

# ACLU Issues Report Calling on Allegheny County to Fix Dysfunctional Public Defender Office

## Clients Still Receiving Inadequate Representation Fifteen Years After Lawsuit Intended to Fix Defender System

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PITTSBURGH - Fifteen years after filing a class action lawsuit alleging grossly inadequate and unconstitutional representation for clients of the Allegheny County Office of the Public Defender ("OPD"), the American Civil Liberties Union of Pennsylvania released a report today entitled *A Job Left Undone: Allegheny County's Fork in the Road*, which describes ongoing, severe systemic problems with the OPD and calls upon county and court leaders and the county executive candidates to make a commitment to fix the agency. The report also reveals that county officials have been aware of the deplorable state of the OPD since at least late 2008, when a secret study they commissioned noted grave concerns about the OPD's management and operations, yet officials took virtually no action to rectify the problems.

"The public defender's office is a key player in deciding whether thousands of lower income people in Allegheny County go to jail every year, how long they stay, and what stigma and baggage they and their families will endure for the rest of their lives," said ACLU of Pennsylvania Legal Director Witold J. Walczak, who co-authored the report.

"County leaders, and particularly the new executive, are at a critical fork in the road where they must decide between fixing the public defender's office or facing another court battle," Walczak added.

The result of a year-long investigation by the ACLU, *A Job Left Undone* is co-authored by Walczak and cooperating attorneys Claudia Davidson and Thomas J. Farrell, all of whom worked on the 1996 class action lawsuit *Doyle v. Allegheny County Salary Board*, which alleged that the OPD failed to provide constitutionally adequate representation and that county officials were ignoring these serious deficiencies. After two years of contentious litigation, the lawsuit resulted in a settlement that called for increased funding, staffing, training and management, as well as written policies promoting best practices.

The ACLU's report is based largely on complaints from OPD clients and discussions with confidential sources within the OPD and who work in the criminal justice system. The identities of numerous contributors to the report are not revealed, as they fear reprisal.

"Early evaluation of the client and his or her case is the lynchpin of effective representation," said Thomas J. Farrell, one of the co-authors of the ACLU's report and a former assistant U.S. attorney and federal public defender. "If you don't know your client or the case you can't be an effective advocate," he added.

"The most frequent complaint we receive in our office from OPD clients is that they are on the verge of trial and still haven't spoken with a lawyer, or even been able to identify who their public defender is," said Walczak. "Obviously, a lawyer who has never met or spoken to her client cannot provide constitutionally adequate representation."

Among the report's highlights is the revelation of a secret county study of the OPD, known as the Kalmanoff Study after its lead author, which warned Allegheny County officials in late 2008 of the severe problems in the OPD. The study, obtained by the ACLU through a right to know request after a legal battle with the county, concluded that "[m]any of [the problems addressed in the ACLU lawsuit] persist today, contributing to a dysfunctional office culture where normative or even minimal performance expectations do not exist."

Kalmanoff found that "[i]n many routine cases, there is little or no contact with a person the defendant can regard as "my lawyer" until just before or at the first courtroom appearance. ... There is a nearly total lack of representation for about four months between the first stages and the trial. During this time inmates are languishing with literally no attorney of record, no one to update their files, and no real advocacy." Kalmanoff added that even judges were reported to hold "a general 'consensus' or shared view that public defenders are not meeting with their clients prior to some key appearances in court."

The Kalmanoff Study also found that the inefficiencies of the OPD were costing the county millions of dollars. The failure to effectively train, supervise and manage OPD employees would result in people spending less time in jail, thereby reducing incarceration costs. Kalmanoff found that the relatively high number of people being sentenced to time served was an indicator that people were spending more time in jail than necessary.

The ACLU's independent investigation over the past year revealed that conditions at the OPD have deteriorated since Kalmanoff's report was completed in late 2008. Despite Kalmanoff's stark warnings and the passage of almost three years, Allegheny County does not appear to have implemented any of the report's thirty specific recommendations for fixing the serious systemic problems.

Seemingly repeating the mistakes that led to the *Doyle v. Allegheny County Salary Board* lawsuit, the county, according to the ACLU's investigation, is beginning to reduce the agency's budget by delaying or refusing to fill staff vacancies, cutting supplies, and discouraging attorneys' purchase of important preliminary hearing transcripts and the use of experts -- practices that will further undermine the quality of representation provided by the OPD.

"The OPD has many fine, dedicated public defenders who are shackled by a broken and mismanaged system, which prevents them from fulfilling their professional responsibility to provide clients with a constitutionally adequate defense," said Claudia Davidson, one of the report's co-authors. "Even the best lawyers would have a hard time providing adequate representation under these conditions."

In today's report, the ACLU calls on the county executive and County Council to work with the OPD, the District Attorney's Office and the Court of Common Pleas to (1) complete the OPD reforms mandated by the *Doyle* settlement, which also would largely satisfy the American Bar Association's Ten Principles for Public Indigent Defense Systems; and (2) implement the Kalmanoff report's plan to streamline and improve the operation of the county's criminal justice system while saving the county money.

The ACLU's report notes that county leaders faced a similar decision in 1996, when they had a report of substandard representation but chose to cut staff and budget anyway. "This time, however," said Walczak, "county officials have the inducement of being able to save millions of tax dollars by implementing the necessary reforms, a savings projection made by the county's own study."

Copies of the report were delivered this morning to the county executive, County Council members, the Court of Common Pleas' President Judge and Criminal Division Chief, the Chief Public Defender, the District Attorney, Justices of the Pennsylvania Supreme Court, the two county executive candidates and several other officials.

A copy of today's report, *A Job Left Undone: Allegheny County's Fork in the Road*, the Kalmanoff Report, the American Bar Association's Ten Principles for Public Indigent Defense Systems, and selected documents from the *Doyle* lawsuit can be found at: <http://www.aclupa.org/opd>

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