

COUNCIL OF THE CITY OF PHILADELPHIA
COMMITTEE ON LAW AND GOVERNMENT

Room 400, City Hall
Philadelphia, Pennsylvania
Tuesday, February 4, 2014
10:05 a.m.

PRESENT:

COUNCILMAN WILLIAM K. GREENLEE, CHAIR
COUNCILMAN W. WILSON GOODE, JR.
COUNCILMAN BOBBY HENON
COUNCILMAN JAMES KENNEY
COUNCILMAN DENNIS O'BRIEN
COUNCILWOMAN MARIAN B. TASCO

BILLS 130851, 130852, 140014, and 140015
RESOLUTIONS 130861 and 140035

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COUNCILMAN GREENLEE: Good morning, everyone. You all look surprised that we're going to start on time. I don't know why that is.

This is the Committee on Law and Government. We have established a quorum: Councilman O'Brien, Councilman Henon, Councilwoman Tasco, and myself, Bill Greenlee.

First let me note for the record that Bill Nos. 140014, 140015, and Resolution 140035, which were the bills and resolution dealing with the Department of Prisons, will be held to a future date until the call of the Chair.

Ms. Marconi, will you please read the title of the bills and resolution we are hearing today.

THE CLERK: Bill No. 130851, an ordinance providing for the submission to the qualified electors of the City of Philadelphia of the proposal set forth in a Resolution approved by Council proposing an amendment of The

1 2/4/14 - LAW & GOV. - BILL 130851, etc.
2 Philadelphia Home Rule Charter to provide
3 that Council approval is required for
4 certain contracts for one year or less
5 for the purpose of providing legal
6 representation and related services for
7 indigent persons, including but not
8 limited to parents and children who are
9 subjects of dependency proceedings;
10 criminal defendants; persons in juvenile
11 justice proceedings; persons involved in
12 behavioral health proceedings; and
13 indigent persons involved in other
14 proceedings where legal representation is
15 required as a matter of law or by court
16 order; and to provide that Council
17 approval is also required for renewals or
18 extensions of such contracts; and
19 authorizing the appropriate officers to
20 publish notice and to make arrangements
21 for the special election.

22 Bill No. 130852, an ordinance
23 amending Title 17 of The Philadelphia
24 Code, entitled "Contracts and
25 Procurement," by establishing reporting

1 2/4/14 - LAW & GOV. - BILL 130851, etc.
2 and auditing requirements for certain
3 contracts for conflicts counsel for
4 indigent individuals; all under certain
5 terms and conditions; and
6 Resolution 130861, resolution
7 proposing an amendment to The
8 Philadelphia Home Rule Charter to provide
9 that Council approval is required for
10 certain contracts for one year or less
11 for the purpose of providing legal
12 representation and related services for
13 indigent persons, including but not
14 limited to parents and children who are
15 the subjects of dependency proceedings;
16 criminal defendants; persons in juvenile
17 justice proceedings; persons involved in
18 behavioral health proceedings; and
19 indigent persons involved in other
20 proceedings where legal representation is
21 required as a matter of law or by court
22 order; and to provide that Council
23 approval is also required for renewals or
24 extensions of such contracts; and
25 providing for the submission of the

1 2/4/14 - LAW & GOV. - BILL 130851, etc.
2 amendment to the electors of
3 Philadelphia.

4 COUNCILMAN GREENLEE: Thank
5 you.

6 Before we have any witnesses, I
7 want to recognize Councilman O'Brien for
8 opening remarks. And I just for the
9 record want to note the Councilman's hard
10 work on this very important issue and of
11 his staff. I've certainly been educated
12 through this whole process. And, again,
13 I recognize Councilman O'Brien.

14 COUNCILMAN O'BRIEN: I am also
15 impressed with Chairman Greenlee, and his
16 participation in this issue was
17 invaluable and his leadership in this
18 Council Chambers was also very
19 beneficial, and we couldn't have moved
20 forward without that. So I thank you for
21 that.

22 Thank you, Chairman Greenlee
23 and members of the Law and Government
24 Committee. The right to counsel is a
25 fundamental procedural safeguard

1 2/4/14 - LAW & GOV. - BILL 130851, etc.
2 guaranteed under the Bill of Rights to
3 all persons accused of a crime who are
4 unable to afford a lawyer.

5 In the landmark case Gideon
6 versus Wainwright, the U.S. Supreme Court
7 recognized the fundamental role that
8 legal representation plays in a fair
9 criminal justice system.

10 On November 14th, 2013, I
11 introduced three pieces of legislation
12 regarding indigent representation with
13 co-sponsor and Chairman of this committee
14 Councilman Greenlee. The first two
15 pieces of legislation are a change to the
16 Philadelphia Home Rule Charter. Bill No.
17 130851 is the ballot question and
18 Resolution 130861 is the accompanying
19 resolution.

20 Currently, Section 2-309 of the
21 Charter, titled "Leases and Contracts,"
22 states that Council may by ordinance
23 authorize the leasing of real estate for
24 more than one year and the contracting
25 for personal property to be supplied or

1 2/4/14 - LAW & GOV. - BILL 130851, etc.
2 services to be rendered over a period of
3 more than one year. As a result, City
4 Council has no authority to review
5 contracts the Administration enters into
6 when the length of the contract is for
7 one year or less. While this is an
8 approach to government that I agree with
9 and I do not believe that every contract
10 should require City Council approval, I
11 do strongly believe that any contract
12 dealing with an individual's
13 constitutional rights is important enough
14 to require Council approval.

15 I understand that amending the
16 Home Rule Charter is not an action to be
17 taken lightly, but these contracts are of
18 such importance that an exception to the
19 Charter is not only required but it is in
20 the best interest of the City. The right
21 to counsel is a constitutionally
22 protected right.

23 The contract the Administration
24 plans to issue an RFP for and eventually
25 sign deals directly with the

1 2/4/14 - LAW & GOV. - BILL 130851, etc.
2 constitutionally protected right. The
3 Charter amendment will not prohibit the
4 Administration from entering into a
5 contract. It will just require a public
6 forum to be able to review the contract
7 and get answers before any contract is
8 signed. Without this legislation, there
9 is zero public input.

10 The amendment to the Charter
11 requires all contracts for rendering of
12 services for a year or less that involve
13 the expenditures of more than \$100,000
14 for the purpose of providing legal
15 representation and related services for
16 the indigent may only be made when
17 permitted by ordinance. This provision
18 applies to the contracts' renewals and
19 extensions. In order to make an
20 amendment as narrow as possible so as not
21 to open the floodgates of Council
22 approval for every contract, I did the
23 following: put a monetary threshold of
24 over \$100,000; and, two, specifically
25 state this amendment only applies to

1 2/4/14 - LAW & GOV. - BILL 130851, etc.
2 contracts dealing with the legal
3 representation of the indigent. The
4 monetary amount is necessary to make sure
5 that only large contracts are considered.
6 As a result, this excludes individual
7 private attorneys who are currently
8 providing legal representation to the
9 indigent by being court-appointed
10 conflict counsel. However, the monetary
11 amount includes the Philadelphia
12 Defenders Association, Child Support
13 Center, and Community Legal Services.
14 Because these organizations have been
15 contracting with the City for many years,
16 they are exempt from the review
17 requirement unless Council provides an
18 ordinance to the contrary.

19 The third piece of legislation,
20 Bill No. 130852, is an ordinance that
21 requires audits of the law firm or entity
22 that the City enters into a contract with
23 for the representation of the indigent.
24 There are two audits, a financial audit
25 and a quality control audit.

1 2/4/14 - LAW & GOV. - BILL 130851, etc.

2 The financial audit is standard
3 and encompasses what Council already asks
4 of many other departments during the
5 budget process. I have amended the bill
6 to require the Director of Finance submit
7 the financial information with the
8 proposed annual operating budget. The
9 information requested includes, but not
10 is limited to, yearly profits and loss,
11 costs, expenditures, salaries, assets,
12 liabilities. In addition, the Finance
13 Director must submit a detailed report of
14 other duties performed by employees, use
15 of equipment and other services paid in
16 part or in full by City funds. This
17 section was included in case the
18 Administration chooses a contract with a
19 private firm. The assurance that tax
20 dollars will not be paying for the legal
21 representation of non-indigent
22 private-paying clients is essential.

23 The quality control audit will
24 be performed by an independent auditor
25 who is familiar with indigent defense

1 2/4/14 - LAW & GOV. - BILL 130851, etc.
2 systems and the Philadelphia criminal
3 justice system. Along with the overall
4 review of the operations and quality of
5 representation provided, the auditor will
6 also check individual employee
7 performance reviews, resumes, and job
8 descriptions to ensure that the
9 complexity of cases is matched by an
10 attorney's experience level.

11 Furthermore, the auditor will
12 evaluate the effectiveness of the current
13 system's case management and its
14 adherence to national standards.

15 Last, the auditor will give
16 recommendations on how to improve the
17 quality of representation, the systemic
18 operations, and supervision.

19 The legislative intent behind
20 this ordinance is to make sure that the
21 level of representation for the indigent
22 is up to the national standards. This is
23 a necessary piece of legislation, because
24 the other organizations and entities that
25 represent the indigent, the Philadelphia

1 2/4/14 - LAW & GOV. - BILL 130851, etc.
2 Defenders Association, the Child Support
3 Center, and Community Legal Services, are
4 non-profit organizations that have an
5 independent board who oversees both
6 financial and quality standards of the
7 organization. Many of these quality
8 controls are prescribed and recommended
9 by the American Bar Association, I
10 believe, who are ensuring that
11 Philadelphia lives up to those standards
12 and principles in every aspect of our
13 indigent defense delivery system.

14 Thank you, Chairman Greenlee.

15 COUNCILMAN GREENLEE: Thank you
16 again, Councilman, for all the work you
17 have done on this matter.

18 The record will also reflect
19 that Councilman Goode, a member of the
20 Committee, is present.

21 Any other statements or
22 questions by the Committee before we get
23 started?

24 (No response.)

25 COUNCILMAN GREENLEE: Before

1 2/4/14 - LAW & GOV. - BILL 130851, etc.
2 our first witnesses are called, just for
3 the record, again, as the Councilman
4 indicated, we had a very intensive
5 hearing on the general matter a few weeks
6 ago. I ask everybody's testimony to
7 basically be centered on the bills and
8 resolution that are before us today
9 dealing with the Charter question and
10 dealing with the audit question. And if
11 you have any written testimony -- a lot
12 of you have submitted written testimony.
13 That has already been distributed to the
14 Committee. It will be made part of the
15 record, and we ask that you summarize any
16 statements that you have.

17 And with that, Ms. Marconi,
18 will you please call the first witnesses,
19 please.

20 THE CLERK: David Carroll and
21 Phyllis Subin.

22 (Witnesses approached witness
23 table.)

24 COUNCILMAN GREENLEE: Good
25 morning to you both. Whoever would like

1 2/4/14 - LAW & GOV. - BILL 130851, etc.
2 to start, please identify yourself and
3 proceed.

4 MR. CARROLL: Good morning. My
5 name is David Carroll. I'm the Executive
6 Director of the Sixth Amendment Center, a
7 Massachusetts-based indigent defense
8 resource center providing evaluation
9 services and technical assistance to
10 overcome any perceived systemic
11 deficiencies in the delivery of the right
12 to counsel.

13 Over my 16-plus years career,
14 I've had the pleasure and privilege of
15 traveling all across the United States
16 studying right-to-counsel systems. I've
17 been to all but two states now doing
18 that. I testified before the U.S. House
19 Judiciary Committee on these issues, and
20 I currently have a Department of Justice
21 grant to help jurisdictions deal with
22 these issues.

23 The right of one charged to
24 crime -- the right of one charged with
25 crime to counsel may not be deemed

1 2/4/14 - LAW & GOV. - BILL 130851, etc.
2 fundamental and essential to fair trials
3 in some countries, but it is in ours,
4 thus announced the U.S. Supreme Court in
5 the 1963 case of Gideon versus
6 Wainwright, requiring states, not local
7 governments, through the Fourteenth
8 Amendment to provide Sixth Amendment
9 right-to-counsel services to any person
10 of limited means facing a possible loss
11 of liberty at the hands of the criminal
12 justice system.

13 I open with the Gideon quote
14 just to remind the City Council the
15 importance of what we're doing here
16 today. The Sixth Amendment to the U.S.
17 Constitution established protection of
18 the individual from having his life or
19 liberty taken by big government without
20 the process being fair. The mistake too
21 many jurisdictions have made over the
22 years since Gideon is to build a
23 functioning primary indigent defense
24 system and then to skimp on conflict
25 services. The United States Constitution

1 2/4/14 - LAW & GOV. - BILL 130851, etc.
2 does not care if the majority of indigent
3 accused have adequate representation.
4 The right to counsel is an individual
5 right. It requires jurisdictions to
6 ensure that each and every individual
7 have adequate representation whether or
8 not they are deemed by a court to be
9 co-defendant number one or number two.

10 So I applaud the efforts of the
11 Administration and the City Council to
12 address the issues with your conflict
13 services. My concern is that to date the
14 discussion has focused more on the model
15 for delivering indigent defense services;
16 that is, whether it's best to have a
17 private law firm, a public defender
18 office or privately paid assigned
19 counsel. What I can tell you from my
20 experience across the country is that
21 I've seen very good and very bad examples
22 of every type of model that's in place.
23 I've seen terrible public defender
24 offices and exceptional public defender
25 offices, and the same holds true with

1 2/4/14 - LAW & GOV. - BILL 130851, etc.
2 contract models and assigned counsel
3 models.

4 Indeed, two of our best
5 indigent defense systems in the country,
6 those in Massachusetts and Oregon, offer
7 predominantly assigned counseling
8 contract systems, respectively. Indeed,
9 the State of Oregon employs a mixed
10 contract system that looks very much like
11 what the Administration is proposing here
12 in Philadelphia. The Oregon system
13 employs both non-profit public defender
14 offices, private attorneys, and private
15 law firms.

16 I say this to underscore the
17 fact that I don't dismiss out of hand the
18 Administration's plan to contract with a
19 private law firm for conflict
20 representation. I have no reason to
21 doubt the reports I have read that the
22 plan to contract with the law firm is
23 being contemplated in an effort to
24 improve services and to provide conflict
25 defendants with sources similar to

1 2/4/14 - LAW & GOV. - BILL 130851, etc.
2 primary defendants, like investigators
3 and social workers. The Administration's
4 goal of improving conflict representation
5 in the City is to be applauded and
6 supported.

7 However, from the materials I
8 have reviewed, it appears that the
9 Administration's plan will not accomplish
10 this admirable goal. What experience
11 teaches us is that no matter which model
12 is employed, the most important thing to
13 the health of an indigent defense system
14 is that the model structurally meets
15 nationally recognized standards of
16 justice and that it is appropriately
17 funded to meet those standards.

18 Though I do not speak for the
19 U.S. Department of Justice, it is clear
20 to me that their recent actions reflect
21 their aim of implementing national
22 standards no matter what model is in
23 place everywhere in the U.S. We're
24 specifically talking about the American
25 Bar Association's Ten Principles of a

1 2/4/14 - LAW & GOV. - BILL 130851, etc.
2 Public Defense Delivery System. Let me
3 explain.

4 The ABA promulgated the Ten
5 Principles in February 2002 to help
6 governments understand their obligations
7 under the Sixth Amendment. Our nation's
8 top law enforcement officer, Attorney
9 General Eric Holder, has called the ABA
10 Ten Principles the basic building blocks
11 of a well-functioning public defender
12 system. These ten simple tenets are a
13 shorthand method by which to gauge
14 whether or not the right-to-counsel
15 delivery model is set up to allow
16 attorneys to provide effective
17 representation. The Ten Principles seek
18 answers to simple questions like are
19 attorneys appointed early enough in the
20 process to have sufficient time to
21 conduct necessary investigations or is
22 the defense services provider free to
23 defend zealously the client without
24 concern for retaliation, things like
25 termination of employment or reduction in

1 2/4/14 - LAW & GOV. - BILL 130851, etc.
2 pay.

3 Now, I want to be clear. I
4 have not studied indigent defense
5 representation in Philadelphia, but I've
6 read a lot of materials, including a
7 DOJ-funded report called "Does the Type
8 of Criminal Defense Attorney Matter." If
9 what is in that report proves true, then
10 the conflict system in Philadelphia fails
11 the majority of the Ten Principles. The
12 report makes the case that conflict
13 system experiences undue judicial
14 interference. It fails to enforce
15 standards related to attorney
16 qualifications, training, workload, and
17 oversight. So just changing the delivery
18 model in Philadelphia without adhering to
19 the Principles will not fix the
20 underlying problems of inadequate
21 representation for conflict defendants.

22 DOJ action in recent years
23 shows that the Attorney General is
24 requiring the implementation of the
25 Principles wherever services are found to

1 2/4/14 - LAW & GOV. - BILL 130851, etc.
2 be deficient. I'll relate the two most
3 relevant actions by DOJ for today's
4 discussion.

5 On December 18th, 2012, the DOJ
6 Civil Rights Division announced a
7 sweeping agreement with Shelby County,
8 Tennessee -- that's Memphis -- requiring
9 that much of the ABA Principles be
10 implemented in an effort to improve the
11 county's deficient delinquency services.
12 The first of the ABA Principles
13 explicitly state that the public defense
14 function, including selection, funding,
15 and payment of counsel, is independent.
16 Similar to Philadelphia's conflict
17 system, the indigent defense system for
18 juveniles in Shelby County prior to the
19 agreement was under the control of the
20 judiciary.

21 Removing indigent defense
22 services from the judiciary to an
23 oversight system that does not experience
24 undue political or judicial interference
25 complies with several U.S. Supreme Court

1 2/4/14 - LAW & GOV. - BILL 130851, etc.
2 cases related to independence.

3 Now, I will not go through all
4 those cases here. They are in my written
5 testimony, but you should know that the
6 U.S. Supreme Court has said that
7 independence of defense counsel is
8 constitutionally protected and that
9 government violates the right to
10 effective assistance when it interferes
11 in certain ways with the ability of
12 counsel to make independent decisions
13 about how to conduct their defense. Such
14 instances would include when a defense
15 counsel must contemplate what he must do
16 to please the judge in order to get the
17 next appointment rather than zealously
18 advocating solely in the interest of the
19 indigent accused.

20 Another way independence is
21 infringed upon is when government
22 entities contract for a single flat fee
23 where there's no standards set for
24 performance and develops no manner to
25 measure against the standards. The ABA

1 2/4/14 - LAW & GOV. - BILL 130851, etc.
2 Principles specifically ban such
3 contractual arrangements, and it
4 anticipates -- obviously we haven't seen
5 the contract, but it anticipates that the
6 one the Administration is contemplating
7 is a flat fee.

8 Thus, if the City Council wants
9 to avoid DOJ attention, the debate in
10 Philadelphia should be about how best to
11 obtain independent oversight of conflict
12 defender services rather than what
13 delivery service model it should be.
14 This is made clear in another recent
15 federal action, a federal court decision
16 in a case called Wilbur versus Mount
17 Vernon out of Washington state.

18 Just on December 4th of this
19 past year, U.S. District Judge Robert
20 Lasnik granted injunctive relief against
21 the Cities of Mount Vernon and Burlington
22 for regularly and systematically
23 providing deficient right-to-counsel
24 services to the indigent accused.
25 Announcing that adversarial testing of

1 2/4/14 - LAW & GOV. - BILL 130851, etc.
2 the government's case was so infrequent
3 as to be a non-factor in the functioning
4 of the criminal justice system, the judge
5 found the appointment of counsel in Mount
6 Vernon and Burlington to be little more
7 than a formality, resulting in plea
8 bargains that had almost nothing to do
9 with the individualized nature of the
10 case.

11 As you can imagine, the
12 conflict system in Philadelphia has many
13 similarities to those systems in Mount
14 Vernon and Burlington. And the greatest
15 criticism of the public defender services
16 in that case was the entire lack of
17 supervision, in violation of ABA
18 Principal Ten. As Judge Lasnik decries,
19 the city officials who were responsible
20 for administering the public defense
21 contract did not feel it was necessary
22 for them to know how many non-public
23 defender cases the defenders were
24 handling, the number of public defense
25 cases they were assigned or even whether

1 2/4/14 - LAW & GOV. - BILL 130851, etc.
2 the defenders were complying with
3 standards for defense counsel that was
4 set out in the cities' ordinances.

5 To me, this is precisely what
6 the Administration is proposing in
7 Philadelphia. Change the model, but do
8 not set up any institutional method for
9 promulgating standards and measuring
10 services against those standards.

11 You should know that the DOJ's
12 Civil Rights Division and the DOJ Access
13 to Justice Initiative are specifically
14 responsible for bringing a spotlight to
15 the need for independent supervision in
16 any remedy of deficient right-to-counsel
17 services. They filed a Statement of
18 Interest in Wilbur on August 2013
19 specifically calling for independent
20 oversight and monitoring to ensure that
21 the city's compliance with any court
22 order is fulfilled.

23 So unless the system has a
24 supervisory component that is independent
25 of political and judicial interference,

1 2/4/14 - LAW & GOV. - BILL 130851, etc.
2 it cannot guarantee that the services are
3 meeting constitutional muster. And the
4 lack of a supervisory component is
5 glaringly absent from what I know of the
6 Administration's plan for conflict
7 services. Without uniform standards
8 related to attorney qualifications,
9 training, performance, workload, among
10 others, and without an independent agency
11 performing oversight to see if such
12 standards are being met, the City cannot
13 guarantee that conflict system is
14 constitutionally adequate. And such a
15 glaring systemic deficiency may become
16 the focus of Department of Justice action
17 here in Philadelphia just as they are
18 currently pursuing actions in Tennessee,
19 Missouri, and Mississippi.

20 The City of Philadelphia has
21 ignored the problem of conflict
22 representation for too long. The Sixth
23 Amendment Center stands ready to assist
24 you in moving forward.

25 Thank you very much, and I'll

1 2/4/14 - LAW & GOV. - BILL 130851, etc.
2 take any questions you may have.

3 COUNCILMAN GREENLEE:

4 Mr. Carroll, thank you. We'll hear from
5 Ms. Subin first and then have any
6 questions.

7 Before Ms. Subin starts, the
8 record will reflect Councilman Kenney,
9 Vice Chair of the Committee, is present.

10 Ms. Subin, we have your written
11 testimony, so any shorter statement would
12 be great. We'd appreciate it. Thank
13 you.

14 MS. SUBIN: Thank you,
15 Councilman Greenlee. Good morning, and
16 my thanks to this committee for again
17 inviting me to appear before it. My name
18 is Phyllis Subin. I'm the Executive
19 Director of the Pennsylvania Coalition
20 for Justice, which is a group of
21 advocates that have come together to
22 reform Pennsylvania's indigent defense
23 system in a manner that is consistent
24 with the ABA Ten Principles which have
25 been well outlined by Mr. Carroll.

1 2/4/14 - LAW & GOV. - BILL 130851, etc.

2 I will note to this committee
3 that the Pennsylvania Coalition for
4 Justice brought a resolution before the
5 Philadelphia Bar Association regarding
6 the ABA Ten Principles, and the
7 Philadelphia Bar Association Board of
8 Governors has endorsed the ABA Ten
9 Principles as the mechanism through which
10 indigent defense organizations should be
11 organized, consistent with best practices
12 and evidence-based practices. So we have
13 precedent in Philadelphia. I would also
14 note that the Pennsylvania Bar
15 Association House of Delegates also
16 passed a similar resolution in terms of
17 what are the best practices.

18 Very briefly, my background is
19 that I spent over 20 years as a trial and
20 appellate lawyer with the Defender
21 Association of Philadelphia. I then went
22 on to be a full-time law professor at the
23 University of New Mexico School of Law in
24 Albuquerque, and I was appointed to be
25 the State Public Defender for the State

1 2/4/14 - LAW & GOV. - BILL 130851, etc.
2 of New Mexico.

3 Mr. Carroll has referenced a
4 number of models that we know are out
5 there. I will tell you as the Chief
6 Public Defender for a state system, I was
7 a hundred percent funded by the State
8 Legislature, and the New Mexico public
9 defender system included not only ten
10 staff public defender offices, but it
11 also encompassed over a hundred contract
12 lawyers who responded to a request for
13 proposal that we had issued to deliver
14 conflict-of-interest services. So under
15 one umbrella, we had a statewide indigent
16 defense system that was, again, a hundred
17 percent funded by the State of New Mexico
18 through the legislative process. Because
19 we had that control over the entire
20 system, we were, therefore, able to have
21 the kind of quality controls and
22 supervision that Mr. Carroll has
23 referenced.

24 There are other models out
25 there. He and I have both traveled

1 2/4/14 - LAW & GOV. - BILL 130851, etc.
2 across the United States and done
3 assessments and evaluations of those
4 systems, and we think that we can bring
5 that information to the City and to this
6 Council as may be needed.

7 One of the things that I would
8 say with regard to one of the proposals
9 that is before you is for a quality
10 control auditor. That is a
11 recommendation that I offered to this
12 Council back in October, and I think it
13 is totally consistent with what
14 Mr. Carroll has discussed here earlier.

15 We know that there are
16 standards. I myself have written some of
17 the national standards that are also
18 involved as justification and referenced
19 in the ABA Ten Principles, and I know
20 that they are essential in terms of the
21 delivery of quality and zealous indigent
22 defense legal representation.

23 One of the questions I think
24 for Philadelphia and certainly referenced
25 by Mr. Carroll is how do you provide some

1 2/4/14 - LAW & GOV. - BILL 130851, etc.
2 kind of independent oversight. Unlike
3 the Defender Association of Philadelphia,
4 which has existed since 1934, there is a
5 new model, whatever that model may be
6 coming before the City, and I think we
7 need to make sure that we are able to
8 provide the kind of independence and
9 standards measurement that is necessary
10 to assure all of the citizens of
11 Philadelphia that that new model is going
12 to be workable. We can reference
13 certainly the ABA Ten Principles, but in
14 my written testimony, I've given you
15 other areas that exist that we know are
16 standards, from caseload to delinquency
17 representation to capital trial,
18 appellate, and post-conviction
19 representation.

20 I think that while I can't
21 comment specifically on legislation, I
22 reaffirm the recommendation that I've
23 made to this Council that they do have a
24 quality control auditor to assure that
25 this new entity, whatever it might be,

1 2/4/14 - LAW & GOV. - BILL 130851, etc.
2 has the level of caseload management,
3 assignment of cases to qualified lawyers,
4 and that it has the leadership that is
5 engaged and involved so that there is
6 supervision.

7 One of the critical things that
8 I think exists in the Commonwealth and
9 why I reference my experience in New
10 Mexico is that in New Mexico, the
11 Gideon's Sixth Amendment right to counsel
12 was clearly recognized as a state
13 obligation. One of the major problems
14 that I see in Pennsylvania is that the
15 Commonwealth of Pennsylvania, through the
16 Public Defender Act, has totally
17 delegated the state's obligations to the
18 counties and, quite frankly, the counties
19 do not have the tax base that is
20 necessary to support the kind of indigent
21 defense services that the courts and the
22 Legislature and the Governor are imposing
23 on the lawyers.

24 Lawyers have an obligation in
25 criminal cases to explain to non-citizens

1 2/4/14 - LAW & GOV. - BILL 130851, etc.
2 what their immigration law consequences
3 are. When we look at children and the
4 delinquency system, there are huge
5 collateral consequences that in many ways
6 are more important than what the direct
7 outcome of an adjudication might be. And
8 I think that we really do need to join
9 together to say to the Commonwealth of
10 Pennsylvania, Now is your time to step up
11 to the plate.

12 My written testimony references
13 a very, very beginning bill that we have
14 in the State Legislature right now for a
15 million dollar appropriation, but when
16 Pennsylvania becomes the only state that
17 doesn't fund any level of indigent legal
18 defense representation and services, I
19 say shame on us. And I think this is a
20 way that we need to begin to assist
21 Philadelphia, because this is inherently
22 also part of the City's struggle in terms
23 of how do you create a system that does
24 meet the ABA Ten Principles when you do
25 not have the level of funding that is

1 2/4/14 - LAW & GOV. - BILL 130851, etc.
2 necessary.

3 The Washington state case that
4 Mr. Carroll referenced was justice on the
5 cheap, and the DOJ caught them and the
6 federal caught them. And we are in a
7 very activist position right now in terms
8 of what the Department of Justice and the
9 American Civil Liberties Union are doing
10 in terms of lawsuits. Allegheny County
11 has also seen a lawsuit. Venango County
12 just barely ducked out of a lawsuit.
13 There are lawsuits currently in Luzerne
14 County, and I think we need to protect
15 Philadelphia against the heavy costs of
16 litigation and involvement in the
17 Department of Justice, and one way of
18 doing that is to be able to form a model
19 that really does meet the ABA Ten
20 Principles and, through auditing, assure
21 that the quality controls and the
22 standards are there for the practice and
23 for the citizens of Philadelphia.

24 So with that, I will stand for
25 any questions, Councilman.

1 2/4/14 - LAW & GOV. - BILL 130851, etc.

2 COUNCILMAN GREENLEE: Thank
3 you, Ms. Subin. I know Councilman
4 O'Brien has some questions. Just a
5 couple things. One, just a statement.
6 Thank you for your earlier recommendation
7 at the hearings, because I think that
8 whole quality control issue is one of the
9 essences of Bill No. 130852. So we
10 certainly appreciate your input there.

11 And let me just say as an
12 aside, there's a whole lot of issues that
13 the State seems to delegate to the City
14 without proper funding. Of course, then
15 when we do stuff they don't like, they
16 take certain rights away from us, but I
17 can go on for a while on that one.

18 Just a general question before
19 I recognize Councilman O'Brien, and I
20 know certainly we're talking about the
21 indigent defense in here, which is
22 obviously very important, but when a
23 system doesn't work, it obviously affects
24 not just that defendant, right? I mean,
25 that's obviously, Ms. Subin, in your case

1 2/4/14 - LAW & GOV. - BILL 130851, etc.
2 certainly your main concern. But for
3 whatever reason a case is overturned,
4 thrown back, the other witnesses, the
5 families of those people, everybody. So
6 it affects -- and in the end, it affects
7 the budget. It costs more money, right?

8 So getting this right isn't
9 just about the indigent defendant, which
10 is obviously the key, but it's about the
11 whole system. Is that a fair statement?

12 MS. SUBIN: Councilman
13 Greenlee, absolutely. This is about the
14 victims who deserve a day in court, and
15 when justice is delayed because cases
16 have to be retried due to ineffective
17 assistance of counsel or cases are
18 delayed and delayed, that affects
19 victims. It affects taxpayers who have
20 to pay the daily cost of incarceration.
21 So this is something that concerns every
22 citizen in Philadelphia.

23 COUNCILMAN GREENLEE: Okay.
24 Thank you very much.

25 Mr. Carroll, did you want to

1 2/4/14 - LAW & GOV. - BILL 130851, etc.
2 add something to that?

3 MR. CARROLL: The only thing
4 I'd like to add is also it's a public
5 safety issue. If you have somebody
6 sitting in jail simply because the
7 attorney didn't have the time, tools, and
8 training to do anything on the case, the
9 real perpetrator of the crime remains on
10 the street to wreak havoc with the public
11 safety.

12 COUNCILMAN GREENLEE: Yeah.
13 That's a very good point too. So I try
14 to -- when we've talked about this, I've
15 tried to expand that, that obviously the
16 indigent defense is extremely important,
17 but it's the whole system that really is
18 impacted if this isn't done right.

19 So with that, Councilman
20 O'Brien.

21 COUNCILMAN O'BRIEN: Yes. I'll
22 just summarize briefly, because I was
23 most impressed with your testimony,
24 David. So I'll just try to summarize.

25 You talked about national

1 2/4/14 - LAW & GOV. - BILL 130851, etc.
2 standards and you talked about
3 independent supervision and oversight.
4 You talked about national standards,
5 proper funding, the Ten Principles of the
6 ABA as a basic building block. You
7 articulated the question of having a
8 defense attorney in place early enough so
9 that they can do all of the various
10 component parts of their work and avoid
11 retaliation. And specifically I welcomed
12 your remark that the perception that a
13 defense attorney would offend the judge
14 is also something for us to evaluate and
15 consider, and that the independent
16 supervision and oversight
17 responsibilities include caselaw,
18 attorney qualifications, workload
19 standards, and that the most important
20 issue is that whatever model we have is
21 not as important as the oversight and
22 supervision services to guarantee that it
23 meets constitutional muster.

24 If you can, just in summary,
25 again review for us that supervisory

1 2/4/14 - LAW & GOV. - BILL 130851, etc.
2 and -- or let me just rephrase that. Let
3 me just ask you to articulate what you
4 would view as the most important part of
5 a supervisory component.

6 MR. CARROLL: There needs to be
7 independent oversight that can set
8 standards and measure against those
9 standards. So, for instance, a judge
10 cannot interview the defendant. They
11 can't go into the case file and look and
12 try to understand whether the lack of a
13 motion was because there was a valid
14 reason for not doing it.

15 So it has to be some form of
16 oversight that can actually have the best
17 interest of the defendant in mind where
18 they can measure up and say you're either
19 falling down or you're not. Most
20 jurisdictions have done that through an
21 Indigent Defense Commission.
22 Pennsylvania is in the minority of states
23 without a statewide commission. They're
24 one of only two states that do not fund
25 any portion of indigent defense. And

1 2/4/14 - LAW & GOV. - BILL 130851, etc.
2 generally from the national level, those
3 two important lacks of oversight and
4 funding to standards are why Pennsylvania
5 is considered one of the most deficient
6 systems in the country.

7 COUNCILMAN O'BRIEN: Deficient?
8 Thank you.

9 Again, you state in your
10 written testimony without an independent
11 agency performing oversight to see that
12 such standards are being met, the City
13 cannot guarantee that conflict services
14 are constitutionally adequate. So I will
15 ask both of you, is it your opinion
16 having an independent monitor or auditor
17 will guarantee the constitutional rights
18 of the indigent, that they're protected
19 and preserved, and specifically having,
20 as we specifically prescribed in the
21 legislation, having an independent
22 monitor and auditor?

23 MS. SUBIN: I think, Councilman
24 O'Brien, that that recommendation does
25 give Council as well as the City and the

1 2/4/14 - LAW & GOV. - BILL 130851, etc.
2 taxpayers a very solid opportunity to
3 appreciate and assess how this new
4 entity, however it may be operable, is
5 performing, how it's supervised, how the
6 assignment of cases takes place, to
7 qualifications for lawyers. So I give it
8 a strong recommendation because I think
9 it is something that will be helpful.

10 In the broader picture, there
11 are places like King County, Seattle that
12 have actually formed an Office for Public
13 Defense that supervise the public defense
14 county agencies that provide the
15 deliverables within a county system.

16 So that is just one model of
17 how another large county has worked, and
18 there are actually four entities that
19 deliver public defense legal
20 representation services in King County.
21 So I think -- we know what the models
22 are. Both Mr. Carroll and I have
23 traveled the country and have seen them,
24 but I certainly think as a beginning step
25 in Philadelphia having the quality

1 2/4/14 - LAW & GOV. - BILL 130851, etc.
2 control auditor is something that would
3 be beneficial to everybody involved in
4 the justice system.

5 COUNCILMAN O'BRIEN: Again,
6 maybe both of you could answer this. The
7 Administration, we anticipate, is going
8 to take a position that oversight and the
9 legislation that we have before us is
10 going to increase costs, increase delays,
11 eliminate competition. Can you put that
12 up against the constitutional protections
13 and the cost of DOJ getting involved.

14 MR. CARROLL: It will cost
15 more. That's one of the glaring
16 deficiencies, is that the City hasn't
17 been able or willing to provide the
18 necessary resources to protect the rights
19 of the conflict defendants. It would
20 pale in comparison to the cost of if DOJ
21 set their sights on Philadelphia in
22 looking at the conflict system.

23 I should say that one of the
24 things we're seeing across the country is
25 the right to counsel only attaches if

1 2/4/14 - LAW & GOV. - BILL 130851, etc.
2 there's potential of jail time. The
3 criminal justice systems in our country
4 are quite bloated. You're looking at the
5 need to shrink the size of government in
6 many areas, and the criminal justice
7 system is a prime example where that
8 could be done. If there was an effort to
9 reclassify crimes to be -- like traffic
10 ticket citations, you're removing the
11 right to counsel in all those cases.
12 There's a movement to look at things like
13 reclassification, increased use of
14 diversions. These are more
15 cost-effective ways of dealing with, we
16 sort of say, the people we're mad at
17 versus the people we're afraid of. The
18 criminal justice system really should be
19 saved for the violent offenders. And
20 then if you look at that, you can
21 decrease the number of people and then
22 the cost of providing effective
23 representation wouldn't be that great.
24 If there's no desire,
25 willingness to look at those issues, then

1 2/4/14 - LAW & GOV. - BILL 130851, etc.
2 the only answer is that it's going to
3 increase costs to form this type of
4 oversight, and the question then becomes
5 do we want to spend that money or would
6 we rather spend that money if ACLU or the
7 Department of Justice decides to launch a
8 lawsuit in Philadelphia.

9 MS. SUBIN: I think Mr. Carroll
10 is specifically referencing the
11 misdemeanor practice, and in
12 Pennsylvania, unlike the rest of the
13 country, we have probably the most
14 complex misdemeanor practice because of
15 our criminal code making misdemeanor
16 penalties go up to a maximum of two and a
17 half to five years, whereas everybody
18 else in the country, grand misdemeanors
19 are no more than one year under the old
20 common law. So our practice in
21 misdemeanor court is pretty severe, and
22 certainly diversion is one issue.

23 I think another issue is that
24 we have to look also -- because this
25 contract covers delinquency practice, and

1 2/4/14 - LAW & GOV. - BILL 130851, etc.
2 delinquency practice in Pennsylvania has
3 become increasingly much more complex in
4 terms of the number of juveniles that
5 actually get sent to the adult system now
6 for trial but also because the
7 Legislature has taken steps --
8 Pennsylvania is the only state that I
9 know of that has civil mental health
10 commitments for certain levels of
11 juvenile delinquent sex offenders who are
12 still in a commitment prior to their 21st
13 birthday. And so now we have public
14 defender offices that have to do civil
15 mental health commitments for those
16 juveniles. We have juvenile sex offender
17 registration for delinquents, which is
18 now a lifetime.

19 So those are an increment of
20 penalty that drives the level of
21 resources that you have to fund into the
22 indigent defense representation, and the
23 state imposes it without any obligation
24 to support you as county leaders in terms
25 of what they are doing to the justice

1 2/4/14 - LAW & GOV. - BILL 130851, etc.
2 system.

3 COUNCILMAN O'BRIEN: Thank you,
4 Phyllis. I would welcome the opportunity
5 to explore your recommendations on issues
6 that further challenge this system. And
7 when I was Chair of the House Judiciary
8 Committee, I interacted with Stew
9 Greenleaf on a regular basis. I did a
10 cursory review of Senator Greenleaf's
11 bill and it calls for a million dollar
12 appropriation, but my reading of that is
13 that that million dollars would provide
14 an association similar to what the
15 district attorneys have, but it really
16 doesn't get to adequate funding for
17 indigent counsel.

18 I would ask everyone generally
19 to recognize that we are the only state
20 that the Commonwealth is not paying for
21 indigent counsel, and I would leave the
22 fight, along with the Bar Association and
23 all of you, to go to Harrisburg and find
24 that appropriate funding. Am I reading
25 that correctly?

1 2/4/14 - LAW & GOV. - BILL 130851, etc.

2 MS. SUBIN: You're correct.

3 What Senate Bill 979 would basically do
4 would be to establish a state-funded
5 resource center to support indigent
6 defense legal services. It is by far
7 insufficient for what is truly the
8 state's obligation, but it is a
9 recognition of the current political
10 reality in Harrisburg as to, one, what we
11 could get introduced and, two, what could
12 even possibly be funded under the current
13 circumstances that exist in Harrisburg.

14 COUNCILMAN O'BRIEN: What would
15 you define as "circumstances"? No; don't
16 get into that.

17 Thank you. I have no further
18 questions.

19 COUNCILMAN GREENLEE: Thank
20 you, Councilman.

21 Councilwoman Tasco.

22 COUNCILWOMAN TASCO: Good
23 morning.

24 MR. CARROLL: Good morning.

25 COUNCILWOMAN TASCO: Were you

1 2/4/14 - LAW & GOV. - BILL 130851, etc.
2 invited to participate in the discussion
3 about changing Philadelphia's process on
4 indigent defense in the bill that's
5 before us, not this bill but the process
6 that the City set up? Were you involved
7 in any of the discussions?

8 MS. SUBIN: Yes. Councilwoman
9 Tasco, I was invited to consult with the
10 Chancellor of the Philadelphia Bar
11 Association and the group that she had
12 put forward, and I also was able to meet
13 at least telephonically with Mr. Resnick
14 and to also provide him with some of the
15 national standards that we have that
16 Mr. Carroll has referenced.

17 COUNCILWOMAN TASCO: Okay.
18 Thank you.

19 COUNCILMAN GREENLEE: Any other
20 questions?

21 (No response.)

22 COUNCILMAN GREENLEE: Seeing
23 none, thank you very much. Thank you for
24 your participation, for coming down here,
25 and thank you for your continued work on

1 2/4/14 - LAW & GOV. - BILL 130851, etc.
2 this issue.

3 Ms. Marconi, could you call the
4 next witnesses, please.

5 THE CLERK: William Fedullo,
6 Robert Muench, and Meredith Brennan.

7 (Witnesses approached witness
8 table.)

9 COUNCILMAN GREENLEE: Good
10 morning, everyone. Whoever would like to
11 start, please identify yourself. And,
12 again, if we could try to keep our
13 remarks particularly towards the bills
14 and resolution before us today.

15 MR. FEDULLO: My name is Bill
16 Fedullo and I'm the Chancellor of the
17 Philadelphia Bar Association.

18 MR. MUENCH: I'm Robert Muench
19 and the Chair of the Criminal Justice
20 Section.

21 MS. BRENNAN: Meredith Brennan,
22 Chair of the Family Law Section of the
23 Philadelphia Bar.

24 COUNCILMAN GREENLEE: Please,
25 Mr. Fedullo.

1 2/4/14 - LAW & GOV. - BILL 130851, etc.

2 MR. FEDULLO: Thank you and
3 thank you, Chair Greenlee, Vice Chair
4 Kenney -- he was just over there. I
5 guess he left.

6 COUNCILMAN GREENLEE: He's
7 here.

8 MR. FEDULLO: And Councilman
9 Goode, Councilman O'Brien, Councilwoman
10 Tasco, and Councilman Henon. Thank you
11 for inviting us.

12 I represent as the Chancellor
13 of the Philadelphia Bar Association
14 approximately 13,000 members of the legal
15 profession in our city. I understand
16 that the City has been placed essentially
17 at the mercy of the Commonwealth with
18 regard to funding indigent clients, much
19 in the same way as the City has been at
20 the mercy with the School District cuts
21 that we've had to sustain this past year,
22 which has been a bit part of my
23 administration to this point. So I
24 understand the problems that the City
25 has, but I first want to congratulate the

1 2/4/14 - LAW & GOV. - BILL 130851, etc.
2 City for stepping back and taking a
3 second look at the critically important
4 issue of indigent representation in
5 criminal and dependency cases where the
6 Defender Association is unable to
7 represent a party due to a conflict of
8 interest. And it is my understanding
9 that at this point that the City is
10 favoring a non-profit procedure approach
11 this time around. So I congratulate the
12 City on that, and I think that the Bar
13 Association applauds them for
14 understanding that. That's my
15 understanding.

16 COUNCILMAN O'BRIEN: Okay.

17 MR. FEDULLO: The Sixth
18 Amendment to the Constitution of the
19 United States guarantees to every citizen
20 the right to have the assistance of
21 counsel for his defense or her defense.
22 There is no qualifier in the Sixth
23 Amendment providing for the ability to
24 pay usual and customary fees as a
25 condition to receiving this right. Every

1 2/4/14 - LAW & GOV. - BILL 130851, etc.
2 person charged with a crime has the same
3 right to the assistance of counsel
4 without regard to the person's ability to
5 pay.

6 Having the same right requires
7 that the standards must be established to
8 ensure that those on the lower end of the
9 economic scale are afforded the same
10 level of opportunity of quality
11 representation as anyone else in our
12 society facing the same charges, the same
13 way that every child in this Commonwealth
14 and in this city is entitled to a similar
15 education. We were supposed to have been
16 guaranteed that by Brown v. Board of
17 Education, the same way Gideon versus
18 Wainwright guarantees a similar criminal
19 representation.

20 The Defenders Association of
21 Philadelphia, which I'm very much aware,
22 does a remarkable job with the resources
23 at its disposal to provide competent
24 representation to those who qualify for
25 its services. It is when the Defender

1 2/4/14 - LAW & GOV. - BILL 130851, etc.
2 Association is unable to represent an
3 individual due to a conflict of interest
4 that the quality of representation
5 provided is called into question. To
6 this point, the representation has been
7 made by appointment of individual
8 counsel. Even with a second defender's
9 office, whatever form that takes, you are
10 still going to have cases where you're
11 going to have appointed counsel,
12 appointed individual counsel, because
13 often there are three or four or five
14 people arrested and they're all going to
15 need representation. So the City needs
16 to recognize that in those instances,
17 that money is not going to be saved
18 because it's going to have to be paid to
19 those individual counsel who are
20 appointed for extra defendants.

21 So our primary goal for the
22 people of the City is to fully realize
23 the right to have assistance of counsel
24 guaranteed in the Sixth Amendment. In
25 evaluating proposals, no delivery system

1 2/4/14 - LAW & GOV. - BILL 130851, etc.
2 should be summarily dismissed from
3 consideration, but I believe I could say
4 without fail that the Bar Association
5 does favor a non-profit approach.

6 Each model should be carefully
7 examined to determine whether it can
8 achieve the goal of equal justice for
9 all.

10 Now, you've heard about the Ten
11 Principles of the ABA, and I'm not going
12 to reiterate things that you already
13 heard. It's already in the written
14 material I've submitted to you, the same
15 way we've submitted the standards for
16 practice for representation of children,
17 parents, and agencies in child welfare
18 cases. So in the interest of time and
19 getting questions from ladies and
20 gentlemen, I will eliminate that portion
21 of my remarks to you.

22 But what I will say is this,
23 that the Philadelphia Bar Association
24 urges the City to require any new program
25 for indigent representation in conflicts

1 2/4/14 - LAW & GOV. - BILL 130851, etc.
2 cases in juvenile matters to adhere to
3 the Performance Guidelines for Quality
4 and Effective Juvenile Delinquency
5 Representation, the same as with criminal
6 representation and the same with support
7 representation. All of those have been
8 submitted to you by our submissions.

9 So each year, thousands of
10 Philadelphians receive representation
11 through the conflicts counsel appointment
12 system. Thousands more are impacted by
13 the appointment system, including the
14 victims of crime, witnesses, and family
15 members of the accused.

16 We've recently celebrated the
17 60th anniversary of the United States
18 Supreme Court decision in Gideon versus
19 Wainwright which made clear the right to
20 counsel in criminal proceedings whether
21 or not the defendant could afford to pay.
22 Seven years after the Gideon decision in
23 McMann versus Richardson, the Supreme
24 Court held that the right to counsel is
25 the right to effective assistance of

1 2/4/14 - LAW & GOV. - BILL 130851, etc.
2 counsel. Thus, any system adopted for
3 the provision of legal counsel in
4 conflicts cases must afford indigent
5 defendants effective aid in the
6 preparation and trial of the case.

7 With such fundamental rights at
8 stake, it is critical that a thorough,
9 transparent, and inclusive examination of
10 all available options be accomplished in
11 order to provide the people of
12 Philadelphia with the best possible
13 conflicts counsel program.

14 The Philadelphia Bar
15 Association and I stand ready to assist
16 the City in any way possible to achieve
17 this goal.

18 So thank you for the
19 opportunity to provide this testimony.

20 COUNCILMAN GREENLEE: Thank
21 you, Mr. Fedullo. We'll hear from the
22 other two and then any questions.

23 Speak into the microphone so we
24 can hear you.

25 MR. MUENCH: Councilman, I'm

1 2/4/14 - LAW & GOV. - BILL 130851, etc.
2 here in support of the Chancellor,
3 Mr. Fedullo. My primary focus is on the
4 Councilman's legislation that is being
5 proposed, and I think that it's a wise
6 first step in the process of trying to
7 reform this system. I think the issue
8 behind the legislation is so that the
9 one-year circumvention of coming to City
10 Council for review and oversight is
11 handled more appropriately, because I
12 think that with the current legislation,
13 you now take that away from the City when
14 you're dealing with indigent individuals,
15 and I think we understand now the
16 importance of dealing with the
17 constitutional rights of people,
18 especially the poor and those that can't
19 afford attorneys, how important that is
20 to not have that circumvented.

21 I think that what we're dealing
22 with here was a model that the City
23 proposed that was only going to be in
24 existence for a year, and our primary
25 concern was twofold. Number one, what

1 2/4/14 - LAW & GOV. - BILL 130851, etc.
2 happens after that year is up and that
3 firm that's a for-profit model, that's a
4 corporate model, may go bankrupt or just
5 dissolve? What happens to all those
6 individuals?

7 The second prong of our concern
8 was who can get up and get this kind of
9 thing running in time and have a
10 for-profit model in place and then, at
11 the end of that year, be guaranteed some
12 type of furtherance of the contract but
13 not have the oversight that the
14 legislation is proposing?

15 So I think that was two key
16 areas that we were dealing with in terms
17 of our objection to this process, outside
18 of all the other objections that you've
19 heard through all the testimony that's
20 been in front of you that I'm not going
21 to restate because you've heard it enough
22 times.

23 This is a very serious and
24 important issue, and it overlaps, as
25 you've heard earlier, a lot of different

1 2/4/14 - LAW & GOV. - BILL 130851, etc.
2 areas of concern, mental health. You're
3 going to hear from Family Law and the
4 dependency issues for children. There's
5 the juvenile delinquency side of this.
6 And to have one or two firms handling
7 this entire issue is just something that
8 was extremely troubling to us as an
9 organization, because we really didn't
10 know how it was going to be done. There
11 wasn't a lot of transparency in the
12 contract process, and this is what we
13 were looking for. We wanted to be able
14 to step back, take a breather, look at
15 this a little more objectively, and have
16 some of these questions answered. I
17 don't think we had that from the first
18 proposal that was put out there. And in
19 talking to individuals that deal with
20 these RFPs on a regular basis, the RFP
21 the way it was presented was not very
22 well done.

23 So there were a lot of issues.
24 There were issues with the organizational
25 structure of the group that wanted to

1 2/4/14 - LAW & GOV. - BILL 130851, etc.
2 take the contract. And you're going to
3 hand a multi-million-dollar contract to a
4 group of individuals when you don't know
5 all of these issues, I think that
6 requires City Council oversight. I think
7 it requires this legislation to be
8 approved and put into place. I think it
9 requires us to all just take a close look
10 at what's going on here. I mean, we're
11 handing over taxpayer money for this
12 operation and we really don't know what
13 the outcome is going to be.

14 So I really think that we had
15 to have more oversight. Like what
16 Councilman O'Brien seems to focus on is
17 there's a need for oversight. There's a
18 need for oversight of this process, and
19 there's a need for these kinds of
20 contracts and these kinds of cases to
21 come before City Council, not be in the
22 exclusive purview of the Mayor and the
23 Managing Director. I think we really
24 need this process in place so that we can
25 all feel -- I'm not trying to say this is

1 2/4/14 - LAW & GOV. - BILL 130851, etc.
2 a feel-good situation, but we have to
3 feel better about what we're doing in
4 order to try to help people, and there's
5 so many areas of overlap.

6 The question came up -- we
7 never even thought about it. The
8 question came up, let's say the one year
9 is up. The one year is up. They've
10 taken the money, however it was doled
11 out. The one year is up. The
12 organization has got it, and then they go
13 out of business. They go out of
14 business. They can't afford it the next
15 time around. Who picks it up the next
16 year? What happens with all those cases?

17 Statistically from what I've
18 learned over the years -- and I've been
19 doing this 25 years. I am a
20 court-appointed attorney, so I get these
21 cases, and I can tell you that the
22 federal government's Criminal Justice
23 Panel is a very good one, but they bill
24 on the hour. They bill on the hour. Our
25 current system the way we have it now, we

1 2/4/14 - LAW & GOV. - BILL 130851, etc.
2 get a flat fee for what we do. So we
3 either have to do it right or we -- and
4 most of us lose money in this process as
5 lawyers, because we put our clients
6 first. But a for-profit model, they're
7 out to make a profit. They're going to
8 cut corners and cut costs in order to
9 make money, and that's why I think we
10 need the non-profit or the not-for-profit
11 model and we need the oversight.

12 But 22,000 to 30,000 cases a
13 year go through this system. The Public
14 Defenders Office handles about
15 three-fifths of those cases and the
16 court-appointed lawyers handle the rest.
17 And multi-defendant cases, two, three,
18 four, five defendants in a case, we're
19 the ones that get them.

20 In terms of the structure for
21 oversight of the attorneys the way the
22 current system is in place now for
23 whether they're qualified or not, we have
24 Bar Association review. We have review
25 of the applicants that get into the wheel

1 2/4/14 - LAW & GOV. - BILL 130851, etc.
2 that handle these cases. If another firm
3 takes it over, we have no idea who is
4 going to be handling those matters and
5 how it's going to be structured.

6 So there's just a lot of issues
7 that I think the legislation at least
8 starts to address, and I applaud
9 Councilman O'Brien and this committee for
10 undertaking this quest and I think that
11 it's something that -- the legislation
12 should be approved by the Committee and
13 by City Council and put into place, and
14 we should all just take a step back and
15 take a deep breath and take a close look
16 at what's going on here.

17 Thank you.

18 COUNCILMAN GREENLEE: Thank
19 you. Thank you, Mr. Muench.

20 Ms. Brennan, please.

21 MS. BRENNAN: Thank you. I
22 don't have any testimony to add other
23 than what's been said, although if
24 there's any questions regarding how this
25 legislation or the RFP process generally

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2 would affect the dependency cases, I'm
3 happy to try to answer any of those
4 questions.

5 COUNCILMAN GREENLEE: Okay.
6 Thank you. Thank all three of you.

7 I just had one thing.
8 Mr. Muench, am I pronouncing that right?
9 You specifically talked about support for
10 the legislation, and we're going to hear
11 from the Administration next, but their
12 concern is what you're calling oversight,
13 their concern -- they mention it a couple
14 times in the testimony, written
15 testimony -- is political interference.
16 Do you have concern about City Council
17 politically interfering in this process?

18 MR. MUENCH: No. I think that
19 the thought of political interference is
20 more an independent auditor or oversight
21 in terms of the contract terms and how
22 it's being delivered in terms of
23 administration, so that funds are not
24 being squandered or there's issues with
25 respect to what's happening with the

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2 taxpayers' money. I think that's the
3 concern that's being addressed in the
4 legislation as it's presented to Council.

5 In terms of political
6 interference, I am probably the only
7 person here that's testifying that is a
8 court-appointed attorney that does court
9 appointment work in the criminal system,
10 and I've done this in the juvenile system
11 for delinquency cases and I do it in the
12 adult system, and I can tell you that we
13 do not feel pressure from judges the way
14 it seems to be portrayed. We don't feel
15 that way. We feel as though we are
16 autonomous and we have the chance to
17 handle these cases to the best of our
18 ability for our clients.

19 I think what's critical here to
20 be looked at is, the wheel that we have
21 in place -- and I'm not saying that this
22 is going to be the model that's going to
23 evolve from all of this, because there
24 seems to be a train that's on a track and
25 it's going down in a certain direction

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2 and something is going to be done to
3 change this process, whether it's funding
4 through the state, whether it's something
5 done in terms of how the delivery system
6 is morphed in terms of what we have
7 today, whether it's going to be a
8 not-for-profit model or whatever comes of
9 this through the legislation and what we
10 can do in terms of who addresses the
11 contracts. But I think the real -- the
12 key for me is, we have a lot of attorneys
13 that have been vetted and handle this
14 court appointment process and handle
15 these cases on a daily basis. They're in
16 the courtrooms every day and they're
17 handling these, and they handle them
18 well. And when you have a lot of -- they
19 say many hands make light work. Well, we
20 have a lot of attorneys out there trying
21 to make light work of a really
22 overburdened system, but these attorneys
23 are also not handling as many cases as
24 you may think that they're handling. I
25 mean, I can tell you right off that I

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2 made \$16,000 last year in court
3 appointment cases and I probably handled
4 maybe 40 to 50 cases through the City.
5 So I did not make a lot of money, but I
6 did a lot of work, I can tell you that.
7 I did an awful lot of work, and I enjoy
8 the work, and I think that it's because I
9 had the time to devote to these cases.

10 I think if you take a different
11 model now and you have 40 or 50 attorneys
12 spread out through the court system,
13 which is what the original group was
14 proposing, handling 8,000 to 10,000 cases
15 or more, they're not going to be able to
16 do it. They're not going to be able to
17 deliver the service in the same way. So
18 it's going to be more of a mill. There's
19 going to be things that are just cranked
20 out, and so clients are going to suffer,
21 the public is going to suffer, and I
22 think that has to be another concern.

23 I kind of think of the old joke
24 about the older politician and the
25 younger politician talking to each other

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2 and the younger guy says --

3 MR. FEDULLO: Be careful here.

4 MR. MUENCH: The younger guy
5 says to the older one --

6 COUNCILMAN GREENLEE: I know
7 which category I fall into.

8 COUNCILMAN O'BRIEN: We are
9 statesmen.

10 MR. MUENCH: He says, Why
11 should I care about dogs, children, and
12 felons? None of them can vote.

13 And the older politician looks
14 at him and says, Yeah, but their families
15 and their owners and their loved ones
16 can. And I think that's what we're
17 looking at. You asked the question,
18 Councilman O'Brien, about the families or
19 it was Chairman Greenlee. You said the
20 families are also affected by this, and
21 the attorneys that are involved in the
22 system, we understand that. We're
23 dealing with the families all the time.
24 We deal with the support structure and
25 all of the issues that come up with these

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2 kinds of cases.

3 I don't think a for-profit
4 model second Defenders Office is going to
5 be the right approach, and I'm glad to
6 hear that the City is taking a step back
7 and is looking at a not-for-profit model.
8 But they're still going to have to deal
9 with, even within that model, what do you
10 do with multiple defendant cases when you
11 have conflicts of three or more and those
12 types of things. The oversight is going
13 to come from auditors that are dealing
14 with review of the contract, review of
15 the expenditure of money.

16 But I feel autonomous in my
17 system. If I were in a courtroom every
18 day like a public defender, I would feel
19 overwhelmed just like the public
20 defenders today feel overwhelmed with the
21 amount of cases that they have, and we
22 all feel like we're overworked and
23 underpaid, but I feel better about the
24 way I handle cases with my clients
25 because I feel like I can devote more

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2 time to my cases and give my clients at
3 least what I feel is quality
4 representation without the political
5 interference or judicial arm on me in
6 terms of what you asked of your question,
7 Chairman.

8 COUNCILMAN GREENLEE: Okay.
9 Thank you.

10 Mr. Fedullo, just real quickly,
11 without getting into detail, you said you
12 understood that the Administration is
13 looking at a different model. Have you
14 been involved at all? You don't have to
15 get into detail, but have you been
16 involved at all in these discussions?

17 MR. FEDULLO: To the extent
18 that especially since December of last
19 year I have. I've spoken to basically
20 most of the players, a lot with
21 Councilman O'Brien honestly and with the
22 City, and my understanding is that the
23 City at this point is preferring a
24 non-profit model. That's not a
25 commitment, but it's a preference to a

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2 non-profit model. As I think I've
3 suggested throughout, the profit model
4 raises far too many issues, far too many
5 problems, far too many ethical problems.
6 You get appointed to represent a criminal
7 client, being paid by the City, and you
8 have a 1983 action against the City for
9 being beaten up during the arrest. What
10 happens then? What's the ethical dilemma
11 there? And there's so many others. It's
12 like how many quarters can you cut to
13 make a profit, whereas if you're court
14 appointed, you're there for the duration.

15 COUNCILMAN GREENLEE: No; I
16 understand. The reason I bring that up
17 is, I don't think we knew that piece of
18 it, but I guess they didn't want to have
19 political interference, so I guess they
20 didn't tell us.

21 MR. FEDULLO: It's fairly
22 recent.

23 COUNCILMAN GREENLEE: Well,
24 yeah, but we're pretty easy to reach by
25 phone.

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2 Councilwoman, you have a
3 question? Councilwoman Tasco.

4 COUNCILWOMAN TASCO: Good
5 morning. We're only two floors away.

6 Thank you, and congratulations,
7 Mr. Fedullo, on your election to become
8 Chancellor of the Bar.

9 MR. FEDULLO: Thank you.

10 COUNCILWOMAN TASCO: You may or
11 may not know this, I'm sure, but was the
12 Bar included in the discussion of
13 changing the model, the City's model?
14 Was there any sort of like a committee
15 put together and you were invited to
16 participate and have input?

17 MR. FEDULLO: My predecessor
18 put together a task force that was
19 involved in the process, and my
20 predecessor made remarks to the Council.
21 As far as the contract itself, I think
22 that was part of the problem. I don't
23 think there was enough transparency so
24 that the Bar, the Chancellor of the Bar,
25 could see what was in the contract to

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2 really comment on what the contract was
3 detailing. It's very difficult as an
4 attorney to be asked to comment on the
5 contract that you don't see, and that was
6 part of the problem.

7 So I think transparency,
8 however this process works out, is really
9 necessary, because if we -- we can't help
10 the process -- and I want to help the
11 process. We're not here to drag down the
12 process; we want to help the process.
13 But in order to help the process, we have
14 to see what's in the contract itself.

15 COUNCILWOMAN TASCO: There have
16 been many issues raised this morning
17 about the whole system of providing
18 services to indigent clients and taking
19 into consideration the young lady who
20 testified earlier, Ms. Subin, in terms of
21 changes that may be coming down the pike
22 or changes that are in the pipeline.
23 Were any of these issues, that you know
24 of, discussed during the course of the
25 debate over changing our model?

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2 MR. FEDULLO: I --

3 COUNCILWOMAN TASCO: I mean,
4 she raised a number of issues about the
5 state. The other gentleman, Mr. Carroll,
6 raised other issues about other cities
7 and the problems, and when the discussion
8 came from the City that they wanted to go
9 to a different model of handling indigent
10 clients --

11 MR. FEDULLO: What the history
12 was, I believe, that the court system
13 itself through the Commonwealth paid the
14 appointed counsel. At some point, fairly
15 recent history, the court system said to
16 the City, It's your baby, you fund the
17 appointed counsel. So the City was left
18 with the dilemma where we're going to
19 have to pay a certain amount each year to
20 appointed counsel. How do we do it more
21 efficiently. And I think everybody came
22 into this with very good intentions. The
23 intention was how do we save money and,
24 at the same time, try to adhere to
25 standards. The problem became the amount

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2 of money you had to spend made it
3 impossible to adhere to the standards.
4 There just wasn't enough money that was
5 on the table to set up this for-profit
6 entity to adhere to the standards. They
7 just weren't going to man enough
8 courtrooms, have enough follow-through.
9 If you got appointed the ninth month of
10 the year and you only had a one-year
11 contract, what happened to that case at
12 the end of the year if the contract
13 wasn't renewed? Do you have to keep, he
14 or she, keep representing the person?
15 What exactly happens? So there was too
16 many unanswered questions, too little
17 funding, as is most cases. If there was
18 enough money for everything, we wouldn't
19 have these problems.

20 But the Commonwealth of
21 Pennsylvania has basically thrown it on
22 the City. The City once again is left
23 with the dilemma how do we handle a case
24 in which we have poor people and they're
25 being underrepresented, very similar to

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2 the situation with our schools.

3 So the City is not really the
4 bad guy here. They're really not. I
5 mean, the Commonwealth should have been
6 providing this funding and they haven't
7 been and they haven't been for the last
8 couple years. The City, I think, simply
9 is looking for a better way to do it. We
10 want to help them. We want to help them
11 do it. We don't think the profit model
12 works. We just don't. There's so many
13 reasons why it doesn't work. And the
14 good news I've heard recently is that the
15 first time around the Defenders
16 Association felt that they couldn't
17 participate as a helper to the second
18 defenders office essentially. I think
19 there's a little bit of a change of
20 attitude where they may be willing to
21 share some resources by putting up a
22 wall, but sharing the resources for
23 appellate work and things like that,
24 which are going to be necessary for
25 motions practice and things like that.

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2 So that now maybe they can save money on
3 that end with the Defenders sharing some
4 resources with the second office.

5 So we're trying to -- and this
6 stuff changes on a daily basis, because
7 the information I had with regard to the
8 City I found out yesterday. So every day
9 there's a change, a little bit of a
10 change, in how we're going about the
11 process, and like I said, we're here and
12 we have wonderful attorneys who are very
13 experienced in all aspects of the
14 practice being covered to help us through
15 this process.

16 But I have to say too, I think
17 there was a little bit of a misconception
18 that judges somehow, if you didn't do
19 what they wanted to in appointed cases,
20 they would remove you. That won't happen
21 in Philadelphia. It's never happened, to
22 my knowledge. I don't think judges in
23 Philadelphia do that. And so I don't
24 think that's an issue at all. I just
25 wanted to make that clear to Council,

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2 because I think there may have been some
3 earlier testimony alluding to that.

4 COUNCILWOMAN TASCO: Thank you
5 very much.

6 COUNCILMAN GREENLEE: Thank
7 you, Councilwoman.

8 Councilman O'Brien.

9 COUNCILMAN O'BRIEN: Thank you,
10 Chairman.

11 Again, Mr. Fedullo, I'd like to
12 thank you for your compelling testimony
13 that, in your words, this process should
14 be about thorough, transparent, and being
15 inclusive. I'd like to reemphasize for
16 the record that all of our focus has to
17 be about preserving the constitutional
18 rights of the indigent, plain and simple.
19 That's the whole story. Otherwise, as
20 others have testified, the consequence of
21 having the cost of DOJ getting involved
22 is an unacceptable result and will be
23 more costly.

24 Bill, I'd like to ask you
25 and Mr. Muench and Ms. Brennan to just

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2 briefly identify the safeguards that need
3 to be in place to guarantee the indigent
4 receive quality representation.
5 Mr. Muench, from the criminal defense
6 side. And, most importantly, I think
7 often we're not focusing enough on the
8 delinquency and dependency issues
9 involving Family Court.

10 So if you could comment very
11 briefly on that. Bill, if you want to
12 lead off.

13 MR. FEDULLO: Thank you. I
14 think probably the most important of the
15 principles that we have to adhere to are,
16 first of all, the assignment of counsel
17 as quickly as possible after a client's
18 arrest, detention or request for counsel.

19 The defense counsel's workload
20 is controlled to permit the rendering of
21 quality representation. You can't have
22 thousands of cases. You just can't do
23 it. It's an impossibility.

24 The defense counsel's ability,
25 training, and experience matching the

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2 complexity of the case. You can't have
3 somebody one year out of law school doing
4 homicide cases. That doesn't work very
5 well.

6 The same attorney that
7 continuously represents the client until
8 the completion of the case. You can't
9 have attorneys bouncing around from one
10 courtroom to another and the client has
11 no way to say, Well, that was my counsel
12 and now he or she is no longer my
13 counsel.

14 And the defense counsel -- and
15 this is probably the most important
16 thing, is that they're supervised and
17 systemically reviewed for quality and
18 efficiency according to the national and
19 local adopted standards.

20 So out of the Ten Principles,
21 those are the ones I would pinpoint as
22 the most important, and I think that
23 whatever system gets to be in place, we
24 really have to adhere to those.

25 COUNCILMAN O'BRIEN: Thank you.

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2 That answers my questions.

3 Mr. Muench and Ms. Brennan, do
4 you have anything else?

5 MR. MUENCH: I agree with what
6 the Chancellor says, and in addition I
7 would just indicate that the judges do
8 provide safeguards in many cases. It
9 usually comes up when attorneys don't
10 show up for court several times. A judge
11 has the authority and usually
12 responsibility to remove that attorney
13 from the representation and put new
14 counsel on, and sometimes that does
15 happen. That doesn't happen often, but
16 it does happen. So the judges are always
17 vigilant and they're always watching in
18 terms of what goes on and how the case is
19 being handled.

20 But in terms of independence,
21 the attorney is the one that's
22 responsible and ultimately will be
23 responsible. Our safeguards are governed
24 by the Disciplinary Board. We have
25 sanctions that can be leveled against us,

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2 all the way up to disbarment, if we don't
3 do something right. There's PCRA actions
4 that are brought against attorneys that
5 drop the ball on things. So there are
6 safeguards already in place internal to
7 what we have to do in terms of our
8 practice.

9 We take CLE programs. We have
10 12 hours of continuing education every
11 year that we have to subscribe to. One
12 thing that we don't have in this system
13 is that judges don't have to take CLEs in
14 our system. Unlike New Jersey that just
15 implemented that where judges have to
16 take a certain number, our judges don't,
17 but they go to judicial colleges and they
18 do have outside training. That will be
19 something that -- and it's been discussed
20 informally with the Chief Justice as to
21 whether that's something that could be
22 done, and it's not a high priority item
23 in the court system's lasers right now.
24 It's not something that they're looking
25 at. But New Jersey does it; we don't.

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2 Safeguards, those are all
3 different ways in which there are
4 safeguards that could be in place or
5 safeguards that are in place. In terms
6 of your legislation, you address it in
7 your legislation, independent audits. We
8 have the vetting process in terms of
9 going through the Bar Association and the
10 panels that we have set up to show that
11 an attorney is qualified to handle a
12 certain type of case. If an attorney
13 wants to handle juvenile cases or
14 misdemeanors or felonies or non-homicides
15 or homicides, we have different levels of
16 vetting through our Association that
17 attorneys have to apply to in order to
18 get placed on those lists to handle those
19 cases. Otherwise, he or she does not get
20 to participate in those types of
21 representations.

22 So there are things in place.
23 There are safeguards. But in terms of
24 contract safeguards, I think that your
25 legislation talks about the independent

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2 analysis issues and kind of like having
3 the Price Waterhouse out there looking at
4 what happens, somebody who is not
5 connected to the City, but an independent
6 auditor that can look at these issues and
7 say, Well, at least people aren't
8 stealing the money or running off with
9 client funds or whatever it might be.
10 There's things that are in place or could
11 be in place with respect to these
12 contracts to have oversight for those
13 issues and safeguards.

14 COUNCILMAN O'BRIEN: One of the
15 safeguards that we articulated in the
16 legislation was that it not be Price
17 Waterhouse but rather someone who has at
18 least seven years experience dealing with
19 indigent counsel.

20 MR. MUENCH: I just said that
21 as a joke.

22 COUNCILMAN O'BRIEN: Okay.
23 Thanks.

24 MS. BRENNAN: Just briefly, in
25 1997, the Board of Governors did request

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2 that the First Judicial District
3 implement a system of appointment and
4 compensation for attorneys, private
5 attorneys, representing dependency -- in
6 dependency matters that emulated the ABA
7 standards. In addition, I just want to
8 point out that the current compensation
9 for attorneys in the dependency system is
10 well below the threshold that was
11 recommended back in 1997.

12 COUNCILMAN GREENLEE: Any other
13 questions?

14 MR. FEDULLO: That's part of
15 the problem I think with the initial
16 rollout, is that there was very little
17 attention paid to the dependency
18 attorneys that were going to need to be
19 involved, and I think that, just
20 commenting on what I was able to observe,
21 I think all the emphasis was on the
22 criminal appointments and none on the
23 dependency, which some people estimated
24 to be 60 percent of the appointments that
25 are going to be necessary. So I think

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2 the City has to be aware of that issue.

3 COUNCILMAN GREENLEE: Thank
4 you.

5 Any other questions?

6 (No response.)

7 COUNCILMAN GREENLEE: Seeing
8 none, thank you again.

9 (Thank you.)

10 COUNCILMAN GREENLEE: Thank you
11 for the work you do.

12 Ms. Marconi, who else do we
13 have here?

14 THE CLERK: Michael Resnick.

15 COUNCILMAN GREENLEE: Other
16 than Mr. Resnick, is there anyone else
17 here to testify?

18 (No response.)

19 COUNCILMAN GREENLEE: He'll be
20 our last witness.

21 (Witness approached witness
22 table.)

23 COUNCILMAN GREENLEE: Please
24 identify yourself for the record and
25 proceed.

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2 MR. RESNICK: Good morning,
3 Councilman. My name is Michael Resnick,
4 Director of Public Safety for the City of
5 Philadelphia. I appear before you today
6 to offer testimony on Resolution 130861,
7 Bill No. 130851, and Bill 130852, which
8 were introduced on November 14th, 2013 by
9 my friend Denny O'Brien. And while
10 Councilman O'Brien is a person of the
11 highest integrity and I know cares
12 greatly about these issues, I'm here
13 today to express the Nutter
14 Administration's strong opposition to
15 this legislative package.

16 The aforementioned resolution
17 and both bills would give Council
18 specific approval authority over
19 contracts for one year or less regarding
20 legal representation of indigent
21 individuals. Specifically, the
22 resolution is an amendment to the
23 Philadelphia Home Rule Charter that would
24 vest Philadelphia City Council with
25 specific approval authority over the

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2 aforementioned contracts. Bill 130851 is
3 an ordinance which would place the
4 proposed Charter amendment on the May 20
5 ballot, and, lastly, Bill 130852 would
6 establish a reporting and auditing
7 requirement for conflict counsel
8 contracts.

9 Our opposition stems from at
10 least three different concerns. First,
11 we believe the proposal would excessively
12 slow down the contracting process.
13 Secondly, we believe the proposal would
14 add unnecessary costs to the City's
15 conflict counsel contracts. And,
16 thirdly, we believe the proposal would
17 dilute the authority in City government
18 for the management of City affairs.

19 The process for initiating a
20 professional service contract is lengthy,
21 with each RFP moving through over 20
22 different steps in ACIS, which is the
23 City's automated computer contracting
24 system, and there are over ten different
25 steps outside of ACIS. Adding an

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2 additional and significant step in the
3 contracting process and especially a step
4 that would require additional negotiation
5 would substantially increase the time and
6 expense involved in administering the
7 process already viewed by many as
8 excessively cumbersome.

9 Besides these administrative
10 costs, the addition of Council review to
11 the contract approval process will
12 inevitably and without a doubt increase
13 the out-of-pocket costs of the
14 contractors. Whether or not ultimately
15 true, the practical reality is that many
16 potential contractors will believe that
17 Council approval will mean political
18 interference in contracting decisions,
19 potentially causing some worthy
20 contractors to simply drop out of the
21 process and others to increase their
22 price as a protection against anticipated
23 increased contracting requirements. And
24 it does not matter whether this
25 perception is true or not. The

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2 perception will be real, the fear of
3 political interference will be real, and
4 the decrease in competition and the
5 increase in price will be real.

6 Even apart from the fears of
7 political interference, the reality is
8 that vendors who believe they have to
9 negotiate first with the contracting
10 department and then with City Council
11 will inevitably and quite rationally
12 increase their prices to the City, if
13 they choose to negotiate with us at all.
14 Economics 101 tells us that no rational
15 vendor is going to give their best price
16 if they believe that Council is going to
17 demand further concessions in pricing or
18 terms in the second stage of
19 negotiations.

20 The Home Rule Charter sets up a
21 strong mayoral form of government. This
22 means that primary accountability to
23 ensure the sound management of City
24 operations and the provision of City
25 services and to ensure the sound

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2 stewardship of City finances is imposed
3 on the Mayor and the Administration.
4 With that responsibility comes ultimate
5 accountability, and the Charter framers
6 were explicit on this point. The
7 Charter's vesting of extraordinary
8 responsibility and authority in the Mayor
9 allows the public to hold the Mayor
10 accountable for any mismanagement,
11 misdirection of service or unsound
12 management. The Charter was expressly
13 designed to eliminate the diffusion of
14 responsibility and accountability and
15 political interference that had been
16 prevalent in City government prior to the
17 Charter's adoption.

18 We believe that in the case of
19 contracts for conflict counsel, the
20 Charter's version works. We believe that
21 the Administration's proposed approach to
22 providing for conflict counsel services
23 is the right one and under current City
24 contracting rules no one could seriously
25 question that the accountability for

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2 conflict counsel system lies squarely
3 with the Administration. The
4 Administration wholeheartedly accepts
5 this accountability with respect to the
6 issue of contracts for conflict counsel.

7 Under the Charter, Council too
8 has immensely important and critical
9 responsibilities in shaping the affairs
10 of City government. Most critically,
11 Council has the extraordinary authority
12 to raise revenue and the exclusive
13 authority to ordain appropriations. With
14 respect to contracting, no Mayor can
15 commit City funds more than one year in
16 advance without Council approval because
17 no monies can be or should be spent
18 without authorization from Council
19 through an appropriations bill.

20 But in even more practical
21 terms, these bills and this resolution
22 seek the extraordinary remedy of a
23 Charter change to rectify a perceived
24 problem that doesn't even exist.
25 Currently, there is no contract to

1 2/4/14 - LAW & GOV. - BILL 130851, etc.
2 provide indigent defendants with conflict
3 counsel. While the City was engaged in a
4 process to develop such a contract, that
5 opportunity has been withdrawn. The
6 Administration still seeks to improve
7 upon the current system of appointing
8 indigent defendants with counsel when the
9 Defender has a conflict.

10 The prospect of change should
11 not engender fear and panic that would
12 require a change to our Home Rule
13 document. The Administration has pledged
14 to work closely with the Bar Association
15 as well as Council to develop a system of
16 conflict counsel for indigent defendants,
17 and the Administration welcomes Council's
18 oversight.

19 The override of the Charter
20 contemplated in this legislative package
21 is actually unnecessary, as the City has
22 proven its ability to contract for these
23 services with the entities that maintain
24 the highest standard of service. The
25 Defender Association, the Support Center

1 2/4/14 - LAW & GOV. - BILL 130851, etc.
2 for Child Advocates, and Community Legal
3 Services all have contracts with the City
4 to provide legal services to our most
5 vulnerable citizens. Our current
6 processes are sufficient to ensure that
7 these entities provide superior quality
8 representation in a fiscally sound
9 manner.

10 We believe Council can and
11 should have access to information about
12 the City's contracting process in order
13 to fulfill its oversight role. We do
14 not, however, believe that this requires
15 one branch of government assuming the
16 duties of the other.

17 For all of these reasons I have
18 set forth in this testimony, I urge you
19 not to rewrite the current balance of
20 powers, nor allow fear of change,
21 especially when the City has demonstrated
22 its ability to contract for these
23 services, to drive this unnecessary
24 amendment to the Home Rule Charter.

25 COUNCILMAN GREENLEE: Thank

1 2/4/14 - LAW & GOV. - BILL 130851, etc.
2 you. I think a number of us have
3 questions. Before, though, I want to
4 recognize Councilman O'Brien, who has a
5 statement.

6 COUNCILMAN O'BRIEN: I would
7 just -- thank you, Mr. Chairman.

8 I have no questions for my good
9 friend Mike Resnick. I would -- that's
10 why I made introductory remarks that
11 focused on the substantial reasons for
12 the introduction of this legislation and
13 also articulated my continued support for
14 this legislation.

15 I also addressed, I believe, in
16 that opening statement the concerns that
17 the Administration was going to bring
18 forward, and conclusively I believe that
19 the witnesses that testified today have
20 articulated again the importance of this
21 legislation. So I have no questions.

22 COUNCILMAN GREENLEE: Thank
23 you, Councilman.

24 I was not going to ask
25 anything, Mr. Resnick, but I can't help

1 2/4/14 - LAW & GOV. - BILL 130851, etc.
2 myself. A number of times in your
3 testimony you talk about political
4 interference. Why do you think it's
5 political interference for elected
6 officials that people have chosen to come
7 in office, that if it's a legislative
8 body, it's political interference, but if
9 it's the executive body, which last I
10 checked the Mayor was an elected official
11 also, that's not political interference?
12 Can you explain that one for me?

13 MR. RESNICK: The process as it
14 exists now, Councilman, is that if you
15 are going to respond to an invitation or
16 a solicitation, you know you have to deal
17 with the Administration or the department
18 that has advertised for that service or
19 those goods, and you know that that's who
20 you need to deal with. Now we're adding
21 another layer, another bureaucracy, I
22 guess. So as I said in my testimony,
23 whether or not it's real or not, that
24 will be the perception, so vendors will
25 think that not only do they have to

1 2/4/14 - LAW & GOV. - BILL 130851, etc.
2 negotiate with the Administration's
3 department or division or whoever is
4 contracting for these services, but
5 they're also going to now have to do
6 another round of negotiations with City
7 Council. So whether that is engaging
8 additional consultants, lobbyists,
9 whatever the need be, and then again, as
10 I said in my testimony earlier, why give
11 your best and final to the
12 Administration's representative who is
13 contracting for the services when you
14 know you have to come before another
15 entity that might even negotiate further
16 and seek additional costs or concessions
17 from the potential vendor.

18 COUNCILMAN GREENLEE: But I
19 think the idea is for everybody to try to
20 work together on this, and I think for
21 the Administration to come in and just
22 use the term "political interference,"
23 because there's connotations in that
24 that's --

25 COUNCILMAN KENNEY: Offensive.

1 2/4/14 - LAW & GOV. - BILL 130851, etc.

2 COUNCILMAN GREENLEE: It's very
3 offensive. I was not going to use that
4 word. And I have to say when you come in
5 using those kind of terms, it's hard for
6 us to want to work with you. I don't
7 know how else to say it. Because they're
8 derogatory terms, Mr. Resnick, and you
9 know they are, that that is the -- when
10 you say the perception is going to be
11 political interference, well, you're
12 saying that. I'm not sure anybody else
13 is saying that. I think a lot of
14 people -- and it's the reason I brought
15 out the question in the first panel, that
16 this doesn't involve just the defendant.
17 It involves a whole host of people if
18 this process is not done right. It
19 involves the witnesses, the victims,
20 their families. They're our
21 constituents. They're people that either
22 voted for us or have the right to vote
23 for us or vote us out.

24 So I don't see that as
25 political interference. I see it as

1 2/4/14 - LAW & GOV. - BILL 130851, etc.
2 serving our constituents. And, again, as
3 Councilman Kenney said, and I think
4 you're going to hear from other people,
5 when you dismiss our suggested
6 involvement as just political
7 interference, then I have no trouble
8 dismissing your comments. I'm sorry. I
9 don't know how else to say it.

10 MR. RESNICK: And I apologize,
11 Councilman. I don't know if I didn't
12 make it clear. I didn't mean to offend
13 anybody on this body by suggesting that
14 that was going to be the fact. My point
15 was that if a contractor who -- the
16 process now is convoluted. The process
17 now takes a long time. And if you need
18 to now negotiate with one entity in the
19 government and then find yourself having
20 to negotiate with another entity in the
21 government made up of 17 different
22 individuals, I mean, that's going to
23 lengthen the process, add costs to the
24 process. Some people might not want to
25 even be involved in the process.

1 2/4/14 - LAW & GOV. - BILL 130851, etc.

2 COUNCILMAN GREENLEE:

3 Mr. Resnick, nobody is saying that every
4 City Council person is going to have
5 different suggestions. That's not the
6 way we operate in here. That's not true.
7 And, again, and I'm repeating myself and
8 other people have questions or comments,
9 but what you just said is not the same
10 thing as saying political interference,
11 and I think you were trying to say
12 something by saying that in your
13 testimony. So, again, just for the
14 record, I resent those comments.

15 Councilman Kenney, please, and
16 then Councilwoman Tasco -- Councilman
17 Goode and then Councilwoman Tasco.

18 COUNCILMAN KENNEY: Thank you,
19 Mr. Chairman.

20 Did you write that statement
21 yourself?

22 COUNCILMAN GOODE: That was my
23 question.

24 MR. RESNICK: Did I write it
25 myself, Councilman?

1 2/4/14 - LAW & GOV. - BILL 130851, etc.

2 COUNCILMAN KENNEY: Did you
3 write it yourself? Did you sit down and
4 pen the paper?

5 MR. RESNICK: No, I did not. I
6 wrote some of the testimony. Others
7 wrote other portions of the testimony.

8 COUNCILMAN KENNEY: Who else
9 wrote it?

10 MR. RESNICK: I can't tell you
11 who wrote that.

12 COUNCILMAN KENNEY: Well, you
13 should be more transparent then and tell
14 us who else wrote it. Because
15 transparency is the hallmark of this
16 Administration, but you can't tell me
17 who --

18 MR. RESNICK: Not that I can't,
19 Councilman. I don't know. I can't
20 because I don't know.

21 COUNCILMAN KENNEY: So you read
22 words that somebody gave you and you
23 don't know who wrote them?

24 MR. RESNICK: There are about
25 three or four people who wrote the

1 2/4/14 - LAW & GOV. - BILL 130851, etc.
2 testimony.

3 COUNCILMAN KENNEY: Well, who
4 are they?

5 MR. RESNICK: I wrote some of
6 it. John Cerrone wrote some of it. I
7 don't know if someone from the Law
8 Department, who the person in the Law
9 Department was who wrote it.

10 COUNCILMAN KENNEY: That would
11 be nice if the Law Department is involved
12 because it's relative to legal issues, so
13 it would be nice to have them involved.

14 I find the testimony extremely
15 offensive. Mayor Nutter has been a
16 member of this body for 15 years. He was
17 a ward leader, politician, and he ran for
18 office and he ran for office to become
19 Mayor. So is his involvement political
20 interference? I mean, he's the Mayor.
21 He could say this firm, that firm, that
22 firm. He raises money. He has
23 fundraisers. Is he politically
24 interfering?

25 MR. RESNICK: I don't think the

1 2/4/14 - LAW & GOV. - BILL 130851, etc.
2 Mayor could say this from that,
3 Councilman. I mean, we have legislation
4 that dictates exactly how we enter into
5 contracts in this city.

6 COUNCILMAN KENNEY: What do you
7 think the role of City Council is in
8 general? If you had to describe to a
9 class of students what City Council's
10 role is in government, what would you
11 say?

12 MR. RESNICK: City Council
13 legislates and they have oversight
14 responsibility over the budget.

15 COUNCILMAN KENNEY: So they're
16 like a Board of Directors of a municipal
17 corporation. Is that pretty accurate?
18 The Mayor is the CEO and the Council is
19 the Board of Directors. Would you
20 disagree with that?

21 MR. RESNICK: That's one
22 interpretation. I don't know if the
23 Charter agrees -- I don't know if the
24 current Charter gives this Council that
25 much authority.

1 2/4/14 - LAW & GOV. - BILL 130851, etc.

2 COUNCILMAN KENNEY: Do you
3 disagree with that interpretation?

4 MR. RESNICK: It's an analogy,
5 Councilman. I don't know if I agree with
6 it point by point.

7 COUNCILMAN KENNEY: Do you
8 disagree with it or not?

9 MR. RESNICK: I agree with some
10 of it. I don't know if I agree with all
11 of it.

12 COUNCILMAN KENNEY: Could you
13 imagine a corporate CEO making a decision
14 to engage in a contract of this nature,
15 of this level, and not even talk to the
16 Board of Directors of their company?
17 That CEO would be out on the street.

18 MR. RESNICK: Well, like I said
19 again, Councilman, it's an analogy. I
20 don't think the Charter sets up this form
21 of government, our form of government
22 such that Council is a Board of Directors
23 and --

24 COUNCILMAN KENNEY: This City
25 Charter sets up a form of government with

1 2/4/14 - LAW & GOV. - BILL 130851, etc.
2 a strong Managing Director. We don't
3 have that either. You guys interpret the
4 Charter the way you want to interpret it.
5 You have Deputy Mayors involved with
6 things that the Managing Director for
7 history has always been involved in, but
8 the Managing Director isn't involved with
9 that stuff anymore. So you interpret the
10 Charter the way you want to interpret it
11 when it fits your needs. And let me tell
12 you something, this testimony is the
13 exact reason why this body and the second
14 floor cannot see eye to eye, because you
15 have this attitude that somehow you know
16 better than everybody else, and it's
17 offensive. It's offensive and it's rude,
18 and that's why things don't get done in
19 this city the way they should be, because
20 of that exact attitude. And I'll tell
21 you, I'm voting -- your testimony
22 convinced me to vote for this
23 legislation, so thank you very much.

24 MR. RESNICK: You're welcome.

25 COUNCILMAN GREENLEE: Thank

1 2/4/14 - LAW & GOV. - BILL 130851, etc.
2 you, Councilman.

3 Councilman Goode.

4 COUNCILMAN GOODE: Thank you,
5 Mr. Chairman.

6 Let me echo the sentiments of
7 my colleague Councilman Kenney. If I
8 came in here undecided after the expert
9 testimony which preceded you, I would be
10 fully decided, but particularly after
11 your testimony, there's no way I would
12 side with you. The main reason is it's
13 full of value judgments. The whole --
14 not so much whether those value judgments
15 are true or not true, but the fact that
16 it's full of value judgments period is
17 offensive.

18 I was going to ask the question
19 who wrote the testimony, because I'm
20 concerned with one line within the
21 testimony and whether you wrote it. It
22 says, Economics 101 tells us that no
23 rational vendor is going to give us her
24 best price if she believes that Council
25 is going to demand further concessions in

1 2/4/14 - LAW & GOV. - BILL 130851, etc.
2 pricing or terms at a second stage of
3 negotiations.

4 Did you write that?

5 MR. RESNICK: No, Councilman.

6 COUNCILMAN GOODE: Whoever
7 wrote that, you should never read their
8 words again, and I'll just end there.

9 Thank you.

10 COUNCILMAN GREENLEE: Thank
11 you, Councilman.

12 Councilwoman Tasco.

13 COUNCILWOMAN TASCO: Good
14 morning.

15 MR. RESNICK: Good morning,
16 Councilwoman.

17 COUNCILWOMAN TASCO: The
18 Charter gives us the right to approve
19 contracts three years and over. Is that
20 political interference?

21 MR. RESNICK: That's what the
22 Charter says, Councilwoman.

23 COUNCILWOMAN TASCO: So we have
24 a right to protect the interest of the
25 people. And I'm not going to comment. I

1 2/4/14 - LAW & GOV. - BILL 130851, etc.
2 agree with all the statements that have
3 been made. But we were elected to
4 protect the rights of the people of this
5 city, whether it's in my district or all
6 over the City of Philadelphia. So if we
7 have a question or issue to raise about
8 an issue coming before us from the
9 Administration, we have the fiduciary
10 responsibility to protect our citizens.

11 So I too resent the fact that
12 our raising the issue about this contract
13 and taking some action that we believe
14 will protect our citizens is not
15 political interference. It is our right
16 and it is our duty to the people we
17 represent in this city to do that.

18 I wanted to ask you, were you a
19 part of the process to bring the initial
20 contract, the whole idea of moving from
21 changing the process as it currently
22 exists to now having one company, private
23 vendor represent the indigents?

24 MR. RESNICK: Well, I was part
25 of the process to look for an alternative

1 2/4/14 - LAW & GOV. - BILL 130851, etc.
2 to the current model since we were -- one
3 of the witnesses said it. I think it was
4 the Chancellor who said it, that the
5 court decided that this is not something
6 that they wanted to or should be doing
7 anymore and gave the City the
8 responsibility for the appointment and
9 paying of conflict counsel, so as part of
10 the process of determining what it is
11 that we were going to do to replace that
12 system since they weren't going to do it
13 anymore.

14 COUNCILWOMAN TASCO: Now, who
15 was involved in coming up with the new
16 system? What was the process you used to
17 determine that you would come to this new
18 system?

19 MR. RESNICK: There is no new
20 system, Councilwoman. There is no
21 contract that's going into place.

22 COUNCILWOMAN TASCO: You came
23 to a decision that you would contract it
24 out to one contractor, but how did you
25 get to that point?

1 2/4/14 - LAW & GOV. - BILL 130851, etc.

2 MR. RESNICK: What we did was,
3 in consultation with the courts and some
4 others, put a scope of services together
5 and issued an RFP. We had, I think it
6 was, about five proposals that responded
7 to the RFP. We engaged the Bar
8 Association, the past Chancellor of the
9 Bar. We asked her to put a task force
10 and a committee together, which she did.
11 We met with those individuals from the
12 Bar Association on numerous occasions.
13 We had each one of the people who
14 submitted proposals come in and give the
15 proposal, talk about how they would do
16 this work, how much it would cost, all
17 the details about the proposals. The
18 representatives from the Bar were there.
19 They had the ability to see the
20 individuals, to hear the proposals, to
21 ask them questions, and at the end of
22 that process, by an agreement of most of
23 the people in the room, including the
24 City officials and the Bar Association,
25 we whittled it down to, I believe, two

1 2/4/14 - LAW & GOV. - BILL 130851, etc.
2 presenters, and those two presenters were
3 called back and they were asked
4 additional questions, they gave
5 additional presentations, and then an
6 ultimate decision was made as to which
7 presenter to pick, to enter into a
8 contract negotiation.

9 COUNCILWOMAN TASCO: One
10 comment made this morning -- I don't
11 remember who -- concern was raised by one
12 of the witnesses, talked about the
13 one-year process and what happens if the
14 vendor who wins the contract decides that
15 it's too expensive, but how does that
16 upset the whole apple cart?

17 MR. RESNICK: Well, as we do in
18 all our contracts, Councilwoman, we have
19 one-year contracts with up to three
20 renewals. If their performance was
21 satisfactory, they would have been
22 renewed. If the performance was not
23 satisfactory, it was our hope that we
24 would know that prior to the expiration
25 of the year, and we would either have

1 2/4/14 - LAW & GOV. - BILL 130851, etc.
2 been able to assist the contractor in
3 modifications in some way to enable them
4 to bring their performance up to
5 standards or we would have the
6 opportunity at that point to look for
7 another alternative so that when the
8 expiration of the contract happened, the
9 individuals who were being defended by
10 this firm would not be left without
11 representation.

12 COUNCILWOMAN TASCO: So
13 wouldn't you have thought that it would
14 have been a little better to protect the
15 client, our citizens, in looking at a
16 process that would be longer than the one
17 year so that they wouldn't be shifted to
18 another lawyer, another company that
19 would represent them? I mean, did you
20 think of those pieces?

21 MR. RESNICK: We did,
22 Councilwoman, but I don't think we
23 thought that -- given the fact that this
24 was a new undertaking and a new entity,
25 we didn't want to tie ourselves to

1 2/4/14 - LAW & GOV. - BILL 130851, etc.
2 something like that beyond the year, and
3 we would have provision if it was not
4 working out to change.

5 COUNCILWOMAN TASCO: Okay. I
6 think that's all my questions. Thank
7 you.

8 COUNCILMAN GREENLEE: Thank
9 you, Councilwoman.

10 Councilman Goode.

11 COUNCILMAN GOODE: Thank you,
12 Mr. Chairman.

13 Just for the record,
14 Mr. Resnick, do you believe that the
15 citizens of Philadelphia should have a
16 say in protecting their rights under the
17 Sixth Amendment?

18 MR. RESNICK: Of course.

19 COUNCILMAN GOODE: Do you
20 believe that the Council should have a
21 say in protecting the citizens' rights
22 under the Sixth Amendment?

23 MR. RESNICK: Of course.

24 COUNCILMAN GOODE: Do you
25 believe that the voters in the 1950s that

1 2/4/14 - LAW & GOV. - BILL 130851, etc.
2 framed the original Charter should have
3 more say than the voters in 2014?

4 MR. RESNICK: The voters in
5 1950 set up our form of government,
6 Councilman, and --

7 COUNCILMAN GOODE: And we've
8 changed that several times.

9 MR. RESNICK: We have changed
10 it several times, but --

11 COUNCILMAN GOODE: Do you
12 believe that the voters in the early
13 1950s should have more of a say in
14 protecting their rights under the Sixth
15 Amendment than the voters in 2014?

16 MR. RESNICK: No, but I think
17 the ultimate point that we're here for is
18 should we change the Charter. Do we need
19 these oversights that everyone else has
20 talked about? Yes. Do we need to
21 accomplish that with a Charter change?

22 COUNCILMAN GOODE: Do you
23 believe --

24 MR. RESNICK: No, we don't.

25 COUNCILMAN GOODE: You don't

1 2/4/14 - LAW & GOV. - BILL 130851, etc.
2 believe the voters in 1950 should have
3 more of a say than the voters in 2014?

4 MR. RESNICK: I didn't say
5 that. I said that we don't need to
6 change the Charter to ensure that the
7 guidelines that everybody preceding me --

8 COUNCILMAN GOODE: That's not
9 the question I'm asking. I'm asking a
10 fundamental question about democracy, how
11 it actually works, and balance of powers.
12 And this is somewhat of a debate about
13 executive powers versus legislative
14 powers, but guess who gets to decide
15 that? The voters. So I'm asking you the
16 question, should it be the voters from
17 the early '50s or should it be the voters
18 in 2014?

19 MR. RESNICK: In terms of
20 relevance, Councilman, I guess perhaps we
21 should on many issues --

22 COUNCILMAN GOODE: On this
23 issue, should it be the voters in the
24 early '50s or should it be the voters in
25 2014?

1 2/4/14 - LAW & GOV. - BILL 130851, etc.

2 MR. RESNICK: Well, you could
3 say any issue, but the point that I'm
4 making is that we don't need to change
5 the Charter to implement the controls and
6 the measures that everyone who preceded
7 me was talking about.

8 COUNCILMAN GOODE: Should the
9 voters get to decide whether we should
10 change the Charter to do that?

11 MR. RESNICK: Sure. The voters
12 always get to decide whether we should
13 change the Charter.

14 COUNCILMAN GOODE: But you
15 consider this political interference.

16 Thank you.

17 COUNCILMAN KENNEY: Point of
18 information.

19 COUNCILMAN GREENLEE:
20 Councilman Kenney.

21 COUNCILMAN KENNEY: Just a
22 point of information on Councilwoman
23 Tasco's line of questioning. And
24 somebody who has been here longer than me
25 can correct me if I'm wrong, but this

1 2/4/14 - LAW & GOV. - BILL 130851, etc.
2 whole art form of one-year contracts with
3 three one-year renewals I believe was a
4 Rendell Administration creation, and
5 probably David L. Cohen was probably
6 behind it, because it was artfully done.
7 But that's a way to keep this stuff out
8 of our room. That's the stuff -- that's
9 to keep this issue of spending taxpayers'
10 money out of this room so whoever the
11 Mayor is can make the decisions they want
12 to make on who to award contracts to.
13 And let me tell you where we should make
14 sure we're vigilant. On this new master
15 concession contract for the airport, be
16 careful, because they just did a
17 hipper-dipper recently relative to B and
18 C by doing a subcontract through the
19 master lease for a particular vendor
20 without coming here.

21 So this whole transparency
22 stuff is hooey, because they're
23 transparent when they want to be and
24 they're translucent most of the time.

25 COUNCILWOMAN TASC0: They're

1 2/4/14 - LAW & GOV. - BILL 130851, etc.
2 transparent on us.

3 COUNCILMAN KENNEY: On us, but
4 they're translucent most of the time.

5 So in addition to this
6 particular contract, be aware of this
7 coming concession contract, because
8 there's a lot of stuff going on that
9 we're going to uncover, and we're going
10 to make sure the public understands it.

11 But that Charter never intended
12 for contracts of that size to be given in
13 one-year increments with three one-year
14 renewals. Never. And Rendell did it,
15 and he was a great Mayor and I respect
16 him totally, but in this particular
17 situation, this is that important that it
18 should come before us. And whether you
19 agree or not, whether you think there's
20 political interference or not, that's on
21 you, but we have a job to do. We're the
22 Board of Directors of this company and
23 things need to come before the Board of
24 Directors before we move in one direction
25 or another. And that's why we need to

1 2/4/14 - LAW & GOV. - BILL 130851, etc.
2 change the Charter, because the second
3 floor doesn't want to talk to the fourth
4 floor about anything at all. And if we
5 cooperated and spoke to each other
6 through the Council President, through
7 Chairpersons of the Committee, we
8 wouldn't have this issue, but you guys
9 want to go on your own, and that's why
10 we're changing the Charter, because you
11 don't listen and you don't talk.

12 So thanks.

13 COUNCILMAN GREENLEE: Thank
14 you.

15 And just one other followup on
16 this whole Charter thing. Mr. Resnick,
17 you said about -- well, I think in
18 response to Councilwoman Tasco's, one of
19 her questions, Well, that's the way the
20 framers of the Charter wanted it. Well,
21 we had a bill -- and we're holding it --
22 a bill that the Administration put up to
23 change the Charter to deal with the
24 Department of Prisons. Now, I'm not
25 going to say right, wrong or indifferent.

1 2/4/14 - LAW & GOV. - BILL 130851, etc.

2 So why can't we make proposals -- you can
3 make proposals and we can't.

4 MR. RESNICK: We can talk about
5 that, Councilman, but I think we all
6 have -- a lot of issues are out here, but
7 they're all missing the point. The point
8 of my testimony is simply that. The
9 Administration contracts for these
10 services through the Defender
11 Association, Support Center, Community
12 Legal Services. We contract for other
13 services that implicate constitutional
14 rights through DHS. We contract with
15 vendors to provide services at the Prison
16 System that implicate constitutional
17 rights. We do it all the time. We do it
18 well. We don't need the Charter to be
19 changed for us to enter into these
20 contracts that will include all of the
21 safeguards that the previous witnesses
22 talked about. That is the point of my
23 testimony.

24 COUNCILMAN GREENLEE: Okay.

25 And our point is we disagree and we think

1 2/4/14 - LAW & GOV. - BILL 130851, etc.

2 we need the Charter change.

3 Councilman O'Brien, do you have
4 anything else?

5 COUNCILMAN O'BRIEN: No. I was
6 just going to reiterate that the purpose
7 of this legislation is simply -- it's not
8 redoing or opening Pandora's box on the
9 procurement process. It simply deals
10 with the constitutional rights of the
11 indigent and a threshold of a hundred
12 thousand dollars, and I ask for the
13 members' support.

14 COUNCILMAN GREENLEE: Thank
15 you, sir.

16 Any other questions or
17 comments?

18 (No response.)

19 COUNCILMAN GREENLEE: Seeing
20 none, thank you.

21 Any other witnesses on these
22 bills or resolutions?

23 (No response.)

24 COUNCILMAN GREENLEE: Seeing
25 none, that will conclude our public

1 2/4/14 - LAW & GOV. - BILL 130851, etc.
2 hearing.

3 Again, just for the record,
4 Bill Nos. 140014, 140015, and Resolution
5 140035 are being held to the call of the
6 Chair.

7 We will now go into a public
8 meeting. And, again, for the record, the
9 bill and resolution that were advertised
10 on the other ballot questions, Bill No.
11 130059 and Resolution 130073, are being
12 held by the sponsor of that bill and
13 resolution. Councilwoman Sanchez has
14 said she will look for another way to
15 deal with those issues.

16 Now let me recognize Councilman
17 Kenney for a motion on an amendment to
18 130852.

19 COUNCILMAN KENNEY: Thank you,
20 Mr. Chairman. I move that Bill No.
21 130852 be amended as the amendment has
22 been distributed to the members of the
23 Committee.

24 (Duly seconded.)

25 COUNCILMAN GREENLEE: It's been

1 2/4/14 - LAW & GOV. - BILL 130851, etc.

2 moved and seconded.

3 All in favor?

4 (Aye.)

5 COUNCILMAN GREENLEE: Opposed?

6 (No response.)

7 COUNCILMAN GREENLEE: Hearing

8 none, Bill No. 130852 is amended.

9 Councilman Kenney.

10 COUNCILMAN KENNEY: Thank you,

11 Mr. Chairman. I move that Bill No.

12 130852, as amended, be reported out of

13 this Committee favorably and a request

14 made for rules suspension to allow first

15 reading at our next Council session.

16 (Duly seconded.)

17 COUNCILMAN GREENLEE: It's been

18 moved and seconded.

19 All in favor?

20 (Aye.)

21 COUNCILMAN GREENLEE: Opposed?

22 (No response.)

23 COUNCILMAN GREENLEE: Hearing

24 none, Bill No. 130852, as amended,

25 reported out of this committee favorably

1 2/4/14 - LAW & GOV. - BILL 130851, etc.
2 with a rules suspension.

3 Councilman Kenney.

4 COUNCILMAN KENNEY: Thank you,
5 Mr. Chairman. I move that Bill No.
6 130851 be reported out of this committee
7 favorably and a request made for rules
8 suspension to allow first reading at our
9 next Council session.

10 (Duly seconded.)

11 COUNCILMAN GREENLEE: It's been
12 moved and seconded.

13 All in favor?

14 (Aye.)

15 COUNCILMAN GREENLEE: Opposed?

16 (No response.)

17 COUNCILMAN GREENLEE: Hearing
18 none, Bill No. 130851 reported out of
19 this committee favorably with a rules
20 suspension.

21 Councilman Kenney.

22 COUNCILMAN KENNEY: Thank you,
23 Mr. Chairman. I move that Resolution No.
24 130861 be approved by this committee.

25 (Duly seconded.)

1 2/4/14 - LAW & GOV. - BILL 130851, etc.

2 COUNCILMAN GREENLEE: It's been
3 moved and seconded.

4 All in favor?

5 (Aye.)

6 COUNCILMAN GREENLEE: Opposed?

7 (No response.)

8 COUNCILMAN GREENLEE: Hearing
9 none, Resolution 130861 is reported out
10 of this committee with a favorable
11 recommendation.

12 No other issues before this
13 committee, that concludes our business.

14 Thank you all very much.

15 Again, Councilman O'Brien, thank you and
16 your staff for all the work you do.

17 COUNCILMAN O'BRIEN: Thank you,
18 Mr. Chairman.

19 COUNCILMAN GREENLEE: Thanks to
20 all the members of the Committee.

21 (Committee on Law and
22 Government concluded at 11:50 a.m.)

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CERTIFICATE

I HEREBY CERTIFY that the
proceedings, evidence and objections are
contained fully and accurately in the
stenographic notes taken by me upon the
foregoing matter, and that this is a true and
correct transcript of same.

MICHELE L. MURPHY
RPR-Notary Public

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direct control and/or supervision of the
certifying reporter.)

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