

PHILADELPHIA DISTRICT ATTORNEY'S OFFICE

LYNNE ABRAHAM, DISTRICT ATTORNEY

FY10 BUDGET HEARING STATEMENT

MAY 5, 2009

Good morning President Verna and Council members. This will be my last budget hearing statement as District Attorney of Philadelphia. Let me begin by thanking you for your support for me and for the dedicated and hardworking young men and women of my office over the past eighteen years. All of these prosecutors have fought long and hard for justice in our city. I appear before you today to ask one last time, for the safety of all Philadelphians, that you continue that support.

Regrettably, the Mayor of Philadelphia has proposed slashing the city's prosecution budget by 22% over the amount you allocated one year ago for FY09. The Mayor invokes the city's current financial crisis to justify this drastic cut. Yet at the same time he seeks this huge cut for criminal prosecution, he proposes a relatively slight decrease of only 4% from the budget that funds lawyers for criminal defendants. In other words, the cut to criminal prosecution is *five times higher* than the reduction for criminal defense. This peculiar priority isn't required by the economic mess. In fact, the Criminal

Justice Advisory Board – the board created at the Mayor’s own urging, composed of representatives of every criminal justice agency – has recommended an alternative approach. That proposal recommends almost exactly the same total criminal justice expenditure as the Mayor’s budget plan; but it distributes the necessary cuts in a rational, fair manner.

All I ask is that you follow that multilateral proposal. But this is not about me. After December, I won’t even be here. This is about doing what’s right to protect our constituents. The following points lay out the situation in more detail.

1. How we’ve cut so far.

Last year, in the midst of an ongoing wave of killings, shootings and other violence, this body recognized the need to prioritize public safety and refused to cut the District Attorney’s Office budget. However, a few months ago, in the midst of the economic crisis in which our City suddenly found itself, the mayor sought to reduce our actual expenditure by 5% from the amount this Council allocated for FY09. That’s \$1,600,000, a significant chunk of my budget. Because the City’s fiscal imbalance was not recognized until late fall, the entire \$1,600,000 has to be cut from our budget in the final six months of the current fiscal year.

But I understand that we all have to do our part. I readily agreed to the new spending goal, and we are working to meet it. To that end:

- my Office has imposed a hiring freeze since this past October.
- the three-year employment commitment normally required of new prosecutors has been suspended.
- detective overtime has all but been eliminated.
- all salary increases, both merit and longevity, have been suspended.
- I have taken the difficult, unprecedented step of rescinding the employment offers made to all law school graduates who were scheduled to join my Office next fall.

At the same time, we have maximized the use of forfeiture funds – to the extent that the law permits – and have lobbied all of our grant providers to increase grant revenues. With these steps, I believe we can operate within our target budget for FY09. I have met my Council-allocated budget, without need for end-of-year transfer ordinances, *each and every year for the past eighteen years*. There are many other departments and agencies that cannot say the same thing.

2. *How we've saved the City millions in prison costs.*

At the same time that we have been taking these steps to reduce our budget, my Office has taken the lead in the legislative arena to save the City millions of dollars.

The City currently pays incarceration costs of between \$82 to \$100 per day per inmate. For the last two years I have worked closely with the Pennsylvania District Attorneys Association and Dennis O'Brien, former Speaker of the Pennsylvania House, to enact a prison reform package. The reforms modernize old state laws that unfairly operated to place on local officials the costs of housing long-term prisoners who really should be in state institutions.

Thanks to our efforts, this legislative package (Acts 81-84 of 2008) was recently signed into law by Governor Rendell. In various stages over the next three years, the new law will require that prisoners subject to sentences of two or more years serve their time in the state correctional system instead of in county jails. This change will relieve county governments of the sole financial burden of incarcerating long-term prisoners, and at the same time will help ensure better treatment programs for serious offenders in an attempt to reduce their risk of recidivism.

After securing passage of this legislation, my Office immediately filed a petition to transfer from our county jails to the State all prisoners serving maximum sentences of 2 or more years. As a result of our petition, the State Department of Corrections has agreed to immediately accept the transfer from our county jails of 250 prisoners serving sentences of two or more years. These

transfers are at no cost to the City. They have already saved the City close to two million dollars in the last four months. As a result of the new law, and other efforts by the courts, the City's average jail population has dropped by over 400 since January. (This figure comes directly from the prisons themselves, and belies the claim, which the City recently presented to Council, that the population is inexorably rising.) The estimated savings from the population, spread over FY10, would be up to nine million dollars.

The new law that made possible these savings was one of my top legislative priorities. My Office drafted the legislation and spent hundreds of hours putting together a state-wide criminal justice partnership to get it passed. I am pleased to report its success. I am disappointed, however, that the Administration has not accounted for either the realized or projected savings, and is instead proposing an 8% increase in the Prisons budget – while cutting the District Attorney's budget to the bone.

3. *What the Mayor has in mind for prosecuting criminals.*

Let me begin by making clear that there is a large disconnect between the Administration's proposed budget and the real numbers. Last year this Council allocated \$32,000,000 for criminal prosecution in FY09. Now the Administration is advocating a FY10 budget for my Office of \$24,943,050. (That figure, by the way, would reduce the District Attorney's budget to the

level it was at almost a decade ago – in the year 2000.) The Administration is deliberately mislabeling this as a 12% reduction. No matter how one dresses it up, however, twenty-five million dollars is not, and will never be, only 12% less than thirty-two million dollars. The proposed seven-million dollar reduction for FY10 is and always will be 22% less than the 32 million dollars you voted for FY09.

Let me try to put that in perspective. The Mayor says that the City's discretionary budget – the portion that the City has the power to reduce – is two billion dollars, and that the size of the total projected citywide budget deficit for FY10 is 172 million dollars. Doing the math again, \$172 million out of \$2 billion equals 8.6 %. In other words, an across-the-board reduction in discretionary funding of 8.6% would completely close the FY10 deficit.

So how does the Mayor justify such a wildly disproportionate cut – twenty-two percent – for criminal prosecution? Don't get me wrong – I am not suggesting that we solve the budget shortfall by blindly cutting everything in the budget by exactly the same amount. On the contrary, careful prioritizing is precisely what we should be doing. Public safety is the last government service that should be sacrificed.

Even the Mayor seems to acknowledge that – but only, for some reason, as to every *other* criminal justice agency. Take a look at this chart of the

Mayor's proposed criminal justice budget. No one else comes even close to the proposed cut to the District Attorney.

	<u>FY09 Apprvd</u>	<u>FY09 Proj</u>	<u>Chng</u>	<u>FY10 Proposed</u>	<u>Chng</u>	<u>Ttl Chng</u>
Police	524,001,749	536,442,088	+2.3%	522,478,250	-2.6%	-0.3%
Courts	114,552,203	108,824,593	-5.0%	99,096,983	-8.9%	-13.5%
Clerk QS	5,017,014	5,289,363	+5.4%	4,915,313	-7.0%	-2.0%
Prisons	230,001,319	243,458,119	+5.8%	248,835,310	+2.2%	+8.2%
Defender	36,503,902	36,382,604	-0.3%	35,036,005	3.7%	-4.0%
DA	31,987,373	30,578,148	-4.4%	24,943,050	-18.4%	-22.0%

So the question arises again: how could the City make such a lopsided cut to the prosecution budget? It would be one thing if the Mayor could cut the amount of criminal activity by 22% over the course of a single year. But of course that would be unrealistic. In the real world, if the District Attorney's Office budget is slashed by almost a quarter, there simply won't be enough prosecutors to handle the work. One of two things will happen: either criminal defendants will spend much more time awaiting trial in Philadelphia prisons (at huge expense to the City), or many more criminals will be released from jail (at huge expense to your constituents, who will be the victims of the increased murders, rapes, robberies and burglaries that will result).

4. *What the Mayor has in mind for defending criminals.*

While the Mayor's proposal would hamstring criminal prosecution, what does he propose for criminal defendants in this era of financial crisis? He proposes that they (or at least their lawyers) emerge relatively unscathed. At the Mayor's invitation, the Defender Association accepted a midyear FY09 reduction of *just 0.3%* from their approved FY09 budget. That amount was tiny compared to the cuts taken by most other agencies, including the District Attorney's Office. One might expect the Mayor to make up for that by seeking a real reduction this time around, in the Defender Association's FY10 budget. One would be wrong. The Mayor's proposed budget for criminal defense counsel includes no more than a token additional reduction of 3.7%. As described by the Deputy Mayor for criminal justice (himself a 20-year veteran of the Defender Association), the public defenders office should be "held harmless" under the Mayor's proposed budget.

That largesse would be difficult to understand even if the Defender Association were a public office with responsibilities equivalent to the District Attorney's Office. But in fact these lawyers, although referred to as "public defenders," are public only in the sense that they are paid with our money. They are private employees of a private organization that has been granted a no-bid, no-cut, \$35,000,000 contract – on top of which they receive \$12,000,000

annually in federal grant money, plus some unknown amount of private “charitable” contributions.

Yet with all those resources, the Defender Association covers *only 60% of the criminal cases in the system*. The First Judicial District must pay out of its budget another \$8,000,000 more for appointed defense counsel in the remaining indigent criminal cases. And some defendants hire and pay for their own counsel. On the other side of the courtroom, opposing this total of \$43,000,000 of Philadelphia taxpayers’ money, stand your Assistant District Attorneys – whose budget the Mayor now wants to cut to \$25,000,000.

Apparently the Mayor, despite all of the rhetoric, places a higher priority on defending criminals than on prosecuting them. So much for the tough talk about fighting crime, supporting victims and witnesses, and protecting the public. What message is sent to the law abiding citizens of Philadelphia when the City fathers decide to spend so many millions more of their tax dollars on criminal defense than prosecution?

5. *Forfeiture funds – the mythical pot of gold.*

In an effort to explain this enormous discrepancy, the Mayor has said repeatedly that the DA’s Office can make up for the drastic cut he seeks by supplementing its budget with drug forfeiture funds. This is a fallacy. Here is what the truth is. The District Attorney’s Office is not sitting on hordes of

forfeited cash. The current drug forfeiture balance is \$5,322,728 – *but most of it is not ours.*

The public may not know, but the Mayor knows, that by past agreement with the City, 60% of drug forfeiture funds go to the Police Department. Because we have been spending down our share, the current balance contains even a higher percentage that belongs to the police. Accordingly, the Mayor knows that, of the \$5.3 million balance, \$5 million belongs to the Police Department, not the DA. Pursuant to state law, we are merely the repository of all forfeiture funds, including the police share, and it must be reflected in our grant revenue budget. But we can't, and don't, spend one dime of it.

So there is no pot of gold that we can tap to replace the millions the Mayor wants to remove from our allocation. We currently spend our annual share of incoming state forfeiture funds to pay the salaries of the personnel presently assigned to our Narcotics Division. These salaries have been and continue to be included on our grant revenue budget detail pages. It is simply false to suggest that there are hidden millions lying around to compensate for the giant bite the Mayor wants to take out of our budget. The money we receive from this Council funds our remaining positions – the vast majority of our lawyers – who cannot be paid out of state drug forfeiture proceeds. Any cuts to our budget will mean cuts to them.

Moreover, even if there were “extra” forfeiture money coming in, the Mayor’s plan to cut our budget in anticipation of using such revenue is illegal.

The Pennsylvania forfeiture law, 42 PA.C.S. 6801(f), clearly states:

“... The entity having budgetary control shall not anticipate future forfeitures or proceeds therefrom in adoption and approval of the budget for the district attorney”.

The reason for this prohibition is that forfeiture actions must be driven by legal circumstances, not by economic concerns. We cannot know in advance whether, or how much, forfeitable property may be seized by police officers or detectives. There is no proper way to budget for such contingencies; and the statute flatly prohibits it. By asking Council to consider state forfeiture funds as a reason for slashing the District Attorney’s budget, the Mayor is asking you to join him in violating the law.

The Mayor’s staff has similarly suggested that the prosecution budget can be safely slashed because we have unique access to grant funds to compensate. This is another fallacy. Certainly, if the Mayor manages to chop off 22% of our budget, we will aggressively seek grants to try to mitigate the damage. But we do that anyway. And in doing so, we will be competing against all the other criminal justice entities that have also been hit hard by the current crisis. A dollar in grants for us is likely one dollar less for the courts, or some other agency, and vice versa. We have no special access to grant funds.

Ironically, however, there is one person who does: the Mayor. The recent federal stimulus package targeted a special fund of \$13.5 million to the City of Philadelphia. Unlike regular grants – the kind my office has to compete for – this special stimulus money is *guaranteed*, and it is within the Mayor’s discretion to spend as he wishes in order to reduce the impact of the financial crisis on the criminal justice system. And that is on top of other targeted grant opportunities, such as the COPS program, which can be tapped to hire police officers. For unknown reasons, at the same time the administration was offering up the unwarranted expectation of grant money for the DA’s office, it failed to account anywhere in the budget proposal for the guaranteed funding that is coming to the Mayor.

6. *The effect on the District Attorney’s Office.*

Despite the claims to the contrary, then, a 22% decrease in the District Attorney’s Office budget would have real, and dire, consequences. Over 90% of the District Attorney budget is in Class 100, *i.e.*, wages. Accordingly, a \$7,000,000 reduction in that budget would require reducing personnel costs by \$6,400,000, which is the equivalent of 100 prosecutors. That’s right – 100 prosecutors.

This kind of cut is downright foolhardy in light of the growing criminal case inventory in Common Pleas Court. There are currently 11,143 cases

awaiting trial – up from 8,000 last year. That figure includes 453 homicide cases. There are an additional 29,500 cases waiting to be tried in Municipal Court. The police made 73,258 arrests last year. Eliminating 100 prosecutors would immediately and severely affect our ability to adequately prepare and try these cases. Consequently, more cases will be dismissed or nolle prossed. More cases will result in not guilty verdicts. All cases will experience longer delays. Justice will not be swift; it will be hobbled.

Victims will be further victimized by the very system instituted to protect them. Victim-witness services, including restitution assistance, court accompaniment, and transportation, will be greatly scaled back. As you know, victim-witness service organizations throughout the City are funded through the District Attorney's budget. In seeking a 22% cut in our budget, the Mayor is turning his back to all of these groups and their dedicated work as well.

Nor will the effects of a 22% cut be on victims alone. Defendants awaiting trial will remain in custody longer as their trials are postponed, dramatically increasing the present jail population. Another expensive lawsuit against the City would likely follow. Many hard-fought and difficult-to-obtain convictions, including those in murder cases, will be lost on appeal because we will not have sufficient attorneys to write the required appellate briefs or argue the appeals.

In addition to the disastrous impact on pending cases, investigations will also be undermined. Our work in areas such as house stealing and contractor fraud will have to be terminated. Dollar thresholds for many economic crimes and crimes against senior citizens will have to be raised or investigation eliminated entirely, thereby leaving many victims with nowhere to turn. Nuisance bars and crack houses that destroy neighborhoods will no longer be closed and seized, but will flourish.

A 22% budget cut will also require the termination of several important, successful and cost-saving programs. Drug Treatment Court, Community Court, Gun Court, DUI Court, and Mental Health Court would all be subject to elimination. Our Charging Unit staff will have to be drastically reduced, resulting in significant additional delays in arraignment of arrestees, which will in turn increase holding times in police facilities, and thereby renew the risk of costly litigation against the City. And these risks will occur immediately since, with almost no cut to the police budget, the number of arrests will continue to rise, as it has for the past four years.

Perhaps it is in recognition of such litigation against the City that the Mayor's budget proposal, while slashing the DA's Office and "holding harmless" the public defender's budget, seeks to increase the budget of the City's Law Department by 31% – five million dollars.

In any case, from a fiscal perspective alone it is clear that a 22% cut in the District Attorney's budget will cost much more than it will supposedly save. More importantly, from a public safety perspective, this proposed punitive budget reduction will have a devastating impact on our neighborhoods. Crime will increase, trust in our criminal justice system will decline, and the quality of life in our already suffering City will further deteriorate. Citizens, feeling that they and their families will never be safe here, will continue to move elsewhere.

7. *The recommendation of the Criminal Justice Advisory Board.*

Something is obviously wrong with the extraordinary disparities proposed in the Mayor's budget – and I am hardly the only one who thinks so. The Philadelphia County Criminal Justice Advisory Board, created last year at the Mayor's request, agrees that there is a better, fairer way to allocate the available criminal justice funds.

The Board's stated mission, as established in its bylaws, is to “examine and address community criminal justice issues and recommend ways in which public safety agencies and private organizations can cost-effectively, efficiently, or collaboratively deliver criminal justice programs in Philadelphia County.” The Board is composed of all of the main participants in the Philadelphia criminal justice system. Members come from the courts, the

Mayor’s office, the District Attorney’s Office, the public defender’s office, the police department, and other agencies.

In direct fulfillment of its assigned mission, the Board, at its most recent meeting just last week, on April 28, 2009, passed a resolution prepared and circulated by my Office a week earlier, recommending that City Council reallocate the funds proposed in the Mayor’s budget for the criminal justice system, as shown in the third column of numbers below (CJAB FY10):

	<u>FY09 Apprvd</u>	<u>Mayor FY10</u>	<u>CJAB FY10</u>	<u>Chng from FY09</u>
Police	524,001,749	522,478,250	522,478,250	(1,523,499) (-0.3%)
Prisons	230,001,319	248,835,310	240,237,689	10,236,370 (+4.5%)
Clerk QS	5,017,014	4,915,313	4,665,823	(351,191) (-7.0%)
Courts	114,552,203	99,096,983	106,633,549	(7,918,654) (-7.0%)
Defender	36,503,902	35,036,005	33,145,543	(3,358,359) (-9.2%)
DA	<u>31,987,373</u>	<u>24,943,050</u>	<u>29,049,240</u>	(2,938,133) (-9.2%)
Total	943,066,318	935,304,911	936,210,094	

As you can see from the chart above, the Board’s recommendation for total criminal justice spending is almost precisely the same as the Mayor’s total proposal.* Furthermore, the Board adopts *exactly* the Mayor’s proposal for the Police Department. The recommendation merely reallocates the amounts

* The two totals for criminal justice spending – shown in column 2 and column 3 – vary by less than one-tenth of one percent. The CJAB total exceeds the Mayor’s total, by \$905,183, only because of a discrepancy in the budget numbers for the public defenders office. The CJAB total (column 3) was calculated based on the official figure of \$35,941,188, listed at line 2.42 in the FY10 Budget Ordinance. The Mayor’s total (column 2) was calculated based on the Defender Association representation that its FY10 budget will be \$35,036,005.

proposed for the other agencies, to ensure that the City's criminal justice system is capable of continuing to work *as a system*.

The recommendation includes a significant decrease for the District Attorney's Office, but it is matched (unlike the Mayor's proposal) by an identical cut for the Defender Association. The judicial representatives on the CJAB are obviously aware the role of public defenders office and its place in the system. They understand that the courts cannot properly function if the Defender Association were to be crippled; but they understand that the same is true as to the District Attorney's Office. In fact, as President Judge Dembe testified before you last week, every criminal courtroom requires an Assistant District Attorney, but not every courtroom requires a public defender. The judge further pointed out that, even if the CJAB recommendation prevented the Defender Association from handling some criminal cases, the void could easily be filled with court-appointed counsel.

The essential point about the CJAB recommendation, however, is this: *the proposed cut to the prosecution and defense is equal* – unlike the Mayor's wildly disproportionate proposal. Whatever difficulties would be created for public defenders would be borne in equal measure by my Office. The burdens of this financial crisis would be shared fairly, and that fairness can be achieved with only a miniscule adjustment in the overall criminal justice budget. Indeed,

the bottom-line difference between the Board's recommendation for my Office and the Mayor's proposal for my Office (\$4,100,000) amounts to just four tenths of one percent (.004) of the total \$936,000,000 that the Mayor would allocate for the criminal justice system.

Another difference with the Mayor's proposal, although a slight one, concerns the Clerk of Quarter Sessions. The judges and administrators of the Courts are of course quite familiar with the work of the Clerk's office. As above, they understand that the system could not function if there were insufficient resources provided to perform the work assigned to the Clerk's office. Accordingly, while the CJAB recommends a slightly higher cut for the Clerk of Quarter Sessions than the cut proposed by the Mayor, the size of that cut is equal to the CJAB-recommended decrease *for the Courts themselves*, and is *less than* the cuts recommended for the District Attorney and public defender. Given the economic problems facing this City, it is unclear why the Clerk of Quarter Sessions would be excused from its due portion of the necessary belt-tightening.

The only other significant difference from the Mayor's proposal concerns the prisons. Not that the Board would cut the prison budget; on the contrary, it recommends a sizeable increase there (4.5%). But the Board was unwilling to go quite as high as the Mayor. The Mayor's figures fail to account for falling

prison population figures, for the \$9,000,000 projected savings in prison costs gained by our successful prison reform legislation, or for the self-defeating effects of cutting so much from the rest of the system. If, despite these considerations, the Mayor still wants to spend more on prisons, he retains the option of using some, or all, of the \$13,500,000 in guaranteed federal stimulus dollars under his control.

As for the criminal justice system as a whole, however, who is better positioned to recommend the most effective and efficient allocation of funds? The Board's recommendation, even at a glance, is more reasonable and balanced than the Mayor's proposal. It's the best way, in this difficult year, to prevent court shutdowns, avoid unnecessary delays in the trial of cases, and protect both victims and defendants alike.

Make no mistake about it – that doesn't mean I am happy about swallowing what adds up to a cut of almost 10% over last year. This large reduction will require great sacrifice by the employees of the DA's Office. But I accept that the Board's recommendation reasonably balances the City's financial plight with the City's obligation to safeguard its citizens. It will allow us to continue to staff all criminal courtrooms, both adult and juvenile; to defend hard-won convictions on appeal; to provide needed services to crime victims; to investigate serious and complicated criminal schemes; to protect our

elderly; and to continue to participate in the innovative court programs that actually save money. I pledge to take whatever additional steps are necessary to continue to give quality legal services to everyone in the criminal justice system.

Once again, I thank you very much for your time; and I am prepared to answer any questions that you may have.