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## Court reforms are lopsided

### The effort to fix the city's justice system threatens to trample defendants' rights.

By Howard D. Popper

Since an Inquirer series questioned the efficacy of Philadelphia's criminal-justice system, the courts have produced a flurry of ad hoc measures to address the perceived problems. While the jury's still out, it's already clear that the changes being contemplated will advance the interests of prosecutors at the expense of defendants.

Take the first response. Reacting to anecdotes about cases dismissed due to alleged defense delays meant to wear down witnesses, the Court of Common Pleas announced a crackdown on court-appointed attorneys, even though they handle only 15 percent of cases and do so for the lowest pay, making them least likely to delay cases.

The emphasis on supposedly strategic defense delays is misguided. While a small number of lawyers may try to game the system, their impact is minimal.

In addition, much has been made of the dismissal of cases in which the prosecutor causes three delays. But if a prosecutor can't get a case prepared in three attempts, why shouldn't it be withdrawn? And if it turns out that a witness was intimidated or legitimately unavailable, there are simple procedures for refiling the case.

Then there's the myth that preliminary hearings in Philadelphia are "almost trial-like" (though they generally last no more than 10 minutes). One proposed fix would allow more hearsay testimony, less evidence, and less cross-examination, supposedly to bring the city in line with the rest of the state. But those advocating the practices of other jurisdictions are ignoring differences in police procedures, charging and negotiation practices, and the volume of cases and defendants in custody.

For example, Philadelphia criminal complaints contain little besides dates, names, and charges. Suburban complaints include affidavits detailing the facts and evidence, rendering hearings clear and focused.

In other counties, detectives or prosecutors routinely negotiate charge reductions and dismissals

at preliminary hearings. Philadelphia cases have historically been overcharged, and assistant district attorneys rarely reduce or dismiss charges. Instead, they throw their cases against the wall and criticize judges who apply the law and dismiss or reduce charges.

When cases reach suburban courthouses for trial, prosecutors have the authority and judgment to resolve them appropriately. In Philadelphia, they lack discretion to reduce charges, and they rigidly hew to sentencing guidelines and onerous mandatory minimums, regardless of equity or practical considerations. The result is needless felony trials in which judges have to determine the appropriate charges and sentences, while the district attorney publicizes isolated cases in an attempt to bring the judiciary to heel.

Though imperfect, Philadelphia's preliminary hearings are key to separating the wheat from the chaff. If the only practice imported to the city is the supposed brevity of evidence and testimony, without the other pieces that make the county process work, the result will be gridlock. Philadelphia's already overburdened system cannot handle additional felony cases that are now being reduced to misdemeanors or dismissed at preliminary hearings.

The first meeting on reforming the system convened by Justice Seamus McCaffrey, the state Supreme Court's point man on the issue, included the district attorney and various supervisory judges and administrators, but not a single representative of the Defender Association or the defense bar.

On March 10, the Supreme Court named a "blue-ribbon" study panel. All its members are former prosecutors, judges, or both. None brings a pure defense background or perspective to the task, and none has spent much time in preliminary hearings in decades. Clearly, the court intends to correct the system's inadequacies at the expense of the rights of the accused.

Victims deserve their day in court without being further victimized. However, stacking the deck against the accused is unacceptable. The presumption of innocence dictates that an arrest doesn't end a criminal inquiry. Some victims are mistaken; some cases are insufficient; some defendants are innocent.

Some short-term fixes are obvious: District Attorney Seth Williams must fulfill his promise to stop overcharging; continuance policies must be consistent and equitable; the process of producing police reports and documents must be revamped so it doesn't cause delays; and line prosecutors must be trained and encouraged to exercise discretion.

Long-term reform must be based on meaningful, objective analysis, not cherry-picked tales or numbers. And all of the stakeholders must be given a seat at the table.

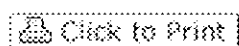
Lady Justice holds a two-sided scale. We can't repair the city's justice system by putting a thumb on one side.

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