COUNCIL OF THE CITY OF PHILADELPHIA
BEFORE THE COMMITTEE OF THE WHOLE
OPERATING BUDGET HEARINGS - CONTINUED

- - -

Room 400, City Hall
Philadelphia, Pennsylvania
Wednesday, March 8, 2000
11:20 a.m.

- - -

BILL 00005 - An ordinance adopting the Operating Budget for Fiscal Year 2001

PRESENT: COUNCILWOMAN JANNIE L. BLACKWELL
COUNCILWOMAN BLONDELL REYNOLDS BROWN
COUNCILMAN DAVID COHEN
COUNCILMAN W. WILSON GOODE, JR.

- - -

VINCENT VARALLO ASSOCIATES, INC.
Registered Professional Reporters
Eleven Penn Center, Suite 600
Philadelphia, PA 19103
(215) 561-2220

3/8/00 - OPERATING BUDGET CONT'D - BILL 05

I N D E X

	Page
The Honorable Alex Bonavitacola President Judge, Court of Common Pleas	2784
Joseph DiPrimio Court Administrator First Judicial District	2791
The Honorable John Herron Administrative Judge, Trial Division	2811

3/8/00 - OPERATING BUDGET CONT'D - BILL 05

P R O C E E D I N G S

COUNCILWOMAN BLACKWELL: If any Councilpersons are in the building, I ask that you please come to chambers. We are ready to begin a follow up hearing. We have several judges waiting. We can't in good conscience hold them very long because we're holding up the progress in of our city. If you are in your offices, please come down, and we will begin this hearing in five machines. Thank you.

- - -

COUNCILWOMAN BLACKWELL: Good morning. Again, I invite all the Councilpersons who are in the building to please come to chambers. This is a continuation of our Committee on the Whole hearings. There was a request that Judges Bonavitacola and Herron be here, President Judge. And certainly we have many judges who are here. This request was made by Councilman Cohen, and we invite them to please come to the witness table.

We welcome you, we don't want to hold you long from your duties, and we appreciate your time.

(Witnesses come forward.)

3/8/00 - OPERATING BUDGET CONT'D - BILL 05

COUNCILWOMAN BLACKWELL: Let me welcome both of you, Judge Bonavitacola and Judge Herron. And would you please introduce other judges who are here and identify yourself for the record.

JUDGE BONAVITACOLA: Yes. Good morning, Councilwoman.

COUNCILWOMAN BLACKWELL: Good morning.

JUDGE BONAVITACOLA: Alex Bonavitacola, President Judge, Court of Common Pleas.

Seated to my right is Administrative Judge of the Trial Division, John Herron. With us today is the President Judge of the Municipal, Louis Presenza, and our Court Administrators, who have a great deal of information in the event we can't answer all of your questions. And that's Joseph DiPrimio, our Court Administrator; and our Deputy, Joseph Cairone; and our Financial Services Deputy, Kevin Cross. And Judge Legrome Davis is in the room too with us.

COUNCILWOMAN BLACKWELL: Thank you. And, again, welcome to all of you. We appreciate the job that you do for our city.

Do you have the testimony, or should we go right into any questions that you have?

JUDGE BONAVITACOLA: I think it would be more productive if you'd just ask the questions that you would like to ask, and we can answer them and supplement it.

COUNCILWOMAN BLACKWELL: Thank you very much.

Having said that then, the Chair recognizes Councilman David Cohen.

COUNCILMAN COHEN: Thank you, Madam Chair.

COUNCILWOMAN BLACKWELL: Thank you. Do you have your mike on, Councilman?

COUNCILMAN COHEN: Yes, I thought I did.

Madam Chair, I'd like to suggest that Mr. DiPrimio join and any other members that you feel might be helpful, they can certainly come within the railing and be available to you and, if necessary, comment at any time to the microphones.

COUNCILWOMAN BLACKWELL: That will be fine, Councilman.

COUNCILMAN COHEN: Just as a general -- if anyone speaks at any time, it's always necessary to, if you're speaking, to first

announce your name, just for the record, so that the record will be clear.

And I very much appreciate everybody coming. I had hoped that you would have been present during the regular budgetary session, but all of you apparently were unable to make it, and there was one unfinished business that touches both on the budgetary process and on our Council responsibility in general.

The budgetary process involves dollars and cents. The general request is the quality of criminal defense attorneys, basically, in the City, that are available to indigent defendants. And that's the last question. The general policy question, we'll just touch on a bit here but we think it is very much interrelated.

But for this morning, I want to touch on budgetary matters. The last time we talked in this fashion about the budget was, according to my record, was on June 5, 1998. I cannot believe it's almost two years ago. And at that time, the same issue that I'm going to be raising came before Council. I was assured then that the matter was about -- was on its way to being

resolved. And it hasn't been, and in fact, it is considerably worsened from the point of view of the constituents who contact me on a continuing basis, and they are members of the Criminal Defense Bar and the Criminal Justice Section of the Bar Association. And I wanted to put before you the case, as I see it briefly, and then have you respond.

When we spoke almost two years ago in these chambers, we were told, I think, sir, by you, Judge Bonavitacola, that at that time, the court system was spending something over $9 million, between 9 and $10 million for fees for defense purposes. Since that time, it seems to be common knowledge that the courts' loads have increased enormously. They were very heavy then, but the numbers of arrests has increased, the number of prisoners has increased. And instead of there being an escalating cost, actually the cost of attorney representation has been going down.

And while some who are concerned only about figures would welcome any costs going down, when the price you pay is justice in the United States, when lawyers who had been representing

defendants are now, in fairly significant numbers, finding themselves unable to take the court appointments, it becomes a very disturbing matter, and there have been many different situations throughout the country which indicate the very growing, indeed concern, by Americans of the level of quality of the Criminal Defense Bar. That many -- it's felt that there are many cases in which defendants are not being adequately represented by counsel because the skilled counsel don't take court appointments in many cases.

And so, sir, what I find as of now -- and tell me whether it's wrong -- that instead of spending the 9 to 10 million that you had indicated, Judge Bonavitacola, that you had logged into the City Administration at the time you were preparing the court budget for -- I believe it was 1998, Fiscal Year 1998, this year it looks as if the expenditures are going to be far below that. We have been able to document something less than 5 million spent, with 8 months of the year gone. And it looks like the expenditures will be even below 7 million.

Could we be within that? Are my

figures all wrong that I've been given, or do they have a base? Is it true that the attorneys' fees have gone down?

JUDGE BONAVITACOLA: Not exactly. In Fiscal Year '97, we spent $9,200,000 -- I'm rounding off the figure.

COUNCILMAN COHEN: That's the same figure, yes.

JUDGE BONAVITACOLA: In Fiscal '98, we spent $7,300,000, with a caveat that there are still petitions outstanding in 1998 that have not yet been finalized or approved. So they would go against our '98 figures.

In 1999 --

COUNCILMAN COHEN: Was there any special reason with why there was that sharp of a drop in that year, at a time of escalating arrests and convictions?

JUDGE BONAVITACOLA: Well, I can only speak as to the homicides petitions, but they have gone down. We had -- in 1999, I had 187 petitions for homicide cases before me. The year before that, I had 210. The year before that, I had 275.

COUNCILMAN COHEN: That's the only

significant area, in the months, the crimes where we had a sharp going-down rate. It was the homicide rate, all major cities.

JUDGE BONAVITACOLA: Well, if we count all kinds of criminal charges, all kinds.

COUNCILMAN COHEN: For which attorneys are required.

JUDGE BONAVITACOLA: Right.

COUNCILMAN COHEN: By the constitutions of Pennsylvania and of the United States.

JUDGE BONAVITACOLA: Now, that's everything in the Family Court, everything in the Trial Division, everything in Municipal Court.

The total number of petitions for payment have not increased. For example:

In Fiscal '96, we had a total of 13,700 petitions for payment;

In Fiscal '97, we had a total of 13,700 petitions for payment;

In 1998, 12,700. That's 1,000 less;

And in Fiscal '99, we're showing 14,000.

So there has not been that wide variance where petitions have gone through the

ceiling.

COUNCILMAN COHEN: But why would one year have 9.2 million and the next year have 7.something million, when the number of petitions are relatively, according to your figures, stable?

JUDGE BONAVITACOLA: If you will recall, at that hearing, I made a promise to the Council and to all of the Defense Bar that we would clean up all of the petitions that had been outstanding because there was a complaint that we were paying them too late, that the petitions were sitting.

COUNCILMAN COHEN: That was one of the complaints.

JUDGE BONAVITACOLA: And that caused a spike because we cleaned up all the backlog of petitions that had been laying around, so that caused a spike.

And we are now current in the payment of our attorneys' fees. We have no more backlog that we had, which caused us to spike it at $9.2 million.

MR. DIPRIMIO: Good morning,

3/8/00 - OPERATING BUDGET CONT'D - BILL 05

Councilwoman Blackwell and Councilman Cohen. My name is Joseph DiPrimio for the record, Court Administrator in the First Judicial District.

If President Judge Bonavitacola will allow me, I would try to amplify or clarify some of the answers to the questions, which I think --

COUNCILMAN COHEN: Well, I would appreciate that.

MR. DIPRIMIO: Okay.

COUNCILMAN COHEN: 'Cause I'm having some difficulty absorbing --

MR. DIPRIMIO: President Judge Bonavitacola is correct when he mentions that the total amount paid was $9.2 million for FY '97. In years prior, what is significant is that we did an analysis -- one of the first things I requested to do was an analysis of the counsel fee structure through the years. And believe it or not, the only data that was available to us in a reliable fashion goes back to FY '92.

For the record, in FY '92, the City of Philadelphia appropriated to the First Judicial District a total sum of $3.5 million in counsel fees. However --

COUNCILMAN COHEN: What was that figure?

MR. DIPRIMIO: 3.519457.

COUNCILMAN COHEN: For what?

MR. DIPRIMIO: For court-appointed counsel in all indigent cases.

JUDGE BONAVITACOLA: For what year?

MR. DIPRIMIO: This is in Fiscal Year 1992.

COUNCILMAN COHEN: Oh, 1992.

MR. DIPRIMIO: But it's important to show the history of where we -- of how we got to where we are today.

The total amount, however, paid in FY 1992 was 5.6 million 661,000 dollars. You would say there is a shortfall, and indeed there was.

The balance of the -- the difference, the $2 million difference was made up out of the Operating Budget of the First Judicial District.

Same thing in FY '93. Council appropriated $3.5 million -- I'm rounding off. However, payments that year were $6.6 million, the shortfall being of $3 million, likewise being made up out of budgetary realignments for that fiscal

year.

In '94, the First Judicial District did something a little different. Instead of doing the adjustment on the back end, the people in power at that time did the adjustment -- the realignment at the beginning of the fiscal year. So instead of having to pay $6.6 million, they used that as starting point. And so what was budgeted was $6.6 million.

That's not to suggest, however, that Council appropriated additional funds for counsel fee. However, the realignment was made up out of operating funds of the court system. So it was a redeployment of dollar resources that were reallocated at the beginning of the fiscal year, when our predecessors came before Council.

We carried that number forward in -- 19 -- but in '94, we spent $7.5 million in counsel fees, and so that shortfall was made up out of operating revenues of the court system.

The following year, $7.1 million was earmarked as the amount of money to be budgeted for counsel fee, keeping in mind that the base amount that Council has given the First Judicial

District for that line item goes back to '92 at $3.5 million. But in FY '95, a total of $7.1 million were appropriated -- excuse me, were budgeted by the First Judicial District, with the shortfall being made up out of ongoing operating funds of the court.

In '95, there was a shortfall again. Instead of $7.1 million being the amount of money that was paid out, a total of 9.5 million -- $9,582,670, in fact, was paid out by the court system, almost half of it being out of the court's towards Operating Budget.

In 1996, $7.4 million was budgeted by the First Judicial District. Again, I would just like to -- 3.5 being the original Council appropriation, and the difference being made up out of the First Judicial District Operating Budgets by reallocation of the budgeted amount.

Notwithstanding the fact that $7.4 million was budgeted, the First Judicial District experienced an additional shortfall in the amount of $1.5 million, which -- that sum also had to be made up out of First Judicial District operating revenues.

You might ask Well, where did you get the operating revenues? For example, as employees were shifted or some retired or some quit, the funds that were available were redeployed to pay counsel fees as opposed to mistaking certain that the First Judicial District complement of workers was at an optimum level. And as a result of doing those kinds of things, I guess you could imagine that, you know, you're doing -- you're multi-tasking employees that should be otherwise be doing certain functions.

But the District lived up to its obligation and continues to live up to its obligation in terms of trying to put a realistic amount of dollars into our Operating Budget to meet counsel-fee needs.

In FY '97, and President Judge Bonavitacola and the Administrative Governing Board challenged as a new court administrator to say, Joe, get a handle on this and let's take a look at it. The Board appointed a steering committee, which was chaired by then-President Judge Silverstein of the Municipal Court. Judge Herron sat on that committee, Mr. Cross and I and

some others, and Mr. Newman -- I see Mr. Newman in the room today. And Mr. Newman was a representative appointed by Chancellor Frank Devine, I believe, at that time, to serve and to assist the court in coming up with a solution to this ongoing escalating problem.

Some people actually predicted budgets to run in the areas of $10 million and $15 million, but there was no logic to the growth that was taking place.

I can tell you that in FY '97, the First Judicial District increased its budget allotment from the $7.4 million in '96 to $7,698,000 in 1997. Again, the counsel component, a line-item component, still is 3.5 million, but the difference is being made out of operating funds of the District.

Notwithstanding that increase in Fiscal 1997, the District spent, as Judge Bonavitacola testified, $9,197,867. There was a shortfall that year as well, in the amount of $1.5 million. Where did the District get that money? The District got that money as a result of the reallocation of Grants Revenue reimbursement that

we negotiated an agreement with the then-mayor's chief of staff --

COUNCILMAN COHEN: Well, Really, Mr. DiPrimio, I wasn't inquiring as to where shortfalls were covered from, although that's a fair subject for discussion. But so far as I know, what's been happening is just the reverse. What seems to be happening -- I would like to start with the year that Judge Bonavitacola started with.

MR. DIPRIMIO: Okay.

COUNCILMAN COHEN: When he began this discussion.

MR. DIPRIMIO: Yes.

COUNCILMAN COHEN: We were then in the fiscal year of 1998, and that year, he said that we were spending $9,200,000, and that $10 million had been budgeted that year.

What seems to be happening now is just exactly the reverse -- that instead of making up the shortfall for the attorneys' fees, you're using the attorneys' fees to make up some other shortfall.

MR. DIPRIMIO: Well --

COUNCILMAN COHEN: Because there's nothing like the 10 million that seems to have been budgeted, because our understanding -- and I'm just trying to summarize this 'cause we may have to just have separate hearings on this, because it's baffling to me, it's baffling to the attorneys that live in the system, and there is a great amount of discontent. And the real sufferers are the people who are entitled to the fine legal services at the Bar.

And all throughout the country, apparently, this is a part of the same process that funds are being squeezed out of the need by indigent defendants and are being used for other purposes.

MR. DIPRIMIO: Well --

COUNCILMAN COHEN: Because there's nothing like the $10 million being spent now. And everybody knows that the demand on the Criminal Bar is greater. We're concerned that maybe very fine, young, inexperienced attorneys are being used in defense cases. We're concerned that maybe that's the reason why the poor, you know, why the rate of convictions and other problems that occur

in the criminal justice system here and throughout the country, maybe that's why our defendants are not being given the effective representation that the constitution requires them to.

So we're concerned about these kinds of things, and maybe we can shortcut this. We are told that attorneys bill in accordance with whatever has been worked out as appropriate for billing, and that, say, they're expecting a check for $2500, they get a check for $1500, that they're being told -- in some cases, they can't get any reason whatever. In some cases, they're being told for it's budgetary reasons. We don't know of any budgetary reasons. By the figures we see, your coffers should kind of be pretty full with respect to money available for attorneys' fees.

We're told there's no system by which defense attorneys, those that are practicing at the Bar, can have any of their complaints specifically dealt with. And I understand that there have been no meetings possible to be arranged where this could be discussed.

We're looking for just a solution that

just does two things. We want an effective criminal defense system so that there can be no charges ever leveled at them as to the inadequacy of the Defense Bar. We know there are experienced and inexperienced attorneys. We don't think the indigent ought to be confined to inexperienced or lesser experienced attorneys. We think they ought to get the same kind of defense available as any person gets in the United States who's represented by a private attorney.

And we think there's got to be some mechanics to deal with this disturbing question as to why lawyers who fight for the rights of other people seem not to be able to find out why their check is being cut, why they can't have a discussion with somebody, and why this disturbing question, which has existed for this length of time, why can't it be resolved?

Why can't there be a meeting or a series of meetings with you, where you go over the figures you're giving here today and all other figures and develop a system which is fair to both sides, which ultimately results in the kind of criminal defense that Philadelphia can really be a

world-class city about. I'd like to be able to brag about every in Philadelphia, regardless of their poverty level, regardless of what ethnic group they come from, if there's a need for a Defense Bar, they can get experienced attorneys.

And I'm distressed when I hear it, and I hear it increasingly, that experienced attorneys are rejecting cases because they feel it's unfair, many of them feel they cannot afford to do it because they get no explanation. They work out their fee bill, they think they're meeting every requirement and they get cut.

And we understand, as a matter of fact, that over the last eight years, maybe as much as $30 million has been sent by the courts at the end of the years to the administrative office of Criminal Practice, AOPC, is that the initial? I just learned about it and I'm astonished to say -- I have to tell you, I'm astonished to learn it. I did not know that the courts were sending surpluses left over every year and that the amount may be as much as $30 million, that our courts in Philadelphia were sending to the State system of courts.

JUDGE BONAVITACOLA: Well, that's how we pay for computers and technology which the City does not provide us a dime for.

MR. DIPRIMIO: Councilman, Councilman, I --

COUNCILMAN COHEN: I've never heard a presentation made in City Council for that kind of money.

MR. DIPRIMIO: Councilman, may I just clarify? You are correct to say that we are allowed to, by agreement with the City Administration going back to 1990, allowed to retain year-end surpluses. They're not surpluses.

JUDGE BONAVITACOLA: Savings.

MR. DIPRIMIO: These are savings as a result of a committed zero-growth budget that had been entered into. We do not come to Council and ask for additional revenues, except for those rare instances where the City Administration has come to the Trial Division for additional services, such as active electronic monitoring.

COUNCILMAN COHEN: Well, I'll tell you, the Members of Council -- I can't speak for the

Mayor or the Administration Department, the executives of the City of the City, but Members of the Council -- I think an overwhelming majority would be very concerned if they felt that money which ought to go appropriately for attorneys' fees for the defense of indigent defendants is being used to accumulate a surplus.

JUDGE BONAVITACOLA: Councilman, you and I know each other for a whole lot of years.

COUNCILMAN COHEN: Many, many years.

JUDGE BONAVITACOLA: And I have a great --

COUNCILMAN COHEN: So have I.

JUDGE BONAVITACOLA: I have a great deal of respect for you and I don't mean to be cynical.

The courts would love to be rid of this problem completely and turn it over to the City entirely. We'll give you the budget money back, we'll give you the three employees that we detail to do all of this work and go over these figures, then let the City deal with it as they see fit, rather than have us merely as the conduit. Your money to at us and then our money to the

petitioning attorneys.

If the City wants to assume the responsibility, I'll turn it over tomorrow.

COUNCILMAN COHEN: The City consists of at least two separate bodies that don't always see eye to eye and don't always have the same information available.

I first entered City Council in 1968. And except for the year -- two terms when I stayed out because I was an unsuccessful candidate for mayor in 1971 and did not come back till the end of Mayor Rizzo's term, but I've been here now for more than 20 years consecutively, I have never even heard of this practice of the court system turning over surplus money to this administrative office. I just learned about that last night. It never was presented in any form that I'm aware of in a system that we in Council at least understood it. And I found nobody that knows anything about it.

But -- and I don't want to comment. It sounds like a strange practice to me. I think budget matters, you know, ought to be out in the open by everybody, and presumably, for some

reason, it hasn't been. And I don't want to get involved in that.

But until we could work that out, let's assume the City were willing to do it and were willing to set up another group, there would have to be some time spent.

Why can't we arrive at some system whereby the attorneys could meet with the court officials and attempt to work this out? Wouldn't that make sense, instead of your having something in effect which is resulting in turning away experienced lawyers from the defense of indigent defendants, subjecting us to all kinds of potential criticism and attack?

JUDGE BONAVITACOLA: We have. As a matter of fact, last year, maybe it's a year and a half ago, the then-chairperson of the Criminal Justice Section of the Philadelphia Bar Association approached me and said that we were unfair to attorneys because in the event a case was tried and then had to be retried, we were not allowing them to have a case preparation fee.

And I discussed it with Judge Herron, and we listened to the pros and cons of it, and we

agreed with them, that indeed, we were not being fair with them. Therefore, on a retrial of the case, we allow the attorney to re-bill again for case preparation. In homicide cases that's $1700. In felony cases, it's $600.

Getting back to your to your point, we have two ways for counsel to be paid. We have the guaranteed fee system, which is a very simple form. The attorney puts down the days that he devote to the trial and his preparation fee, he attaches to it certifications by the trial judge that that attorney was in court that day and did the work.

When it's totaled up, other than a mathematical computation that might be an error, I defy any attorney in this city to say that I cut any of those fees -- not a one. And I think I can speak for Judge Herron that we don't tamper with these guaranteed-fee system schedules, excepting for mathematical error.

The problem comes in on the hourly fee petitions, where attorneys seek to be paid based upon hours rather than on this system, which is per diem. We have at least -- we perceive it to

be -- a fiduciary duty to review those to make sure that, number one, they're reasonable, because we are expending public monies. And number two, that they are not so far out of line as to be different than what everybody else is filing, and we get some lawyers who have tried the case for two weeks, then want to take a PCRA, which is a post-conviction relief-back appeal, or appeal the case, and sit there and spend 65 hours reading the transcript over again.

Now, if they were not the attorney in the courtroom, I would say that might be reasonable. But being the attorney in the courtroom, they know what the issues are and who the witnesses are that they have a problem with or the evidence. And to say that they spend all of those hours reading the entire transcript, from jury selection through final argument, to me, is a stretch. They're the ones that we use our discretion to determine whether they are appropriate or not.

And we have trial judges that write to us and tell us that it's unreasonable, that they know what was going. For example, I have a letter

from a judge concerning two fee petitions in a homicide case. And he said in that letter: "It is my opinion that the out-of-court time on both cases is bloated. Further, if I had the last word, I would see to it that they are not paid more than 50 percent of their billing."

Now, there's a trial judge in the courtroom saying, The petition you're about to review is bloated. I can't let that go by.

COUNCILMAN COHEN: Was that communicated to the attorney?

JUDGE BONAVITACOLA: I'm sorry?

COUNCILMAN COHEN: Was that communicated to the attorney as a reason for cutting his fees?

JUDGE BONAVITACOLA: When an attorney has a fee that's reduced by my office and they complain about it, we review it all over again and ask the attorneys for documentation. If they say, I read the notes of testimony and I want credit for 100 hours, we ask them, Tell us the amount of pages involved in the transcript, tell us about all of these trial briefs that you prepared.

COUNCILMAN COHEN: We're not objecting

-- I haven't heard a single complaint where anybody has been talked to. The complaints, in large number, is that a check is been given to them and they get either no reason when it's cut sharply, no reason is given, or they're given for budgetary reasons.

What they seem to be asking from me is what every group of people want to know, is why they get treated the way they did? In your case, if I reviewed that case, I would have received the same -- made probably the same decision you made to cut it, but I would have felt that the attorney had a right to know why it was being cut, and if he had something to say, he had a right somewhere, somehow to say it. And that's what I'm suggesting.

Isn't there a method that could be worked out? For example, I don't want to take all the time because we have other matters scheduled shortly by this committee. But would there be a way, would it be agreeable to the three that thought just came to me, if the three of you could meet with three lawyer members -- well, I won't even put lawyer members, there may be other

members of counsel that -- three Members of counsel and three members of the bar, could we meet somewhere and see if some arrangement that could be fair and workable could be worked out?

Because otherwise, I see -- I can't see how this condition can be permitted to do fester, because it's hurting the rights of people who may be under criminal charges and who need court-appointed counsel.

JUDGE HERRON: Councilman Cohen, I'm Judge Herron, Administrative Judge of the Trial Division. We are agreeable to any meeting anywhere, with any individuals involved and, of course, should Council wish to spend time and join that, of course, that's fine with us as well.

I think just two brief points might be helpful to you. First, the Board of Judges, by vote, agreed some time go that only counsel approved by the Bar Association's Review Committee as qualified to accept court appointments would be selected off the list of court-appointed counsel, so judges do not make a personal decision on qualities or qualifications of counsel.

And we've adhered to that, obviously,

so every indigent defendant is assured of representation by a lawyer who has been approved by the Bar Association Committee. And, of course, the leadership of that committee is constituted from the Criminal Defense Bar.

Second, I would say this to you: Every time a lawyer has written to me -- and I know that this is President Judge Bonavitacola practice as well -- concerning a cut in the fee, and I cut 18 percent of the fee petitions I reviewed, over 900 during the period that I've got my records here, 18 percent of those were cut. I know that in the PCRA, 'cause I'm looking at, you know, over my 13 years on the bench, I've looked at thousands of these.

I know a PCRA, it takes somewhere between 25 and 30 hours. The petitions that I'm getting are all forms, one page saying "I rendered services." I don't see anything within the petition justifying an extraordinary fee request. Oftentimes, the fee request for a PCRA are in excess of $2,000. I look at it. Criminal rule of Procedure 424 require that the administrative judge of the Trial Division review every fee

request in excess of $1,500.

That's why I would reiterate to you what President Judge Bonavitacola has said. This court is willing to turn over to whatever entity you want the entire $8 million budget for counsel fees and court employees as well. We would be delighted that some other responsible entity take this over.

And by the way, we are the only county in Pennsylvania where the court doles the money out. In every other county, the county commissioners do this, not the court.

Now, if you want us to stay in, in a fiduciary way, to review the petitions, we're willing to do that, obviously. If you want us out of the picture, we'd be delighted to get out completely.

Thank you.

COUNCILMAN COHEN: Well, that might be an option to getting out of it, but right now, you have it. Maybe somebody's going to have to study the history of why it developed that way, but during the time you have it, whether it's for a short period or for a long period, I'm saying that

ordinary principles of fairness, if applied in good faith, and I don't see any reason why they shouldn't be by all parties concerned, can during the time the court has this responsibility, we can have a fair way of handling that responsibility and discharging our duty to every person in the Commonwealth.

As court officials, just like those of us who are members of the Bar, we have a special responsibility to see to it that every person charged with a crime gets constitutional rights, and they ought to have the right to the most effective counsel they can get.

I get a totally different story from many different members of the Bar whom I've also known over many years and for whom I have a great deal of respect. They see the situation from a different point of view, and that's why I'm urging, let us see if we can, at least for the time being, arrive at a fair system.

And would it be all right with you if I communicate with the President Judge to set a date, say, within the next two weeks, when we can put aside, and I would like to urge this, that we

put aside other things for about two others and meet so that we can determine whether the matter can be resolved without going through extensive hearings.

We have our own problem. As you've been reading in the newspapers, it's been the tough for the Council and the Mayor to get together on a problem far simpler, and I hope when saw the Mayor come in here, I hope that that constitutes a smoking of a peace pipe, which I hope will be gratified later in the day.

So there are difficulties at all levels in getting together, but certainly the attorneys and the judges at the Bar, I think, are in a position to resolve that.

JUDGE BONAVITACOLA: At your request, we'll meet at any time of your choosing or at a convenient time with representatives of the Criminal Bar and with representatives of City Council, we'll meet with them -- mindful, though, that we cannot just abdicate our responsible.

COUNCILMAN COHEN: Of course. No one -- we're asking you to assume your responsibilities, sir, no to abdicate them.

JUDGE BONAVITACOLA: Okay.

COUNCILMAN COHEN: Because we think -- and as you said before, we've known each other a long time. I know you from the days you were at the Zoning Board how conscientious you were. And it's that degree of conscientiousness -- and I know how burdened you are as President Judge, but I think we've got to find the time to resolve this.

I don't want to deal with it the next budgetary year. I want to have you come and let me congratulate everybody upon how fine it's all working out, you know, how happy the lawyers are and how happy the judges are. And much more important than either the lawyer or judges, how happy the people in Philadelphia are that those charged with crimes are getting an experienced group of attorneys and their constitutional rights are being fully protected, whether the verdict is guilty or innocent. Everybody's entitled to feel law treated them fairly.

JUDGE BONAVITACOLA: And we will so meet with them at any time that is mutually agreeable.

COUNCILMAN COHEN: All right. Thank you very much.

JUDGE BONAVITACOLA: Thank you.

COUNCILMAN COHEN: Thank you all. And to the other judges and the staff, we say thank you.

COUNCILWOMAN BLACKWELL: Let me ask, does any other Councilmember have any other questions for the judges?

(No questions.)

COUNCILWOMAN BLACKWELL: Let me thank you, President Judge, Administrative Judge, and all other judges and administrative judges and court personnel who are here. We thank you very much.

And this part of the Committee of the Whole will stand in recess until Monday the 13th at 9:00 a.m.

JUDGE BONAVITACOLA: Thank you for your time.

COUNCILWOMAN BLACKWELL: Thank you very much.

I will remind others who are listening that we have public testimony with the School

Board today, starting at 2 p.m.

Thank you very much.

(Adjourned at 12;06 p.m.)

- - -

C E R T I F I C A T E

I HEREBY CERTIFY that the foregoing proceedings of the Council of the City of Philadelphia of Wednesday, March 8, 2000, were reported fully and accurately by me, and that this is a correct transcript of same.

RE: COUNCIL COMMITTEE OF THE WHOLE
BILL NO. 000005

_____,
JOSEPHINE CARDILLO,
Registered Professional Reporter