

SENATE JUDICIARY HEARING  
APRIL 1, 2014  
HARRISBURG, PENNSYLVANIA  
S.B. 979 –THE PENNSYLVANIA CENTER FOR EFFECTIVE INDIGENT DEFENSE LEGAL  
REPRESENTATION ACT

Marissa Boyers Bluestine, Esq.  
Mailing Address:  
The Pennsylvania Innocence Project  
1719 N. Broad Street  
Philadelphia, PA 19122  
mbluestine@temple.edu  
215-204-3818

**TESTIMONY OF MARISSA BOYERS BLUESTINE, ESQ., LEGAL DIRECTOR  
PENNSYLVANIA INNOCENCE PROJECT**

My name is Marissa Bluestine. I am the Legal Director for the Pennsylvania Innocence Project. Our organization exists to try and identify those individuals who were convicted of crimes that they did not commit and work for their exoneration and release from custody. All of our work is, by definition, in the post-conviction setting. To date, we have successfully litigated 3 post-conviction claims of factual innocence for clients who are demonstrably innocent of the crimes for which they were convicted. What we have discovered is that the need for training of indigent counsel goes far beyond preparation for trial, and extends into the post-conviction context.

We have reviewed hundreds, if not thousands, of cases for those who claim to be factually innocent. And while we accept only a handful of cases for investigation or litigation, what we have seen in terms of the need for training of attorneys in post-conviction law and representation is sobering. Two of our clients were convicted of a murder committed by another man whom we were able to identify and who gave a full, detailed confession to the killing. These men had been convicted of murder – and sentenced to life in prison without the possibility of parole – based upon the testimony of a single eyewitness to the crime who made her identification fully two years after the tragedy. Each of these men had been represented by court-appointed counsel in post-conviction proceedings. In both cases, the attorneys appointed

by the court filed what are called "Findley" letters – letters asking to be allowed to withdraw from the cases because the attorneys could not identify any "meritorious" issues to be addressed on appeal. Yet, we were able to identify multiple issues related to counsel's potential ineffectiveness at trial and on appeal which should have been obvious to anyone with even a rudimentary understanding of post-conviction law.

Too many times we see defendants forced to proceed *pro se* – by themselves without counsel – because counsel has filed invalid Findley letters only to have the Superior Court reverse and require new counsel to be appointed. Surely not all of these cases involve claims which will result in relief, but all of them involve claims which should at least have been recognized and raised by a competent and well-trained counsel. The waste of judicial resources at issue here is incalculable. Some examples of such mistakes include:

- Advising a client that he had to first obtain sworn affidavits from witnesses before he could file a petition for a new trial based upon their recantations when the post-conviction statute has no such requirement. The delay in obtaining the unnecessary documentation caused the defendant to lose his right to pursue relief.
- Failing to understand the time restrictions of the Commonwealth's post-conviction relief statute which require new petitions to be brought within 60 days "of the time the claim could have first been presented," resulting in the loss of potentially viable claims.
- Being unaware of the availability of DNA testing or how it could impact a defendant's rights resulting in the defendant's inability to ever request DNA testing again.
- Incorrect citations to the trial record on appeals in such a manner that later requests for DNA testing are deemed waived and unavailable.

Post-conviction law is, admittedly, byzantine and complex. The rules seem to change with frequency and without notice. All the more reason for counsel to receive dedicated training on the issues. When we first began this work five years ago there were no trainings to attend – no regular CLE programs, no in-house trainings, no structure instruction. We had to learn

everything we now know through reading a book and by meeting with other, more experienced, counsel. The need for comprehensive training in post-conviction law – a matter not taught in any of the Commonwealth’s law schools – is acute and urgent.

Post-conviction litigation often expose grave injustices – if not the conviction of the actually innocent, certainly the revelation of due process violations so grave as to constitute miscarriages of justice. Without properly trained and educated indigent defense counsel, countless defendants who have been improperly convicted – be it by virtue of their actual innocence, or even legal innocence – cannot have their claims properly presented in or heard by a court. We support the legislation as it stands, and urge its adoption.