FAULHABER, Ph. D, Judiciary Committee

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P R O C E E D I N G S

1
2 CHAIRMAN DeWEESE: This is the 21st of August
3 House Judiciary Hearing in Philadelphia. We are going to
4 commence.

5 My name is Bill DeWeese. I am from Greene County.
6 To my left is Mr. Reber from Montgomery County. I am hopeful
7 that we will anticipate the arrival of several more members.

8 My Chief Counsel, Mike Edmiston is to my right.
9 John Connelly, Special Counsel is in the room or will be here,
10 was here a minute ago.

11 We are anticipating Paul Dunkleburger from the
12 Minority side. We are anticipating an educative experience.
13 We are trying to learn why more people seem to be on death
14 row, why there are more capitol punishment situations in
15 Philadelphia than there are in Pittsburgh and there are in
16 other parts of the State.

17 So without any further ado, I am going to call on
18 William G. Babcock, Executive Director of Pennsylvania
19 Prison Society.

20 We have allowed about fifteen minutes for
21 presentation and about fifteen minutes for questions and
22 answers.

23 I am going to try to expedite that, since these
24 people wouldn't let us in the courtroom until 10:00 on the dot.
25 If you can give us about ten or twelve minutes and then ten or

1 twelve minutes.

2 We are going to shave five or eight minutes on each
3 guy and gal, if we can.

4 Thank you and welcome.

5 Whereupon,

6 WILLIAM G. BABCOCK

7 having been duly called, testified as follows:

8 DIRECT TESTIMONY

9 MR. BABCOCK: Thank you. I would like to thank
10 Chairman DeWeese for calling this session today. Let me just
11 preface my remarks by saying that I am in no way an expert
12 on legal representation in death penalty cases, but the Prison
13 Society has been made aware of some of the problems in this
14 area and most of what I have to say today is basically a
15 distillation of information that I have received from several
16 sources around the State.

17 It is clear that the death penalty in Pennsylvania
18 is a reality. While no one has yet to be electrocuted under
19 the post Ferman Death Penalty Statute, there are currently
20 approximately eighty men incarcerated in the State and county
21 institutions in Pennsylvania under the sentence of death.

22 The legislature has recently expanded the death
23 penalty by adding two additional aggravating circumstances to
24 the statute.

25 Thus whether or not one supports the concept of the

1 death penalty, the fact is that Pennsylvania will soon be
2 electrocuting people.

3 I believe it is fair to say that whether we
4 support the death penalty or condemn it, we all support the
5 constitutional requirements of due process and fundamental
6 fairness.

7 Basically the American criminal justice system gives
8 the accused the right to a fair trial. At no time does that
9 become more urgent than in the situation where the accused, if
10 found guilty, may suffer the ultimate penalty.

11 Even those who most adamantly support the death
12 penalty, do not want to electrocute an innocent person or even
13 one who may be guilty of a crime, though not the crime of
14 capitol murder, as defined in the Pennsylvania Statutes.

15 To insure that only those who are intended to be
16 executed are executed, to prevent the electrocution of those
17 who are not guilty of capitol murder, the State must insure
18 that each capitol defendant is provided with due process.

19 Paramount among the due process standards of our
20 criminal justice system is the Sixth Amendment right to be
21 represented by competent counsel.

22 This is an area in which we believe that
23 Pennsylvania can improve its performance, both at the trial and
24 appellate levels.

25 Other speakers today will be testifying on the need

1 for representation at the appellate level and I will try to
2 concentrate this morning on the need for better representation
3 at the trial level with some emphasis on Philadelphia County.

4 According to an article written by Stu Shuman of
5 the Pennsylvania Coalition for the Abolition of the Death
6 Penalty, as of October 1st, 1985, there were seventy-five
7 people under sentence of death in Pennsylvania

8 Of that number, only one came from Allegheny
9 County, while more than thirty were from Philadelphia.
10 Obviously, one has to ask what explains such disparity.

11 The one variable that clearly differs between the
12 two counties is the quality of representation afforded the
13 defendants at the trial level.

14 In Pittsburgh, the Defender's Office has
15 established litigation training and support program,
16 specifically designed to provide a strong defense in capitol
17 cases.

18 Legal briefs, motions and other forms applicable
19 to death penalty defense have been fully correlated and
20 computerized.

21 In addition, extra witnesses have been identified
22 and are available to testify. Furthermore, the Defender's
23 Office in Pittsburgh receives technical assistance from the
24 Allegheny County Death Project at Duquesne University Law
25 School.

1 Finally, and perhaps most importantly, the
2 Defender's Office assigns two lawyers to every homicide case.
3 One whose responsibility is the trial and in the event the
4 defendant is found guilty, the second attorney is responsible
5 for the penalty phase.

6 In the manual trial of the penalty phase, a matter
7 of life or death, the Southern Poverty Law Center emphasises
8 the importance of two attorneys in that situation.

9 The penalty phase of the capitol trial is like no
10 other proceeding in our entire legal system. In order to give
11 a jury a reason not to kill, a lawyer must conduct the most
12 extensive background investigation imaginable, working with
13 every aspect of the client's life from birth to present.

14 In almost every situation, it will be useful to
15 have the defendant evaluated by a competent private psychologist
16 or psychiatrist.

17 A good background investigation will help find
18 that all important reason to make the jury spare the defendant's
19 life.

20 Failure to make the investigation will seal the
21 defendant's fate. So for the above reasons, the American
22 Bar Association's standards require the appointment of two
23 attorneys in all capitol cases.

24 The situation here in Philadelphia is different.
25 While the Defender's Office is assigned to represent indigent

1 defendants in misdemeanor and felony cases, those indigents
2 charged with homicide are appointed counsel from the private
3 bar.

4 According to my most recent conversation with the
5 appointment clerk for the Board of Judges in Philadelphia, the
6 following are the standards that must be met for certification
7 of an attorney who seeks appointment in homicide cases in
8 Philadelphia.

9 First of all, they have to maintain an office in
10 Philadelphia. Secondly, they have to be regularly engaged as
11 trial counsel in criminal cases, either in State or Federal
12 Court.

13 Third, within the last three years they must have
14 tried at least five criminal jury trials in the State or
15 Federal Court and/or ten criminal nonjury trials.

16 Now, these local court rules make no distinction
17 between potential capitol cases and other homicide cases and
18 they provide for appointment of only one and not two attorneys.

19 Furthermore, the standards are significantly low
20 in comparison to other jurisdictions. A Philadelphia lawyer
21 can be certified for appointment to a capitol murder case if
22 in the previous three years he or she has tried only ten
23 nonjury misdemeanor cases in Philadelphia Municipal Court
24 under those standards.

25 Trials in Philadelphia Municipal Court are almost

1 always nonjury. How does this compare with other jurisdictions?
2 First of all, let's look at the standards within the Defender's
3 Office in Philadelphia.

4 Before trying any jury cases, and these obviously
5 are nonhomicide cases that the Defender's Office handles, they
6 must spend a minimum of one and one-half to two years in the
7 full-time practice of criminal law.

8 Even then, they normally begin with jury trials in
9 misdemeanor cases that have been appealed from Philadelphia
10 Municipal Court.

11 Only after several years of full-time experience
12 under intensive supervision is a public defender assigned to a
13 serious felony case, even below the homicide level.

14 The following are some standards from other
15 jurisdictions. In Massachusetts, the standards contemplate
16 that for a capital case, and indeed for all first and second
17 degree murder cases, counsel must have at least five years
18 criminal litigation experience, must have been lead counsel
19 in at least ten prior jury trials of serious and complex cases,
20 at least five of which must have been life felony indictments
21 and must be experienced in utilizing expert witnesses, including
22 psychiatrists.

23 The American Bar Association standards go even
24 further in requiring not only substantial trial experience but
25 also, as I mentioned earlier, requiring the appointment of two

1 attorneys in all capitol cases.

2 In Ohio, death penalty cases, no fewer than two
3 attorneys may be appointed for each defendant. Lead counsel
4 must have at least three years litigation experience, together
5 with prior experience, either as lead counsel in a death
6 penalty case, as co-counsel in two death penalty cases, or
7 is lead counsel under other equivalent specified circumstances.

8 In Alabama, Lousiana and South Carolina, they
9 all require a minimum of five years experience. In Lousiana
10 and South Carolina an attorney with less experience may be
11 assigned only as an assistant counsel in a death penalty
12 case.

13 And in the United States District Court for the
14 Eastern District of Pennsylvania here in Philadelphia,
15 attorneys eligible for appointment are divided into panels.

16 In order to serve on the first panel from which
17 attorneys are chosen for all felony cases and also for serious
18 or complex misdemeanors, an attorney must be regularly engaged
19 as trial counsel for a minimum of three years preceding the
20 application for panel membership.

21 Now, all of this is not to suggest that every
22 attorney who is appointed in a capitol case in Philadelphia
23 meets only these minimum standards which have been established
24 by the local court rules.

25 We would submit, however, that many experienced,

1 able criminal defense lawyers in Philadelphia will not bother
2 to seek certification in appointment in death penalty cases
3 or homicide cases in general, simply because of the fees
4 which have been established by the court.

5 Currently, attorneys are compensated at the rate
6 of \$50 an hour for cases that go to trial. I have spoken with
7 at least one criminal attorney in Philadelphia who told me
8 that he no longer seeks appointments in homicide cases simply
9 because at the rate of \$50 an hour, he would be losing money.

10 Even in those cases where experienced criminal
11 lawyers are appointed, there are other systemic restraints
12 which prevent the quality of representation needed.

13 First, there is no adequate capitol case litigation
14 support center in Philadelphia comparable to the branch of the
15 Defender's Office in Pittsburgh.

16 Second, as previously mentioned, only one and not
17 two attorneys are appointed in each case. And, finally,
18 Philadelphia homicide judges generally allot \$150 for defense
19 investigators, psychiatrists and other expert witnesses.

20 As a result many attorneys and defendants' families
21 are saddled with the responsibility of doing much of the case
22 and penalty phase investigation themselves.

23 Now, based upon these observations, we would make
24 at least two possible recommendations or present two options.
25 One option, obviously, would be the expanded use of the

1 Defender's Office in Philadelphia to include appointment in
2 homicide cases, where we would anticipate that they would
3 develop a death penalty litigation branch similar to what has
4 happened in Allegheny County.

5 Another option would be to establish a statute
6 and possibly by amending the current death penalty statute.
7 Minimum qualifications, such as those that have been established
8 by the ABA, including the appointment of two attorneys in each
9 case, for any cases in which attorneys must be appointed for
10 capitol defendants.

11 Such legislation, I think, also should include
12 a prevailing rate of compensation and provide for adequate
13 funding, perhaps by the State, for both attorneys and expert
14 witnesses.

15 There will be other speakers to talk about other
16 recommendations for other portions of the process. I am
17 available for questions.

18 The Prison Society is available for whatever
19 technical assistance we can provide to the Committee.

20 CHAIRMAN DeWEESE: Thank you.

21 Bob Reber, do you have any questions?

22 REPRESENTATIVE REBER: Just one.

23 When you suggested that the possible legislation
24 could be implemented to provide for compensation for counsel
25 as well as for expert witnesses, do you have any kind of handle

1 on past experience with the number cases that might fall under
2 that category, what kind of dollars and cents we are talking
3 about?

4 The reason I ask that question, we have a difficult
5 time getting a \$2 million State appropriation for legal aid.
6 I can see the (word inaudible) that I am going to run into
7 before the House when I advocate again taking Commonwealth
8 General Fund monies to pay for, specially the penalty phase
9 of convicted murders.

10 MR. BABCOCK: I recognize that difficulty. I do
11 not have the figures available. I suspect either other
12 speakers today or I can try to get them for you and submit
13 them to you at a later time.

14 REPRESENTATIVE REBER: It might be of some help
15 for staff if they had a ballpark figure at least to work from.

16 MR. BABCOCK: Yes, I can do that.

17 REPRESENTATIVE REBER: Thank you.

18 Thank you, Mr. Chairman.

19 CHAIRMAN DeWEESE: Sure.

20 Counsel, questions?

21 MR. Mr. Babcock, the appointment
22 process, locally, you have made some reference to the
23 qualifications.

24 Have you had much of an opportunity to discuss
25 beyond the one counsel that you mentioned, the impact of

1 the (word inaudible) availability on the inclination to
2 self-declare eligibility (words inaudible)?

3 MR. BABCOCK: I have had conversations with a
4 small number of attorneys, two or three attorneys. Generally
5 what they are saying is that the process--I guess less
6 experienced attorneys are more often involved simply because
7 that is--they are able to work for less money and it is a good
8 way to start out when you are first out of law school to get
9 appointments, to get your practice going.

10 I can't give you an exact figure of how many
11 attorneys, you know, first of all the definition of experienced,
12 per se, but how many of those have just simply said, no, I
13 am going to opt out of this situation.

14 MR. : If you were to characterize
15 the hourly rate for that kind of case, are you comparable
16 in characterizing it comparatively as a percentage of what
17 counsel might receive in a private representation?

18 MR. BABCOCK: Well, counsel I spoke to was
19 charging at least \$150 an hour.

20 MR. : So it is approximately one-third?

21 MR. BABCOCK: Yes.

22 CHAIRMAN DeWEESE: No further questions. I have
23 your testimony and we are grateful for your being here today.
24 Thanks, Mr. Babcock.

25 MR. BABCOCK: Thank you.

1 (Witness excused.)

2 CHAIRMAN DeWEESE: Next individual to share some
3 testimony, Benjamin Lerner, Chief Public Defender, Defender's
4 Association of Philadelphia.

5 Welcome.

6 Whereupon,

7 BENJAMIN LERNER

8 having been duly called, testified as follows:

9 DIRECT TESTIMONY

10 MR. LERNER: Good morning.

11 CHAIRMAN DeWEESE: I am Bill DeWeese; Bob
12 Reber, our counsel. I want to say Gwen Miller of our staff
13 and Amy Nelson of our staff, make sure everybody knows who we
14 are up here from Harrisburg.

15 MR. LERNER: Thank you, Representative DeWeese.

16 CHAIRMAN DeWEESE: Yes, sir. I am Bill DeWeese.

17 MR. LERNER: I appreciate the opportunity to
18 appear before your committee today. As you know and as you
19 have heard a hundred times and will hear a thousand times more
20 before the morning is over, that the Defender's Association of
21 Philadelphia does not handle homicide cases as a general rule.

22 So perhaps I really have no reason to be here and
23 no information whatsoever that will be of any help to you.

24 CHAIRMAN DeWEESE: You never handle them?

25 MR. LERNER: We have on rare occasions in particular

1 cases been specially appointed to handle homicide cases.
2 But in Philidelphia, the practice has been, dating back for as
3 long as there has been a Defender Association, that indiqents
4 charged with homicide are represented by counsel appointed from
5 the private bar.

6 Their names appear on various court appointment
7 lists that the individual judges keep. As you have heard,
8 and will hear again, and I will actually talk a little bit
9 about it later myself, there is very little, virtually nothing
10 in the way of qualifications to enable a particular lawyer
11 to get on a particular judge's homicide appointment list.

12 Generally, the only qualification is that that
13 particular judge be willing to put you on his or her homicide
14 list.

15 What I thought I might be able to talk about
16 which might be of some help to the Committee is to outline for
17 you very briefly, first of all, the kind of training and
18 supervision program that the Defender Association uses for
19 our new lawyers who handle misdemeanor cases and felony cases
20 and everything inbetween, up to but not including homicides.

21 You might find it helpful to contrast that with
22 what you will hear about the training or lack of training or
23 qualifications or lack of qualifications for people who were
24 chosen in Philadelphia to handle homicide cases.

25 Secondly, since I recently completed a two-year

1 term as the president of the National Legal Aid and Defender
2 Association, which is the national organization that represents
3 both public defender and civil legal services offices around
4 the country, I thought I could give you a very quick overview
5 of some of the things that are being done in other parts of the
6 country with regard to death penalty representation and then
7 I would be happy to be available for any questions that you
8 might have that I might answer, particularly as pertains to
9 the situation in Philadelphia and why the Defender Association
10 historically hasn't been asked to handle homicide cases.

11 Let me turn to our own training program first.
12 Our office represents about seventy percent of the nonhomicide
13 criminal defendants in the Philadelphia courts.

14 We get all of our cases by way of court appointment
15 that is, it is the court that decides whether a particular
16 client is eligible for our services, not our office.

17 We are appointed in most of our cases at the very
18 beginning of the case. As you may know, Philadelphia has a
19 twenty-four hour preliminary arraignment court that operates
20 around the clock at the Police Administration Building.

21 We staff that court twenty-four hours a day, seven
22 days a week. People who are arrested are taken there within
23 hours after they are arrested for a preliminary arraignment.

24 One of the things that the Bail Commissioner who
25 presides at that preliminary arraignment does is to make a

1 determination as to whether or not the--any particular
2 defendant qualifies for appointed counsel, and if so, whether
3 the Defender Association should be appointed.

4 That determination is subject to review by other
5 court administration officials and by judges later on in the
6 process.

7 But the fact is that we get most of our cases at
8 that early stage in the proceeding and we represent defendants
9 all the way through pretrial, trial, post conviction proceedings
10 where they are appropriate and where appeals are appropriate.

11 We represent juveniles and adults. As I said
12 earlier, we do everything from fairly trivial summary and
13 misdemeanor cases through very, very serious violent felony
14 cases.

15 Most of our lawyers are hired either right out of
16 law school or maybe with a year or so of clerking experience.
17 Although, law schools do a lot more than they used to do in
18 terms of clinical education and trial skills, they come to us
19 really raw, green, new, however you want to put it.

20 We start them off with a three-week classroom
21 training session during which we try to teach them not only
22 about how our office and the Philadelphia Criminal Justice
23 System is organized, but also we give them a crash course in
24 some areas of Pennsylvania Criminal Law and Criminal Procedure
25 which will be most relevant to their work.

1 We also have a trial advocacy training component
2 part of this program. In that part of the program, we in effect
3 make up scripts based on real cases.

4 We have lawyers from our office playing the role of
5 judge, prosecutor and witness and our new lawyers do examinations,
6 cross-examinations and arguments in simulated courtroom
7 settings.

8 They are video taped and their work is critiqued
9 both in groups with the other new lawyers present and then
10 individually in one on one sessions by the trainers.

11 The trainers in our office consist of some of our
12 supervisory people and some of our senior trial lawyers. We
13 are fortunate in Philadelphia that we have a Defender's Office
14 with very experienced trial staff.

15 Most of the lawyers on our staff have been with
16 us seven, eight years, some as many as fifteen years, doing
17 pretty much criminal defense work exclusively.

18 So we have a substantial reserve of experienced
19 trial lawyers and trainers that we can draw on. After the
20 training program is completed, we start to break our new
21 lawyers in to a rotation which generally takes them from the
22 least serious and demanding assignments, interviewing clients,
23 for example, representing people at bench warrant hearings and
24 then preliminary hearings.

25 We gradually take them through a process which at the

1 end of two to two and a half years we will have them trying
2 for the first time, serious felony cases and jury cases.

3 Every time one of our new lawyers graduates, so
4 to speak, to the next step in our system, every time he or she
5 makes their first couple of appearances in municipal court,
6 their first couple of appearances in preliminary hearings or
7 in juvenile court or in the Philadelphia Felony List Room
8 Program, they are supervised very closely by one of the
9 supervisors in that unit or by one of the senior trial lawyers
10 who is in a sense broken out from their regular trial rotation
11 for a period of three to four months to assist in this trial
12 training work.

13 By supervision, what I am referring to is a senior
14 lawyer or supervisor will sit down with the new lawyer, go
15 over his or her cases, make sure they understand what is in the
16 cases, make sure they understand what the most fruitful method
17 of proceeding might be.

18 The senior lawyer or the supervisor will then
19 observe the new lawyer in court and will critique and review
20 the new lawyer's performance with that lawyer after court is
21 over.

22 That is done, as I say, at least the first couple
23 of rotations that each one of our new lawyers has in the new
24 program.

25 Obviously, as the lawyers get more experience and

1 more comfortable, they need less and less everyday supervision.
2 We supplement that kind of training for our new lawyers with
3 a regular course of seminars for all of our staff.

4 Some of the seminars are geared toward the entire
5 staff. Some of them focus on recent developments in the law.
6 Some of them focus on particular segments of the staff.

7 For instance, if we have a seminar that focuses on
8 cross-examination or scope of cross-examination in a preliminary
9 hearing, we will make that seminar mandatory for the people
10 in the office who are doing the most preliminary hearing work
11 at that time and discretionary for the other lawyers.

12 But all of these seminars which we hold about
13 eight, nine months out of the year, on the average of once a
14 week, are generally very well attended.

15 Most of the training is done by people on our own
16 staff, although, we do use outside experts when appropriate,
17 particularly when we are dealing with recent developments in
18 evidentiary law and in matters of scientific interest.

19 For instance, when the new breathilizer began to
20 be used in the Philadelphia courts, one of the police
21 breathilizer experts came to our office to give us a seminar
22 with the new units.

23 As I say, with that kind of training, it still takes
24 a new lawyer in our office between two to two and a half years
25 before that lawyer is going to be given his or her first chance

1 to handle serious felony cases and jury trials.

2 We also are able to provide our staff, new lawyers
3 and experienced lawyers alike, with a good range of support
4 services.

5 We have a full-time staff of investigators here.
6 Most of our investigators were former Philadelphia police
7 officers, so they know the city, they know the criminal
8 justice system and they know how to find witnesses, and they
9 know what to look for in a criminal case.

10 We have a social services staff that helps in
11 diagnosis and evaluation of clients that have drug or alcohol
12 problems or various psychiatric or psychological problems and
13 that social work staff is particularly valuable to us in
14 sentencing proceedings.

15 Frequently, judges have told me that the social
16 worker working with one of our clients and diagnosing a
17 particular problem and making a recommendation for treatment
18 in a program, either inpatient or outpatient, has meant the
19 difference in that judge's mind between a sentence of
20 probation with a mandatory program attached to it on one hand
21 and a substantial jail sentence on the other hand.

22 We think that is not only beneficial to our
23 clients but also of great benefit to the system, obviously,
24 because it means that people with problems are going to get
25 treated for those problems, thus increasing their chances of

1 rehabilitation.

2 It means also, quite frankly, that the State is
3 going to be spared the substantial expense of incarcerating
4 somebody to provide treatment which could be provided better
5 and equally safely on the outside.

6 As I said, you will be able to contrast that
7 kind of training program and those kind of support services
8 with what you have been hearing and what you will continue to
9 hear with regard to the resources available and the training
10 available to lawyers in Philadelphia who are called upon to
11 provide representation to indigents charged with the most
12 serious felonies, our homicide cases.

13 I know from my own National Legal Aid and Defender
14 Association experience that gradually throughout the country,
15 and in some places faster than others, there is a movement
16 towards recognizing even in the states which are considered
17 the heaviest law and order states and which traditionally
18 have the most number of people on death row, there is a
19 tendency towards recognizing that it takes particular training,
20 particular skill, to try homicide cases and particular capital
21 cases, and that lawyers involved in those kinds of cases need
22 some support services, some specialized support services in
23 the investigative social service and psychiatric area if they
24 are going to provide even basically effective representation
25 as required by the Sixth Amendment.

1 NLADA and the National Association of Criminal
2 Defense Lawyers and other organizations that are particularly
3 interested in the defense of people charged with crime, have
4 focused largely in the last several years on providing
5 specific hands on training for groups of lawyers throughout the
6 country, training that includes both advocacy skills and
7 things that are more specific to this kind of representation;
8 for example, how to put on a penalty hearing for a defendant
9 who has been convicted of first degree murder and for whom a
10 jury will soon be making literally a life or death decision.

11 The best legal talent in the country in the
12 criminal defense area, is generally available to provide this
13 kind of support service frequently at virtually no cost or
14 very minimal cost, particularly to people who are representing
15 indigents.

16 I participated in or observed conferences like
17 this throughout the country. One thing that has always struck
18 me is, you can go to (word inaudible), Virginia or Atlanta or
19 California or Chicago or Texas or Washington, D.C. and you can
20 see the best lawyers in the country training lawyers from that
21 area on how to represent, properly represent people who are
22 on trial for their lives, but you can come to Philadelphia over
23 the past several years and you will see virtually nothing
24 like that.

25 CHAIRMAN DeWEESE: Why? Why?

1 MR. LERNER: I am afraid that there are--the main
2 reason for that is that there--first of all, there are no
3 mandatory standards for counsel to get on these appointment
4 lists, and secondly, there hasn't been very much interest
5 on the part of the court or the elected city government here.

6 This goes back several administrations with one
7 notable exception, I think, in providing good representation
8 in these kind of cases and there is no pressure on these
9 lawyers to do that, to get that kind of training.

10 They don't need it to get on the appointment list.
11 It doesn't matter, to put it bluntly, how well or how poorly
12 they do.

13 Whatever got them on a judge's appointment list
14 in the first place is going to continue them on that judge's
15 list, no matter what kind of reputation they build or don't
16 build as a trial lawyer.

17 I am afraid that we have a system that, although
18 there are notable exceptions to this, doesn't necessarily
19 encourage the best, the brightest or the most committed of
20 our criminal defense lawyers to go and do what is necessary
21 to get on these lists.

22 Now, it is also clear to me that compensation is a
23 problem. Compensation in court appointments in Philadelphia
24 as well as in many other places, has been woefully inadequate.

25 People don't expect to make a good living out of

1 court appointments, generally, not most of the lawyers that I
2 know, at least the ones that are good enough to make a living
3 on their own, and they are willing to take some financial
4 sacrifices, often substantial financial sacrifices.

5 When the sacrifice gets too great to a point where
6 the lawyer actually winds up losing money if he or she has a
7 decent practice by taking an appointment, that is something
8 you are generally not willing to do more than once or twice.

9 Philadelphia has taken some steps in that area.
10 As of July 1st of this year, we put in a new court appointment
11 fee schedule and we have pretty much doubled the rates.

12 In homicide I think now as of July 1st, it is
13 \$50 an hour for court time and \$40 an hour for out of court
14 time.

15 That is much better than it was, but it still
16 isn't very much for the kind of work that is necessary to do
17 an adequate job in a homicide case.

18 I don't think there is only one way to provide
19 this kind of representation effectively. But I think whether
20 you provide it by way of an organized program like a
21 defender office or some kind of homicide defense organization
22 or capitol punishment defense organization, or whether you
23 try to continue to provide it exclusively through appointing
24 lawyers from the private bar.

25 There are certain minimum things that must be done

1 if that representation is going to be anything but counsel in
2 name only.

3 Those things include substantial minimum
4 qualifications for trying homicide cases, which include
5 standards, both based on experience in prior trials and
6 specific training relating to the trial of homicide cases
7 and particularly capitol cases.

8 Those minimum requirements include adequate
9 support services, funds for investigators, funds for expert
10 witnesses, a forensic psychiatrist where necessary, a chemist
11 who can analyze blood stains, finger print expert perhaps. The
12 whole range of expert witnesses who are available for the
13 Commonwealth in appropriate cases need to be available to
14 somebody who is representing a person who is on trial for his
15 or her life.

16 Finally, I think that we need a system that
17 depoliticizes the placing of lawyers on various judge's
18 appointment lists.

19 If we are going to continue to rely on court
20 appointed lawyers, we need some central authority outside the
21 control of any individual judge operating under the authority
22 of the Chief Justice or President Judge of the court, operating
23 under certain defined standards which can make the decision
24 as to what lawyers ought to be on this list and what lawyers
25 aren't ready for this list and what lawyers who are on the list

1 have performed in a way that justifies their staying on the
2 list and what lawyers ought to be removed.

3 We don't have any of that in Philadelphia. In
4 the eleven years that I have been the Chief Defender of the
5 Philadelphia Defender Association, we have taken only the most
6 miniscule of steps toward achieving any of those goals.

7 I don't know, frankly, what the--your committee or
8 the State Legislature, how far they might be willing to go in
9 this area.

10 I understand, certainly, the difficulty of providing
11 enough reasons for State legislators to take money out of the
12 State budget and fund either trial programs, training programs,
13 Statewide appellate programs in this area or any area
14 involving criminal defense.

15 Believe me I know as well as any of us here how
16 unpopular that subject is. On the other hand, this is a
17 State which unlike many, many other states in the United
18 States, provides virtually nothing in the way of financial
19 resources for the representation of indigent defendants in
20 what is after all a State court system.

21 CHAIRMAN DEWEESE: You are on a national board,
22 what is the comparison of the other forty-nine states, roughly?

23 MR. LERNER: Many states have either a statewide
24 state funded or partially state funded defender system. Many
25 other states leave, while they leave the representation and the

1 funding of indigent defense systems at the trial level, the
2 counties or the localities provide a state funded, statewide
3 appellate system or a state funded, statewide post conviction
4 system.

5 There is a wide range of options, obviously, that
6 the state is free to choose and do choose throughout the
7 country.

8 But as Mr. Spangenberg will, I am sure, tell you
9 in greater detail, there has been more and more use of statewide
10 funding, either at the trial or more frequently at the appellate
11 level.

12 CHAIRMAN DeWEESE: Okay. Any further testimony
13 or some questions?

14 MR. LERNER: That is all I have. I would be
15 available for any questions.

16 CHAIRMAN DeWEESE: Okay, about ten minutes worth
17 of questions. We have a lot.

18 Kevin Blaum, State Representative from Wilkes-Barre
19 joined us on my right and Jerry Kosinski, State Representative
20 from here in Philadelphia joined me on my left.

21 Usually they are both to my right, but today they
22 are not.

23 Jerry, questions?

24 REPRESENTATIVE KOSINSKI: I wasn't here for your
25 whole testimony. Did you mention the Robinson case?

1 MR. LERNER: I didn't mention it by name, but
2 the Robinson case, for the members of the Committee who may
3 not have heard of it, is a case which is now on appeal before
4 the State Supreme Court.

5 A judge in Philadelphia appointed someone in a
6 capitol case who had been out of law school I think about ten
7 months at the time of her appointment.

8 REPRESENTATIVE KOSINSKI: Incorrect. Three years.

9 MR. LERNER: Well, however long she had been out,
10 she had done--

11 REPRESENTATIVE KOSINSKI: It is my law partner.

12 MR. LERNER: Well, she had done very, very little
13 representation in very serious felony cases. She tried the
14 case before another judge.

15 The jury returned a first degree verdict in a
16 capitol case, sentenced the defendant to death and the judge
17 on his own motion decided that he had serious problems with
18 the representation provided and relieved the trial lawyer of
19 representation, appointed another trial lawyer, who was very
20 experienced in trying homicide and capitol cases.

21 That lawyer argued post verdict motions. One of the
22 grounds that the lawyer was appointed to argue and did argue
23 was the alleged ineffectiveness of trial counsel.

24 The trial judge decided trial counsel had been
25 ineffective in several respects and granted a new trial. When

1 last I heard that case was pending before the Supreme Court.

2 REPRESENTATIVE KOSINSKI: What happened in the
3 Superior Court, sir, about ineffective assistance of counsel?

4 MR. LERNER: I don't know what happened in Superior
5 Court.

6 REPRESENTATIVE KOSINSKI: You don't know? Why
7 don't you read the brief?

8 CHAIRMAN DEWEESE: Wait a second, Jerry.

9 REPRESENTATIVE KOSINSKI: It wasn't ineffective.
10 Well, this is one of the points they are bringing up.

11 CHAIRMAN DEWEESE: Well, the degree of asperity
12 is not necessary in my opinion. I mean, we can get these
13 questions back and forth.

14 MR. LERNER: The point I would like to make about
15 this, and obviously I can't predict what the Supreme Court is
16 going to do with this case.

17 But we have a situation where regardless of the
18 outcome of the case, lots of judicial time, lots of money,
19 taxpayer's money, is being spent on additional hearings and
20 on appeals on this ineffectiveness issue, which is a significant
21 enough issue, regardless of how it ultimately turns out, so that
22 it has attracted a lot of legal resources, a lot of judicial
23 resources and a lot of attention.

24 I suggest to you that we would have much less of a
25 chance that things like this would happen if we had a better

1 system in Philadelphia for providing court appointed counsel
2 in these kinds of cases.

3 CHAIRMAN DeWEESE: Other questions?

4 REPRESENTATIVE KOSINSKI: Yes. I didn't hear
5 you bring up the same agrument of judicial time and money
6 when it came to the PCHA hearings.

7 That is sort of inconsistent.

8 MR. LERNER: No. I don't think it is inconsistent.

9 CHAIRMAN DeWEESE: PCAH?

10 REPRESENTATIVE KOSINSKI: PCHA hearings. We had
11 a hearing a couple weeks ago, the subcommittee, on crime and
12 corrections and the talk there was just the opposite.

13 MR. LERNER: I am not sure I understand your
14 point. It seems to me it is perfectly consistent. The better
15 you do it the first time, the less likelihood that you will be
16 having a substantial long, highly contested major PCHA hearing
17 the second time.

18 Now, that doesn't mean that you can stop people
19 or that you should stop people who are serving life or fifty
20 years from filing a PCHA, but the fact is that the judges
21 are not lying in wait looking to hold lengthy hearings or
22 grant PCHA's for inmates.

23 If the case has been tried well the first time
24 and the record reflects that, you have a much better chance
25 that those PCHA's will only need and will only get a very

1 summary disposition.

2 REPRESENTATIVE KOSINKSI: In death sentence cases,
3 isn't ineffective assistance of counsel usually argued?

4 MR. LERNER: It is not--it is frequently argued.

5 REPRESENTATIVE KOSINSKI: Very good. Even with the
6 paid attorneys?

7 MR. LERNER: It is frequently argued.

8 REPRESENTATIVE KOSINSKI: Okay. I just want to
9 correct something for the record. You were talking about an
10 attorney who did not have much experience with non--well, with
11 felony trials.

12 She happened to try the longest felony case in
13 history of the city.

14 MR. LERNER: I really don't see where that is--the
15 fact that you tried one long case is not a substantial amount
16 of experience or isn't any particular evidence at all with
17 regard to your experience in handling a capitol case.

18 REPRESENTATIVE KOSINSKI: And there was also some
19 political undercurrents in the case, too, that I would like the
20 Committee to realize that had to do with the judge who heard
21 the case and the judge who appointed the attorney.

22 So that is all I am going to say on that particular
23 case. Since I am not going to be here all day, I just wanted
24 to bring that up, to show that there is more undercurrents
25 than just ineffectiveness of counsel or to point this one case

1 out and say there are problems.

2 CHAIRMAN DeWEESE: Well, he didn't point it out.
3 You did.

4 REPRESENTATIVE KOSINSKI: Well, it is in the--
5 Shuman from his office, Stu Shuman paper that is distributed
6 to the Committee members.

7 CHAIRMAN DeWEESE: Okay.

8 REPRESENTATIVE KOSINSKI: It was also in the
9 testimony of the gentleman from the Pennsylvania Prison
10 Society.

11 So I am a one-man truth squad today.

12 CHAIRMAN DeWEESE: Anything else from the
13 gentleman from Philadelphia?

14 REPRESENTATIVE KOSINSKI: No.

15 CHAIRMAN DeWEESE: The gentleman from Wilkes-Barre?

16 REPRESENTATIVE BLAUM: One question.

17 The training that is done for these attorneys, how
18 is that funded?

19 MR. LERNER: That is funded out of our own office
20 budget. And we are able, from time to time, if we don't have a
21 big entering class, to do some training for other smaller
22 defense offices; for example, the Montgomery County Office is
23 going to send us a couple of their new lawyers this September
24 to participate in our training program.

25 But we--that is entirely funded out of our budget.

1 REPRESENTATIVE BLAUM: How much does that cost?

2 MR. LERNER: It is hard to say, because we are
3 using, as I said, virtually entirely people from our own
4 office.

5 I, frankly, never tried to break out the number of
6 hours that they spent doing this function. They all have other
7 duties and other responsibilities so they are freed up from
8 time to time.

9 We have one person in the office, in an office of
10 I guess about 130 lawyers, who is the director of training.
11 Her responsibility--her overall responsibility is to run this
12 training program, to supervise the weekly seminars that we
13 have and also to provide some central supervision of this one
14 on one supervision that I was describing.

15 But accept for that lawyer, all the other people
16 in the office who are participating in this have other trial
17 responsibilities, too.

18 I really couldn't tell you how much of their time
19 they spend on the training as opposed to their other duties.

20 CHAIRMAN DeWEESE: Mr. Lerner, you said that
21 you folks aren't involved very often in homicide cases, but
22 very rarely.

23 MR. LERNER: That is correct.

24 CHAIRMAN DeWEESE: And capitol punishment cases,
25 once in a blue moon?

1 MR. LERNER: Very occasionally. The way that
2 normally happens when it happens, and it has only happened
3 I think two or three times since I have been the Chief
4 Defender, is there are times when we are appointed to represent
5 somebody who was first charged with a nonhomicide offense.

6 For one reason or another, later on, out of the
7 same circumstances that lead to the original appointment or the
8 original charge, that person is charged with homicide.

9 If we have done a substantial amount of work on the
10 case and established an attorney-client relationship, I have
11 on rare occasions, specially requested the precedent judge
12 to appoint us in those cases.

13 CHAIRMAN DeWEESE: Just from a layman's point of
14 view, why is Philadelphia County different from Greene County
15 where I come from, Fayette County, Washington County, relative
16 to this?

17 I know why it is different. There is a multitude
18 of reasons.

19 MR. LERNER: I didn't know where you wanted me to
20 start.

21 CHAIRMAN DeWEESE: But give me a thirty second
22 synopsis of why we don't operate this way in Greene County
23 relative to the criminal justice system?

24 MR. LERNER: Well, obviously, we have a lot more
25 cases and a lot more lawyers and a lot more judges. That makes

1 a big difference.

2 CHAIRMAN DeWEESE: You alluded to--

3 MR. LERNER: Also, there is a historical reason
4 here. That will take more than thirty seconds, if you want me
5 to give it to you.

6 CHAIRMAN DeWEESE: You alluded to administrations,
7 not only the current administration, but several others, with
8 one notable exception.

9 Who was the notable exception?

10 MR. LERNER: During the Greene administration when
11 the present mayor was the managing director, the managing
12 director and finance director asked our office if we would
13 be interested in a program where for a year we would try a
14 certain percentage of the court appointed homicide cases and
15 then some study or evaluation could be made, comparing our
16 representation with representation in court appointed cases
17 from the point of view of cost and effectiveness and court
18 efficiency.

19 CHAIRMAN DeWEESE: That was done?

20 MR. LERNER: It wasn't done, even though it turned
21 out we could have gotten an LEAA grant for that and the
22 criminal justice coordinating commission here approved it
23 because the judges decided that they wanted the approval of
24 the Bar Association Board of Governors before the judges would
25 agree to back this program and appoint us in say, one third of

1 the appointed cases.

2 The Bar Association Board of Governors did not
3 provide that approval, to put it mildly.

4 CHAIRMAN DeWEESE: Mr. Babcock raised two options,
5 the statutory modifications and the expanded use of public
6 defenders wherewithall.

7 Which would be your option, or both? If you were
8 in our perverbal legislative shoes, what would you do in
9 Harrisburg?

10 MR. LERNER: I am uncomfortable, frankly, answering
11 that question. I think there is no doubt that our office has
12 the staff and the resources and the experienced lawyers to
13 handle these cases if the city or the State decides that they
14 want us to have a homicide unit and they want us to handle
15 these cases.

16 CHAIRMAN DeWEESE: How would it improve?

17 MR. LERNER: I think that we--I think that we would
18 provide--we could provide more experienced, better trained
19 lawyers with more support services than what we have on the
20 average now.

21 But on the other hand, I would not like to see a
22 system which totally cut out the private bar from part of the
23 responsibility in representing indigents, either in homicide
24 on in nonhomicide cases.

25 I think they are a very important element in the

1 criminal justice system.

2 CHAIRMAN DeWEESE: The last observation in the
3 form of a question. What--we are talking about funding, of
4 course.

5 What kind of funding is now available for you
6 folks from the State and what kind of funding would be needed
7 to make for a more idealistic yet workable system?

8 MR. LERNER: We get nothing from the State now.
9 Virtually all of our funding comes from the city of Philadelphia.
10 What we would need would depend on obviously how many cases
11 we were going to handle.

12 CHAIRMAN DeWEESE: Okay. We are only two minutes
13 behind schedule. That is all. Thank you very much.

14 MR. LERNER: Thank you.

15 CHAIRMAN DeWEESE: Next witness. Wait, wait,
16 wait. Belatedly, my Chief Counsel tells me he has a question
17 or two, belatedly.

18 MR. EDMISTON: I haven't been asked. I guess it
19 is belated.

20 Mr. Lerner, has there been any effort locally to
21 change the court rule by which we have attorneys in
22 Philadelphia making a certification and making themselves
23 available for appointments by individual judges, lately, any
24 changes?

25 MR. LERNER: Not any substantial effort as far as I

1 can tell. I mean, there were some--there was some modification
2 a couple years ago for the first time to put in some standards
3 with regard to the number of cases that lawyers had to try.

4 If you compare those standards, for instance, to
5 what they put in down in the Federal Court system on their
6 indigent defense program, or the standards that are available
7 at some other parts of the country, you can see that these are
8 not very meaningful.

9 MR. EDMISTON: Is there a local committee, a
10 committee of the local bar association, or for that matter
11 in conjunction with the courts, that develops criminal and
12 representational rules proposals?

13 MR. LERNER: The bar association has a standing
14 criminal justice section, which has, at least in theory, has
15 this as one of its functions.

16 But I don't think that section has been very
17 active in this area recently. I think there is a widespread
18 feeling, certainly on the part of the bar, that court really,
19 the local court really just hasn't been interested in making
20 very many changes in this area.

21 MR. EDMISTON: That is all.

22 CHAIRMAN DeWEESE: Okay.

23 Bob Reber, one more.

24 REPRESENTATIVE REBER: This is a followup on this
25 situation with the appointment process. How many judges, first

1 of all, are there in Philadelphia that would be involved in
2 the appointment process or would have these so-called lists?

3 MR. LERNER: The judges, all of the judges in the
4 trial division, and I think they number somewhere around
5 sixty, have the right to put people on the homicide appointment
6 list.

7 Different judges in different sections of the
8 court have their own lists for cases that are particular to
9 that section of the court.

10 REPRESENTATIVE REBER: And is it then a master list that
11 is drawn on from a pool by an appointment clerk or by a
12 precedent judge or does the individual trial judge have
13 some discretion?

14 MR. LERNER: Well, I think Representative
15 Kosinski and I may differ on this, but I think my--

16 REPRESENTATIVE REBER: Well, I don't care about
17 Representative Kosinski and we will keep him quiet now. It is
18 my turn.

19 MR. LERNER: My understanding is that the practice
20 is different for the homicide list. I have seen--I know that
21 there is a master list for court appointments in nonhomicide
22 criminal justice cases.

23 The court administrator's office makes the
24 appointment off of those lists. On the other hand, the homicide
25 lists are individual.

1 I know that different judges have their own homicide
2 lists and they--there is a rotation system used. They go from
3 judge to judge to determine whose turn it is to make an
4 appointment.

5 Each judge, when he or she has an appointment,
6 can make--does make the appointment off of their own list.

7 REPRESENTATIVE REBER: And that particular judge
8 that makes the appointment, he does not hear the case.

9 MR. LERNER: Well, that is right. I mean, I--

10 REPRESENTATIVE REBER: Is that possible that that
11 could happen?

12 MR. LERNER: I think it is possible theoretically,
13 but there are so many more judges on the trial list who have
14 their own homicide appointment list than there are judges
15 hearing homicide cases at any given time.

16 That is not likely to happen.

17 REPRESENTATIVE REBER: In your opinion, had it not
18 been your idea but mine, if there was a process where the
19 particular judges now that are in that particular (words
20 inaudible) that would possibly be hearing this kind of cases
21 and/or making the appointments.

22 If there was the input of each of those judges
23 to put what they consider to be qualified people that met the
24 so-called standards on a master list, then that master list
25 was operated and selections from that were made on a continuing

1 rotating basis, there was an evaluation by an appointment clerk
2 board or some type of board to screen the applicants that are
3 put by the so-called judges onto the list before appointments
4 are made in individual cases from that list, would that be
5 somewhat of an improvement in your mind as far as doing two
6 things, obviously eliminating some of the concerns that were
7 referenced in this case as well, and more importantly, and
8 screening, if you will, and it may be done by such an agency
9 or a group or association such as yourself or an adjunct
10 thereof.

11 MR. LERNER: Oh, please, no.

12 REPRESENTATIVE REBER: Okay. I understand that.
13 But the point I am trying to make is, it would seem that if
14 in fact there are problems, let's look to ways to remedy those
15 problems.

16 In my mind it would be screening those that are
17 on the list to make sure they should actually be on the list
18 because it sounds to me like there is some unique reasons why
19 these things crop in various instances.

20 MR. LERNER: I don't think anybody would disagree
21 with that assumption. The further you--the more you go in the
22 direction of higher and uniform standards administered by
23 some authority or organization that is not directly under the
24 control of the individual judges who are proposing names for
25 these lists, the better off you are.

1 That still wouldn't solve the problem of funds
2 for training or expert services or investigation. But it would
3 be a major step.

4 REPRESENTATIVE REBER: It is my personal opinion
5 that the same problem why we have professional people sitting
6 on the bench is the same reason why we don't get the qualified
7 attorneys representing indigents on appointment cases.

8 It is the dollars and cents issue. The public
9 wants to run a Rolls Royce operation on a Chevrolet budget.
10 That is the big problem.

11 That is frankly the biggest problem in the entire
12 criminal justice system in the Commonwealth of Pennsylvania
13 today.

14 There is no other reason. It is very simple, if
15 we have the right salaries for the judges to get some of the
16 silk stocking attorneys, if you will, to sit on the bench, we
17 wouldn't have probably half the problems we have.

18 The same thing follows over in this area.

19 Thank you, Mr. Chairman.

20 CHAIRMAN DeWEESE: With the exception of silk
21 stocking attorneys, you probably had some good things to say
22 there.

23 Ben, thank you very much for visiting with us.

24 MR. LERNER: Thank you for this opportunity.

25 CHAIRMAN DeWEESE: I am sure we will meet again.

1 (Witness excused.)

2 CHAIRMAN DeWEESE: Les Nauhaus, Director of
3 Public Defender's Office of Allegheny County.

4 John Cordisco of Bucks County, John Cordisco is
5 here joining us.

6 Whereupon,

7 LESTER G. NAUHAUS

8 having been called, testified as follows:

9 DIRECT TESTIMONY

10 MR. NAUHAUS: Mr. Chairman and members of the
11 House, my name is Lester Nauhaus and I am the Public Defender
12 from Allegheny County.

13 I have been with the Public Defender's Office
14 for thirteen years and have been a practicing attorney in
15 Pennsylvania for eighteen years.

16 I was requested by the Chairman to come speak to
17 you about the Allegheny County experience in representation in
18 capitol cases.

19 In Allegheny County, indigent defendants for the
20 most part that are charged in capitol cases are represented by
21 the Allegheny County Public Defender's Office.

22 Within the Allegheny County Public Defender's
23 Office we have what is known as our homicide division. In
24 the homicide division we have three experienced attorneys,
25 one investigator, one attorney that does some duty in that

1 particular area and one secretary.

2 When I use the word, experienced, there has been
3 some talk about what is experienced and what is necessary. In
4 the Allegheny County Public Defender's Office, the three
5 lawyers that we have, two of them, and the ones to do the
6 capitol cases are both ex-prosecutors.

7 They prosecuted homicide cases for the Allegheny
8 County District Attorney's Office several years before they
9 came onto my staff.

10 They know what a homicide case is, how to try one,
11 how they are supposed to be tried and what the special problems
12 are. The third attorney that is in the division does not try
13 capitol cases even though he has been trying major felonies
14 for about four years.

15 We just don't believe he has the experience
16 necessary in order to try capitol cases.

17 We have a unique experience in Allegheny County.
18 One of them is the fact that we have the degree of support
19 that we do have.

20 In the prepared speech that I gave to you, I
21 indicated that there is moral support, financial support and
22 technical support.

23 We get our technical support by a professor of
24 law at Duquesne University whose name is Bruce Lattawitz
25 (phonetic).

1 When Bruce came to Pennsylvania, he originally
2 worked in the Public Defender's Office. He then accepted a
3 position at Duquesne University as a professor of law.

4 When the death penalty was reenacted in Pennsylvania,
5 he started doing work in death penalty cases. He is recognized
6 as one of the leading authorities in Pennsylvania on death
7 penalty work.

8 He also gives freely of his time and his students'
9 time to our office. So any time that we have a problem
10 insofar as the law is concerned, we can go to Professor
11 Lattawitz and he has always been available.

12 Professor Lattawitz is also available to almost
13 any attorney in Pennsylvania that needs to talk to someone
14 about this particular statute.

15 Several years ago he and my office put on a
16 seminar of capitol case work. There were lawyers from
17 Western Pennsylvania that attended.

18 There were no lawyers from Eastern Pennsylvania
19 that came to this seminar. It lasted for two days. It was
20 very well received.

21 Insofar as the financial support is concerned, my
22 board of commissioners have frankly looked at a very difficult
23 problem, which is the appropriation of tax dollars to the
24 criminal defense and capitol cases and have allowed me to
25 fund this particular division.

1 We have the financial resources in that division
2 to get any of the expert testimony that we need. We can get
3 any of the medical or technical tests performed that we need
4 performed.

5 If we need witnesses, we can get them. We have
6 an extensive budget insofar as these cases are concerned.
7 The commissioners of Allegheny County have seen to it that
8 at least this division is properly funded.

9 Frankly, one of the reasons I came here was to
10 recognize the support that I am getting from the commissioners
11 in Allegheny County.

12 Insofar as the moral support is concerned--

13 CHAIRMAN DeWEESE: That has been an ongoing thing?

14 MR. NAUHAUS: Yes. They have been supportive.

15 CHAIRMAN DeWEESE: The commissioners before and
16 the commissioners before and the commissioners before?

17 MR. NAUHAUS: Well, the commissioners before the
18 commissioners before didn't have to deal with the death
19 penalty.

20 CHAIRMAN DeWEESE: Okay.

21 MR. NAUHAUS: But the commissioners before the
22 current set were openhanded insofar as the money that was
23 necessary in order to properly fund this unit.

24 The moral support comes from within. It is
25 sometimes very difficult to try these cases in a vacuum.

1 We have found that if you can sit down at a table with other
2 lawyers, other lawyers that know how to try death penalty
3 cases and go over the cases and almost brainstorm the defense
4 of the capitol cases that it works insofar as ideas coming
5 from other attorneys, although they are not assigned to that
6 particular case, the ideas come about.

7 Typically, in Allegheny County insofar as the trial
8 of these cases are concerned, we pick the cases up within
9 hours of arrest.

10 One of the reasons for that is because of the fact
11 that the two people I have doing the cases are ex-prosecutors.
12 There are good lines of communications with the police.

13 So when they pick someone up and it looks like it
14 is going to be a capitol case or even if it is a homicide,
15 they will call us and tell us to have someone.

16 We will make arrangements to start representation.
17 Our investigators are immediately sent out to talk to the
18 defendant along with the lawyers, so that we can start
19 investigating the case.

20 Much of the material that is used in these cases
21 is on word processors. We have word processors who know where
22 the law is, who know where the different pleadings are that
23 we need, if we need to reduce bail, if we need certain tests
24 done immediately, we can get them done because the resources
25 and the forms and pleadings are readily available to us.

1 Two lawyers always work on every homicide, capitol
2 case. It is almost--we wouldn't do it any other way.
3 Nationally, I don't know that there is anybody that does
4 this kind of work that would allow one lawyer to try a capitol
5 case.

6 So there are always two lawyers that try capitol
7 cases in Allegheny County from my office. Even when there are
8 situations where there are conflicts and we can't handle a
9 case, we make sure there are two lawyers appointed.

10 The reason for that is simply this. It has to do
11 with the fact that in Pennsylvania you have guilt phase and
12 immediately thereafter there is the sentencing phase.

13 An attorney cannot properly prepare for his guilt
14 phase or the guilt phase trial when he has to always be worried
15 about what happens if the jury finds him guilty of first degree
16 murder.

17 He has to go right into the sentencing phase. It
18 is a matter of him having to split off his tension. His whole
19 focus during the trial of these cases has to be on one particular
20 issue or one particular set of issues or facts.

21 It just is not humanly possible for an attorney to
22 try a case to two different issues. That is why we have one
23 lawyer try the guilt phase and one lawyer tries the sentencing
24 phase.

25 The other problem is a matter of jury communications.

1 In many situations you have a lawyer who is trying to convince
2 the jury that his client didn't do it or is not guilty of the
3 crime.

4 He has to turn around immediately and then go
5 back to the jury and say, well, I was wrong the first time,
6 but I am right this time, don't put this man in the electric
7 chair.

8 He loses a lot of credibility with his judge.
9 That is basically all I came to tell you. I am open for
10 questions.

11 CHAIRMAN DeWEESE: Okay.

12 Kevin Blaum, Wilkes-Barre, do you have any
13 questions?

14 REPRESENTATIVE BLAUM: No.

15 CHAIRMAN DeWEESE: Jerry of Philadelphia?

16 REPRESENTATIVE KOSINSKI: None.

17 CHAIRMAN DeWEESE: Bob Reber?

18 REPRESENTATIVE REBER: Just one question.

19 You did say that the police, when there is a
20 homicide involved, contact you immediately. Is that regardless
21 of the defendant's financial status?

22 MR. NAUHAUS: The police have a pretty good
23 understanding. They have a pretty good idea who we will
24 represent and who we won't.

25 Frankly, if they are in jail, we represent them.

1 REPRESENTATIVE REBER: Is there in fact private
2 appoints from the--appointments from private bar?

3 MR. NAUHAUS: There are private appointments in
4 Allegheny County in two situations. The first situation is
5 if there is a conflict of interest.

6 If two people have been arrested for the same
7 homicide and it is a capitol case, we are not allowed to
8 defend both of them.

9 So the courts will appoint a second set of
10 attorneys to represent the other defendant. The other situation
11 is when we have too many cases.

12 We will not--

13 REPRESENTATIVE REBER: Who makes that determination?

14 MR. NAUHAUS: Too many cases?

15 REPRESENTATIVE REBER: Yes.

16 MR. NAUHAUS: I do. We just cannot try more than
17 one capitol case a month. It just can't be done.

18 REPRESENTATIVE REBER: Thank you, Mr. Chairman.

19 CHAIRMAN DeWEESE: John Cordisco, Bucks County.

20 REPRESENTATIVE CORDISCO: Your Honor, I apologize
21 for the delay in arriving. I was on 95 for over an hour.

22 CHAIRMAN DeWEESE: No problem.

23 REPRESENTATIVE CORDISCO: There was a jackknifed
24 tractor and trailer.

25 In reviewing your testimony, it seems that you

1 have spent a great deal of time in reviewing, from an
2 appropriations standpoint, the operations and funding of your
3 office.

4 Is there anything that you would like to highlight
5 as to the sentencing practices and procedures?

6 MR. NAUHAUS: In our county?

7 REPRESENTATIVE CORDISCO: In your county.

8 MR. NAUHAUS: No. I wish I didn't have to deal
9 with this statute. That is for another meeting.

10 REPRESENTATIVE CORDISCO: I think that is
11 probably a conclusion that is shared by many of your fellow
12 colleagues in the Defender's Office.

13 But at least from our standpoint, I guess I am
14 here hoping that some light could be shed in this particular
15 area.

16 I think it is the contention of this committee
17 to really go into depth of the problems that we see or we
18 will hear from in your particular case, that reference the
19 various sentencing practices and procedures in these particular
20 kind of cases.

21 MR. NAUHAUS: I am sorry, sir. I am not following
22 your question.

23 REPRESENTATIVE CORDISCO: Well, I think the
24 question goes back to what I said initially. Did you have any
25 specific areas that you would like to have highlighted in

1 reference to this particular issue?

2 MR. NAUHAUS: Well, my understanding of the issue
3 is why there is a difference in the number of people who are
4 on death row from Philadelphia as opposed to the number of
5 people that are on death row in Allegheny County.

6 REPRESENTATIVE CORDISCO: Yes.

7 MR. NAUHAUS: From what I have heard this
8 morning and what I have read and what I have seen, there are
9 many reasons.

10 One of the reasons is Philadelphia happens to
11 be a more violent city than Pittsburgh, and that some of the
12 crimes that are coming out of Philadelphia are just more
13 outrageous than what is happening in Pittsburgh.

14 But that cannot be the total answer. It is--I
15 am astounded that lawyers try capitol cases in major
16 metropolitan areas with only one attorney, without the
17 ability to freely spend the money that has to be spent.

18 These are very expensive, in monetary and in
19 personnel hours. They are expensive cases to try. They are
20 certainly expensive cases to defend.

21 It seems to me that if you are going to properly
22 defend these cases, you have got to have almost an open wallet.
23 The problem that I see here is the fact that that wallet does
24 not exist, that there is--

25 REPRESENTATIVE CORDISCO: Doesn't exist for

1 Philadelphia County or per se across this Commonwealth?

2 MR. NAUHAUS: Well, it doesn't exist totally for
3 any county, even my county. I could use more financing.
4 But in Philadelphia, the way it is set up with this court
5 appointment system, with the judges appointing certain lawyers
6 and frankly, there is a lot of politics going on here.

7 You have certain attorneys that aren't going to
8 spend a lot of money because they don't want to get themselves
9 in trouble with the judges that have appointed them so they
10 try to keep the funds down.

11 We see that in Allegheny County in the appointment
12 of felony cases. You have got to have a system wherein
13 spending of the money is not--whether you spend it or you
14 don't spend it, should be a decision as to whether it is
15 necessary, not whether or not somebody is going to be upset
16 that you spent the money.

17 You have to have the ability to spend this kind of
18 money. This is expensive--these are expensive prosecutions
19 and expense defenses.

20 If the State wants to extract this penalty then
21 it is the obligation of the State, whether it is the county
22 government, whether it is the State government, to see to it
23 that the money is available.

24 Nobody asked for this penalty except the State.
25 The State has to be willing and ready and able to pay for it.

1 CHAIRMAN DeWEESE: Good point.

2 REPRESENTATIVE CORDISCO: I believe I caught the
3 point that you were trying to make, as I came in. I didn't
4 hear the total context of the discussion.

5 But do you feel that--correct me if I am wrong,
6 too. Do you feel that an increase in funding directed towards
7 the salaries that are given to these individuals would enhance
8 the system any?

9 MR. NAUHAUS: No, not substantially. Because all
10 you would do would be making--you would be making the defense
11 of a death penalty case more attractive to, frankly, a lot of
12 people who should not be doing it.

13 I mean, the problem with going to the private bar
14 and saying, we are going to give you, even \$40 an hour out of
15 court and \$50 now in court, the people that should be doing
16 those cases can't afford to take on a case that is going to
17 take them hundreds of hours at \$40 an hour.

18 They can't afford it. The quality of criminal
19 defense lawyers in any major metropolitan area can make more
20 than that in their private practice.

21 So what you have are the people that are not--
22 don't have the experience to try these cases, looking to get
23 these cases for the money.

24 The money that they are being paid to do this
25 should not be a consideration. There is more to it. There is

1 all of the support that is necessary in the trial of these
2 cases.

3 We hire--I don't know that we have a capitol case
4 that we don't hire at least two experts. I don't think it is
5 going to solve the problem.

6 The problem is in who is trying these cases.

7 CHAIRMAN DeWEESE: Mike Edmiston, Chief Counsel.

8 MR. EDMISTON: Mr. Nauhaus, you mentioned the
9 support you have received from the county commissioners all
10 the time.

11 How would you characterize the support, if any,
12 from the Allegheny County Bar Association for the efforts of
13 your office, for the maintenance of that particular unit?

14 MR. NAUHAUS: Allegheny County Bar Association
15 is basically an association of civil lawyers. We don't get
16 support from them and we don't ask for their support, frankly.

17 When I need money in my budget, I go to the
18 commissioners and tell them this is what I need in order to
19 perform this function.

20 I explain to them that the function is mandated by
21 the State and what is necessary. But the Bar Association, if
22 anything, is always accusing me of taking cases that I shouldn't
23 be taking, because the people are making too much money as far
24 as they are concerned.

25 If anything, it is adversarial in many respects,

1 unfortunately.

2 MR. EDMISTON: Your staff, are your people full-time?

3 MR. NAUHAUS: No, sir.

4 MR. EDMISTON: They are not?

5 MR. NAUHAUS: No.

6 MR. EDMISTON: Are any of the lawyers on your
7 staff full-time?

8 MR. NAUHAUS: Paid for full-time?

9 MR. EDMISTON: Yes.

10 MR. NAUHAUS: No. They are all part-time.

11 CHAIRMAN DeWEESE: How about you?

12 MR. NAUHAUS: No, sir.

13 MR. EDMISTON: You all maintain an element of
14 private practice?

15 MR. NAUHAUS: Yes.

16 MR. EDMISTON: Do you know what rough percentage
17 of the time people in your homicide unit, do those
18 responsibilities compare with private practice?

19 MR. NAUHAUS: I would say that the people in my
20 homicide division spend forty hours a week in the Public
21 Defender's Office at a minimum.

22 You can't live, breathe--live and breathe any
23 case. You have got to be able to have a break, for no other
24 reason than for sanity sake.

25 But the work is done. It is just that we have a

1 unique situation in Allegheny County where we can do that.

2 The prosecutors are full-time, but we are all part-time.

3 REPRESENTATIVE Are they paid on a
4 straight salary or an hourly basis?

5 MR. NAUHAUS: Yes, sir. We are paid a straight
6 salary.

7 CHAIRMAN DeWEESE: Dr. Faulhaber, from our
8 Harrisburg staff.

9 DR. FAULHABER: I have two questions, one
10 ethical, I think and one educational. The ethical one first.
11 If this State were to join in (words inaudible) say Britin and
12 France and (words inaudible) capitol crimes imposes sentence
13 of life in prison without the possibility of parole or pardon
14 (words inaudible), removing the (words inaudible) power of
15 pardon from the Governor, for example, would that (word
16 inaudible) save any money because that is the major thrust
17 of what I am hearing.

18 It is dollars and cents, \$40 for an hour for this
19 and \$50 an hour for this. I mean, I think a thing like this
20 is obscene that human life can be judged in terms of money
21 because of the (words inaudible) and the constitution of the
22 courts (words inaudible).

23 MR. NAUHAUS: I have to agree with you to a large
24 extent. There would be a savings of money if we abolish
25 the death penalty.

1 I mean, under the Thornburgh administration, it
2 has been life--

3 CHAIRMAN DeWEESE: That is something I don't
4 think anybody out in the (word inaudible) lands really thinks
5 about and realizes, by the way.

6 MR. NAUHAUS: I'm sorry.

7 CHAIRMAN DeWEESE: I mean, I agree, but I didn't
8 think about that until I was reading some information last
9 night, preparing myself for this hearing, that it would save
10 money to eliminate the death penalty.

11 Most people think you are going to spend untold
12 hundreds of thousands of dollars over the span of someone's
13 life to keep them in a prison or in a penitentiary and to say
14 that it would save money to abolish the death penalty is
15 something we don't think about.

16 MR. NAUHAUS: I think if you tracked the pleadings
17 and the work and the time expended in the prosecution--I mean
18 nobody has been executed in Pennsylvania, yet.

19 But if you were to start tracking the legal
20 expenses and the time expenses and the pure administration
21 expenses of what it is going to cost, you would find that
22 you probably would save money with a life sentence without the
23 possibility.

24 CHAIRMAN DeWEESE: Wait until Doc gets the other
25 question in and then you Jerry.

1 DR. FAULHABER: My second question focuses in on
2 (words inaudible) first defense (words inaudible) law school
3 for three years, why is it that it seems from the drift of the
4 present testimony that so much of this type of public
5 defender homicide casework seems to have to be on the job
6 training.

7 I think this is an incredible expensive way for
8 someone to learn the skills to be able to defend someone
9 who is accused of a capitol crime (words inaudible), why
10 doesn't one of the law schools teach this?

11 MR. NAUHAUS: Well, first of all, sir, you were
12 referred to as doctor. Is that--

13 DR. FAULHABER: Philosophy.

14 MR. NAUHAUS: Philosophy.

15 CHAIRMAN DeWEESE: I like to keep a guy like that
16 around.

17 MR. NAUHAUS: I don't have a problem with that.
18 I just wanted to know if it was an M.D., because then I could
19 talk in an area that he understands.

20 I mean, you send someone to medical school and
21 they don't go--nobody is going to allow the person who graduates
22 from Penn Medical School to start practicing the minute they
23 get out of medical school.

24 CHAIRMAN DeWEESE: All right. Brain surgery.

25 MR. NAUHAUS: There are procedures in the medical

1 profession for internships and residencies and in the criminal
2 defense work.

3 There are procedures for that. A person in
4 law school spends three years trying to figure out where the
5 books are and what the books have to say and how to analyze
6 what is going on.

7 It is impossible to train someone to try a case
8 even in three years, if that is all they did. If all they did
9 in law school is learn how to try a case, they still would need
10 more training when they got out of law school.

11 But at most, if you are in law school, you are
12 going to get a one semester, three-credit course, in some sort
13 of trial advocacy.

14 Most of the time that is a mix between civil and
15 criminal litigation. I mean most of the kids get out of
16 law school nowadays and don't know where the prothonotary's
17 office is.

18 CHAIRMAN DeWEESE: I think he has answered the
19 question, Doc.

20 DR. FAULHABER: I don't think we need to go into
21 that any further.

22 MR. NAUHAUS: I guess what I am trying to say is
23 that on the job training is the training we have to have.
24 I don't think that is the fault of the law schools.

25 DR. FAULHABER: Well I certainly think it is.

1 CHAIRMAN DeWEESE: Well, that is somewhat esoteric
2 and I understand both perspectives.

3 REPRESENTATIVE CORDISCO: We will take up that
4 question when we do the Harrisburg Law School routine.

5 CHAIRMAN DeWEESE: Yes.

6 Where is Representative Andrew Carn? Come on up
7 and join us, Representative Carn.

8 REPRESENTATIVE CORDISCO: You can have my seat
9 because I have to speak to a group this afternoon.

10 CHAIRMAN DeWEESE: Andy Carn, from the city of
11 Philadelphia.

12 Do we have any further questions?

13 MR. NAUHAUS: Excuse me?

14 CHAIRMAN DeWEESE: Yes, sir.

15 MR. NAUHAUS: Before leaving, and I came 300
16 miles from Pittsburgh.

17 CHAIRMAN DeWEESE: Absolutely.

18 MR. NAUHAUS: I would like to recommend something
19 on the agenda one of these days for the Judiciary Committee.
20 I think that it is time for the legislature of Pennsylvania
21 to recognize their obligation and responsibility to the
22 criminal justice system of this State.

23 Mr. Lerner touched on it a little bit. But it is
24 in many situations appalling that the State recognizes their
25 obligations to the criminal justice system only as to how much

1 time they can tack onto somebody's sentence or how severely
2 they can sentence somebody.

3 There is absolutely no support for a function which
4 is guaranteed in our constitution in the State Government. It
5 is a crime that that happens.

6 I think that the State legislature should look
7 into why that is. You have the largest tax base in the whole
8 State and you refuse to accept the responsibility of paying
9 for what you want done in the criminal justice system.

10 REPRESENTATIVE CORDISCO: Mr. Chairman, can I
11 just--

12 MR. NAUHAUS: And I am through.

13 REPRESENTATIVE CORDISCO: I feel compelled to--
14 from Bucks County from the Eastern side, to respond to that.
15 I think that what you are touching on is very much a political
16 issue.

17 It is one that is not directed to the general
18 body per se. So when you paint with a brush that is pretty
19 wide, I think that you should be a little cautious, as a member
20 of this committee, in saying that we as a body have failed to
21 recognize.

22 I think there are individuals who do recognize
23 that and have recognized it in the past.

24 MR. NAUHAUS: I was not trying to be personalized.
25 I was talking as the State legislature as a body, not as any of

1 the personalities involved.

2 But I figured I wanted at least my two minutes
3 worth for the trip.

4 CHAIRMAN DeWEESE: You can have more. I can hold
5 it.

6 MR. NAUHAUS: That is all I wanted to say.

7 CHAIRMAN DeWEESE: I am glad you said it.

8 REPRESENTATIVE : I appreciate the
9 comment.

10 CHAIRMAN DeWEESE: I have been in the Assembly for
11 eleven years. I am a comparatively new person in this
12 assignment, so I like to give an editorial comment once in a
13 blue moon also.

14 I think you are right. I think you are right. We
15 have been stingy. We have been parsimonious in Harrisburg
16 relative to funding some of the mandatory sentencing and
17 some of the programs that we have been propelling out into
18 the sixty-seven counties.

19 I think some of the people that sit right here
20 are knee jerk liberals like me on most issues, on most issues,
21 and would like to fund the things that you say need funded.

22 So you do have some support and hopefully we will
23 be able to help you more in the years ahead.

24 Thank you very much for journeying across the
25 State.

1 (Witness excused.)

2 CHAIRMAN DeWEESE: We will take a--let's don't kid
3 anybody, let's take a ten-minute break. We will be back at
4 fifteen minutes in front of the hour.

5 That clock, by the way, is not right. Fifteen
6 minutes in front of twelve, we will resume.

7 (Recess.)

8 Whereupon,

9 STEFAN PRESSER

10 having been called, testified as follows:

11 (Machine off at start of this witness' testimony.)

12 DIRECT TESTIMONY

13 MR. PRESSER: --1982 decision out of the
14 Eleventh Circuit. This is a situation in which an individual
15 was tried for a capitol offense who appointed an attorney
16 who has considerable experience, fifty years of criminal
17 litigation behind him.

18 However--and therefore that is considerably more
19 experience than is presently required for court appointment
20 in Philadelphia that has been pointed out by any number of
21 individuals who have already testified.

22 However, this particular individual notwithstanding
23 his lengthy expertise and criminal representation, had never
24 done a death penalty case under the new statutes which call
25 for this (word inaudible); first you have the guilt phase and

then you have--if conviction, you have a sentencing stage.

1 As a result of having never done that, he failed
2 to put on any evidence at the punishment stage. Notwithstanding
3 that fact, there was the conviction, there was the death
4 sentence, there was an affirmation, rather I should say there
5 was considerable expense on the part of the district attorney's
6 office, taxpayer's expense for the district attorney for the
7 trial.

8 There was then an appeal to the Supreme Court of
9 Georgia and there was considerable expense in the affirmation
10 of that death sentence.

11 There was then a State post conviction hearings
12 in District Court. Again, at the State Supreme Court. Again,
13 all expenditures on the part of the taxpayer's of Georgia.

14 All of which led to repeated affirmation that
15 there had been no constitutional error and moreover that there
16 had been no challenge or there was an affirmance to the
17 assistance of counsel.

18 However, when it got to the Federal stage and--
19 every person who was convicted of a crime in this country has
20 a constitutional right to enter a writ of habeas corpus asking
21 the Federal court to review for constitutional error.

22 Six years down the line, six years after there
23 had been a conviction and an imposition of sentence of death
24 by the jury, the Eleventh Circuit found that the counsel
25 notwithstanding his fifty years of experience had been

1 ineffective in failing to present evidence at the punishment
2 stage.

3 Now, this one particular case that I reported to
4 you is by no means isolated. It turns out--and this does go
5 back to some of the questions that were raised earlier.

6 It turns out from the one study that we have on
7 the issue of reversal rate of death sentences, since the
8 Supreme Court's reaffirmation of the death penalty, sixty
9 percent of all individuals who have gone through the Federal
10 system have been removed from death row.

11 That really is quite astonishing because it turns
12 out in all other cases that reach the Federal level of review,
13 there is only a 6.5 percent reversal rate and for the other
14 statistics that I am familiar with, California's appellate
15 system has only .8 percent reversal rate for felony convictions.

16 So it is clear that if this State does nothing to
17 change the system of representation we have now in Philadelphia,
18 there is going to be considerable Federal court intervention
19 and that is going to lead to considerable waste of resources
20 that are already pumped into the judicial system.

21 I think there are a variety of solutions to this
22 problem. One is, as already stated, you can amend the statute
23 to require high standards for representation.

24 However, it has also been pointed out, simply by
25 changing the standards and not by giving any further resources,

1 I don't think you are going to be able to attract competent
2 counsel.

3 Well, there is a second possibility. What you do
4 is through your power of the purse, you could say to any
5 particular county that would be willing to increase the
6 standards for representation, the State would be willing to
7 afford extra money for representation.

8 However, I think for even less money than would
9 be implicated by my second solution, I happen to think that
10 it is a travesty that in Philadelphia that has one of the
11 finest public defender offices in the nation, where individuals
12 charged with the pettiest misdemeanors receive outstanding
13 counsel that we are not allowed to use that office for somebody
14 who is charged with the most severe penalty known to the law.

15 So I would counsel that simply by providing just
16 slightly more resources, financial resources, to the public
17 defender's office, that this problem largely can be addressed.

18 However, there is one additional situation that
19 does need addressing, and that is, even if you supplied the
20 most competent, the most outstanding, the most sterling
21 attorneys for trial, that would not remove an individual's
22 right to go to Federal Court on the writ of habeas corpus.

23 Now, what we are seeing, especially the southern
24 states saw, that even when there was good counsel at trial,
25 at the moment that a death warrant would be signed, normally

1 those state appointed attorneys could not go into Federal
2 Court.

3 So it was at that point that either NAACP or the
4 ACLU would come forward and find a cooperating attorney for
5 someone on death row.

6 Well, that individual would go running into
7 Federal Court and say, Your Honor, I have just received this
8 case.

9 This man stands to lose his life. I have got to
10 have a few days or few weeks, perhaps even a few months, just
11 to look at the record.

12 I submit to you that there is no Federal Court in
13 the country that under those situations is going to say, I
14 am terribly sorry, if you are not prepared, we are going to
15 execute.

16 So what was happening was that in fact the Federal
17 Courts at that point always issued stays. As a result of that
18 fact, in one instance, that is, Florida, the attorney general
19 of the state, Attorney General Jim Smith, was so upset by the
20 way that this was disrupting the orderly administration of
21 justice that several years ago he started lobbying intensively
22 in his state legislature to create what has now been finally
23 created last year, entitled the Office of Collateral v.
24 Collateral Representative, which would be responsible as soon
25 as the direct appeals would be over for any indigent.

1 They would assume responsibility and they would
2 run and take the case and present it in a timely fashion.

3 Finally, I would close this testimony by counseling
4 that if this State wishes to see an orderly administration of
5 justice within the death penalty area, it ought to have a
6 similar office.

7 Thank you.

8 CHAIRMAN DeWEESE: Thank you.

9 Kevin?

10 REPRESENTATIVE BLAUM: If you were going to raise
11 the standards, what suggestions would you have (words
12 inaudible), hours in the courtroom, hours in certain kind of
13 cases.

14 How would you raise the standards?

15 MR. PRESSER: It is two-fold. I think first no
16 one should be in this position alone, as has already been
17 stated.

18 There ought to be two trial attorneys. And I
19 think that the way that one can get that expertise is by
20 having second chair the case, so that one would require
21 a certain number of trials where one had been second chair,
22 not lead counsel.

23 I think that is largely the route I would counsel.
24 Simply the adoption of the American Bar Association standards
25 I think would be sufficient.

1 CHAIRMAN DeWEESE: Bob?

2 REPRESENTATIVE REBER: Nothing.

3 CHAIRMAN DeWEESE: Andy?

4 REPRESENTATIVE CARN: Yes.

5 You had mentioned that our public defender's
6 office is great. What are you basing that on?

7 MR. PRESSER: Well, the--first of all, from
8 what I have seen. I have been a trial attorney for the
9 American Civil Liberties Union in New York, Texas and now in
10 this State.

11 The training programs that--I don't know if they
12 predate Mr. Lerner or whether he is solely responsible for
13 them, but the training programs of that office are, I think,
14 second to none.

15 Moreover, any office that has managed to retain
16 its public defenders for eight years, notwithstanding fifteen
17 years, which I know has happened, says that that is an office
18 of outstanding quality.

19 Most public defender offices are staffed by
20 people right out of law school. They do it for two or three
21 years.

22 There is a high burnout rate and then they leave.
23 So an office that has managed to retain counsel for eight, ten,
24 fifteen years, is one that obviously has considerable expertise.

25 REPRESENTATIVE CARN: So you weren't basing that on

1 their success rate in terms of their cases?

2 MR. PRESSER: No. I don't have specific
3 statistics on that, sir.

4 REPRESENTATIVE CARN: Okay. What about the need
5 for second attorneys. You had mentioned that there is a need
6 for second attorneys.

7 Presently the system does not allow for that.

8 MR. PRESSER: Right. Financially it is just not
9 done. You need that for two reasons. One has already been
10 suggested, is that one attorney--there is (words inaudible)
11 in this situation of a death penalty case.

12 So first you are establishing whether the
13 individual is innocent or guilty. If found guilty, then, of
14 course, there is a whole new set of proceedings in which
15 you can argue a great many things.

16 Generally the attorney who is doing the guilt
17 innocent phase ought to just be concentrating on attempting to
18 cut it off there.

19 Doing all of the leg work to find the character
20 witnesses and go out into the community to get people to
21 come forward and say nice things about this person, if found
22 guilty, takes such amount of time that it ought to be done by
23 a second attorney.

24 REPRESENTATIVE CARN: Well, what are we losing by
25 the fact that we do not have them?

1 MR. PRESSER: What you are losing is in many of
2 the cases in Philadelphia, the sentencing phase is a very
3 quick proceeding.

4 The reason it is quick is because the attorney has
5 not had the time or the resources or the investigators to
6 go out and find the people that ought to be called.

7 In Texas, when I practiced down there, Texas has
8 considerable death penalty experience, having a death row
9 now that is close to 200 and having executed a number of
10 individuals.

11 The most experienced death penalty litigators
12 say, if the district attorney is going after a death penalty,
13 you know he is going to--

14 (Changing from Tape 1 to Tape 2.)

15 MR. PRESSER: --able to get a conviction. So you
16 have got to spend the bulk of your time on the sentencing
17 stage.

18 That is exactly what very experienced litigators
19 do. They put a tremendous amount of time into sentencing
20 phase.

21 So it can run for weeks. Here I don't think I
22 know of any case which has last two or three days.

23 REPRESENTATIVE CARN: Well, do you think that
24 that has had an impact on the number of persons receiving the
25 death penalty?

1 MR. PRESSER: There is no question in my mind.
2 In the Young v. (word inaudible) case where there was no
3 evidence, I mean that was (words inaudible) upon the Eleventh
4 Circuit finally had to conclude that this individual had not
5 received effective assistance and moreover that the jury might
6 not have sentenced him to die had--it turns out that Mr. Young
7 had never been convicted of anything within the criminal
8 justice system before being tried for this murder.

9 That is generally--juries are generally unlikely
10 to sentence someone with an absolutely clean record to death.
11 The sentencing stage is absolutely critical.

12 REPRESENTATIVE CARN: Thank you, Mr. Chairman.

13 CHAIRMAN DeWEESE: Sure.

14 Counsel?

15 MR. CONNELLY: No questions.

16 CHAIRMAN DeWEESE: Paul?

17 MR. DUNKLEBURGER: No.

18 CHAIRMAN DeWEESE: Mike?

19 MR. EDMISTON: No.

20 MR. PRESSER: I appreciate your time. Thank you.

21 CHAIRMAN DeWEESE: Thank you very much.

22 (Witness excused.)

23 CHAIRMAN DeWEESE: I am told that the last
24 gentleman that was scheduled for today, Mr. Fred Speaker,
25 former attorney general, is not going to be with us.

1 He has submitted written testimony. I am aware of
2 the fact that some gentlemen, and I don't think any ladies,
3 but some gentlemen are here from the DA's office.

4 Bill Chadwick?

5 MR. CHADWICK: That is correct, Your Honor.

6 CHAIRMAN DeWEESE: And Gale Burkholt?

7 MR. TENNIS: Gary Tennis. Mr. Burkholt was not
8 able to make it.

9 CHAIRMAN DeWEESE: Oh, okay. Just so we--we have
10 Bill's name. Gary, please?

11 MR. TENNIS: Tennis, T-e-n-n-i-s.

12 CHAIRMAN DeWEESE: Gary Tennis.

13 And?

14 MR. GALLAGHER: Charles Gallagher.

15 CHAIRMAN DeWEESE: Okay, Charles.

16 Welcome. Talk to us a little bit here this
17 morning, please.

18 Whereupon,

19 WILLIAM CHADWICK, GARY TENNIS, CHARLES GALLAGHER
20 having been called, testified as follows:

21 DIRECT TESTIMONY

22 MR. CHADWICK: First of all, my name is Bill
23 Chadwick. I am First Assistant DA for Philadelphia. Gary
24 Tennis, on my left is the Chief of the Legislative Unit of
25 the DA's office; and Charlie Gallagher, on my right, is the

1 Assistant Chief of Homicide Unit for the DA's Office here in
2 Philadelphia.

3 We are pleased to be here this morning to assist
4 you in your consideration of aspects of the death penalty's
5 administration here in Pennsylvania, specifically, with regard
6 to Philadelphia.

7 I understand that there has been concern and it
8 has been suggested by many of the witnesses who testified
9 here this morning, that there is a disproportionate application
10 of the death penalty here in Philadelphia.

11 That statistic has been alluded to by a number of
12 the witnesses who have testified. The Statewide statistics
13 which are compiled by the administrator of the Pennsylvania
14 Courts, simply do not bear out that contention.

15 That is one of the main issues that I wish to
16 address here. Philadelphia has just over half of the death
17 penalties in Pennsylvania.

18 We have forty-two people in death row out of the
19 eighty-two who have been sentenced to death across the State.
20 We also have well over half of all of the first degree murder
21 convictions in Pennsylvania since the death penalty statute
22 took effect back in 1979.

23 We have 293 first degree verdicts as opposed to
24 557 Statewide. There are many reasons for that. We have a
25 high incidence of urban ills here in Philadelphia.

1 We have organized crime on a large scale. We
2 have drug dealing on a large scale and we have gang activities
3 that I doubt exist anywhere else in the State.

4 A factor that is interesting to note in our review
5 of the statistics is that in the six-year period since we have
6 had the death penalty, Philadelphia has had 2,126 homicides.

7 In 1980 we had 463; '81, we had 390; 1982, 354;
8 '83, 332; 1984, 290; 1985, 297. So we have noticed a gradual
9 decline by almost a third in the number of reported homicides
10 in Philadelphia since the death penalty statute was implemented
11 back in the late seventies.

12 Of the 2,000 homicides plus that we have had in
13 Philadelphia since 1980, we have 293 first degree convictions
14 and 42 of those, as I have already said, resulted in the
15 imposition of the death penalty by the jury.

16 So when you consider those numbers together with
17 the Statewide numbers, I don't think that you will find that
18 there is a disproportionate number of people sentenced to death
19 in Philadelphia compared to Statwide.

20 14.4 percent of the first degree convictions in
21 Philadelphia resulted in the death penalty; whereas, 14.7
22 percent Statewide resulted in imposition of the death penalty.

23 So under those figures, which I said were provided
24 to us by the administrator of the Pennsylvania Courts,
25 Philadelphia actually has a lower percentage rate of death

1 penalties in first degree murder cases.

2 CHAIRMAN DeWEESE: 14.7 to 14.4?

3 MR. CHADWICK: Yes, slightly lower. But we are
4 right there on the average of Statewide. So I don't think
5 that anyone can get up here and tell you that we have a
6 disproportionate number of death penalties here in Philadelphia.
7 That is my first point.

8 CHAIRMAN DeWEESE: That is a pretty big one.

9 MR. CHADWICK: Pardon?

10 CHAIRMAN DeWEESE: Pretty big point considering
11 what we have heard earlier.

12 MR. CHADWICK: Well, does anyone have any questions
13 on that?

14 CHAIRMAN DeWEESE: Well, we will take the
15 testimony and then we will get to the questions.

16 MR. CHADWICK: Another factor which is really
17 not disclosed in those statistics is that we have a number of--
18 in fact, many of our homicide cases are tried to judges
19 sitting without juries here in Philadelphia.

20 Many of the cases result in a compromise verdict
21 by the judges of third degree, rather than first degree murder.
22 In cases where there is a--the less serious first degree murder
23 convictions often result, in our experience, in the judge
24 finding the defendant guilty of third degree.

25 So they wouldn't even fall into the statistics.

1 Likewise, we have an urban jury syndrome here in Philadelphia
2 that also we feel results in defendants being found guilty
3 of third degree murder when they should in fact be found of
4 first degree murder.

5 I think that the committee would all agree that
6 the juries you find upstate are much more conservative than the
7 juries you would find in Philadelphia.

8 So given that fact, you would expect that the
9 death penalty statistics in Philadelphia would be substantially
10 higher than Statewide, given that only those cases where the
11 circumstances are really outrageous and inflammatory to
12 people who get convicted of first degree murder.

13 As I have already said, our statistics show that
14 we have a slight percentage lower death penalties imposed
15 for first murder convictions than the overall Statewide
16 averages.

17 A second point which was not addressed here today
18 is the extent of appellate review that is given to defendants
19 who have been convicted of the death penalty.

20 These cases are given the strictest appellate
21 scrutiny of any kind of case that enters the system. That
22 review goes to the effective assistance of counsel in those
23 cases.

24 So there is a procedure in place right now to
25 review the performance of attorneys who have represented

1 defendants in homicide cases.

2 They are reviewed, first of all, by the
3 Pennsylvania Supreme Court, which not only addresses the
4 issues that are raised by the attorneys on appeal, they conduct
5 their own independent review of the record to make sure that
6 the defendant received adequate representation.

7 After the case goes through that direct appellate
8 process, there is the collateral attack to the post conviction
9 hearing act, and again the case is reviewed by the Pennsylvania
10 State courts for defects in the trial or for errors that
11 were made by counsel through the course of the trial.

12 After that process is complete, the case works
13 it way through the Federal system, where it again receives
14 very strict scrutiny.

15 So the representation that is provided by private
16 attorneys during the course of a homicide case is the subject
17 of very strict appellate review.

18 If at any stage in the appellate process a
19 court decides that the defendant did not receive adequate
20 representation, the remedy is either to grant a new trial or
21 to avoid the death penalty.

22 Finally, with respect to the suggestion that has
23 been made to the Committee this morning concerning the
24 effectiveness of having public defenders handle the
25 representation of defendants in homicide cases, I would submit

1 to the Committee that that is not necessarily a panacea to
2 provide better representation.

3 If you look at the statistics for Bucks County
4 where homicide cases are defended by the public defender's
5 office, Bucks County has the highest death penalty rate per
6 first degree conviction of any county in Pennsylvania.

7 They have six presently out of twenty-two first
8 degree murder convictions on death row, for a percentage rate
9 of 26.8.

10 So I would suggest to you that merely giving the
11 public defender's office the right to defend defendants in
12 cases charged with homicide is not necessarily going to solve
13 the ills of the system.

14 Finally, we certainly would not oppose any efforts
15 by the Committee to raise the level of representation by
16 counsel in criminal cases.

17 Guaranteeing the defendant's right to counsel to
18 effective representation is in the best interest of all
19 parties in the criminal justice system.

20 Many of the proposals that were offered here today
21 could well foster and fulfill that goal. We feel it would be
22 appropriate for the Committee to make recommendations concerning
23 raising the level of representation to the appropriate State
24 and local authorities.

25 That is all I have. Which would be the court

1 system. Representation presently is monitored by the
2 Supreme Court, of course, through the Appellate Court system
3 and on the State Court monitored through the administrative
4 office of the Court of Common Pleas, which requires, or has
5 submitted this affidavit.

6 It is a certification of attorneys seeking
7 appointments in homicide cases. Basically it requires that
8 an attorney seeking homicide appointments in Philadelphia
9 to certify the items that were already alluded to in previous
10 testimony, mainly that I maintain an office in Philadelphia
11 for the practice of law.

12 Two, within the last five years, I have tried at
13 least fifteen criminal cases in the State or Federal Court,
14 no more than five of which have been preliminary hearings or
15 guilty pleas and at least five of which have been jury trials.

16 That is the present certification form which I
17 will offer to the Committee.

18 CHAIRMAN DeWEESE: Is that what we heard earlier?

19 MR. CHADWICK: You heard a rehash of what is
20 contained in that, an interpretation.

21 CHAIRMAN DeWEESE: But how about the minimum, the
22 minimum requirements.

23 MR. CHADWICK: The minimum is five jury trials
24 and fifteen cases.

25 CHAIRMAN DeWEESE: It is not ten misdemeanor in the

1 last three?

2 MR. CHADWICK: No. That is the form, that you have
3 before you, and that is what they are required to sign.

4 CHAIRMAN DeWEESE: And you have concluded your
5 comments?

6 MR. CHADWICK: Yes, I have.

7 CHAIRMAN DeWEESE: Does Charlie or Gary have
8 anything to say?

9 Bob, questions?

10 REPRESENTATIVE REBER: Yes, Mr. Chairman, just a
11 couple.

12 First of all, an observation. I am very happy for
13 the first time in about four years to be in the city of
14 Philadelphia, sitting as a member of this Committee and
15 listening to a district attorney's office give testimony to the
16 Committee without being binded by Fast Eddie Rendell's PR
17 extravaganza of cameras and what have you.

18 It is much, much more comfortable and more
19 interesting to listen to a representative of the district
20 attorney's office.

21 CHAIRMAN DeWEESE: Since I am outrageous myself,
22 I will let you get away with that comment.

23 REPRESENTATIVE REBER: I think I just had to
24 preface that.

25 Getting more to the point at hand--

1 CHAIRMAN DeWEESE: I miss Eddie personally, but
2 go ahead.

3 REPRESENTATIVE REBER: Personally, I don't.

4 Do you have any statistics from a monetary
5 standpoint as to the amount of money expended through the
6 District Attorney's budget, if you will, in the prosecution of
7 homicide cases?

8 What I am trying to get to, from my experience--
9 and if Representative Hagarty was here today, she and I
10 always used to be on the opposite sides of criminal defense
11 things in Montgomery County for years when she was a first
12 assistant district attorney.

13 I always like to give her the jobs of all the
14 personnel that she always had available at her disposal to
15 be attempting to convict some of these individuals out of the
16 upper end of Montgomery County in criminal cases.

17 We were always dealing with marginal clients
18 that probably were indigent and had retained private counsel
19 and the amount of investigative work and the amount of support
20 personnel and what have you, is always rather diminimus on
21 the defense side as opposed to what has been my experience has
22 been available for the assistant district attorney that is
23 prosecuting the case.

24 We have heard testimony today about the monetary
25 concerns and constraints for defense and being part of the

1 problem.

2 I am just wondering if in-house you have developed
3 any kind of dollars and cents picture as to what might be
4 expended in the prosecution of a case, a homicide case, if you
5 will?

6 MR. CHADWICK: We have never done that. If you
7 give me about thirty seconds, maybe Charlie can figure it out.
8 I don't have my calculator.

9 All I can tell you is that we have, as indicated,
10 this year--so far this year we have had 221 homicides reported
11 in Philadelphia.

12 All those do not result in arrests. I would say
13 the clearance rate on homicides is about eighty percent.
14 Let's take 1985.

15 We had 297 reported homicides. That generated
16 in our office approximately 280 cases for us to try. We have
17 twenty assistant DA's to try those 280 cases.

18 We have five detectives to support us within the
19 office. We have four support staff now. I don't know the
20 actual salaries of all those people.

21 But basically what I am telling you is we really
22 don't have a lot of people to try that many cases.

23 CHAIRMAN DeWEESE: That is homicide, right?

24 MR. CHADWICK: That is homicide. Right now, I
25 keep track of all the active homicide cases. There is

1 approximately--there is new cases coming in. More cases come
2 in than go out on a weekly basis.

3 Right now we have a backlog, or an active caseload
4 of approximately 250, 260 cases. We have twenty DA's to handle
5 those cases and we only have, at this point, twelve judges
6 hearing homicide cases in Philadelphia.

7 So as far as getting the answer to your question,
8 I can't give you the monetary figure, but they always say the
9 DA and the governor have unlimited resources to do the job.

10 We don't have unlimited resources, when you consider
11 the numbers that I have just explained to you.

12 CHAIRMAN DEWEESE: Andy?

13 REPRESENTATIVE CARN: I have a couple of questions.

14 CHAIRMAN DEWEESE: Sure.

15 REPRESENTATIVE CARN: Do you feel that the
16 recommendations to increase the quality of counselors for
17 defense would affect the number of people being sentenced to
18 death?

19 MR. CHADWICK: No, I don't. I think that they
20 are getting excellent representation right now.

21 REPRESENTATIVE CARN: Well, can you say that you would
22 recommend or you didn't oppose an increase in the quality of
23 counsel?

24 MR. CHADWICK: Oh, not at all. In fact, we are
25 in favor of that.

1 REPRESENTATIVE CARN: But you are saying that it
2 wouldn't make any difference?

3 MR. CHADWICK: No, I don't think it would. What
4 it would mean would be that the convictions that are obtained
5 now would stand up on appeal, more so than when defendant's
6 are represented by attorneys who don't know what they are
7 doing.

8 REPRESENTATIVE REBER: Alleged do not know what
9 they are doing?

10 MR. CHADWICK: It is not in our best interest
11 to try cases against attorneys who don't know what they are
12 doing because the conviction that we get is hollow and that
13 it is going to be reversed by an appellate court some time
14 later.

15 We are much better off if we have an attorney on
16 the other side that knows that he is doing and can effectively
17 represent his client, so that the conviction won't be
18 overturned.

19 REPRESENTATIVE CARN: But do you think that
20 effective representation would not bring about better
21 decisionmaking on the part of the jury or the judge?

22 MR. CHADWICK: Well, you are equating better
23 decisionmaking with more acquittals.

24 REPRESENTATIVE CARN: No. We are talking about
25 facts.

1 MR. CHADWICK: I don't think that is necessarily
2 true.

3 REPRESENTATIVE CARN: We are talking about
4 representation and facts being put forth so that a judgment
5 can be made on all the facts.

6 That is what I am really looking at here. But I
7 am assuming that the quality, an increase in quality of
8 representation would bring about the presentation of a better
9 case.

10 That is my interpretation.

11 MR. CHADWICK: But the presentation of a better
12 case might not necessarily result in more acquittals.

13 CHAIRMAN DeWEESE: If I might interrupt for a
14 second, Andy.

15 If you guys at the DA's office, whether it is the
16 current DA or the former DA, if you want better folks
17 representing the accused, has Rendell's team or Catskill's
18 team, have you arranged meetings with the judges and tried to
19 get some better counsel for the defendants?

20 MR. CHADWICK: We don't really have input into that
21 process. As has already been said, that is a political process
22 to some extent, who ends up on a judge's appointment list.

23 CHAIRMAN DeWEESE: I am sorry to interrput.

24 REPRESENTATIVE CARN: No problem.

25 One more question. You made a statement that it is

1 a fact that juries outside of Philadelphia are much more
2 conservative.

3 What are your facts to back that up?

4 MR. CHADWICK: I think that is a general impression
5 that every attorney practicing trial law--

6 REPRESENTATIVE CARN: Oh, so that is not a fact.
7 That is an impression. You said it was a fact. I thought
8 you had documented this.

9 MR. CHADWICK: Well, I think if you look at the
10 civil arena. The numbers in civil verdicts for plaintiffs
11 are much higher in Philadelphia than they are in rural
12 counties.

13 REPRESENTATIVE CARN: But this is purely your
14 impression?

15 MR. CHADWICK: Yes.

16 REPRESENTATIVE CARN: No other questions.

17 CHAIRMAN DeWEESE: You have no more?

18 REPRESENTATIVE CARN: No.

19 CHAIRMAN DeWEESE: Would you say there has been a
20 little bit of pork barrel with these appointments, I mean, in
21 the past, in the present and austensibly in the future?

22 MR. CHADWICK: I am not sure what you mean by
23 that.

24 CHAIRMAN DeWEESE: Come on. Pork barrel. You were
25 in the halls of academia longer than I was. You know what I

1 mean.

2 Charlie knows what I mean. He is grinning.

3 MR. GALLAGHER: Because I am grinning doesn't mean
4 I know what you mean.

5 MR. CHADWICK: You mean judges spreading money
6 around to their friends?

7 CHAIRMAN DeWEESE: Appointments, I think was the
8 term.

9 MR. CHADWICK: Through appointments?

10 CHAIRMAN DeWEESE: Yes.

11 MR. CHADWICK: Sure.

12 CHAIRMAN DeWEESE: Okay.

13 Counsel, do you have questions?

14 MR. CONNELLY: Yes, I have a question.

15 CHAIRMAN DeWEESE: John Connelly, special counsel
16 to the Committee.

17 MR. CONNELLY: We are discussing the issue of
18 the judge's list. Is it safe for me to assume a judge is
19 assigned a case and counsel comes into the case at the point
20 the judge assigns it.

21 Is that how death penalty counsel are assigned?

22 MR. CHADWICK: I don't believe that is how it
23 happens. I think--

24 MR. GALLAGHER: I didn't understand.

25 MR. CONNELLY: Well, each judge has a list,

1 presumably, of counsel that he is satisfied can adequately
2 represent in homicide cases.

3 MR. CHADWICK: Right.

4 MR. CONNELLY: At what point does what judge's
5 list get used to assign counsel? Is it when a judge is
6 assigned a case?

7 MR. It is done on a rotation basis.
8 There is one judge that maintains the homicide appointment
9 list.

10 What his list is is a list of the sixty so judges
11 in the trial division who can make homicide appointments.
12 Each of those judges has a list of attorneys who, when it is
13 his turn to appoint, he appoints.

14 MR. CONNELLY: And it is strictly done on a
15 rotation.

16 MR. So it is done on a sixty rotation
17 basis. In other words, Judge A, B and C in order--if there is
18 three homicides that come in today and there is three homicide
19 appointments to be made, there is one judge that keeps track
20 of whose turn it is.

21 It is Judge A's turn. It is Judge B's turn. A
22 letter goes out to that judge. So and so needs representation.
23 He is charged with homicide.

24 That particular judge then notifies the court who
25 he appoints on his particular list to represent the defendant.

1 MR. CONNELLY: Is it safe to assume that there are
2 attorneys on more than one judge's list, or don't you know?

3 MR. : I don't know.

4 MR. CHADWICK: I believe there are. But I think
5 that there is a limit to the number of appointments any
6 attorney can receive in a given calendar year.

7 MR. CONNELLY: Back to the qualifications on
8 that affidavit or whatever one would call it.

9 MR. CHADWICK: Certification.

10 MR. CONNELLY: Do you personally, any of you
11 gentlemen, consider these qualifications even remotely relating
12 to the quality necessary to try this kind of case?

13 MR. CHADWICK: I think that there are people
14 who have those qualifications who could do an excellent job
15 on a homicide case.

16 I think there are people who have done fifty or
17 a hundred jury trials, who I wouldn't want representing me
18 on a homicide case.

19 Therefore, minimum qualifications don't necessarily
20 mean that much. You have to look at the representation that
21 is given to a defendant in a given case, which is what the
22 appellate courts are presently doing.

23 MR. CONNELLY: Can you think of a better way of
24 doing this other than having the attorneys verify the number
25 of trials he has been involved in in this time frame.

1 In other words, a committee to select people that
2 are known to be qualified to this job.

3 It just seems ludicrous to me with this format
4 that this is what I have done, here it is, put me on the list
5 and then I will try the case.

6 MR. CHADWICK: But what I am saying is that you
7 can increase the number of cases tried on that form by
8 ten-fold and you still don't guarantee that the attorney is
9 qualified to represent defendants in death cases.

10 MR. CONNELLY: So the answer may be, if we are
11 taking a serious look at this to find a system to select
12 counsel in these cases that is more significant than purely
13 number of trials, but also the quality of the performance within
14 the confines of those trials; correct?

15 MR. CHADWICK: Yes.

16 MR. CONNELLY: All right.

17 REPRESENTATIVE REBER: Could I just followup on
18 that?

19 CHAIRMAN DeWEESE: Sure. Go ahead.

20 REPRESENTATIVE REBER: It seems to be that really
21 it is not who is on the list, but whether the person that is on
22 the list is qualified.

23 The next step is how do you go about regulating
24 or coming up with a system to make sure that person is in fact
25 qualified, which brings us back again to what Mr. Lerner said

1 earlier this morning.

2 I don't know if you were here or not and heard
3 his testimony. But obviously, there has to be a better system
4 when you have a number of people who are renown in the area,
5 have the expertise, have exhibited it and they themselves
6 then are schooling, if you will, people before they are put on
7 a list for a particular type of case.

8 So I guess the more hurdles you go over and the
9 more people that have to jump over those hurdles, the chances
10 are you are going to get better and better.

11 It is just how far can you practically go, how
12 much money can you commit to that process, is what it comes
13 down to.

14 MR. CHADWICK: That is a good point. Presently
15 you have three years of law school and bar examine before you
16 can practice law.

17 We all know that that doesn't really qualify
18 you do anything. Perhaps, as you say, the more hurdles you
19 place in someone's way, the more people you eliminate at each
20 hurdle.

21 MR. GALLAGHER: One other point I would like to
22 make.

23 CHAIRMAN DEWEESE: Sure. Go ahead, Charlie.

24 MR. GALLAGHER: When you consider the
25 numbers and you can take the statistics and use them which

1 way you want to.

2 But when you consider the numbers and you consider
3 the number of homicides that are in Philadelphia and the
4 attorneys that I see time and time again handling homicides,
5 they are basically the same group of people.

6 Those people that come in to handle homicides
7 are people that have handled a lot of homicide cases, because
8 the volume here is so much higher.

9 The Pittsburgh Public Defender's Office has
10 indicated that there is two people there who were ex-prosecutors.
11 Most of the people that handle homicides in Philadelphia are
12 ex-prosecutors from the Philadelphia DA's Office who are now
13 members of the private bar.

14 So when you are dealing--I don't think you can
15 compare Pittsburgh and Philadelphia. I just don't think it
16 can be done.

17 I think Bill has indicated from statistics that
18 you can't compare Pittsburgh and Philadelphia. You can't
19 compare them by the end results.

20 You are dealing in a forum here in Philadelphia
21 where you have such a large volume of homicide cases and you
22 have a lot of attorneys, experienced private attorneys, that are
23 handling these cases time and time again.

24 You are going to get more experienced people
25 handling homicide cases here in Philadelphia than you are

1 throughout the State except for the exception where you have
2 someone in Pittsburgh, two people that are ex-prosecutors and
3 that is all they do.

4 That is all they have been doing for the last
5 six years is handling homicide cases. I think you will have--
6 you have that in Philadelphia also.

7 You have a lot of attorneys that handle just
8 exclusively homicide cases.

9 CHAIRMAN DeWEESE: But, Charlie, wouldn't the
10 accused get better representation if Philadelphia had a
11 system like Pittsburgh's.

12 If we are looking for the ideal of wanting to go
13 forward, wouldn't that be--I mean the system that was described
14 to us this morning, wouldn't that enhance the Philadelphia
15 situation?

16 I mean, Bill already said, he wants the best
17 people on the other side in the trial. Wouldn't that make
18 them just a little better.

19 MR. GALLAGHER: It may enhance, but it will not
20 necessarily make it better than Pittsburgh. It won't make it
21 as good as Pittsburgh.

22 I don't think you can compare--my basis is--I
23 don't think you can compare Pittsburgh to Philadelphia. I
24 think they have equally adequate--

25 CHAIRMAN DeWEESE: Why is that?

1 MR. GALLAGHER: I think they have equally adequate
2 system to provide competent counsel for defendants charged
3 with homicide.

4 I think that Philadelphia system, you know, you
5 just can't compare it to Pittsburgh.

6 CHAIRMAN DeWEESE: Why can't you compare it,
7 please?

8 MR. GALLAGHER: Because the numbers don't support
9 it. You have a different forum in which you are dealing with.
10 You have much more violent people.

11 Just to look at one statistic and the one
12 statistic is the number of death penalties which results in
13 Philadelphia as compared to Pittsburgh, and then therefore
14 conclude this because it gets better representation.

15 I don't think you can make that conclusion.

16 CHAIRMAN DeWEESE: But it would enhance the
17 system austensibly?

18 MR. GALLAGHER: Sure. That is our position.
19 Anything that would enhance the representation of defendants,
20 we are in favor of, because it makes our job easier as far as
21 the appellate process as well as the collateral review.

22 But the people that are reviewing what happens
23 in Pittsburgh, the homicide cases, are the same people that
24 are reviewing what happens in Philadelphia with the homicide
25 cases.

1 That is the appellate courts of the State.
2 And especially in the death cases. You have the Supreme
3 Court of Pennsylvania not only reviewing the issues that are
4 raised by counsel on both sides of death cases, but they take
5 an independent review of every death case that results.

6 CHAIRMAN DeWEESE: But the bottom line, if we
7 had two attorneys facing you in court, the defendant would
8 probably have a better shot?

9 MR. GALLAGHER: Not necessarily.

10 CHAIRMAN DeWEESE: No. One preparing the case and
11 one preparing the penalty phase. The second question I have
12 along the same lines, if a person was being better compensated
13 now and in the future than they have been in the past, we
14 wouldn't have--you guys would not have a tougher time
15 convicting?

16 You have got two attorneys over there. They are
17 getting paid a lot more money. They are defending that person
18 more aggressively.

19 That doesn't help? That doesn't help the system?

20 MR. CHADWICK: I am not certain if compensation
21 can be related to effectiveness in that setting.

22 MR. GALLAGHER: I don't think it can. Because
23 you have to be--to be frank, you have retained attorneys that
24 are getting paid a lot of money that don't do as good a job
25 that as somebody that is appointed.

1 I don't think you can--right?

2 MR. CHADWICK: I agree.

3 CHAIRMAN DeWEESE: Okay.

4 REPRESENTATIVE CARN: Mr. Chairman?

5 CHAIRMAN DeWEESE: Yes. I have no further
6 questions.

7 Andy, go ahead.

8 REPRESENTATIVE CARN: I just want to followup on
9 a point that I think I heard.

10 Did you initially say that giving more money to
11 the Public Defender's Office would not necessarily increase
12 the quality of representation?

13 MR. CHADWICK: Well, presently, the Public
14 Defender's Office does not handle homicide cases, so giving
15 more money in homicide wouldn't affect anything.

16 You would have to give them the right to handle
17 homicide cases.

18 REPRESENTATIVE CARN: All right. But do you
19 feel that that would help the system or not?

20 CHAIRMAN DeWEESE: If they had the right.

21 REPRESENTATIVE CARN: If they had the right.

22 MR. CHADWICK: I think--

23 CHAIRMAN DeWEESE: Psychiatric care, expert
24 witnesses, ballistics people.

25 MR. CHADWICK: That is a different issue. But

1 given that the death penalty imposition rate is slightly lower
2 in Philadelphia than it is Statewide, I don't see any reason
3 to believe that giving the public defender's the right to
4 handle death cases would decrease the percentage of death
5 penalties in Philadelphia.

6 I think that those numbers are in line with the
7 numbers all across the State.

8 CHAIRMAN DEWEESE: Okay. Thanks, fellows, very
9 much for being here and giving us the preverbal other side of
10 the question.

11 (Witnesses excused.)

12 CHAIRMAN DEWEESE: The last individual for today's
13 public hearing, Bob Spangenberg, American Bar Association.

14 Thank you very much, sir, for being here with us
15 today. We are in no hurry on the schedule. We are right on
16 time.

17 Whereupon,

18 ROBERT L. SPANGENBERG
19 having been called, testified as follows:

20 DIRECT TESTIMONY

21 MR. SPANGENBERG: Mr. Chairman, my name is Bob
22 Spangenberg. I am a member of the Massachusetts Bar and have
23 been for twenty-five years.

24 I am here today on behalf of the American Bar
25 Association that has a program that provides assistance to

1 local jurisdictions who have various kinds of problems with
2 their indigent defense system.

3 I am their--the ABA's principal consultant to
4 this program and currently involved in problems of indigent
5 defense delivery in twenty-five states.

6 Of those twenty-five states, I am involved in
7 death penalty representation problems in ten different
8 states.

9 So I have had the experience of listening to some
10 of your sister states in the problems that they have which in
11 some cases are not unlike what I have heard here this morning.

12 I have spent six days in the last two months in
13 Pennsylvania, four days in Philadelphia and two days in
14 Pittsburgh, talking to judges, lawyers, public defenders,
15 private lawyers.

16 In Philadelphia I have spoken to half of the
17 homicide judges currently sitting to the administrative
18 judge in your central court to public defenders to a number
19 of private appointed attorneys who handle homicide cases in
20 Philadelphia, in order to get sufficient information to be able
21 to make any judgment at all on the nature of the problem and
22 any of the solutions.

23 Actually, I was asked today to talk quickly about
24 how a few other states have addressed this particular problem.
25 Many states throughout the country have the same kind of

1 problem that you have here in Pennsylvania.

2 Let me do that quickly and then I will be happy to
3 talk more and respond to questions about Pennsylvania problem,
4 Philadelphia problem, things that have been raised this
5 morning.

6 I think I have a pretty thorough understanding of
7 the appointment process as it has been given to me by the
8 judges of the court and lawyers and so forth.

9 Then I will offer some ideas that this Committee
10 might consider in the future in trying to address this
11 problem.

12 Let me tell you quickly about several other states
13 that I was asked to look into. First of all, Maryland.
14 Maryland, unlike Pennsylvania, has a statewide public defender
15 system.

16 They have regional offices throughout the state
17 with full-time public defenders at each of the regional
18 offices.

19 They also have a state death penalty unit. That
20 unit assists the local public defenders both at trial and on
21 appeal.

22 Universally, two lawyers are appointed to every
23 case at trial. If there is a conflict of interest, the private
24 bar becomes involved.

25 The requirements of the state are that at least

1 two private attorneys are appointed in each case. They are
2 compensated at the rate of \$25 an hour, which is lower than
3 the compensation in Philadelphia, but their maximum
4 compensation is \$10,000, which is more than double that
5 provided in Philadelphia and Allegheny County and five times
6 the amount that is provided throughout most of the rest of
7 the state in Pennsylvania, as I understand it.

8 The guidelines in Maryland require that two
9 attorneys be appointed, that the lead counsel have prior death
10 penalty trial experience in order to appointed in the case and
11 this applies to both assigned counsel and public defenders.

12 Frequently, what happens in Maryland is that one
13 public defender and one private lawyer join together jointly
14 to handle the case.

15 In matters of appeal, there is a state appellate
16 unit, death penalty unit in Maryland and those are the lawyers
17 that do most of the cases.

18 Once again, two lawyers are assigned to each
19 appeal. When a case reaches the state post conviction process,
20 again, it is that state appellate unit, again, there are
21 two lawyers available.

22 In the State of New Jersey, they have a similar
23 system to Maryland. They have a statewide public defender
24 system.

25 They had regional offices with full-time lawyers

1 in each of the regional offices. The public defenders do most
2 of the trial cases.

3 The requirements are to have two lawyers, two
4 public defender lawyers on every case, to have a staff
5 investigator assigned to each case, to have whatever expert
6 witnesses are necessary in the individual case assigned case
7 by case.

8 If it is a conflict case, the private bar is
9 involved. Once again, there are two attorneys required. The
10 hourly rate is \$40 an hour.

11 There is no maximum for an individual case. I
12 am informed that the average death penalty case runs the
13 State of New Jersey between twenty and \$40,000 per attorney
14 per case, if the private bar is involved.

15 On appeal, there is a special appellate unit
16 in the New Jersey public defender's office that does most of
17 the appeals.

18 There are two lawyers appointed in every case of
19 appeal. State post conviction matters are also handled by the
20 state appellate defender office in a similar fashion to
21 direct appeals.

22 The third state is Ohio. Ohio also has state
23 public defender commission, but the responsibility is different
24 than that in Maryland and New Jersey, in that each county in
25 Ohio selects by option their own system; either a public

1 defender system, an assigned counsel system or contract with
2 the private bar.

3 The state commission in Ohio establishes certain
4 standards of performance, qualifications for each of these
5 systems, be it public defender or assigned counsel of
6 contract.

7 If the local county chooses a system, whatever
8 system they choose, if they can meet the state commission
9 standards, then the state reimburses the county fifty percent
10 of the total cost of their operation over a given year.

11 So it is a state reimbursement program with a
12 local county option as to type of system. The state public
13 defender, however, also has a state death penalty unit.

14 That unit provides both trial counsel and appellate
15 counsel to the local county public defender or to the local
16 county assigned counsel system.

17 The state public defender also has a serious of
18 qualifications and standards. They require two lawyers in
19 every case of death penalty at trial, be it public defender
20 or assigned counsel.

21 They have a compensation rate of \$45 an hour.
22 The maximum is \$12,500 at trial for one lawyer and \$25,000 for
23 the combined two lawyers.

24 On appeal, similarly to New Jersey, there is a
25 state appellate defender program. Two lawyers are assigned to

1 the case.

2 If it is a private attorney appointment because
3 of a conflict, there are two lawyers. They must have prior
4 death penalty appellate experience and they get paid the same
5 rate, \$45 an hour up to \$12,500.

6 Finally, in the State of Florida, which was the
7 fourth state I was asked to provide information to this
8 Committee on.

9 Florida does it differently than any of these
10 other three states. Florida usually has publicly elected
11 public defenders.

12 Someone said, what does a public defender run on?
13 What kind of a platform can a public defender run on? I
14 don't know the answer to that, but the system has been in
15 existence for fifteen years in Florida.

16 It is a circuit system. There are twenty public
17 defender circuits in Florida. The state provides virtually
18 all the funds for indigent defense in Florida.

19 Most of the public defender offices have special
20 death penalty units with extremely experienced qualified
21 lawyers handling death penalty.

22 There are also five appellate units located
23 throughout the state. The appellate lawyers do most of the
24 death penalty representation in Florida.

25 In each case involving public defenders there is a

1 requirement that there be two lawyers on the case, be it trial
2 or appeal.

3 You heard earlier about the crisis that developed
4 in Florida in post conviction. I think that it should be
5 repeated for emphasis because I think Pennsylvania is going
6 to reach this point in the next one to two years, and that is
7 having a large number of cases affirmed by the State Supreme
8 Court and at the post conviction--state post conviction level.

9 Florida's experience was that the whole court
10 machinery came to a grinding halt as the State Supreme Court
11 stayed execution in all cases in Florida for a year because
12 of the failure to have counsel in state post conviction matters.

13 Ultimately, the legislature, the governor and the
14 attorney general, as you heard before, proposed and adopted a
15 system to provide an appellate system for post conviction
16 cases in Florida.

17 That has been in place now for about a year. From
18 all I could learn, it has been extremely effective. So that
19 is how they do it in Florida.

20 These are four different kinds of systems, four
21 different kinds of points of view. But if you look for any
22 themes or consistencies you find two lawyers, you find
23 qualification standards, you find training requirements and
24 standards in each of these states and if not most important,
25 certainly terribly important, you find state funds.

1 There are only nine states in the county that
2 do not provide any money for indigent defense services. Those
3 states are Arkansas, Idaho, Louisiana, Mississippi, Nebraska,
4 South Dakota, Texas, Arizona and Pennsylvania; just nine states
5 in the country.

6 There are no eastern states other than Pennsylvania
7 that do not provide any funds for indigent defense whatsoever.
8 There are twenty-three states that provide complete and
9 total funding for all criminal and juvenile cases throughout
10 the state.

11 Thus the arithmetic is that there are eighteen
12 other states that provide partial state funding to supplement
13 or to reimburse the counties.

14 I have in my testimony laid out each of those
15 states and the particular methods that are used to provide
16 state funds.

17 Which brings me to my final point. As I said I
18 would be happy to answer any questions on any of these or other
19 points.

20 That is recommendations that I would have for
21 consideration of this Committee and for the State legislature.
22 My own view is that this is one of the very few situations
23 where I could come before a committee and say that I think
24 money would really help.

25 We always get accused, lawyers always get accused of

1 asking for more money for this, for that or for the other
2 thing.

3 We understand the competition. We understand
4 this is an unpopular cause. We understand that the majority
5 of Americans, I guess, the polls show, favor the death penalty
6 and that many of our citizens do not understand why there is
7 any right to counsel or why the constitution requires
8 counsel.

9 The fact of the matter is that this is a different
10 kind of case. The United States Supreme Court has said
11 death penalty cases are different than all other crimes.

12 They require different standards. This is true
13 whether we like it or not. My own view is that the state
14 should begin to provide some funds for indigent defense
15 services in Pennsylvania and join the forty-one other states
16 that have already decided to do this.

17 Now, how those funds are going to be provided is
18 a question that you will have to give further consideration
19 if you reach--get beyond that beginning point.

20 You could have an appellate defender program.
21 There are twenty-six states with a state appellate defender
22 program to deal with these cases on appeal.

23 You could have a special fund set aside for
24 death penalty representation. There are states that provide
25 examples of that.

1 You could have a state backup unit which would
2 provide assistance and resources and expert witnesses for
3 public defenders or assign counsel with highly skilled, highly
4 specialized lawyers and brief banks and things of that kind.

5 So I think you have a number of choices. But my
6 point is that I think that the state has to get involved and
7 has to begin to provide some level of assistance.

8 Finally, on behalf of the American Bar Association,
9 we very much offer our assistance to you as you go down the
10 road.

11 If there are things that we can provide for you,
12 information that we can provide, just let us know. We would be
13 happy to do that.

14 We are working in a number of--as I said, a number
15 of other states. It seems to me that the experience in some
16 of these states might be beneficial to this Committee and we
17 stand ready to do anything that we can to help.

18 CHAIRMAN DeWEESE: Thank you very much. To get
19 things rolling a little bit from a rather new perspective
20 on my part, I hear one side early on.

21 I think, holy mackerel, look at these figures.
22 Then I hear (word inaudible) fire team come in here and give
23 me the other side.

24 Could you reflect a little bit upon what has
25 happened this morning? You are the American Bar Association.

1 When I look out there I think of (word inaudible) and
2 farsightedness.

3 What is going on here today?

4 MR. SPANGENBERG: Well, first of all, I am just a
5 private lawyer from Massachusetts trying to provide help in
6 what is really a very critical area, without necessarily
7 taking sides or without taking one particular point of view.

8 I think there have been a number of things that
9 have--

10 CHAIRMAN DeWEESE: The intellectual, legal
11 perspective of the American Bar Association is manifest in
12 front of me today, I hope.

13 MR. SPANGENBERG: Well, the American Bar Association
14 has taken a couple of positions on death penalties. One
15 position they have taken is that there should be two lawyers
16 in every case, from a qualification standpoint.

17 I think that that is a very, very important issue.
18 I think that the program in Pennsylvania--I think that I heard
19 that occurs in Allegheny County, earlier, that two lawyers
20 are appointed to a case.

21 CHAIRMAN DeWEESE: Yes.

22 MR. SPANGENBERG: It does not occur here. I
23 think that is absolutely critical, point one.

24 CHAIRMAN DeWEESE: Okay.

25 MR. SPANGENBERG: Point two, I think that whoever

1 is going to death penalty representation needs to have special
2 training, be they private lawyers or public defenders.

3 I don't hear much about training in Pennsylvania.
4 I think I heard a little bit about Allegheny County. But it
5 seems to me that that is absolutely critical.

6 It is a highly complex area of the law. There is a
7 great deal at stake. I think that the cause could be advanced
8 by having some very good training by the State Bar, by the
9 public defender, whoever does it.

10 I think that that is critical. I think the
11 qualifications for appointment beyond two attorneys is a very
12 important issue.

13 I think that involves training. I think it involves
14 prior experience, at least for lead counsel in death penalty
15 cases.

16 I think if you are going to appoint a private
17 lawyer to handle a death penalty case on trial, or going to
18 appoint two lawyers, the lead counsel should have had some
19 prior death penalty experience.

20 That is also how second counsel will gain prior
21 death penalty experience to be qualified later on. As I read
22 the certification requirement given to me by the administrative
23 judge in this county, there was one thing left out from the
24 testimony by the gentleman this morning, and that is that you
25 can also qualify if you have had ten nonjury trials in the last

1 three years.

2 It is right on the form that the administrative
3 judge gave to me. It seems to me that--and that is not to
4 say that a lot of lawyers are qualifying under that lower
5 standard.

6 I would raise those standards and raise the
7 standards by requiring prior death penalty trial experience.
8 If you are going to handle appellate cases, prior death penalty
9 appellate experience.

10 I think it would also advance the cause if the
11 defender association shared in the caseload, homicide caseload
12 in the county.

13 I think the combination--the best combination--this
14 is my own personal view. The best combination of death
15 penalty representations is a sharing of appointments between
16 the private bar and public defenders.

17 I think they both ought to get involved. I
18 think they both ought to have joint training. I think
19 investigative services and expert witnesses should be provided
20 for both.

21 I think it is a responsibility of the entire bar,
22 not simply the private bar or the public defender bar.

23 CHAIRMAN DeWEESE: I can't figure out--since I
24 was a little boy in Greene County, I used to hear about
25 Philadelphia lawyers.

1 After eleven years in the legislature, I have been
2 surfeited with Brookes Brothers suits and this special
3 (word inaudible) of the Philadelphia Bar Association.

4 What in the hell is going on? Why aren't all
5 these thousands of lawyers in this city raising hell about the
6 fact that we don't have two lawyers defending the indigent,
7 that they don't have prior experience?

8 Where are all these guys that graduated from Penn?
9 I mean, where are they, sir? I mean, I don't understand why
10 we don't have anybody raising hell, unless the DA's people
11 are a hundred percent right.

12 MR. SPANGENBERG: I asked this very question myself
13 when I was first asked to come to Pennsylvania. The first
14 question I asked was where is the State Bar in this issue?

15 My experience in a number of other states that I
16 am working in right now, the State Bar is way out in front.

17 CHAIRMAN DEWEESE: Well, they seem to be some
18 lessened in Pennsylvania.

19 MR. SPANGENBERG: I don't know why. I have asked
20 that question. I was surprised that there wouldn't be someone
21 from the State Bar here to testify today, because it seems to
22 me that this is a very important statewide.

23 I would have expected that there would have been
24 someone here from the Philadelphia Bar Association to testify.
25 I am as confused as you are.

1 This is one of the first things that we do when
2 we get involved in a jurisdiction is to see where is the
3 private bar.

4 Is the private bar up front or are they some other
5 place? I can say on behalf of the Allegheny County Bar, I
6 spoke to some people up there who seemed to be very much
7 interested, contrary to some of the testimony this morning.

8 I asked them, where is the State Bar? And they
9 couldh't give me any satisfactory answer, other than to say
10 that the history of the State Bar is to be civil oriented
11 than criminal oriented.

12 Apparently the history of the Philadelphia Bar,
13 which in other areas I understand has done outstanding
14 pro bona work on the civil side and civil rights and First
15 Amendment and those kinds of cases, has not shown an interest
16 on the criminal side.

17 CHAIRMAN DeWEESE: Any questions from members of
18 the Committee?

19 MR. : I have a question.

20 CHAIRMAN DeWEESE: Just one second.

21 Bob or Kevin?

22 REPRESENTATIVE BLAUM: No questions.

23 CHAIRMAN DeWEESE: Bob?

24 REPRESENTATIVE REBER: Yes.

25 CHAIRMAN DeWEESE: Go ahead.

1 REPRESENTATIVE REEBER: Just to compliment the
2 gentleman on the testimony. It is rare that we get something
3 in package form that we can take back for both ourselves
4 and the staff to take a look at.

5 I want to compliment you on that. I certainly
6 to take some of your suggestions, which frankly were the same
7 points that I was developing after listening from the original
8 first post this morning when we came out of the gate on these
9 issues.

10 I just want to compliment you for that. I won't
11 belabor the point.

12 CHAIRMAN DeWEESE: Andy?

13 REPRESENTATIVE CARN: I am just curious to hear
14 what you state as the impact of the two attorneys as opposed
15 to the one attorney.

16 What kind of impact do you think that might have?

17 MR. SPANGENBERG: Well, there is no question. Let
18 me just add a couple things for the two attorneys, because I
19 think two attorneys without qualifications, without training,
20 without expert witnesses, with investigatory services, is going
21 to make a difference, but not a substantial difference.

22 So I would strongly urge that two attorneys, that
23 you increase the compensation rate, you have two attorneys and
24 you do those other things.

25 If you put that whole package together, my own view

1 is that what you are going to have, is you are going to have
2 a much more fair system, a much better system of determining
3 the facts and truth in the case.

4 That is what I am concerned about, is that
5 judgments are made where peoples' lives are at stake, based
6 on the actual facts that occurred and the truth of the case.

7 It seems to me that if you put those things
8 together, the truth will come out and defendants will be
9 dealt with fairly and their constitutional rights will be
10 protected.

11 REPRESENTATIVE CARN: And so you feel that the lack
12 of that kind of system, as you put forth, promotes an unfair
13 judicial system?

14 MR. SPANGENBERG: I do feel that way.

15 REPRESENTATIVE CARN: Thank you.

16 REPRESENTATIVE : Mr. Spangenberg, you
17 mentioned in your testimony that you shared with us preliminary
18 findings and your report will be forthcoming shortly.

19 It is fair to assume that you will be submitting
20 a copy of that to the Chairman for distribution among the
21 members of the Committee.

22 MR. SPANGENBERG: Absolutely.

23 REPRESENTATIVE : In your visits to
24 Pennsylvania, you talked to some of the members of the bench
25 locally as to how the appointment system works and we have heard

1 it described somewhat consistently through the course of the
2 hearing.

3 What do you understand of the financing of the
4 system? You made some reference to comparatively, Ohio, I
5 believe it was and New Jersey, that the cost could run anywhere
6 from \$20,000 to \$40,000 a case.

7 Do you know what those figures were like as to
8 Pennsylvania? Was there any (word inaudible) on that from
9 the judges that you talked with?

10 MR. SPANGENBERG: I asked that question of a number
11 of private appointed counsel in capitol cases and a number of
12 judges.

13 My understanding is that there is an answer, there
14 is a direct answer to that, in that a voucher is required
15 to be submitted in every case.

16 The vouchers are a matter of public record. I
17 am also told that the vouchers are all separated in the court
18 administrator's office.

19 A member of the staff could go over and simply
20 make a tabulation of those vouchers and get the actual expenses
21 of both the fees and expenses.

22 I happen to think that that would be a worthwhile
23 thing to do. I can't--I have wanted to do that, but that
24 information was not made available to me.

25 What I am told from judges and lawyers is that this

1 \$4,000 maximum which you heard went up from \$2,000 on July 1,
2 is subject to a waiver.

3 The trial judge must certify the amount
4 above \$4,000, then the precedent judge has the final
5 authority and discretion to determine what the bill is going
6 to be.

7 Now, what I am told, and you can verify this
8 simply by looking at the vouchers, is that in a number of
9 cases, trial counsel has submitted bills substantially
10 exceeding \$4,000.

11 In virtually every case, their bill has been
12 cut, either by the trial judge or the precedent judge down
13 from the total amount, where they simply added up the total
14 number of hours they spent on a case and multiplied it by
15 \$40 out of court and \$50 in court and submitted that bill.

16 It has been cut one way or the other. No one knew,
17 that I spoke to, of any bill that had been ultimately approved
18 exceeding \$10,000.

19 There may well be some cases, but this is simply
20 the information that was provided to me by the judges, those
21 judges and lawyers who handle these cases.

22 REPRESENTATIVE REBER: And that was in Philadelphia?

23 MR. SPANGENBERG: That is in Philadelphia, yes.

24 Let me just add that my understanding is that outside of
25 Allegheny County, and Philadelphia, for the most part, the

1 maximum fee at trial is \$2,000. I think that--my final point
2 is that I would urge the Committee obviously to look at the
3 Philadelphia situation.

4 But I would further urge you to look upon this
5 problem as a Statewide problem. I think there are reasons
6 why Bucks County has the percentage that it does.

7 But this is a Statewide problem. You have the
8 only system in the country that I know of which is a part-time
9 public defender system.

10 The reason I understand that it is part-time is
11 the counties are not able to provide sufficient funds to
12 employ full-time lawyers.

13 If you have part-time lawyers up against specialized
14 skilled, full-time prosecutors, twenty homicide attorneys in
15 this office, with appropriate support staff, investigators,
16 and the--I am sure the State Police Lab, maybe the city has
17 a police lab, the county has a police lab, the sheriff's
18 department, unlimited, virtually unlimited resources, up
19 against a part-time system

20 Now, I feel very strongly. If the district
21 attorney's office needs more resources to adequately process
22 cases, they should be given additional resources.

23 I argue that everyplace I go. I am not saying
24 don't give the district attorneys money that they need to
25 process the cases, but I say, give them that money, but in the

1 process, don't create the increased disparity that exists
2 for the constitutionally mandated right of effective assistance
3 of counsel.

4 That is my only point.

5 CHAIRMAN DeWEESE: Anything else?

6 On behalf of the Committee, thank you. Just
7 as you leave, please share with Ira Couldran, the new
8 president of the Bar Association, our desire that the
9 Pennsylvania Bar Association and his friends in Philadelphia
10 segment of the Bar Association, stay in touch with us and
11 try to help work with us toward resolving some of the
12 delimmas that you have enumerated.

13 MR. SPANGENBERG: I shall do that. I would hope
14 that we can work with you as time goes on.

15 CHAIRMAN DeWEESE: I am confident we can.

16 (Witness excused.)

17 CHAIRMAN DeWEESE: Thank you very much, ladies
18 and gentlemen. The hearing is concluded.

19 (Whereupon, the hearing was concluded.)
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25