



Written Statement of
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NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS

before the
United States Senate Committee on the Judiciary

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

February 27, 2007

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

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

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

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

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

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

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

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

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

"Nowhere in public service is it more important to encourage the recruitment of competent lawyers and the retention of experienced ones than in the disciplines of prosecution and public defense, where people's lives and liberty hang in the

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

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

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