STATE OF MICHIGAN

IN THE SUPREME COURT

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86099

IN THE MATTER OF THE RECORDER'S COURT BAR ASSOCIATION, THE CRIMINAL DEFENSE ATTORNEYS OF MICHIGAN, THE MICHIGAN TRIAL LAWYERS ASSOCIATION, WOMEN LAWYERS ASSOCIATION OF MICHIGAN, and THE SUBURBAN BAR ASSOCIATION,

Petitioners,

v

WAYNE COUNTY CIRCUIT COURT AND RECORDER'S COURT,

Respondents,

and

WAYNE COUNTY,

Intervening Respondent.

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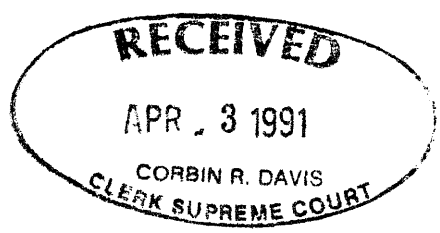
# REPORT OF SPECIAL MASTER - HONORABLE TYRONE GILLESPIE



# I N D E X

# INTRODUCTION

On May 5, 1989, an association of several local and specialized bar associations, whose members consist primarily of attorneys engaged in criminal defense, filed a Complaint in the Michigan Supreme Court seeking superintending control by the Supreme Court over the Chief Judges of the Wayne County Recorder's and Circuit Courts. The object of the suit was to eliminate a fee schedule established by the Chief Judges in July 1988 for representation of indigent defendants and to establish a schedule of fees recommended in 1982 by a committee chaired by Judge Clarice Jobes of the Recorder's Court which plaintiffs feel is fair if enhanced for inflation.

The schedule of 1982 provided for guidelines for payments based on various tasks performed in the course of the defense of the criminal charges against indigent defendants. The schedule adopted by Administrative Order of the Chief Judges in 1988 is based on a flat fee for representation, based on the nature of the crime charged, and is not delineated as to amount of work performed or number of motions brought or hearings held.

It is the position of the plaintiffs that the 1988 schedule is inequitable to participating attorneys and results in a criminal defense system which induces attorneys to counsel their clients to enter guilty pleas, thereby violating the clients' rights under the Fifth, Sixth and Fourteenth Amendments to the U. S. Constitution.

Honorable Dalton A. Roberson, Chief Judge of the Recorder's Court for the City of Detroit, and Honorable Richard C. Kaufman, Chief Judge of the Wayne County Circuit Court, each filed a separate Answer to the Complaint.

Alfonso R. Harper, representing Judge Roberson, filed an Answer generally denying the allegations of the Complaint and, as special defenses, urged lack of standing of plaintiffs to invoke the Supreme Court's jurisdiction. The Answer further denied that any attorney, whether members of plaintiff organizations or otherwise, had ever been required to furnish services to any indigent defendant against the attorney's expressed desire not to do so. The point was further made that a Writ of Superintending Control should not issue without the intervention of Wayne County, which is the governmental unit paying the bills. The relief requested by the Recorder's Court Answer is dismissal or, in the alternative, appointment of a disinterested Special Master to take testimony and make findings and recommendations.

Chief Judge Richard C. Kaufman of the Wayne Circuit Court, filed a separate Answer endorsed by Diane P. Lemanick and Joseph F. Chiesa, of the Office of Judicial Assistant to the Circuit Court. Ms. Lemanick is the Judicial Assistant and Mr. Chiesa is the member of that office that appeared in these hearings. This Answer was a general denial of the Complaint or leaving plaintiffs to their proofs.

The County of Wayne promptly moved to intervene as any increase of attorneys fees that might be ordered would be paid

directly from the county budget. The county's case was presented by Ms. Karen Watkins, an Assistant Corporation Counsel.

Also participating in the proceedings was Michigan Appellate Assigned Counsel System (MAACS) by its Administrator Barbara R. Levine as amicus curiae.

On November 6, 1989, the Michigan Supreme Court entered an order, No. 86099, granting Wayne County's Motion to Intervene and MAACS' motion to file a brief.

This order further appointed Tyrone Gillespie, retired circuit judge from Midland County, as Special Master to take evidence and make proposed findings of fact as follows:

> " * * * (1) the various rates of reimbursement for appointed counsel in Michigan; (2) the amount of overhead and expenses typically incurred by attorneys who accept appointments to represent indigent criminal defendants; (3) the amount of income which may typically be generated by acceptance of appointments; (4) the amount of attorney and staff time spent to generate amounts of income from appointments; (5) instances of pressures to under-represent indigent defendants; and (6) any other topics which any party or the special master thinks will help this Court resolve the issues presented in this case. The complaint for superintending control remains under consideration."

The order, as originally issued, called for a rather sweeping investigation into the subject of indigent attorneys fees. This was later refined by oral communications to limit the study to the Wayne County problem.

Testimony was taken from 32 witnesses, which is summarized herein.

There appeared two principal questions to be studied:

1. Are attorneys appointed to represent indigent criminal defendants being fairly compensated for their services.

2. Does the flat fee schedule presently used in Wayne County create a constitutional problem by inducing indigent criminal defendants to plead guilty, foregoing their rights under the United States and State of Michigan Constitution.

# HISTORY

## HISTORY

The order which is the subject of this suit is Joint Administrative Order 1988-2 setting up a flat fee schedule effective July 1, 1988 which is currently in use. The order and schedule are set forth as follows:

STATE OF MICHIGAN
THIRD JUDICIAL CIRCUIT AND THE
RECORDER'S COURT FOR THE CITY OF DETROIT

**JOINT ADMINISTRATIVE ORDER 1988-2**

IT IS ORDERED:

The attached fee Schedule G representing fees for assigned counsel is adopted for all vouchers submitted after July 1, 1988. Joint Administrative Order 1988-1 including Schedule F is set aside and replaced by this Order and Schedule G.

Counsel appointed for indigent defendants may make no expenditure, other than for subpoena fees, for which he or she expects reimbursement except upon prior approval and order of the trial judge on motion for good cause shown.

In any case in which more than one criminal offense is charged, payment shall be made for only the charge carrying the greatest potential term of imprisonment.

Counsel is required to consult with the defendant prior to the preliminary exam. Consequently, if the defendant is in jail counsel must attach to the fee voucher evidence of a jail visit; and if the defendant is not in jail, counsel must attach to the fee voucher an executed form available from the office of the Circuit Court Administrator or Recorder's Court Administrator verifying that counsel has met with the defendant prior to the preliminary exam. Failure to attach this document to the voucher will result in a $75.00 deduction from the appropriate fixed fee.

In all cases, counsel may petition the Chief Judge for the payment of extraordinary fees. All petitions for extraordinary fees must include an analysis of all assigned cases for the previous one year.

DATED: June 27, 1988

/s/ Richard C. Kaufman
RICHARD C. KAUFMAN
EXECUTIVE CHIEF JUDGE

## SCHEDULE G - EFFECTIVE JULY 1, 1988
(For vouchers submitted on or after above date)

### I. CRIMINAL CASES IN THE TRIAL COURT

| OFFENSE CATEGORY | FIXED FEE |
|---|---|
| 24 MONTH MAX | $ 475 |
| 36 MONTH MAX | 500 |
| 48 MONTH MAX | 525 |
| 60 MONTH MAX | 550 |
| 84 MONTH MAX | 575 |
| 120 MONTH MAX | 600 |
| 168 MONTH MAX | 625 |
| 180 MONTH MAX | 650 |
| 240 MONTH MAX | 675 |
| LIFE (except MUR I & II) | 750 |
| MURDER II | 1,000 |
| MURDER I | 1,400 |

The fixed fee rates in the above table will be paid in all cases, except under those circumstances listed below.

#### EXCEPTIONS

1. Multiple Cases with Same Defendant:
   100% of fixed fee for case with most serious charge
   50% of fixed fee for each other case

2. Case Dismissed at Exam Due to Complainant's Failure to Appear: $100.00

3. Case Where Capias Warrant is Issued:
   Before preliminary exam - 10% of fixed fee
   After exam - 20%
   After AOI - 30%
   After final conference - 40%
   After disposition, before sentence - 90%

4. Attorney Replaced by Retained Counsel:
   After preliminary exam - 20% of fixed fee
   After AOI - 30%
   After final conference - 40%

5. Diversion: Before preliminary exam $100.00
   After exam - paid as disposition

6. Probation Violation or Extradition Hearing: $ 75.00

7. Welfare Fraud:
   Diversions - for a grouping of 25 defendants $1,000.00
   Pleas - for a grouping of 5 defendants $1,000.00

II. ACTIVITY AT THE APPELLATE LEVEL

| | | |
|---|---|---|
| Non-frivolous Motion for New Trial Together with Memorandum of Law by Trial Counsel After a Jury or Non-jury Trial: | | $125.00 |
| Transcript: | Every 400 pages or major fraction thereof other than guilty plea cases | 200.00 |
| | Guilty plea cases | 100.00 |
| Claim of Appeal Brief and All Proceedings: | | |
| | Other than guilty plea cases | 500.00 |
| | Guilty plea cases | 350.00 |
| Visit to Prison Facilities: | | |
| | Wayne County facilities | 75.00 |
| | Camp Pellston and all UP facilities | 400.00 |
| | All others | 200.00 |
| Appeal to Higher Courts for Each One-half Day Spent in Trial Court: | | 75.00 |
| Appearance at Habeas Corpus: | | 50.00 |

III. MISCELLANEOUS ACTIVITY

| | | |
|---|---|---|
| Show-ups: | Full day standby | 200.00 |
| | Per hour | 50.00 |
| Psychiatric Cases in Which the Maximum Penalty is Life Imprisonment: | | |
| | Interview and written evaluation | 300.00 |
| | Attendance in court | 150.00 |
| Other Experts: | Interview and written evaluation | 200.00 |
| | Attendance in court | 150.00 |
| Interpreters: | Per day | 150.00 |
| | Half day | 75.00 |

IV. PATERNITY CASE ACTIVITY

| | |
|---|---|
| Preparation, Non-trial Court Appearance(s), Trials and All Other Trial Court Proceedings: | 150.00 |

V. SPOUSE ABUSE CASES

| | |
|---|---|
| Preparation, Non-trial Court Appearance(s), Trials and All Other Trial Court Proceedings: | 150.00 |

About 1967, the Wayne County Circuit Court and the Recorder's Court for the City of Detroit put in place fee schedules based on an amount per event with a fee for attendance at trial of $100 per day for non-capital offenses and $150 for cases carrying a life penalty and specified rates paid for motions, appearances, preparation for trial and the like. This schedule continued until 1981 at which time a suit for superintending control was brought by the plaintiffs in this action, along with others, against the Chief Judges of the Recorder's and Circuit Courts to obtain a raise consistent with the inflation that had occurred.

At that time a Committee was formed of judges of Recorder's Court, under the Chairmanship of Judge Clarice Jobes of Recorder's Court, to study the fee schedules in that court. This schedule was completed in June 1982 and voted on by the Recorder's bench and adopted. This schedule called for $450 a day fee to be paid in capital cases and $300 a day for non-capital cases. It was not to be effective until December 1, 1982.

Upon completion of this fee schedule, the Supreme Court dismissed the Complaint for Superintending Control; however, before the fee schedule of June 1982 could be effected in December 1982, the Chief Judges agreed upon a different fee schedule and issued Joint Administrative Order 1982-1, dated November 22, 1982, reducing the fees to $300 per day for court attendance in capital cases and $200 for non-capital cases. This change reduced the rates recommended by the Jobes' Committee from about three times the 1967 rates to approximately double the 1967 rates.

Another Complaint for Superintending Control was filed by Wayne County and the Detroit Bar Association, which was dismissed by the Supreme Court for lack of proofs.

In April 1983, the Chief Judges promulgated a New Joint Administrative Order No. 1983-1 which set aside Administrative Order 1982-1 and set the following schedules:

A. For services provided between December 1, 1982 and April 30, 1983, appearance for trial of a capital case would be paid $300 a day and for a non-capital case $200.

B. For services provided between May 1, 1983 to April 30, 1984 such appearance would be paid at $200 a day for capital cases and $135 for non-capital cases.

C. For services provided between May 1, 1984 to November 30, 1984 such appearance would be paid at $250 a day for capital cases and $165 for non-capital cases.

D. For services performed after December 1, 1984 such appearance would be paid at $300 a day for capital cases and $200 for non-capital cases.

In 1985, a new order issued setting trial fees at $150 a day without distinction between capital and non-capital cases. This brought a suit in circuit court which was dismissed by Chief Judge Richard C. Dunn of the Third Circuit in an opinion which denies that the circuit court has subject matter jurisdiction and denied an evidentiary hearing.

Judge Dunn's opinion is attached to this section of the report an an exhibit.

Judge Dunn held that the Circuit Court and Recorder's Court has no subject matter jurisdiction and that only the Supreme Court would have jurisdiction. He further held that the challenge was not specific and no facts were put in dispute by the complaint. The matter of attorneys' fees paid by the public are in the discretionary powers of the judge and cites Soldat v Iowa District Court for Emmet County, 283 NW2d 497 (1979) for authority that normal fees paid by those not indigent may not be equated with reasonable fees in the statutory requirement that reasonable fees shall be paid.

In 1988, Chief Judge Dalton A. Roberson of Recorder's Court and Richard C. Kaufman of the Third Circuit promulgated the schedule of flat fees previously quoted. This schedule was based on a study done by the Wayne County Court Administrator, George Gish. He developed the schedule based on the penalty faced by the defendants as found in the Supreme Court Guidelines.

The plaintffs again, in May of 1989, challenged the reasonableness and constitutionality of the schedule. They seek to have the Wayne County courts revert to the schedule of June 1982, with appropriate escalation for inflation.

It was in November 1988 that the Supreme Court referred the matter to a special master to find facts and make recommendations as to proposed action.

STATE OF MICHIGAN
IN THE RECORDER'S COURT FOR THE CITY OF DETROIT
AND IN THE THIRD JUDICIAL CIRCUIT

MISCELLANEOUS COURT ADMINISTRATIVE MATTER: Hon. Richard D. Dunn (P13025)

IN RE: SCHEDULE "E" No. 85-519626 CZ

OPINION

In the instant case various attorney organizations (hereinafter, the petitioners) have filed a "Miscellaneous Court Administrative Matter: In re Schedule E" challenging the legality of the fee schedule established by AO 1985-6, Fee Schedule E (hereinafter the Schedule) which sets the rate of compensation which is to be paid to attorneys who are appointed by the Third Judicial Circuit Court or the Recorder's Court for the City of Detroit to represent indigent defendants in criminal cases.

At issue is a provision in the Schedule which establishes the rate of compensation for all trials to be $150 per day of trial and one which limits compensation for jail visits for two jail visits for capital offenses, and one jail visit for non capital offenses. In their initial pleading petitioners contend that the amounts paid are under the Schedule are so low as to be unreasonable and hence violative of indigent defendant's rights to effective assistance of counsel contrary to US const Amend VI, and of their rights to due process and equal protection contrary to US Const, Amend XIV; and violative of the statutory mandate under MCLA 775.16 which entitles attorneys who are appointed by the courts to represent indigent criminal defendants to reasonable compensation for such representation.[1] The case is presently before the Court on petitioner's motion for an evidentiary hearing. In their brief in support of said motion petitioners assert that they want to have an evidentiary hearing in order to present proofs which support their contention that the fee for trials established by the Schedule is unreasonable under MCLA 775.16. Petitioners also assert that in a prior case before the Michigan Supreme Court which allegedly addressed a similar subject, the action had been disissed for lack of a factural record. The motion is opposed by the Chief Judge of the Recorder's Court, (hereinafter the respondent) on the basis that the statue does not contemplate holding a hearing

[1] MCLA 775.16 states in relevant part,

> The attorney appointed by the court shall be entitled to receive from the county treasurer, on the certificate of the chief judge that the services have been rended, the amount which the chief judge considers to be reasonable compensation for the services performed.

to determine the reasonableness of attorney fees in which there is no specific case before the Court.

As a preliminary matter the Court would note that it appears that it has no subject matter jurisdiction to entertain this action.[2] In reviewing the petitioners' pleading the Court notes that said pleading contests this Court's and the Recorder's Court general practice in establishing an appointed counsel fee schedule and paying appointed counsel in the amounts set forth in such a fee schedule. Inasmuch as the action presently before the Court contests the general practices of the Wayne County Circuit Court and Recorder's Court the action is in the nature of one for superintending control over a circuit court or the Recorder's Court. Yet, only the Supreme Court has original jurisdiction in such actions. Genesee Prosecutor v Genesee Circuit Judge, 386 Mich 672, 681 (1972); Morcom v Recorder's Court Judges, 15 Mich App 358, 360 (1968). That this Court has no subject matter jurisdiction in this action accordingly dictates that this instant action will be dismissed.[3]

Yet, even if petitioner's action were construed to be a nature such that this Court had jurisdiction to entertain the merits of the issues presented therein, the Court would still deny petitioner's motion; and in considering the merits raised in the instant action, would further deny the relief requested by petitioners.

In considering the motion for an evidentiary hearing the Court would note that petitioners do not attack the provisions of the Schedule as applied in a specific case. Rather, petitioners contest its application in all cases. Their objections thus appear to be essentially a legal challenge in that they contest the facial validity of the Schedule, as opposed to the Schedule's application in specific cases. The challenge being a legal one logically implies that there are no facts in dispute, or those facts which may be contested are immaterial to the outcome of petitioners' challenge. This being so, an evidentiary hearing would be unnecessary to a determination of the issues as framed by the petitioners' pleading. It follows therefore that even if the Court had jurisdiction in this action it would deny petitioners' motion

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[2] While the Court recognizes that this issue was not raised by either the petitioners or the respondent, the issue of this Court's subject matter jurisdiction goes to the authority of this Court to act at all in this matter and may be raised by the Court on its own motion. See, Teeter v Teeter, 332 Mich 1, 5-6 (1952).

[3] This finding, of course, would of itself, obviate the need to rule on petitioners' motion. For the sake of a complete adjudication, this Court will further consider the issues raised by petitioners as if the Court has juridiction.

for an evidentiary hearing.[4]

Further consideration of the petitioners' request for relief[5] in their initial pleading would result in a denial of the relief therein sought. Petitioners' argument as to why the schedule is invalid is essentially twofold:

First, as noted earlier, part of the bases for petitioners' challenge to the legality of the Schedule is premised on alleged constitutional defects. However, in In re Meizlish, 387 Mich 228 (1972), the Court rejected substantially similar arguments that the fee schedule then in effect for the payment of assigned counsel appointed by the judges of the Wayne County Circuit Court violated indigent's and the attorney's constitutional rights. Meizlish is thus dispositive of petitioners' constitutional arguments, and no relief could be granted based thereon.

The court next turns to petitioners' second line of argument. Petitioners assert that the fees paid under the Schedule are unreasonable, and hence violative of MCLA 775.16, because they do not approximate or are far below the fees typically paid to private practitioners or to the prosecutor's office. For the following reasons this argument, even if factually correct is without merit.

It has long been recognized that an attorney does not have a right to be compensated for his or her representation of indigents absent some statute compelling payment. See Bacon v County of Wayne, 1 Mich 461, 462-463 (1850)[6]; State v Rush, 46 NJ 399, 217 A2d 441 (1966), cited with approval in, In re Meizlish,

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[4] Petitioners also argued that they were entitled to an evidentiary hearing based on the language of the Supreme Court's order of dismissal for want of an adequate basis for decision in Wayne County, et al v Chief Judge of the Third Judicial Circuit et al, (Docket No. 70647, March 22, 1983). That case, unlike the present case primarily involved, as noted in the Court's order, the County's "duty to pay" or an attorney's "right to be paid in accordance with a fee schedule." That case is thus inapposite to the case at bar, and thus not controlling.

[5] Petitioners ultimately seek to have the Court retract the Schedule. This, of course, would result in the prior fee schedule, Schedule D, one again becoming effective. The fees allowed under Schedule D were higher than those under the present Schedule.

[6] Indeed, it may be surmised that it was as a consequence of the Court's decision in Bacon, that the first of these statutes was passed which provided for some compensation to attorneys who were appointed to and did represent indigent defendants. See 1857 PA 109.

supra, 240; In re Shuster, 38 Mich App 138, 139 (1972). In Michigan an attorney's right to compensation therefore flows from and is dependent on the statutory provisions now embodied in MCLA 775.16, as quoted above.

It is unquestioned that, ordinarily it lies within the court's discretion to determine what constitutes reasonable compensation. Withey v Oscola Circuit Judge, 108 Mich 168, 169 (1895); In the Matter of Hayes, 55 Mich App 30, 33 (1974). In the Third Judicial Circuit Court and Recorder's Court this discretion to set reasonable compensation has been exercised through the fixing of fees in the Schedule, the constitutionality of which was upheld by the Court in In re Meizlish, supra; See In the Matter of Hayes, supra, 32-33. Once set and reviewed by the State Court Administrator see MCR 8.112(B)(3), in a sense these fees presumptively become the amount under the statute which constitutes "reasonable compensation." See In the Matter of Ritter, 399 Mich 563 (1977) rev'ing, 63 Mich App 24 (1975) (reversing lower court's deviation from the fee schedule).

In an effort to overcome this presumptive validity, in this case petitioners, as noted above, have argued that the fees set in the Schedule are unreasonable per se because they are below the level of fees that might be obtained by an attorney working in private practice or in the prosecutor's office. This argument, however, even if true, is largely beside the point since it runs contrary to the real purpose of statutes, such as MCLA 775.16, which merely provide for "reasonable compensation." The Iowa Supreme Court, in construing the purpose of a statute, § 775.5, the Code 1977, which was similar to MCLA 775.16, stated in Soldat v Iowa District Court for Emmet County, 283 NW2d 497; 498-499 (1979)[7]:

> In considering this matter, we look to several well-established principles. Attorneys are not expected to defend an accused gratuitously. Woodbury County v Anderson, 164 NW2d 129, 132 (Iowa 1969); Schmidt v Whlenhopp, 258 Iowa 771, 775, 140 NW2d 118, 122 (1966). Neither are they entitled to compensation on the same basis as they might justifiably charge one who had privately engaged them.

In Woodbury County, 164 Nw2d at 132, we said:

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[7] It should be noted that in Iowa the legislature through the passage of § 775.7, the Code 1977, enacted a statute which entitled court appointed attorneys to a fee according to the "ordinary and customary charges for like services in the community." This statute superceded the Court's holding in Soldat, see Hulse v Wifvat, 306 NW2d 707 (Iowa, 1981). While certainly this legislative solution remains available to the Michigan legislature, it is clear that the legislature has not, as yet, opted for this approach.

> However, [§ 775.5, The Code] does not purport to provide full compensation nor it is intended to permit payment of fees in such cases which would be charged to nonindigent clients. Its purpose is to insure representation of an indigent defendant in a criminal case on as basis which would alleviate the financial burden on individual lawyers in light of the developing law of an indigent's right to counsel under recent decisions of the United State Supreme Court and this court.
>
> The reasons for this have been stated in various ways by a number of courts. In all of them, however, an important consideration is the recognized duty of a lawyer to represent the defenseless and the oppressed. Jackson v State, 413 P2d 488, 491 (Alaska 1966); Lascher v State, 64 Cal 2d 687, 51 Cal Rptr 270, 414 P2d 398, 400, cert. denied, 385 US 928, 87 S Ct 287, 17 L Ed 2d 211 (1966); Lindh v O'Hara, 325 A2d 84, 93 (Del 1974); Warner v Commonwealth, 400 SW2d 209, 211 (Ky App 1966); State v Rush, 46 NJ 399, 217 A2d 441, 447-48 (1966); State v Lehirondelle, 15 Wash App 502, 550 P2d 33, 34 (1976); State v Sidney, 66 Wis 2d 602, 225 NW2d 438, 442 (1975). Contra, Baer v O'Keef, 235 NW2d 885, 891 (ND 1975).
>
> In Gant v State, 216 So2d 44, 47 (Fla Dist Ct App 1968), the court said:
>
> Attorneys rendering services pursuant to appointment by the court. . . should not expect, nor are they entitled as a matter of right to receive compensation in amounts commensurate with that which would normally be paid for similar services emanating from a voluntary-attorney client relationship.
>
> In Bennet v Davis County, 26 Utah 2d 225, 487 P2d 1271, 1272 (1971), the court stated its position this way:
>
> The objective of this corrective legislation [allowing fees for court appointed lawyers] was to ameliorate the prior condition, wherein an officer of the court was compelled to contribute his time and efforts gratuitously. Consider within this context, there is no basis to hold that "reasonable compensation" is synonymous with the rate which an attorney might charge for legal services in his private practice.

Thus, for the reasons summarized by the Court in Soldate, MCLA 775.16 cannot be construed to entitle court-appointed attorneys to compensation at a rate equal to that received by other practitioners. This being so, petitioners' argument that the fees set in the Schedule are unreasonable compensation because such fees do not approximate fees received by other practitioners cannot be deemed to overcome the presumption of reasonableness which attaches to the Schedule. Accordingly, petitioners' second argument, as does the first, does not afford a basis for granting relief. For

the above expressed reasons, therefore, even if the nature of the instant action were such that this Court had subject matter jurisdiction, the Court would deny the relief requested by petitioners.

Dated:

/s/ Richard D. Dunn
Circuit Judge

JUDGE JOBES COMMITTEE SCHEDULE OF JUNE 1982
WHICH PLAINTIFFS SEEK TO REINSTATE WITH A FACTOR FOR INFLATION

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FEE SCHEDULE FOR ASSIGNED COUNSEL FOR THE
THIRD JUDICIAL CIRCUIT COURT AND
RECORDER'S COURT FOR THE CITY OF DETROIT

| | |
|---|---|
| Arraignment on the Warrant | 50.00 |
| Pre-exam Jail Visit (one only) | 50.00 |
| Preliminary Examination - waived | 100.00 |
| - conducted | 150.00 |
| First Post Exam Jail Visit | 50.00 |
| Second Post Exam Jail Visit | 35.00 |
| Capital Cases: No more than three visits | |
| Non-capital Cases: No more than two visits | |
| Investigation and Preparation of Cases for Trial or Plea | 150.00 |
| Written Motion with Brief and Oral Argument (Excepting standard discovery orders) | 75.00 |
| Calendar Conference and Arraignment on Information (For each appearance) | 50.00 |
| Final Conference (For each appearance as long as adjournment not by defense) | 50.00 |
| Walker Hearing - One-half Day or Less | 75.00 |
| - Full Day and Each Day Thereafter | 150.00 |
| Evidentiary Hearing - One-half Day or Less | 75.00 |
| - Full Day and Each Day Thereafter | 150.00 |
| Attendance in Court for Trial Per Day or Fraction Thereof - | |
| Capital Cases | 450.00 |
| Non-capital Cases | 300.00 |
| Plea | 300.00 |
| Forensic Sanity Hearing - Witnesses Waived | 50.00 |
| - Hearing Held, One-half Day | 75.00 |
| - Hearing Held, Full Day | 150.00 |
| Attendance in Court for Sentence | 75.00 |
| Probation Violation Hearing | 75.00 |
| Non-frivolous Motion for New Trial Together With Memorandum of Law by Trial Counsel After a Jury or Non-jury trial | 125.00 |

APPEALS

| | |
|---|---|
| Transcript | |
| - Every 400 pages or major fraction thereof other than guilty plea cases | 200.00 |
| - Guilty plea cases | 200.00 |
| Claim of Appeal, Brief and All Proceedings - | |
| Other than guilty plea cases | 500.00 |
| Guilty plea cases | 350.00 |
| Visit to Prison Facilities: Wayne County Facilities | 75.00 |
| Camp Pellston and all UP Facilities | 400.00 |
| All Others | 200.00 |

MISCELLANEOUS FEE SCHEDULE

| | |
|---|---|
| Follow-ups - Full Day Standby | 200.00 |
| Per Hour | 50.00 |
| Psychiatrists - Cases in Which the Maximum Penalty is Life Imprisonment | |
| Interview and Written Evaluation | 300.00 |
| Attendance in Court | 150.00 |
| Other Experts - Interview and Written Evaluation | 200.00 |
| Attendance in Court | 150.00 |
| Interpreters - Per Day | 150.00 |
| Half Day | 75.00 |

# ATTORNEYS

# AND

# BIOGRAPHICAL SKETCHES

## A T T O R N E Y S

**For Plaintiffs**

Frank D. Eaman, Bellanca, Beattie & DeLisle, P.C.
Craig A. Daly, private practice

**For Respondent Recorder's Court Chief Judge**

Alphonso R. Harper, Judicial Assistant, Recorder's Court

**For Respondent Chief Judges of Recorder's and Circuit Court**

Joseph F. Chiesa, Judicial Assistant, Third Judicial Circuit
Diane P. Lemanek

**For Intervening Respondent Wayne County**

Karen G. Watkins, Assistant Corporation Counsel
Bryan L. Amann, Assistant County Executive

**For Intervening Respondent Michigan Appellate Assigned Counsel System**

Barbara R. Levine, Administrator MAACS

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The attorneys submitted biographical sketches which follow.

## RESUME

## FRANK D. EAMAN

Name: Frank D. Eaman
Business Address: 444 Penobscot Building, Detroit, Michigan 48226
Residence Address: 24624 Rensselaer, Oak Park, Michigan 48237
Date of Birth: 11/21/44
Occupation: Attorney
Bar Admissions: United States Supreme Court (1984), Second Circuit (1989), Sixth Circuit (1978), State Bar of Michigan (1971), Eastern District of Michigan (1971).

## EDUCATION

Law School: University of Michigan, Ann Arbor, Michigan, J.D. 1971

Undergraduate: University of Chicago, Chicago, Illinois, A.B., 1967 (International Relations)

Secondary: Fordson High School, Dearborn, Michigan, Valedictorian, January, 1963.

## LEGAL EMPLOYMENT

1988 to Present: Shareholder, Bellanca, Beattie & DeLisle, P.C., specializing in litigation and appeals. Responsibilities include personnel.

1975 to 1988: Principal Attorney/Shareholder in Eaman & Ravitz, P.C., Detroit, Michigan, a litigation firm specializing in criminal defense (trial and appellate), discrimination and sexual harassment, police misconduct, libel, divorce/custody, and plaintiff's personal injury. Responsibilities included those of managing partner.

1971 to 1975: Partner in Gage, Burgess, Knox, Burgess & Eaman, Detroit, Michigan, a litigation firm specializing in criminal defense (trial and appellate) and personal injury. Responsibilities included those of managing partner.

1970-1971: Law Clerk, State Appellate Defender Office, Detroit, Michigan, a state-funded defender office representing indigents on appeal. Responsibilities included researching and writing appellate briefs.

1968-1970: Student Attorney, Washtenaw County Legal Aid Society, Ann Arbor, Michigan; Law Student Intern, Equal Employment Opportunity Commission, Washington D.C. (1969); Clerk, Michigan Employment Security Commission, Redetermination Section, Detroit, Michigan (1968).

## TEACHING, PROFESSIONAL ACTIVITIES AND AWARDS

Teaching and Lecturing: Panel Member: Associated Press Editors Convention, Gaylord, Michigan, "Cameras in the Courtroom" (1988), Speaker: National Conference of Chief Justices and State Court Administrators, Rapid City, South Dakota, on Michigan's Assigned Counsel System (1987); Panel Member, Judicial Conference of the State Bar of Michigan, Grand Rapids, Michigan, "Problems in

a Highly-Publicized Criminal Trial" (1987); Lecturer: "How to Present a Powerful Defense," Criminal Defense Attorneys of Michigan (CDAM) Program, Traverse City, Michigan (1987); Seminar Organizer: "Investigation and Preparation of a Homicide Case" Michigan Trial Lawyers Association (MTLA) (1983); workshop leader, instructor and lecturer at training programs conducted by CDAM, MTLA, the Institute for Continuing Legal Education (ICLE), and Wayne State University Medical School; Speaker at various bar association meetings throughouth the state of Michigan; guest appearance on several local radio and television talk shows.

Appointments: Appointment by Governor James J. Blanchard to the State Appellate Defender Commission on recommendation of the Michigan Supreme Court (1988).

Professional Activities: Chairperson, Task Force on Assigned Counsel Standards for the State Bar of Michigan; President, Criminal Defense Attorneys of Michigan; member, Defender Systems and Services Committee of the State Bar of Michigan; past board member and officer of the Legal Aid and Defender Association of Detroit; past board member of the Michigan Trial Lawyers Association; former member of the State Bar Committee on Victims Rights; evaluator and monitor for Legal Services Corporation; member, National Association of Criminal Defense Lawyers.

Awards: Arthur von Briesen Award from the National Legal Aid and Defenders Association for outstanding volunteer contributions to legal assistance for poor persons (1983); Distinguished Service Award of the Detroit Bar Association (1983); Friend of the Year Award from the Board of Trustees of Friends of Legal Aid of the Legal Aid and Defender's Association of Detroit (1983).

Listed: Tarlow, National Directory of Criminal Lawyers, 2d ed. p. 93 (1979)

## PROFESSIONAL ACCOMPLISHMENTS

U.S. v. Ebens: From 1983 through 1987, defended Ronald Ebens in the Eastern District of Michigan against federal civil rights charges in the internationally publicized "Vincent Chin case." After Ebens was convicted and sentenced to 25 years in prison amidst highly prejudicial pretrial publicity, the case was reversed by the Sixth Circuit Court of Appeals [United States v. Ebens, 800 F2d 1422 (6th Cir. 1986)], venue was changed to Cincinnati, Ohio, and Mr. Ebens was acquitted. The case is the subject of the oscar-nominated documentary movie "Who Killed Vincent Chin?"

Detroit Bar Association, et. al. v. Chief Judges: In 1980, represented the Detroit Bar Association and several other bar associations in legal action filed in the Michigan Supreme Court against the Chief Judges of the Third Circuit and Recorder's Court. The purpose of the legal action was to raise attorney fees for lawyers for indigents, whose rates of pay had not been raised since 1967. The case resulted in the doubling of the rates of pay to attorneys for indigents. Attorney fees were reduced in subsequent years, and the case was refiled in 1989.

REFERENCES:

Hon. Charles L. Levin
Justice, Michigan Supreme Court
1008 Travelers Tower
Southfield, Michigan 48076
313-256-2832

Hon. Dennis W. Archer
Justice, Michigan Supreme Court
1425 Lafayette Building
Detroit, Michigan 48226
313-256-2707

Hon. Joseph B. Sullivan
Judge, Michigan Court of Appeals
900 First Federal Building
Detroit, Michigan 48226
313-256-9212

Hon. Clarice Jobes
Recorder's Court Judge
Frank Murphy Hall of Justice
1441 St. Antoine
Detroit, Michigan 48226
313-224-2120

Werner U. Spitz
Wayne County Medical Exm'r
Brush and Lafayette
Detroit, Michigan 48226
313-224-5640

Randall F. Dana
Ohio Public Defender
8 East Long Street
Columbus, Ohio 43266-0587
614-466-5394

James R. Neuhard
State Appellate Defender
1200 N. Sixth St.
Detroit, Michigan 48226
313-256-2814

Patricia A. Smith
Consultant
The Spangenberg Group
1001 Watertown St.
W. Newton, Mass. 02165
617-969-3820

CRAIG A. DALY
577 E. Larned, Suite 240
Detroit, Michigan 48226
(313) 963-1455

EMPLOYMENT HISTORY

| | |
|---|---|
| March 1980 to Present | Private Practice<br>577 E. Larned, Suite 240<br>Detroit, Michigan 48226<br>(313) 963-1455<br><br>Worked as a private attorney in state and federal court with an 85% criminal/15% civil caseload. Represented over 2,000 indigent criminal defendents at the trial level and on appeal, primarily in Recorder's Court and Wayne County Circuit Court. |
| October 1977 to March 1980 | Staff Attorney<br>State Defender Office<br>462 Gratiot<br>Detroit, Michigan 48266<br>Chief Defender: Myzell Sowell<br><br>Represented indigents charged with felonies from arraignment to trial and sentence. |
| September 1976 to May 1977 | Research Assistant<br>State Appellate Defender Office<br>1200 Sixth Avenue<br>Detroit, Michigan 48226<br>(313) 256-2814<br>Supervising Attorneys:<br>Martin Tieber and James Neuhard<br><br>Researched and wrote legal briefs on felony appeals, interviewed and visited clients in prison. |
| September 1974 to September 1976 | Free Legal Aid Clinic<br>4866 Third Street<br>Detroit, Michigan 48226<br>(313) 832-2777<br>Supervisor: Henry Lukowiak<br><br>Represented indigent clients in traffic court, misdemeanor court, and landlord-tenant court. |

EDUCATION

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|---|---|
| 1986-1989 | Wayne County Criminal Advocacy Program |
| June 1978 | National College of Criminal Defense Lawyers - Trial Practice |
| December 1977 | Detroit National Institute of Criminal Defense Lawyers Seminar |
| December 1976 | Juris Doctor<br>Wayne State University Law School |
| September 1976 | Criminal Advocacy Clinic<br>Wayne State University Law School |
| March 1976 | Judicial Internship<br>Justin C. Ravitz<br>Recorder's Court Judge |
| June 1973 | Bachelor of Arts with High Distinction<br>Monteith College<br>Wayne State University |

PROFESSIONAL MEMBERSHIPS

State Bar of Michigan

Criminal Defense Attorneys of Michigan (CDAM)

American Bar Association

August 1983 - Admitted to practice in the United States Court of Appeals, Sixth Circuit, Cincinnati, Ohio.

June 1979 - Admitted to practice in the United States District Court, Eastern District of Michigan, Detroit, Michigan.

TEACHING EXPERIENCE

| | |
|---|---|
| 1981 - 1982 | Group Workshop Leader<br>Criminal Defense Attorney of Michigan (CDAM) |
| 1971 - 1972 | Teaching Assistant<br>"Third World and Women's Studies"<br>Monteith College<br>Wayne State University |

# R E S U M E

ALPHONSO R. HARPER
18040 Fairfield
Detroit, Michigan 48221

Telephones: Res.(313) 861-8089
(313) 861-8291
Ofc.(313) 224-2495

## PERSONAL

Family Status : Married, 4 adult Children.

## EDUCATION AND TRAINING

College : Wayne (State) University, Detroit, Michigan, 1947.
Law School: Detroit College of Law, Detroit, Michigan, 1950.
Other : Numerous seminars & training sessions in legal practice & procedure in criminal law, civil law and administrative proceedings, including that relating to labor/management, business & commercial, and in alternate dispute resolution.

## EMPLOYMENT HISTORY AND EXPERIENCE SUMMARY

02/21/1973 To Present: Judicial Assistant, Recorder's Court of Detroit, A State Court of Michigan.) Judicial Assistant is a statutory office under Michigan Compiled Law Sec 600.1481, which outlines duties and responsibilities of the office. Serves as judicial advisor and legal counsel to bench of 29-35 judges, the Court Administrator and Court staff, provides representation in certain categories of litigation; provides formal and informal advisory opinions and consultation on judicial matters, supervises the court's legal staff, and performs miscellaneous other duties and services on an ad hoc basis.

07/66 02/21/73 Self Employed In Private Law Practice. (Detroit, MI Practice devoted principally to civil law, including legal services and management labor relations services for small architectural and real estate construction/ development firms. Provided some legal services to former employer shown immediately below.

07/65 07/66 House Counsel, Motown Record Corporation, (then of Detroit, Michigan). Had in-house responsibility for certain secondary lines of the firm's business such as advertising and media ventures, artist investment and savings programs, and was confidential advisor to the firm's president and chief executive officer.

08/63 to 07/65 House Counsel, Wayne National Life Insurance Company, a publicly-traded stockholder company, and to related firm of Consolidated American Fidelity Co, both of Detroit, Michigan; and from 06/64 to 07/65, became (Executive) Asst. Secretary/Treasurer, Wayne National Life Insurance Co., retaining house counsel position. Duties and responsibilities included day to day legal consultation, drafting, examination and approval of insurance contracts and agency agreements, day to day legal consultations to president and officers of the company, preparations and briefings for stockholder and board of directors meetings, acted as the firm's spokesperson and liaison officer with State regulatory authorities, was stock transfer officer and handled stockholder and banking relations, and performed the duties of a small firm's corporate secretary and treasurer. Supervised the firm's office staff, including the unit responsible for budget and in-house accounting and payroll services.

04/54 to 08/63 Self-employed in Private Law Practice. Miscellaneous civil, probate and criminal practice.

07/50 to Security officer, U.S. Government, Dept of Army. Part-time self-employment as an attorney.

## CERTIFICATIONS

Member of State Bar of Michigan; Admitted to Practice in United States Supreme Court, United States Court of Appeals (6 Cir), and U.S. District Courts in Mich.

## PROFESSIONAL & CIVIC AFFILIATIONS

Member, Michigan Supreme Court Task Force on Race/ Ethnic Bias in the Courts; Member, Detroit Bar Association, Wolverine Bar Association Association of Detroit, MI; Member of Corp/Bus Law Section and Criminal Law Section of Michigan State Bar, Life Member..

## SPECIAL SKILLS

Experience in Court/Government civil litigation at trial and appellate level. (See, e. g. Hart v Wayne County, 396 Mich 259; 240 NW2d 697, (1976); Council 23, v Recorder's Court Judges, 399 Mich 1; 248 NW2d 220, (1976)), Detroit Free Press v Recorder's Court Judge 425 Mich 1203; 389 NW 2d 864 (1986), and Detroit Free Press v Recorder's Court Judge, 409 Mich 364; 294 NW2d 827 (1980),(orders on application for lv to apl unpublished Court of Appeals opinions.) Represented Chief Judges in attorney fee/indigent defendent cases in Supreme Court 1977-1990.


JOSEPH F. CHIESA
Attorney at Law
Third Judicial Circuit Court
Office of the Judicial Assistant
742 City-County Building
Detroit, Michigan 48226
(313) 224-5262

EDUCATION

DETROIT COLLEGE OF LAW, Detroit, Michigan
J.D. degree, 1975

- Upper 10% graduating class
- Invited to participate in Law Review

UNIVERSITY OF MICHIGAN, Ann Arbor, Michigan
Bachelor of Arts in Political Science, 1971
Secondary School Teacher's Certificate

DE LA SALLE COLLEGIATE, Detroit, Michigan
Graduated 1967

- Recipient of State of Michigan scholarship;
- Several National Honor and National Merit Certificates

MEMBERSHIPS

Admitted to Practice:

(Upper 5% in July, 1975 Multi-State Bar Examination)

- Courts of the State of Michigan (P-25514)
- United States Federal District Court, Eastern District, Southern Division, State of Michigan
- United States Federal District Court, Western District, State of Michigan
- United States Sixth Circuit Court of Appeals
- United States Supreme Court

Associations

Michigan Bar Association
American Bar Association

EXPERIENCE

Professional:

Subsequent to my admission to practice before the bar of the courts of this state in October, 1975 and following a brief period in private practice, I entered the employ of the Third Judicial Circuit Court in January, 1976. I presently serve that employer as an Attorney IV in the Office of the Judicial Assistant.

PERSONAL: Born May 10, 1949, Detroit, Michigan
Height: 6'
Weight: 165 lbs.
Social Security No. 366-48-5838

REFERENCES References, further documentation and writing exemplars shall be promptly furnished upon request.

I would invite the consultation of any members of the Bench whom I have served over the course of the past fourteen years and similarly that of other court administrators and personnel as well as members of the bar.

# CURRICULUM VITAE

BRYAN L. AMANN
37600 Hillcrest Dr.
Wayne, Michigan 48184
(313) 729- 2937

**EDUCATION:**

Juris Doctor, with Honors, May, 1984, University of Detroit, with two years of study (1983, 1984) at Georgetown University Law Center.

Bachelor of Arts, Political Science, May, 1979, University of Michigan.

High School Diploma, May, 1975, Wayne-Westland Schools, John Glenn High School.

**PROFESSIONAL EXPERIENCE:**

Chief Deputy County Clerk, 1986 - ~~present~~ 12/88 under Jim Killeen. Department Head for County General Fund operation (Marriages, Birth and Death Certificates). Also co-managed 3rd Circuit Court since County Clerk is Clerk of Court. Supervised 146 employees in County General Fund, Court and Election Division.

Currently - Assistant County Executive for Criminal Justice - 12/88 - present

Attorney, November, 1984 to 1986
Miller, Cohen, Martens & Ice, P. C.,
Detroit, Michigan.

Staff, Congressman William D. Ford,
June, 1982 to November, 1984.
Worked in Wayne, Michigan, for a one year period, and in Washington, D.C., for the remainder.

Staff-Assistant, 1979 - 1982, Michigan UAW-CAP Department, Sam Fishman, Director, Solidarity House, Detroit, Michigan.

**PROFESSIONAL ORGANIZATIONS:**

Michigan Bar Association, 1984 - present

Detroit Bar Association, 1984, 1985

Michigan Trial Lawyers Association, 1984, 1985

United Auto Workers, Local 900, Wayne, Michigan, 1976 - 1982.

COMMUNITY ORGANIZATIONS:

Wayne Lions Club, 1985 - Present
1st Vice-President

Metro-Wayne Democratic Club, 1984, 1985

15th Congressional District Democratic Organization, 1978 - Present (currently Chairman)

Michigan Democratic Party, 1978 - Present

First Baptist Church of Wayne, Member, 1965 - 1982

First Congregational Church of Wayne, attended 1984, 1985, Member, Board of Trustees 1986 - Present (currently Vice Chairman).

Additional Work Experience:

Ford Motor Company, Michigan Truck Plant, Wayne, Michigan, 1976 - 1979, Assemblyman, part-time and full time.

Personal:

Date of Birth: November 19, 1957
Married to Mary V. Henke, August, 1982
Daughters: Lindsay Nicole, born July 5, 1985
Lauren Ashley, born May 27, 1988

## BARBARA R. LEVINE

Residence:

9685 Looking Glass Brook
Grand Ledge, Michigan 48837
(517) 626-6984

Business:

Michigan Appellate Assigned
Counsel System (MAACS)
Hollister Building, Ste. 365
106 West Allegan
Lansing, Michigan 48913
(517) 373-8002

### EDUCATION

| | |
|---|---|
| 1974 | Juris Doctor<br>University of Michigan Law School |
| 1968 | Bachelor of Arts<br>University of Michigan |

### EMPLOYMENT

| | |
|---|---|
| 1985 to Present | Administrator<br>**Michigan Appellate Assigned Counsel System**<br>Lansing, Michigan<br><br>Agency is responsible for qualifying and training attorneys eligible to handle indigent felony appeals, monitoring the case assignment process, enforcing compliance with attorney performance standards, and collecting data. |
| 1984 to 1985 | Commissioner<br>**Michigan Supreme Court, Lansing, Michigan**<br><br>Reviewed applications for leave to appeal in civil and criminal cases, requests for review by indigent criminal defendants, and related pleadings. Prepared reports assessing the claims of the parties and recommending disposition. |
| 1980 to 1983 | Assistant Professor<br>Director, Criminal Defender and Juvenile Guardian Clinics<br>**University of Toledo College of Law, Toledo, Ohio**<br><br>Taught Criminal Procedure I and II, Constitutional Law I and II. Directed clinical programs in which students represented criminal defendants or served as guardians ad litem for neglected, dependent and abused children. Developed simulation course in criminal defense representation. |

1979 to 1980 — Adjunct Assistant Professor
**Wayne State University Law School**
Detroit, Michigan

Taught Criminal Procedure I and II.

1979 — Reporter
**Special Advisory Committee on Assigned Counsel Standards**

Drafted proposals and commentary for committee charged with formulating an administrative scheme for appointment of and minimum performance standards to be met by counsel assigned to represent indigent felony defendants on appeal.

1974 to 1979 — Assistant Defender
**State Appellate Defender Office**
Detroit, Michigan

Represented approximately 150 indigent clients convicted of felonies on appeal to Michigan Court of Appeals and/or Michigan Supreme Court.

1977 to 1978 — Lecturer
**University of Michigan Law School**
Ann Arbor, Michigan

Taught Criminal Appellate Practice course, including classroom component, to students who participated in representing instructor's clients from State Appellate Defender Office

## PROFESSIONAL ACTIVITIES

State Bar of Michigan
- Criminal Law Section
  - 1974 to Present — Member
  - 1989 to Present — Council Member
- Defender Systems and Services Committee
  - 1985 to Present — Member
  - 1989 to Present — Chairperson
- 1986 to Present — Task Force on Assigned Counsel Standards

Prison Legal Services of Michigan, Inc.
- 1985 to Present — Chairperson, Board of Directors

Michigan Justice Training Commission
- 1989 to Present — Co-Vice Chairperson

1986 to 1987 — Michigan Supreme Court Committee on Rules of Criminal Procedure

PUBLICATIONS

Indigent Defense: Costs and Concerns, 13 Criminal Defense Newsletter No. 1, p. 1 (October, 1989)

The Revised Rules of Criminal Procedure: Appellate Rules, 12 Criminal Defense Newsletter No. 9, p. 1 (September, 1989)

Preventing Defense Counsel Error - An Analysis of Some Ineffective Assistance of Counsel Claims and Their Implications for Professional Regulation, 15 U. Tol. L. Rev. 1275 (1984)

Executive Editor, Improvement in Appeals Project, Michigan Criminal Appeals: Practice and Procedure, State Appellate Defender Office, 1980, 750 pp.

# W I T N E S S  T E S T I M O N Y

# AND

# BIOGRAPHICAL SKETCHES OF WITNESSES

INDEX OF WITNESSES

The first witness for the Bar Association was **Honorable Justin Ravitz**, former Recorder's Court Judge. Judge Ravitz graduated from Michigan Law School in December 1965. He practiced law briefly in a partnership with attorney Sheldon Otis. He then took a position as a Supervisor with Neighborhood Legal Services representing indigents in the Recorder's Court. He was elected as a judge in Recorder's Court in 1972. He left the bench in 1986 and joined the firm of Sommers, Schwartz, Silver and Schwartz where he still practices.

Judge Ravitz was shown a copy of the current schedule for reimbursing attorneys representing indigent criminal defendants and asked to comment on it. The following are excerpts of his answer:

> "Well my opinion is that the method of payment is completely unreasonable. ...
>
> "To have the fixed fee, regardless of whether or not the case is disposed of by guilty plea or by trial is utterly ludicrous. If I were to look at this - and I do not regard myself as a cynical human being - I cannot help but conclude that someone very cynical fashioned this to provide maximum leverage to prompt attorneys to plead clients guilty. That's the only rationale that I can imagine for equating a fee identically, be it a guilty plea or a trial, would be to lean on lawyers to plead defendants guilty and I find that abhorrent." (Tr 1, p 37.)

He then commented that salaries of judges, prosecutors and police and probation officers have increased but that pay for defense attorneys has steadily declined. He stated that the consequence of the decline in his opinion led to more Sixth Amendment abuses. He then commented that the system of petitioning for extraordinary fees is not a satisfactory answer as there are no standards and the fee is dependent on the whim of the judge.

Judge Ravitz then recited a series of functions to be performed to fairly represent a serious non-capital felony case and it was his opinion that a flat fee of $750 was not 50% adequate. It was his opinion that the only rationale for this fee schedule is docket control which he found "frightening." His suggestion was that $500 a day for trial of a capital case would be minimally acceptable.

Judge Ravitz stated that he was one of the founders of the Detroit Wayne County Criminal Advocacy program. This is a program of training on duties of assigned counsel. It is funded by deductions from fees paid to assigned counsel. The course is structured to cover the elements of criminal defense, particularly as the practice is carried out in Wayne County. Upon completion of the course, the attorney is certified for assignments. The education is graded by experience into certification for capital and non-capital cases. The payment to take the training is involuntary and is derived from assessments from payments for assigned cases.

The principal thrust of Judge Ravitz' testimony was that the fee schedule in effect strongly motivated the attorneys involved to encourage guilty pleas and thereby violate the 6th Amendment rights of their assigned clients.

The second witness for the plaintiff was **Judge Clarice Jobes**, a judge of the Recorder's Court since 1978. Judge Jobes chaired a committee called the Committee on Standards for Appointed Counsel. This Committee undertook in 1981 and 1982 to develop a

fee schedule which would be fair to litigants and attorneys and would not interfere with the docketing of the courts. The Committee was composed of judges of the Recorder's Court. The Committee developed a fee schedule after numerous meetings. The schedule was based on a per diem of $450 a day on capital cases and $300 for non-capital cases. The schedule was adopted in 1982 by the Recorder's Court Bench, but it was set for implementation six months after adoption. Before it was implemented, according to Judge Jobes, it was supplanted by a joint administrative order in 1982 ordered by the Chief Judge in response to "political pressure," apparently exercised by the budget department. This administrative order was not discussed before issuance with Judge Jobes or her committee. It provided for remarkably lower fees than recommended by Judge Jobes' committee. This schedule too was replaced in 1988 with a schedule which was based on a fixed fee. It was Judge Jobes' opinion that the fixed fee schedule was unfair in that it did not take into account the simplicity or complexities of each case. Under this schedule, Judge Jobes found that the really competent attorneys were moving from criminal defense to other areas of practice. She was also of the opinion that the schedule adopted by her committee is no longer adequate. She further found that, while there are many attorneys seeking assignments that with certain defendants who are particularly obstreperous or obnoxious or accused of abominable crime, it is hard to find counsel to represent them.

To summarize, Judge Jobes is opposed to the present fixed fee

schedule. She finds it unfair to attorneys and difficult to operate because of disincentive to put in the effort to provide adequate representation when the rewards are the same for minimal effort.

The next witness for the plaintiffs was **Joan Ellerbusch Morgan**. Ms. Morgan is a 1982 graduate from law school. She thereafter clerked in a law firm and in the Federal District Court. Since August of 1984 she has practiced as a sole practitioner. Most of her early work was as assigned counsel at the trial level in Recorder's Court and also with some appellate work. In the years after 1985, she has been doing more retained work with only about 30% assigned work.

Her feeling is that the assigned work is inadequately reimbursed and often she has been required to hire investigators, obtain medical records, use certified mail and prepare numerous copies of materials for which she has not been reimbursed.

She testified that she also practices in Federal Court where the hourly rate is $40 an hour for out-of-court time and $60 an hour for trial time. If the total exceeds $3,500, in order to obtain reimbursement, the approval of the trial judge and the Chief Judge of the Sixth Circuit is necessary. No difficulty has been experienced by her in being paid for all time expended even though it exceeds the $3,500 fee as well as all expenses.

In Recorder's Court, the fee allowed for investigators may not exceed $150 at $10 per hour. It is her experience that she can no longer obtain competent investigators for such sums and she has

paid the excess from her pocket.

It is her opinion that the present fee system is adequate for a plea of guilty which would only include a conference with the client, appearance for preliminary examination and appearance on arraignment. It is not adequate if there is preparation for trial, investigation or the filing of motions or briefs.

Her belief is that more attorneys are pleading clients to obtain a reasonable fee for their services and that the prosecutor has as a corollary taken stiffer positions on many categories of crimes knowing that they will get pleas regardless.

It was further her opinion under the present system that trials in excess of two days can be reimbursed at $300 a day, if the judge agrees to allow it, but that no provision is made for payment necessary for work to be accomplished by a competent attorney. Among such items are witness corroboration, research on jury instructions, preparation of opening and closing statements and preparation of the client for testifying.

Ms. Morgan compared fees she received in a retained case where her fee in defense of a second-degree criminal sexual conduct case was $2,500 as retained counsel. Had she been assigned her fee would have been $675. It was her opinion that assigned attorneys waive motion hearings and preliminary examinations and plead clients guilty in order to reduce the time spent on the case. Retained attorneys on the other hand seek the full panoply of rights because they are paid for their full time.

Ms. Morgan testified that over the last few years her assigned

work dropped to about 28% from 48% of her total employment and her income from assignments was in the range of $28,000 to $30,000 a year. This was by design on her part as her retained business had increased and her base rate for retained business was $100 per hour. She no longer seeks assignments in circuit court as it requires extra effort to see the judge to obtain assignments and the preliminary examinations require travel time to the districts outside of Detroit, which decreases their profitability. She is unwilling to waive preliminary examinations to avoid the travel for, as she illustrated, she on occasions obtains dismissals at that stage. She was critical of attorneys who waive such examinations to increase profitability of assignments.

The next witness was **Patricia Slomski**, an attorney engaged in defense trials and appeals since 1978. All of her practice, with a few minor exceptions, is in indigent trial work in Wayne County. The appellate work is throughout the state. Her work in Wayne Circuit has lessened since the advent of the fixed fee schedule in 1988. Her experience is that more detail is required in Circuit Court than Recorder's Court. She also commented favorably on the practice of allowing $300 a day for trial work in excess of three days. Another point she raised was that the circuit court is far more dilatory in payment of fees earned.

She commented specifically on a case, People v Robert Boston, a murder case which she defended. She spent 198 hours, including nine days of trial time. The case was before Judge James Chylinski who recommended $35 an hour, though she thought she should have

been paid $50 because of the complexity of the case. She filed a petition for extraordinary fees which went to the Chief Judge. She was paid $3,500 by the Chief Judge, which amounted to $17.67 per hour.

When Ms. Slomski was asked her opinion of the current fee system in Wayne County, she responded that it is "ridiculous" and inherently unjust because the flat fees do not take into account the individuality of cases and because they are unrelated to the actual time an attorney spends on a particular case. In addition, she expressed a desire to avoid the "windfalls" and "loose calls" that occur in a flat fee scheme. Instead, she would rather be fairly compensated for specific time she spends on a case.

She also voiced concern that the current fee system discourages the more skilled attorneys from representing indigent clients. She reasons that the better attorneys are reluctant to gamble by accepting a flat fee for an unknown number of hours work, with an unknown number of witnesses, and an unknown number of possible complications.

Ms. Slomski stated that she has retaliated against the fee system in Muskegon County. In Muskegon County, until recently, attorney fees were capped at $250 per guilty plea, and at $500 maximum per trial case. In her opinion, the quality of representation in that county is deficient.

In summary, Ms. Slomski found fault in the current flat fee system because it disregards actual time spent on individual cases, and because she believes the quality of indigent representation

suffers under such a system. She concluded that since the attorneys considering indigent representation have no means for estimating the costs of representation, the only attorneys willing to assume such risks will be the lesser-equipped advocates.

The next witness was **Gerald Lorence**. He has been a practicing attorney in Michigan since 1968. Prior to his admission to the bar, he headed the English Department at Denby High School in Detroit. He later taught English at Wayne State University. His teaching career spanned 17 years. Mr. Lorence is currently, and for the last 11 years has been, the President of the Recorder's Court Bar Association. He accepts criminal appointments in Wayne County Recorder's Court. He took part in the attempt to obtain higher attorney fees from the Recorder's Court in the late 1970s and early 1980s, and worked with Judge Jobes' committee.

He stated that the current fees under the flat rate system are also unreasonable. He also expressed doubt in the propriety of the flat fee method. Mr. Lorence testified that $35 an hour is insufficient compensation, considering the overhead costs involved in running an office. He asserted that a fee of $43 an hour would be necessary to cover overhead costs alone. He also stated that the flat fees are an inducement to plead a defendant guilty.

In summary, Mr. Lorence not only found fault with the previous hourly rate of $35 per hour, because he maintained that $43 per hour is needed just to cover overhead office costs, but that the current flat rate method falls short of adequately compensating defense attorneys who represent indigent clients.

Mr. Lorence also testified that he believes the current fee schedule denies the indigent defendant due process. He stated that the main concern of the courts should be their responsibility to provide proper representation for indigents and that economics should come second. He added that under the current system, the dollar is prioritized over and above the indigent defendant. Although he admitted that the prior fee schedule did not "cure having bad lawyers" by paying them for what they did, competent attorneys who were in the system remained there. He mentioned that since attorneys do not get paid for jail visits or motions now, many attorneys are not filing or arguing the proper motions. In addition, he candidly stated that there was a problem with attorneys pleading their indigent clients out as quickly as they could, but under the current fee schedule, attorneys are pleading their indigent clients out faster than ever. When asked whether the unethical and economically self-interested attorneys are responsible for denying indigent defendants due process, rather than the flat fee schedule, he replied that "the person who devises such a system and puts the carrot out, and the person who grabs the carrot and latches on to it" are both wrong. He added that the current system does encourage attorneys to fail to meet the responsibility their profession should demand with respect to indigent representation. In addition, he commented that, unfortunately, the integrity of many attorneys can be bought with the dollar.

He estimated that 25% to 30% of the attorneys currently

accepting assignments are of the type who work out of their cars, jacket pockets and telephone booths. He finds that practice very unprofessional.

He personally does not appeal denials of extraordinary fees as he does not want to expose himself to the ire of the judges who made the original denial.

To summarize, Mr. Lorence believes that economics rank second to the legal system's obligation to provide competent counsel for indigent defendants. He stated that the current flat fee system induces attorneys to act in their own economic interest, at the expense of indigent defendants.

The next witness was **Lawrence Stiffman**, President of Applied Statistics Laboratory, survey research economics consulting firm in Ann Arbor, Michigan. Mr. Stiffman has gathered information regarding attorney incomes, hourly rates, and office management, which he described as legal economics. He has conducted surveys on behalf of seven various state bar associations around the United States. He has done three surveys of Michigan's legal economic status since 1980 which have been published in the Michigan Bar Journal. These surveys considered demographic information, specialization practices, hourly rates, income and overhead costs of 1,000 attorneys, both plaintiff and defense attorneys, who responded to the 3,000 questionnaires which were sent randomly throughout the state. Mr. Stiffman stated that he had no control over who responded and that people, in general, tend to inflate their income when asked about it in survey form. Thus, he

qualified his remarks by stating that his survey was not specifically conducted to determine what wage would be proper to compensate public defenders or private attorneys representing indigent clients. He also aided the Institute or Continuing Legal Education for the past 10 years in their surveys on compensation. He is retained by the Attorney General's office and the Department of Correction's statistical consulting group.

Mr. Stiffman testified in reference to his 1988 economic survey of Michigan that covered both plaintiff and defense attorneys. According to his date, lawyers engaged in criminal practice made 25% less than lawyers as a whole, in 1987. For criminal defense attorneys, the median yearly income was $50,000, as compared to a median annual income of $70,000 for attorneys as a collective group. Mr. Stiffman also reported that the median hourly rate for attorneys, generally, was $92. For attorneys whose primary source of income is criminal work, the median hourly rate was $75. He noted that although the incomes of various types of attorneys may fluctuate, generally overhead costs do not vary. Thus, criminal defense attorneys generally make less money and carry the same operating costs as other attorneys. He opined that an hourly rate of $35 per hour would only allow an attorney to "break even", but that an hourly wage of $82 per hour would be reasonable for criminal defense attorneys. The $82 an hour figure was calculated by adding 10% (to compensate for the difference between 1988 and 1990 dollars) to the median figure of $75 per hour as evidenced by his 1988 survey.

He also testified that, on the average, criminal defense attorneys working in the Wayne County Recorder's Court system made $12,000 per year. Mr. Stiffman could not figure out why or how the attorneys (500) working in that system remain there. He could only speculate that possibly they had other part-time work or low overhead costs. He warned that publicly supported advocacy would only drop further in quality as long as the system continued to pay wages at or below the 1988 rate.

With respect to flat fees, Mr. Stiffman stated that the validity of a flat rate depends on the underlying basis used to compute it, and its relationship to reasonable hourly rates. He is not opposed to flat fees, but that they must be calculated to encourage competent professionals to enter and remain in the system. Relying on his research of flat fees in the medical field, he commented that flat fees do save money and that they also "create incentives to skimp" He added that an equitable flat fee for attorneys would at least have to reflect the $75 median hourly wage in order to ensure that citizens will be adequately represented by court-appointed attorneys. In reaction to hearing that lawyers are sometimes paid $300 per day, after two days of trial, Mr. Stiffman said that because the market clearing price was calculated at $500 per day, by slightly discounting the prevailing reasonable rate of $600 per day, that $300 per day would be unreasonable, while $500 per day would be reasonable.

In summary, it is Mr. Stiffman's opinion that a reasonable wage for criminal defense attorneys would be $82 per hour. He

added that in order for the flat fees to be reasonable, they would have to reflect the $75 per hour median wage found by his survey, and that a daily rate would have to reflect the $500 market daily rate in order to be reasonable. Although he offered no evidence as to how these hourly or daily rates translate under the current flat fee system, he admonished that the quality of advocacy would continue to decline unless the system more adequately compensates lawyers who represent indigents.

The next witness was **Thomas M. Loeb**, an attorney whose legal practice is comprised of approximately 50 percent criminal work. He has practiced since 1976 in the tri-county area. Prior to that, as a law student, he clerked in the Detroit Public Defender's Office, where he had the opportunity to co-author the trial book. He remained there for two years after he passed the bar exam and then moved to a private firm. He continued to take assignments from the Recorder's Court from then until the present. He is a member of the Criminal Law Section of the State Bar, the Recorder's Court Bar, the National Association of Criminal Defense Attorneys of Michigan, Michigan Trial Lawyers Association, and he serves on the Wayne County Recorder's Court Criminal Advocacy Program.

He testified that the current flat fee for homicide of $1,400 is about one-tenth of what he would charge a client in private practice. He also stated that he has refused a couple of murder cases because he could not afford to accept them, due to the current fee system. In one case that Mr. Loeb tried before the Recorder's Court for an indigent client, he kept track of his hours

and calculated his hourly wage to have been $34.82. He compared his hourly overhead cost of $39.30 and commented that, if he were to continue accepting criminal appointments, he would be "supporting the criminal justice system out of [his] own pocket."

He also stated that the flat fees are unreasonable and that they encourage guilty pleas to be entered in instances where the case should go to trial.

In addition, he noted that the flat fees cause experts to be reluctant to testify in indigent cases because they fear they will not be sufficiently compensated for their time. He stated that he personally has had difficulty locating experts to testify on assigned cases. Mr. Loeb also stated that he has known attorneys who did not adequately defend their indigent clients, due to the fact that the flat fees encouraged them to plead their clients guilty.

On the other hand, he conceded that there are other factors, besides the fee system, that may have caused the number of guilty pleas to increase. He speculated that the four executive judge system is one of those factors. He claims that there is a funnel effect, in that all the cases are poured in, but are funneled out at the first stage, which is in front of one of the four executive judges. He also commented that the "personality" of the Recorder's Court is different now and that that may also be a factor in the change.

In summary, Mr. Loeb objected both to the structure of the flat fee system and to the amount of money paid under it. He

thinks flat fees are inappropriate for cases involving many unknowns, including the number of witnesses, forensic experts, etc. He stated that an hourly fee would be more equitable to balance between cases which require 20 hours work and cases which necessitate 200 hours work. Although he realizes there are other factors that may encourage guilty pleas to be entered, he warns that under the current flat fee system, some defendants will not receive the representation that they are entitled to receive.

The next witness was **Kenneth Mogill**, an attorney who has practiced for the past 19 years. He is a member of the Michigan Trial Lawyers Association and he is an officer of the National Association of Criminal Defense Attorneys of Michigan, of which about 90% of its members accept criminal assignments. He personally took criminal assignments for approximately the first eight years of his practice, but refuses them now and has refused them for the past 10 years. He stopped taking appointments because the pay was insufficient and because his practice had grown to the point where he had plenty of private clients.

He testified that attorneys representing indigents either do not file motions or, if they do, they file only perfunctory motions, and even those are not adequately drafted. He stated that the reason for this sloppiness is that appointed counsel cannot afford to spend the necessary time because the fees they earn from the Recorder's Court are deficient. He concluded that the flat fees are unreasonable because they do not reflect reality. In addition, he noted that the payments he received for indigent

representation were insufficient to cover overhead costs, if he was to do the competent job that he wanted to do.

He also referred to the attorneys in Detroit who live on assigned fees and who do not maintain an office, but operate out of telephone booths and whose filing system consists of the three pockets their suit coat jackets provide. He told the court that these lawyers take on a very large number of clients and that they cannot render effective counsel for each one. Not only do the underfunded and overextended attorneys fail to bring the proper motions and do the necessary discovery and preparation for trial, they are also unable to be creative with their arguments. They are unable to play a role in the development of the law because they cannot afford to raise issues with the hope of leading the law in a new direction. He stated that these lawyers are financially confined to trying only sure winners.

He added that is unethical for attorneys to accept more cases than they can adequately handle. He did, however, acknowledge that young, inexperienced attorneys do take assignments, even at low rates, and do spend more time on cases, to make up for their lack of experience.

To summarize, Mr. Mogill fears for the inadequate quality of work that results from a flat fee system. He notes that it not only encourages sloppy work, which may harm particular defendants, but that it also discourages innovative work, which may assist in improvement of judicial theory and evolution.

The next witness was **Robert L. Spangenberg**, who heads the

Spangenberg Group, a private criminal and civil justice research firm. His firm prepares studies of court systems and their components for state, county and federal government, as well as private foundations and bar associations. He and his firm have helped public defender's offices reform their systems and their methods of compensation. At present, his firm is consulting with assigned counsel systems in 20 states and New York City.

He testified that it is unusual to see a fee schedule that categorizes flat fees according to the offense. Instead, most fee schedules attach maximums according to the type of case, such as felony, misdemeanor, mental health, etc. He also informed the court that most states are increasing the hourly rates for indigent representation from $50 and up. He stated that, although some states have maximums, almost all of them are higher than the flat fees currently delineated in Wayne County. Most states with maximums also provide for a waiver of the cap. Some of those states waive the maximum when extraordinary circumstances are present, while others waive the cap almost regularly.

As another alternative, some jurisdictions establish a range of rates for various types of cases and, if an attorney's bill falls within the range, it will be paid. If the attorneys can justify their hours that are above the range, they will be paid for those hours as well. Mr. Spangenberg stated that there is no serious problem with attorneys padding their bills. He also noted that since, in most places, the judge is in charge of appointing attorneys, if an attorney pads the bill, the judge will scrutinize

the charges, and if the number of hours charged is unreasonable, that attorney will not be appointed again.

Mr. Spangenberg concluded that the Wayne County flat fees are unreasonable because they do not correspond to the actual time an attorney spends on a case, nor do they consider whether the case goes to trial or not. He called the flat fees a disincentive for attorneys to spend time on cases, which he finds troubling. He also stated that because of the low fees, indigents will be represented largely by inexperienced lawyers. Although these new attorneys need to gain experience, he thinks that they should only do misdemeanor work at first because there is not as much at stake.

Remedially, he stated that indigency screening is one way to save some money. He also testified that, generally, state-funded systems are able to provide higher fees and better resources for indigent counsel. Another possibility he mentioned was a cost recovery program, in which defendants voluntarily participate in paying a part of the costs for representing them up front.

To summarize, Mr. Spangenberg stated that the flat fee system is unusual and unreasonable. He finds the system disturbing because it tends to limit indigent representation to inexperienced attorneys and it discourages attorneys from spending an adequate amount of time on appointed cases. He mentioned other alternatives such as cost recovery programs and indigency screening to assist court systems in saving money.

The next witness was **William B. Daniel**, an attorney practicing in Michigan since 1968, and he concentrated in Wayne County from

1971 until 1978, at which time he began working at Chrysler Corporation. He remained at Chrysler for a couple of years and then in 1980 he became the Chief Defender of the Public Defender's Office in Detroit. Next, he moved to the City of Detroit's Law Department for five years, where he was special litigator. He has practiced criminal law throughout his whole career and in his current practice, criminal law comprises about 25% of his case load.

He testified that he accepted only one assignment in 1989 because, after he and his partners reviewed the time spent versus the revenue generated on particular cases for 1988, they concluded that it was not economically practicable to continue to accept assignments. He added that his firm's overhead costs range between $25 and $35 an hour.

Mr. Daniel stated that the one criminal assignment he accepted in 1989 was a murder case, for which the flat fee was $1,400. He calculated that his hourly compensation amounted to $18.49, because he spent 75.3 hours on the case, including eight days of trial. He further commented that, if the client had not been indigent, he would have charged him around $27,000.

He noted that with fixed flat rates, attorneys have no incentive to exceed the minimum amount of work necessary in handling a criminal case. He further stated that the flat fees encourage lawyer laziness. He did mention that he has accepted criminal cases with private clients for a flat fee. Thus, he is not wholly opposed to flat fees if the fees are reasonable. He did

state that he has personally witnessed many instances in which assigned counsel did less than adequate work for indigent clients. He also noted that moral practitioners would feel committed to fully representing all of their clients, indigent or affluent.

In summary, Mr. Daniel testified that he has stopped accepting criminal assignments because it is not economically feasible under the current flat fee schedule. He also stated that attorneys are encouraged to be lazy under the system because the flat fees are unreasonable and insufficient. Although he acknowledged that the more ethical attorneys would serve their clients with equal fervor, under the current system, indigents are not receiving their just representation.

The next witness was Mr. James Howarth. He received his Juris Doctorate from the University of Michigan in 1967 and began his career in private practice in Detroit, doing mostly criminal work. In 1973, he moved to New York City, where he was employed by the Matthew Bender Publishing Company. He was an editor for them and assisted the publication of the Federal Rules of Criminal Procedure in 1975. After that, he returned to Detroit and worked as Deputy Defender for the Legal Aid Defender's Association until 1977, at which time he was promoted to Chief Deputy Defender. In 1981, he went back to private practice with a Southfield firm which handled almost entirely criminal work. In 1988, he went into private practice for himself in Detroit where he again concentrates on criminal defense law. He has focused on criminal law for the past 21 years and has tried cases in eleven counties in Michigan and in

the United States Supreme Court.

Mr. Howarth testified that the flat fees paid in Wayne County are "100% inadequate to compensate for the hours it should take to handle the cases that are outlined." He stated that even the previous method of compensation, under which attorneys were at least paid for the number of motions filed, numbers of court appearances, etc., was better than the current flat fee system - although he was not satisfied with the prior system either. He stated that the flat fees do induce attorneys to dispose of cases as soon as possible.

His practice is exclusively criminal in nature, but he has ceased taking criminal assignments because the fees are inadequate.

To summarize, Mr. Howarth has concluded that the previous system was unsatisfactory, but that the present flat fee system is worse. He finds the flat fees inadequate and that they induce lawyers to dispose of cases as quickly as possible when their clients are indigent.

The next witness was **Gerald Evelyn**, an attorney who has practiced criminal law since 1979. He worked at the Public Defender's Office in Detroit from 1979 until 1981, and then he moved into private practice, where 85% of the cases he handles are criminal defense cases.

He testified that the number of criminal assignments he accepts has decreased because of the lack of fair compensation under the current flat rate system. He stated that his overhead costs amount to $45 per hour. He calculated the hourly wage he

was paid for a murder case he tried recently in Recorder's Court to be $15 an hour. The case involved multiple defendants and he stated that the only defendant who was convicted of murder was indigent and the attorney could not afford to spend the time necessary to settle evidentiary issues in a separate evidentiary hearing. He also testified that the current flat fee system has a discriminatory effect that disfavors blacks.

The next witness was **Samuel Churikian**, an attorney who has been the Chief Deputy Defender of the Public Defender's Office in Wayne County for the past two and-a-half years, and had been in the prosecutor's office for ten years. He testified that the facilities at the Defender's Office are antiquated. He stated they do not even have computers, video tape machines or word processors, while the prosecutor's office has all of the above. Thus, he pointed out that the resources available to prosecutors far exceed those available to public defenders.

In addition, the prosecutor's office works closely with the narcotics section of the Detroit Police Department. They have the Wayne County Medical Examiner, and they have their own experts on ballistics, fingerprints and serology in the Michigan State Police Department. In contrast, he noted that the Public Defender's Office has no such resources, but must locate and hire outside expert assistance at the pay level set by the court.

In the same murder case that Mr. Evelyn testified about (Easter case), Mr. Churikian spent 745.1 hours on the case. He was paid $40.50 per hour, amounting to $32,202. He stated that he had

to "search the Nation" to find a ballistics expert who would assist with his case for the court-approved compensation. He contrasted the prosecutor's budget and available resources in that case, commenting that "the sky was the limit" for the prosecution.

He also commented that office policy is to require an experienced staff attorney to accompany every new public defender at his or her first trial. On the other hand, he stated that indigents represented by his staff received better representation than the unsupervised, private, appointed counsel.

The Wayne County Defender's Office submits vouchers according to the flat fee schedule, just as private, appointed counsel does, although the public defender's attorneys are on a salary basis.

To summarize, he opined that although every defendant is entitled to justice, he does not think they all receive such justice, due in part to the limited resources of the Defender's Office. He stated that attorneys should not be encouraged to fall below minimum standards of justice by underpaying them, and that is what is currently happening.

The next witness was **Judge Edward Thomas**, who has been a Recorder's Court Judge since 1979. He is currently assigned to the trial docket, as opposed to being one of the executive floor judges.

When asked his opinion of the flat fee system, he stated that the reasonableness of the fees vary with the complexity of each case. He did testify that the fees "by and large" do not reflect the time spent or amount of work put into a case. He mentioned a

case currently before him that is one example where the flat fee is inadequate. The case is an assault with intent to murder, or which the flat fee is $750. The Judge noted that although the defense attorneys have put a tremendous amount of time into case preparation, that time is not reflected in the flat fee. He also questioned the efficacy of extraordinary fee provisions, because he has observed that some attorneys hesitate to apply for extraordinary fees because they fear being labeled as a lawyer who always requests extra fees.

He also testified that he has seen and experienced competent attorneys drop out of the assignment system because they can no longer afford to accept appointments under the current fee schedule. However, he stated that, in his opinion, guilty pleas have not increased, nor does the current fee schedule affect a defendant's Sixth Amendment rights.

To summarize, Judge Thomas criticizes the flat fee schedule because it does not adequately compensate assigned counsel for their time and effort. However, he does not think that indigents' Sixth Amendment rights to counsel are threatened.

The next witness was **Ms. Barbara Levine** who is the administrator of the Michigan Appellate Assigned Counsel System (MAACS) in Lansing, Michigan. She has held that position for the past five years. Prior to working at MAACS, she was an attorney with the State Appellate Defender's Office for seven years. She then taught Criminal Procedure at Wayne State as an adjunct professor. After that she became a permanent faculty member at the

University of Toledo College of Law.

MAACS is in place to monitor indigent felony appeals that are brought by private assigned counsel. Their office also maintains a roster of lawyers who are eligible to handle assigned cases and her office attempts to screen the qualifications of the attorneys on the roster, in an attempt to improve the quality of indigent representation. Although their office staff is paid by the state, the private attorneys for indigents are paid at the county level.

While at the University of Toledo, she authored a law review article entitled "Ineffective Counsel" in which she examined the types of ineffective counsel that were found by the State Appellate Defender's Office. She organized those types into ten categories. The most common claimed was failure to investigate (17.5%). The next most common was the failure to move to suppress inadmissible evidence and failure to move to suppress the prior record of their clients. The fourth most common type of ineffective counsel claimed involved a failure to object to inadmissible evidence during trial. She noted that six out of the ten types of claims involved a failure to do something, which would not be known to the judge because the judge is not privy to all the information shared by the attorney and clients.

After leaving the faculty of the University of Toledo, Ms. Levine worked at the Supreme Court in the Commissioners' Office. Her duties there consisted of reviewing appellate briefs and applications for leave, during which time she sometimes viewed instances of ineffective representation.

The next position she assumed was Director of the Michigan Appellate Assigned Counsel System office, whose purpose it is to improve the quality of indigent appellate representation. The various means used to achieve that goal include: maintaining a state-wide roster of attorneys and their eligibility levels, including the attorney's experience and the complexity of cases that would be appropriate for them to accept; implementing orientation programs for the inexperienced attorneys; and providing training and reference materials for assigned counsel. The office also receives complaints from judges and prosecutors regarding the quality, or lack thereof, of assigned counsel representation. Then, her office must answer the complaints and continue to monitor the attorneys who are the subjects of the complaints by comparing their performance to the minimum standards of defense attorneys for the indigent that the Supreme Court has promulgated. If the attorneys fail to comply with the minimum standards, and that non-compliance is glaring, those attorneys will be removed from the attorneys' roster in order to protect the indigent defendants.

She also testified that part of her job involves compiling data from around the state regarding counsel fees for the indigent and to encourage reasonable fees, as part of her office's goal to maintain effective assistance of counsel for the indigent. She added that her office has had a difficult time maintaining a list of eligible attorneys in counties that are low paying. She noted that low fees place the attorney in a no win situation where their choices are to either not perform certain tasks, which violates the

minimum standards, or to not be paid for performing the tasks. She supported this assertion with letters from attorneys which show that the problems of attorneys voluntarily dropping off the assignment roster or remaining and not performing the necessary tasks that the fees do not compensate, are both caused by the low fees that are paid to assigned counsel. She also noted that she sees attorneys trying to "make up on volume what they lose in cost fees per case."

Her office has compiled data regarding assigned counsel fees from all around the state and it is her opinion that flat fee schedules are created to make administration of the courts more convenient because they make the budget more predictable. In addition, with the flat fees, judges do not have to review or approve the hourly vouchers.

She also discussed the performance standards that have been produced by the Task Force on Assigned Counsel Standards, of which she is a member. The committee operates on the premise that if attorneys are reasonably compensated, one can expect reasonable representation from them. The standards for assigned counsel have not been adopted yet because the court rule which would give the bar the authority to adopt the standards is currently before the court. As it is now, attorneys' performances are only governed by their own consciences and the Rules of Professional Responsibility. Ms. Levine supports this proposed set of performance standards and would like to see them embodied in a statute.

She explained that such proposed statute would outline a

system that is state funded and state administered. There would be officers of the state system who would be appointed to supervise assigned counsel at the county level and that local office would train attorneys, and provide investigative services and expert witnesses at both the trial and appellate levels. Local public defender's offices would be established in every county whose population exceeds 150,000. Counties with smaller populations would have the option of joining the state supervised system or continuing to do local assignments. The system would operate on legislative appropriations, and thus would completely remove funding concerns and control from the counties. In addition, the local courts would not have any responsibility to determine which attorneys are fit to satisfactorily protect indigents' rights to counsel under the Sixth Amendment because that protectorate function would be assumed by the state. She also stated that, in her opinion, since Sixth Amendment rights derive from the state and federal constitutions, those rights should be protected by the state. She added that state funding could best provide for economic support of that guarantee. She related the problems some trial court judges have in securing funds from their county commissioners for their court's budgets. She added that when particular counties have budgetary trouble, the attorneys taking assignments should not be expected to assume that county's economic burden by accepting discounted fees.

In addition, Ms. Levine referred to a Felony Defense Survey that she prepared for a conference at Mackinac Island in 1989. She

noted that while the total prosecutorial budget for the state was $60,818,937, the state defender's budget was only $22,253,654.

She also indicated that flat fee schedules are unusual, and that the other county that uses flat fees, Ingham County, restricts the application of flat rates to non-capital offenses. Attorneys defending in assigned, capital cases are paid on an hourly basis, and that hourly rate was recently increased from $50 to $55 per hour. She stated that two competing trends are prevalent in criminal dockets throughout the state: fees are being raised and caseloads are increasing. Thus, counties are trying to be creative in containing operating costs. She warned that Michigan is in or is rapidly approaching a crisis in providing defense services to indigents because of these competing trends.

Her survey indicated that 97% of the attorneys polled think that the current assigned counsel fees are too low, 71% said they were much too low. She also found that as attorneys gain experience, they decrease the number of assignments they will accept -- not because of the work or the clients, but because of the low fees. The attorneys polled added that they would return to accepting assignments if the fees were better. Seventy-five percent of the attorneys surveyed stated that assigned counsel should be paid on an hourly basis and the median rate they suggested was $65 an hour, which was about halfway between what they would charge in retained cases. They also should be paid for overhead costs. In addition, 50% of the attorneys believed that indigent defendants receive lower quality representation than

defendants with retained counsel. Eighty-two percent said that assigned counsel fees were at least one of the causes of this lower quality of indigent representation. She noted that in Wayne County, because of the flat fee schedule, the hourly compensation decreases as the number of hours spent on a case increase.

She added that the Counties that pay assigned attorneys on an hourly basis redress the problem of padding of bills by having the judges who try each case amend the attorney's bills for those cases, if the number of hours seem excessive, and the judges who heard the cases will be able to make that determination. She commented that, however, some judges may cut the billed hours simply because of their own court budgetary concerns.

She suggested that Wayne County adopt a system of ranges of acceptable billable hours based on the type of case involved and then, if the hours submitted fit within the appropriate range, the judge presumes the bill is reasonable and simply pays it. If the hours exceed the range, then the judge can require the attorney to justify the number of hours. She stated that the ranges could be created by calculating the average pay, using computers in a fashion similar to the way the sentencing guidelines were created. She admonished that, under the current fee schedule, some attorneys will push cases along without doing an adequate job and some attorneys will convince themselves that certain motions or jail visits are unnecessary, and a few extremists may plead a client guilty after just meeting him or her. She added that, as the fees get worse, more corners will be cut. She noted, on a more

optimistic note, that some attorneys will always do what is right, regardless of the compensation.

In summary, Ms. Levine would prefer that indigent counsel be paid an hourly rate of $55-60 per hour and that would give the judges the discretion to also award extraordinary fees in the proper circumstances. She noted that the current flat rate schedule discourages trials, pre-trial preparation, and even plea bargaining. In addition, she believes that attorneys should not be over- or underpaid, and the flat fee schedule does just that. She noted that the discrepancy between the hours spent and the money paid is most blatant in murder cases. She also stated that the flat fees drive good attorneys away from the assignment system and she feels that it is inappropriate for the courts to move their dockets at the defendant's expense, by encouraging assigned defense counsel to do ineffective work. She also pointed out that even though the flat fee schedule may discourage frivolous motions, it also discourages non-frivolous ones.

The next witness was **Elizabeth Jacobs**, who has been a licensed attorney since 1974. She began her legal career at the Legal Aid Defender's Office in Detroit and she remained there for five years where she handled felony cases exclusively. Upon leaving that office, she went into private criminal practice, where she works at present. She has accepted criminal assignments in Recorder's Court during the course of her private practice.

She testified that, since the flat fee schedule was adopted in 1988, she began to cease accepting certain criminal assignments,

such as capital offenses and murder I cases because she decided she could not afford to do them. Now, she does not accept any criminal assignments because of the economic difficulty in doing so. She also commented that there is a correlation between the fees and a denial of due process for indigent defendants becaue the fees encourage attorneys to plead defendants guilty. She stated that she would be willing to come back to the assigned counsel system if the fees were increased. She also stated that she would represent a defendant charged with murder I for a $5,000 maximum. She stated that attorneys should be paid by the hour to avoid windfalls and inadequacies, but that ceilings that are high enough to be reasonable are acceptable.

To summarize, she testified that she has withdrawn from the representing of indigent defendants because she cannot afford to do so. She believes that the flat fee schedule threatens indigents' Sixth Amendment rights to counsel because it encourages guilty pleas. She feels that a better method would be to pay attorneys on an hourly basis, with ceilings on the amounts that could be paid for particular crimes, as long as the ceilings are reasonable.

The next witness was **Benjamin Blake**, who is currently the Chief Defender of the State Defender's Division of the Legal Aid Defender's Association in the city of Detroit. He has held that position since May of 1989. Before joining the Legal Aid Defender's Office, he was in private practice, where he did both assigned and retained criminal defense work, which amounted to 35%

of his total practice.

He testified that he restricted his assigned practice throughout his years of private practice, first because he wanted to maintain a diverse practice and later, although the assigned work provided valuable courtroom experience, because he did not need to supplement his caseload as his firm was doing well on its own. He testified that the current flat fee schedule is inadequate, unless an attorney takes minor narcotics cases which can be concluded with guilty pleas. He explained that flat fees are inadequate because of the lack of connection between the work done and the fee awarded. He commented that the flat rate system plants a "seed for abuse" because attorneys will be tempted to do cursory work on their clients' cases.

He stated further that in the Legal Aid Defender's Office, the attorneys in the office must fill out vouchers under the flat fee schedule, just as private, assigned counsel do. Although the staff attorneys are salaried, the income of the whole office depends on the vouchers -- the total of which have been declining. Thus, the office has had difficulty in obtaining and maintaining the quality of counsel that it would like to employ because of the difficulty they have had in sufficiently compensating the staff attorneys. He cited an example where he lost a quality recruit because he could only offer her $24,000 starting salary. He noted that in 1989 his office's gross income, number of cases that they closed, and amount of compensation per case all declined. (Compensation per case went from an average of $495 per case in

1988 to $431 per case in 1989.) He warned that, if their caseload increases and he cannot afford to hire more attorneys, he would find himself in a "catch-22" situation.

He noted that his defender's office does not have to include in their request for extraordinary fees information regarding how many times they have requested and how many times they have been granted extraordinary fees. Private, assigned counsel are required to disclose such information and may be hesitant to apply for the fees as a result.

To summarize, Mr. Blake stated that he would like to see attorneys compensated for the hours spent on each case, as opposed to flat fees. He admonished that the flat fees do not reflect the work put in on a case and that they may encourage abuse. He also remarked that he has had trouble hiring quality attorneys at the defender's office because he is unable to offer them sufficient salaries, based on the fact that his office is not adequately compensated for the work they do under the flat fee system.

The next witness was **Arthur Tarnow**, an attorney who has practiced since 1965. His varied career commenced at the Court of Appeals, where he clerked for seven months. He then moved to the Legal Aid Defender's Office for a few years. He became the first full-time Director of the State Appellate Defender's Office, where he stayed until 1977. Next he went into private practice, with an emphasis on criminal appellate work. He has also taught criminal procedure at the University of Detroit since 1970 and has given guest lectures at various law schools. He is also active in the

Criminal Defenders Association of Michigan, and he chaired the Criminal Jury Instruction Committee in the mid-1970s. In addition, he is on the board of the Time For Justice, an agency which is funded by the Archdioceses of Detroit to provide representation for those incarcerated in the Wayne County Jail. He also was on the board of the Legal Aid Defender's Office from 1982 until 1987.

He testified that he does not accept criminal assigned work because he feels that he could not do quality appellate work on assigned counsel fees. He stated that, according to a hypothetical he created, a typical appeal, based on a three-day trial, would require the reading of 600 pages of trial court testimony. According to his calculations, the current flat fee system would pay the appellant attorney between $29.93 and $31.33 per hour and, after subtracting typical overhead costs of $400 per week, the attorney would be left with $19.05 to $20.00 per hour compensation. His hypothetical did not take into account the possible necessity of forensic reports, nor did he include the possible costs of filing motions in the trial court relating to the calling of witnesses. When asked what message the appellate flat fee schedule gives, he replied, "[i]t says to me there is no concern about quality of representation," instead he speculated that it is comparable to the Court of Appeals' influence to discourage oral arguments in an attempt to move their own dockets. In addition, he noted that the flat fees fail to compensate attorneys for important services, such as correspondence to clients, postage costs and xeroxing costs.

Mr. Tarnow summarized that the current flat fee schedule is inadequate to compensate assigned appellate counsel. He added that the new time table on appeals which has been recently reduced from 60 to 56 days also does nothing to better the quality of indigent appellate representation.

The next witness was **Judge David Kerwin**, who has been a Recorder's Court Judge in the city of Detroit since 1979. He had been a practicing attorney since 1972 and focused primarily on criminal defense work. He spent a few years at the Public Defender's Office, where he eventually became Deputy Defender and then went into private criminal practice for five years, spending most of his court time in the Recorder's Court or the Federal Sixth Circuit.

He testified that the current flat fee schedule "encourages mediocrity" and fails to adequately compensate attorneys representing indigent defendants. He stated that the experienced attorneys who were willing to accept capital case assignments are not willing any longer because the fees are inadequate. He added that flat fees may be appropriate in certain categories of crime, such as carrying a gun in a motor vehicle, because the number of witnesses will be small and the "amount of trial time if the matter goes to trial, is predictably limited." He also stated that pre-trial time is also predictable in this type of crime. However, in assaultive crimes and capital offenses, the issues, discovery and investigation are more complex and unpredictable, so the imposition of flat fees would not be appropriate.

He commented that the fee of $550 for carrying a concealed weapon is low, while the flat fee of $750 for capital offenses, other than first or second degree murder, is "completely unreasonable." He stated that he sees the "barest compliance with constitutional requirements" that a licensed attorney can do, and he added that the quality of representation continues to decline. He analogized the current flat fee schedule with the short term thinking exhibited by a motorist who, believing that he is frugal, refuses to pay $25 for an oil change today, but then ends up paying $600 in repairs as a result. He added that he is getting an increased number of cases remanded from the Court of Appeals on the issue of incompetency of counsel. He summarized, "[Y]ou pay now, or you pay later."

He also testified that the current fee schedule induces more guilty pleas and more bench trials. Under a flat rate system that does not compensate for the number of hours spent on cases, he sees and feels that he will continue to see junk that is labeled as motions and briefs. He reads briefs where the defendant's name is written over another defendant's name that has been whited out, and he sees references to cases that were overruled years ago. He stated that this sloppiness is getting worse. He also generalized that retained counsel provides higher quality representation to their clients than do assigned counsel for indigent defendants. He mentioned the attorneys that he refers to as "waivers and pleaders" who enable the system to operate on the high volume and low fees that are the hallmark of the current schedule, but he

added that the representation they perform is mediocre.

He warned that, under the present fee schedule, the more experienced defendants that have been through the system many times will not allow their attorneys to plead them guilty. However, the inexperienced, first offenders will be shoved through the system, even when they may have a triable case. Thus, the system fails to aid the people that may be most deserving of its protection and assistance. He stated that the trend is for attorneys that can make a living on retained clients to do just that, leaving mostly attorneys who are incapable of earning a living on the assigned counsel roster.

To summarize, Judge Kerwin testified that flat fees should only be applied in cases where the time and strategies needed are predictable. Capital offenses and murder cases should not be subjected to flat fee schedules because of their inherent unpredictability. He also stated that the constitutional right to counsel is threatened under the current flat fee schedule and that the quality of representation is declining. He fears that by not paying for adequate compensation now, the courts will pay even more later. He also questions the wisdom of the flat rate schedule because it may cause first-time offenders to miss their day in court on a triable case, while the experienced offenders may persuade their attorneys to go to trial.

The next witness was **James Neuhard**, who is currently the Director of the State Appellate Defender's Office. He was also President of the National Legal Aid and Defender's Association and

is currently in charge of the Standing Committee for Legal Aid and Indigent Defense, and he chaired the Bar Information Program. The Information Program responds to requests seeking information on how to improve legal services for indigents, and he has given seminars on this subject all over the country. He was also on the DASH Committee which reported on the crisis in the federal criminal justice system, focusing on the Sixth Amendment right to counsel.

He testified that the DASH report revealed that the war on drugs has caused an enlarged burden of criminal work on the system. He is also working with the American Bar Association to author a report on fees for those attorneys representing indigent defendants. He has helped organizations develop standards for counties that want to contract for indigent counsel.

He stated that one problem in Wayne County is that, in order for indigent defense attorneys to visit appellate clients in Marquette Prison, they must pay more in plane fare there than they receive in compensation. He also stated that indigent defense counsel fees in Wayne County comprises a smaller percentage of the county's budget than any other county in the state.

He testified that the trend around the country is toward state funding of indigent representation. He added that in West Virginia, the Supreme Court held that their Sixth Amendment right to counsel requires that assigned counsel be paid at least $40 per hour for out-of-court time and $60 an hour for in-court time spent on indigent defense.

He testified that, if the fees in Wayne County were increased,

the assigned attorneys would be able to do a better job, and that assigned attorneys should be able to hire investigators and experts.

To summarize, Mr. Neuhard stated that the trend on a nation-wide scale is to move toward state funding of assigned, indigent representation. He pointed out that attorneys defending indigents on appeal in Wayne County cannot afford to visit their defendants in far away prisons, such as Marquette. He also stated that the quality of indigent representation would increase if the fees more adequately compensated assigned counsel.

The next witness was **Cheryl Harper**, who is a court clerk in Recorder's Court with the attorney assignment unit. It is her duty to maintain a roster of available attorneys to accept assignments and to insure that they follow through and pick them up.

She testified that the assignment roster is one large list with distinguishing marks only for those attorneys who are qualified to take capital cases and for those attorneys who work in the public defender's office. She stated that there has never been a time when she was unable to find an attorney for any particular case. She also mentioned that she maintains a list of attorneys who will be on call for 24 hours to attend a line-up, if necessary. She stated that she has had no problem finding attorneys to serve at line-ups for $200 per day, and that she even has a substantial alternate list. She estimated that her office made 14,000 case assignments last year, and that their list of available attorneys consists of 660 names. She also noted that the

list of available attorneys has consistently expanded with each year. In addition, she informed the court that, in her estimation, approximately 400 of those 660 available attorneys are active, and around 100 of them are very active.

To summarize, Ms. Harper testified that the number of available attorneys for indigent assignments has consistently increased in Wayne County and she has never had any problem securing assigned counsel for line-ups.

The next witness was **Charles Lusby**, who is a criminal defense attorney, handling almost exclusively criminal cases. His office is in Detroit and he has often practiced in Recorder's Court.

He testified that, although he does a lot of criminal work, he does occasionally turn down assignments. He expressed a desire to further decrease the number of indigent assignments, along with retained cases, because he would like to slow down. He added that he gives indigent defendants the same quality representation that he provides for retained clients, but that he refuses to "hand-hold," meaning that he will not run down to the jail every time the client wants him to. He did state that he will do more running for retained, paying clients than indigents. He commented that the current flat fee schedule does not prevent him from doing anything that he believes should be done on a particular case. He emphasized that the current fee schedule does not impinge at all on an indigent defendant's Sixth Amendment right to counsel. He did, however, add that the fee schedule is "ridiculously low," and that it is one of the reasons he turns down assignments.

To summarize, Mr. Lusby testified that he provides quality representation for indigent defendants, although he will not run to visit them each time they call, as he will for retained clients. In addition, he stated that even though the current flat fees are "ridiculously low," indigent defendants are not in any way denied their Sixth Amendment rights to counsel.

The next witness was **Vernon Rayford**, who is currently a law librarian for the Detroit Recorder's Court, and has been in that position since 1974. Prior to that, he worked in the Wayne State Law Library and the Detroit Bar Association Library. He also gained his JD degree from Wayne State University.

He testified that the Recorder's Court library is open to the lawyers who practice there during business hours, including assigned counsel. He opined that the library has available virtually all the inormation that is necessary to work in the court, and that the librarians will provide assistance to any attorney requesting it. He estimated that approximately 15-20% of the 660 eligible attorneys on the assignment roster actually use the library, and that 10% of them frequent the library on a regular basis.

To summarize, Mr. Rayford stated that the Recorder's Court Library is stocked with all the information practicing attorneys would need, but that only around 15% of the attorneys accepting assignments from the court actually use the facilities.

The next witness was **Myzell Sowell**, an attorney who has practiced since 1952. He is a general practitioner who does more

criminal work than civil. Prior to going into private practice, he worked at the State Defender's Office for 12 years. He was Deputy Defender and ultimately became Director of that office. He added that around 40-50% of his current practice is devoted to indigent representation.

He testified that he has evaluated defender systems around the country, including Atlanta, Boston and Philadelphia. He found those systems to have been grossly understaffed, the attorneys grossly underpaid, and a lack of continuity of representation. By comparison, he thinks that the Wayne County defender's office is "one of the most effective defender operations in the country." He added that he accepts all kinds of assignments from the Recorder's Court, adding up to about 45% of his total income. He also stated that he took most of them to trial. In addition, he believes that the private assigned bar is "unusually well qualified." Although he stated that he has not noticed any material difference in his own income, he does not like the concept of flat rates because they may encourage pleas. He also testified that the competition between public defender's offices and private assigned counsel is healthy, and is preferential to a system comprised solely of public defenders.

To summarize, Mr. Sowell testified that the quality of both private assigned and public defender representation is excellent. On the other hand, he did state that flat rates may encourage guilty pleas, although his own quality of representation has not been affected.

The next witness was **Jeffrey Edison**, an attorney who has practiced since 1976. He has been in a private firm since 1980, with a focus on criminal defense work. He also spent some time in the Defender's Office of the Legal Aid and Defender Association.

He testified that he rarely refuses criminal assignments, and accepts all varities of cases from the Recorder's Court Judges. He estimated that he has litigated around 200 jury trials. He stated that he has also worked with the Criminal Advocacy Program where he conducted lectures and assumed a position on the Board of Directors. He has also lectured before the Criminal Defense Attorneys of Michigan.

He stated that he represents each of his clients, indigent or affluent, to the best of his ability. He added that he always advises his clients of their rights and that some choose to plead guilty. He stated that the fee schedule would not dissuade him from doing his best in every case. He also commented that he has never denied any defendant his Sixth Amendment rights, nor does he think the flat fee system does. He did state, however, that the combination of low fees and a flat rate would be unfair, because attorneys are not compensated for what they do. He added that he has never been denied extraordinary fees.

To summarize, Mr. Edison testified that the flat fee system has not affected the quality of his representation and that he continues to do his best for each client, regardless of their economic status. He stated that the flat fee system does not deny defendants their Sixth Amendment rights to counsel, but that an

inadequately low flat rate would be inequitable.

The next witness was **Donald Tippman**, a research consultant who specializes in statistical anlysis of criminal justice matters. He does most of his work for the Recorder's Court. He also worked for the court as a probation officer for four years. He has an education degree from Wayne State, a master's of arts from the University of Detroit, and a liberal arts degree from Loyola of Chicago. He has done research on the effect of the switch to a flat fee schedule in Wayne County in 1988.

He testified that the average fee paid per case was $634.50 in 1988 and $627.34 in 1989. The average was $628.99 in 1987. He added that the increase in probation sentences in 1989 was insignificant statistically. He also stated that the overall amount of money paid for attorney fees increased in 1989 by 15.1% as compared to 1988. He speculated that the change may have occurred due to the fact that more vouchers were submitted during 1989, and due to the corresponding fact that the number of attorneys turning vouchers in increased by 11.5% in 1989. He noted that, in 1988, 33.5% pled guilty and in 1989, 34.5% pled guilty, resulting in a 5% increase. He stated that this change was also statistically insignificant.

To summarize, Mr. Tippman testified that there has been no significant statistical change in the amount of compensation awarded assigned counsel, nor has there been a significant difference in the number of guilty pleas entered since the move from an hourly fee system to the flat fee schedule.

Appearing as the first witness for the county of Wayne was **Mary Lannoye**, who is budget director for the county. Ms. Lannoye has a B.A. in political science and a master's of public administration from Michigan State University. She worked eight years in Ingham County, holding several positions as supervisor of the budget division of that county, administrator of the prosecutor's office, and deputy controller.

Her job in Wayne County is preparation of the budget and insuring that there are funds to meet the budget. The total budget of the county is one and-a-half billion dollars. Much of those funds are in special accounts, such as the airport and health department. The general fund was $273 million in 1990. It is from that fund the prosecutor's and court costs are met. This includes the fees paid to attorneys for representation of indigent defendants. In the year 1990, there was budgeted $9.2 million for circuit and Recorder's Court and $6.6 million to the probate court for indigent representation. The general fund is indebted to the state in about the sum of $200 million borrowed in 1987 to fund the deficit which had accrued to that time. The largest contributor to the deficit was the indigent hospital program which was running $15 to $17 million a year in the red. Child care for abused children was also several million dollars over budget. This item was budgeted at $35 million but ran over $40 million. The county jail is running $2 million over budget.

In 1987, the county paid $12.2 million for indigent defense. In 1988, the figure was $14.6 million and the figure is projected

to be $16.7 million in 1989. The projection for 1990 was $15.8 million. These figures include probate court figures. The expenses of the prosecutor's office in 1987 was $10.5 million. In 1989, it was $12.9 million. Federal grants and drug forfeiture moneys raise the total to about $16.7 million spent on prosecution. Ms. Lannoye testified that the County of Wayne is reimbursed $3.5 million for judicial salaries and $4.4 million for court clerks.

She testified that, if a public defender's office were installed, it would require rental of several hundred offices which is a cost the prosecutors would not have. Also, she admitted on examination that a prosecutor could prosecute a number of defendants, whereas an attorney might have to be assigned for each defendant, thereby requiring a larger staff of attorneys for the defense.

The next witness for Wayne County was **Bryan Amann**, who is employed as the Assistant County Executive for Criminal Justice. Mr. Amann has held that position since December of 1988. He is an attorney admitted to the bar in 1984. His duties encompass all the courts operating within the county and includes physical arrangements, fundings, numbers of courts and judges. The providing of funding for counsel for the indigent defendants is one of his responsibilities. The court budget he administers amounted to $52 million in 1989. While there are 46 employees of the county working with the County Clerk's office, there is another 55 employees paid for by the state for which the county only administers the fringe factors, which amount to $300 thousand a

year. Other costs carried by the county is the diversion program for first-time offenders, building maintenance and remodeling for housing of the courts.

When reorganization was accomplished, the county lost the use of court fees which are sent to the state. Moneys needed to operate the court must be voted upon by the legislature. The county must come up with the funds for payment for counsel for the indigent but the fees are decided by the Chief Judges.

Mr. Amann noted that the county budget is approximately $13 million for prosecution, while the budget for indigent defense is about $16 million. The requests for money for indigent defense is never questioned, but the prosecutor's budget is closely held and supervised.

His view is that the quality of criminal defense has small relationship to the fee and he would support a full public defender system so that the quality could be supervised and that the quantity could be controlled to that necessary for adequate representation.

Mr. Amann's position is that the county finances are fragile and that simply raising fees under the present system would not be an answer and could trigger a penalty which would put the county in receivership. It was Mr. Amann's testimony that the county had no real input into the current fee schedule and it was the product of the Chief Judges attempting to work out an equitable system that accomplished the goal of obtaining adequate representation on a basis equitable to everyone.

Mr. Amann testified that, because of several crises that have demanded his attention since he took the position of Assistant County Administrator, he had not had time to thoroughly investigate the question of indigent representation and indicated some surprise at the filing of this lawsuit which had not been discussed with him. He had made superficial investigation of a total public defender program and he seemed to feel that such a program might have a possibility as a solution to the problems in the current system.

His general view is that the current indigent defense system is satisfactory from a fiscal point of view, but any addition to the cost of the system could upset the fragile balance of the Wayne County budget.

The next witness was **George Gish**, Clerk of the Court and Administrator of the Recorder's Court. Mr. Gish graduated from the University of Detroit with a 4.0 grade average. He started work in Recorder's Court in 1964. His background was in probation. He is an expert on court management and has consulted in many courts in America and abroad. His background as a consultant, teacher, panelist and author is distinguished and extensive. He was the author of the current fee schedule in litigation.

He testified on several occasions that his chief concern was court delay in the development of the 1988 fee schedule and not reduction of cost. Mr. Gish described the situation which in 1976 caused a virtual collapse of the Recorder's Court which had a backlog of 6,331 cases when the Supreme Court assigned Judge T.

John Lesinski as judicial administrator and established a branch of the Supreme Court Administrator's Office for docket control. All of the available jail space was filled with persons awaiting trial.

Currently, because of steps that were taken at that time, the National Center for State Courts has recognized the Recorder's Court as one of the three most efficient courts in the United States. He testified that there are 633 attorneys on the list of attorneys available for defense work and 120 attorneys on the appellate assigned counsel list.

Studies conducted of attorneys fees disclose that, prior to the change in fee schedule, the average payment to attorneys representing indigent defendants was $634.50. After the flat fee schedule was introduced, it only caused a drop of $7.13 to $627.34.

The fixed fee schedule was tied to the sentencing guidelines. His studies indicate no significant changes in numbers of motions brought or guilty pleas offered since the advent of the fixed fee schedule. Most recently, pleas on arraignment have risen from 34% to 41%.

Mr. Gish testified that the court requires 300 to 55 jurors a day, and the cost of jurors is about $1 million a year. They have been able to more closely predict the number of jurors needed and, as a by-product, have lessened the inconvenience to jurors.

The trial rate prior to the establishment of the flat fee schedule was 25%. Since the advent of the new reimbursement schedule, there has been an increase of guilty pleas of 12% and

dismissals have increased by 25.5%.

The next witness was **Judge Richard Kaufman**, the Chief Judge of the Wayne County circuit bench. He has served in that position since the spring of 1986, and he has also been Executive Chief Judge of the combined force, Recorder's Court and Wayne County Circuit Court, since that time.

He testified that, since 1987, the criminal dockets of the Recorder's Court and the Wayne County Circuit Court have been combined into one system. The judge stated that the flat fee schedule was developed in order to help combat the problem of a lack of jail space in Wayne County. He referred to a study that the county ordered which indicated that one of the causes of jail overcrowding was the lengthy time involved in processing criminal cases in Wayne County. The study's conclusion showed that if the docket could be reduced to the point where it would take 90 days to bring a criminal case to the court, as opposed to the 120 days time necessary when the study was conducted, the county could reduce the demand for jail beds by 742 beds. The study further showed the drastic savings that docket reduction would effectuate by indicating that, for each day the court could reduce the docket, the court would save the need for 456 jail beds.

The judge noted that the overcrowding was so chronic that at one time he was forced to decline admittance to the jail to people charged with armed robbery.

He also stated that one way to reduce the docket, and thus, effect a remedy for jail overcrowding, is to ensure that guilty

pleas be entered early on, if they were going to be entered at all. He testified that the flat fee schedule was to provide the necessary incentive to encourage criminal attorneys to examine a case sooner, rather than later on during the criminal process. He added that the purpose of the flat fee schedule was and is not to encourage cases that should be tried to be pled; rather, the purpose was and is to encourage those cases that should be pled to be pled earlier on in the process. He stated that the flat fee schedule has accomplished that goal. He did state, however, that the prosecutor's plea policies are even more important in controlling how early pleas are entered.

He also felt that the flat fee schedule does not in any way undermine the right of indigent defendants to have the assistance of counsel, nor has he ever seen an indigent defendant claim that they were denied adequate representation because of the appointed counsel compensation schedule. He testified that, in his opinion, the quality of indigent representation in Wayne County exceeds the required standard.

The judge expressed that he, and all of the judges with whom he has spoken, have plenty of attorneys to appoint to represent indigent defendants under the flat fee schedule. He also defended the flat fee schedule by noting that the schedule is presumptive but does provide an exception for those cases in which the flat fee would be unreasonable, through the offer of a petition for extraordinary fees. He testified that the petitions are not "cavalierly rejected", he stated that each petition is treated

seriously and backed up by sound reasons for denial or grant. He related that out of the 29 total requests for extraordinary fees in 1989, 23 of them were granted. He also explained that when an attorney petitions for extraordinary fees, the judges look at all the assigned cases an attorney has had in that year to determine what fees is reasonable for the particular case in which extraordinary fees are requested, to avoid an attorney getting overpaid in other cases and seeking extra fees in the case at bar.

In summary, Judge Kaufman testified that the flat fee schedule was created not to encourage pleas to be entered in cases that would normally go to trial, but to encourage pleas to be entered early on in the process, in cases where pleas were going to be entered anyway. He stated the chronic need to remedy the overcrowded status of the county jail, and added that docket reduction, through the entering of guilty pleas at an early stge, significantly reduces the problem of jail overcrowding. He also added tht the provision for extraordinary fees provides assurance that the fees paid to attorneys representing indigent defendants will be reasonable. He also testified tht the quality of indigent representation is more than adequate.

The next witness was **Jack R. Dodge**, who has been Wayne County's Chief Financial Officer since 1987. His former occupations included, in reverse chronological order: Chief Financial Officer for the city of Livonia; financial officer for a division of McDonald-Douglas; and CPA with the firm of Haskins and Sells.

He testified that, as Chief Financial Officer of Wayne County, it is his duty to head the Department of Management and Budget, and to oversee the various departments under that department, such as accounting, budgeting, risk management, assessments, grants and contracts.

He stated that when he entered office in 1987, Wayne County had a deficit of $190 to $200 million. Thus, he had to borrow a sum of $103 million from the State Emergency Loan Board. So, he has to worry about repaying state loans as well as providing for a daily operating budget for the county. He added that if the county does not balance the budget, the state imposes a 10% penalty on the emergency loan, which has a snowball effect on the budget, causing the county to become more deeply indebted. Luckily, by 1989, the county showed a balanced budget, and did not get penalized. Mr. Dodge testified that Wayne County could probably expect to show a balanced budget in 1990, although he predicted that indigent attorney fees would exceed the amount budgeted for them. He noted that the county's surplus in 1989 was $433,000.00, as compared to the $160 million general fund budget, so the surplus does not provide a whole lot of leeway. He also stressed that, even if the total county budget was exceeded by a mere $10 in a year, the state would impose a 10% penalty on the emergency loan. Thus, due to the severity of the consequences, he added that anticipating luck in balancing the budget is not sufficient.

To summarize, Mr. Dodge testified that the Wayne County budget must be balanced each year, and that each year's expenditures must

not exceed the budgetary allowance or the county will be severely penalized by the state, and this penalty will have a snowball effect, causing the county to become helplessly indebted.

The next witness was **Judge Dalton A. Roberson**, who is Chief Judge of the Recorder's Court, and who has succeeded Judge Kaufman as Executive Chief Judge of the Third Judicial Circuit. He has been a Recorder's Court Judge for 16 years. Prior to that, he practiced with the firm of Harrison, Friedman and Roberson, which engaged in the general practice of law, in which 66 to 90 percent of their work was done in Recorder's Court.

He testified that docket management has been a primary concern of the court because of the docket's relation to jail population. He also stated that the flat fee schedule was created in part to combat the growing docket problem, in order to attempt to expedite cases and to get pleas out of the system at the earliest possible time. He stated that the effort is to effect pleas at the arraignment on the information, because if a plea is entered at that time, no docket time is ever blocked off for that case. If pleas are entered at a later date, time is wasted because trial dates are set for trials that never occur. He also mentioned the importance of encouraging prosecutors to offer pleas early on in the process, to aid in docket control.

He noted that the time for binding a defendant over has decreased from taking 21 days for jails and 14 days for non-jails, to 14 days for jails and 7 days for non-jails, due to docket management. He related the fact that defense attorneys now have

the benefit of automatic discovery, which allows them to have access to a lot of information before arraignment, that attorneys did not have in the past.

He added that an indigent defendant's constitutional rights are protected under the current flat fee schedule and that the attorneys accepting indigent assignments are appropriately qualified and are of a higher caliber than when he was practicing.

To conclude, Judge Roberson testified that, in order to control jail population, the court docket must also be controlled. He noted that the flat fee schedule helps to effect pleas at the arraignment on the information, which is the goal of docket management. In addition, he noted that assigned counsel now have much more information available to them prior to the arraignment because of the current practice of automatic discovery. He also stated that the Sixth Amendment right to counsel is protected under the current flat fee schedule and that the quality of indigent representation has increased over the years.

## WITNESSES
(In order of their appearance)

*(References are to transcripts of the testimony which are filed with the Supreme Court, but only summarized in this report.)*

Honorable Justin Ravitz (Vol 1, 32-111)
Honorable Clarice Jobes (Vol 1, 112-154)
Joan Morgan (Vol 1, 154-202)
Patricia Slomski (Vol 1, 202-226)
Gerald Lorence (Vol 1, 227-242; Vol 2, 190-218; Vol 4, 156-229)
Dr. Lawrence Stiffman (Vol 2, 4-86)
Thomas Loeb (Vol 2, 86-162)
Kenneth Mogill (Vol 2, 162-190)
Robert Spangenberg (Vol 3, 5-106)
William Daniel (Vol 3, 110-155)
James Howarth (Vol 3, 155-214)
Gerald Evelyn (Vol 3, 215-228; Vol 4, 6-40)
Samuel Churikian (Vol 4, 40-114)
Honorable Edward Thomas (Vol 4, 120-153)
Barbara Levine (Vol 5, 5-18; Vol 6, 3-91; Vol 7, 34-73)
Elizabeth Jacobs (Vol 5, 18-65)
Benjamin Blake (Vol 5, 66-152)
Arthur Tarnow (Vol 5, 152-183)
Honorable David Kerwin (Vol 6, 92-173)
James Neuhard (Vol 7, 73-141)
Cheryl Harper (Vol 8, 8-37)
Charles Lusby (Vol 8, 38-57)
Vernon Rayford (Vol 8, 58-67)
Myzell Sowell (Vol 8, 68-120)
Jeffery Edison (Vol 8, 121-158)
Dr. Donald Tippman (Vol 8, 159-213)
Mary Lannoye (Vol 9, 14-89; Vol 10, 5-24)
Bryan Amann (Vol 9, 90-155; Vol 10, 24-77)
George Gish (Vol 10, 80-228; Vol 11, 3-83)
Honorable Richard Kaufman (Vol 11, 84-191; Vol 12, 3-20)
Jack R. Dodge (Vol 12, 23-48)
Honorable Dalton A. Roberson (Vol 12, 49-162)

## BIOGRAPHICAL INFORMATION OF WITNESSES

Each of the attorneys was asked to provide biographical information on the witnesses presented. The response was not unanimous. However, those responses that were received are reproduced and presented in alphabetical order.

# CURRICULUM VITAE

BRYAN L. AMANN
37600 Hillcrest Dr.
Wayne, Michigan 48184
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EDUCATION:

Juris Doctor, with Honors, May, 1984, University of Detroit, with two years of study (1983, 1984) at Georgetown University Law Center.

Bachelor of Arts, Political Science, May, 1979, University of Michigan.

High School Diploma, May, 1975, Wayne-Westland Schools, John Glenn High School.

PROFESSIONAL EXPERIENCE:

Chief Deputy County Clerk, 1986 - ~~present~~ 12/88 under Jim Killeen. Department Head for County General Fund operation (Marriages, Birth and Death Certificates). Also co-managed 3rd Circuit Court since County Clerk is Clerk of Court. Supervised 146 employees in County General Fund, Court and Election Division.

Currently - Assistant County Executive for Criminal Justice - 12/88 - present

Attorney, November, 1984 to 1986
Miller, Cohen, Martens & Ice, P. C.,
Detroit, Michigan.

Staff, Congressman William D. Ford,
June, 1982 to November, 1984.
Worked in Wayne, Michigan, for a one year period, and in Washington, D.C., for the remainder.

Staff-Assistant, 1979 - 1982, Michigan UAW-CAP Department, Sam Fishman, Director, Solidarity House, Detroit, Michigan.

PROFESSIONAL ORGANIZATIONS:

Michigan Bar Association, 1984 - present

Detroit Bar Association, 1984, 1985

Michigan Trial Lawyers Association, 1984, 1985

United Auto Workers, Local 900, Wayne, Michigan, 1976 - 1982.

COMMUNITY ORGANIZATIONS:

Wayne Lions Club, 1985 - Present
1st Vice-President

Metro-Wayne Democratic Club, 1984, 1985

15th Congressional District Democratic Organization, 1978 - Present (currently Chairman)

Michigan Democratic Party, 1978 - Present

First Baptist Church of Wayne, Member, 1965 - 1982

First Congregational Church of Wayne, attended 1984, 1985, Member, Board of Trustees 1986 - Present (currently Vice Chairman).

Additional Work Experience:

Ford Motor Company, Michigan Truck Plant, Wayne, Michigan, 1976 - 1979, Assemblyman, part-time and full time.

Personal:

Date of Birth: November 19, 1957
Married to Mary V. Henke, August, 1982
Daughters: Lindsay Nicole, born July 5, 1985
Lauren Ashley, born May 27, 1988

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PERSONAL INFORMATION

Age: 58

Marital Status: Widower

EDUCATION

University of Detroit
Evening School of Commerce and Finance
Bachelor of Business Administration Degree
June, 1963

Wayne State University Law School
Juris Doctor Degree (Cum Laude)
June, 1967

EMPLOYMENT

Legal Aid and Defender
Association of Detroit,
State Defender Division
Detroit, Michigan

Chief Defender - May, 1989 - Present

Bolden and Blake, P.C.
Detroit, Michigan

Attorney - Civil and Criminal Practice
1970 - 1989

Patmon, Young & Kirk, P.C.
Detroit, Michigan 48226

Trial Attorney
1969 - 1970

Plunkett, Cooney, Rutt, Waters,
Stanczyk & Pedersen, P.C.
Detroit, Michigan

Trial Attorney
1968 - 1969

Michigan Court of Appeals
Detroit, Michigan

Law Clerk to Chief Judge
1967 - 1968

Conductron Corporation
(KMS Industries)
Ann Arbor, Michigan

Assistant Manager of Contracts
1965 - 1967

Department of Defense
Defense Supply Agency
Detroit, Michigan

Administrating Contracting Officer
1966 - 1967

United States Air Force
Detroit Contract Management District
Detroit, Michigan

Contracts Administrator/Budget Analyst
1960 - 1966

PROSESSIONAL AFFILIATIONS

State Bar of Michigan
Member of Negligence Council - 3 yrs.

Detroit Bar Association

Wolverine Bar Association

Michigan Trial Lawyers Association
Member of Executive Board

SAMUEL J. CHURIKIAN

---

| | |
|---|---|
| LEGAL EDUCATION | Wayne State University Law School<br>Detroit, Michigan<br>Degree: J.D. 1978 |
| UNDERGRADUATE EDUCATION | Wayne State University<br>Detroit, Michigan<br>Degree: B.A., Sociology, 1974 with Distinction |
| EXPERIENCE | |
| 1986 to Present | Chief Deputy Defender<br>State Defender Office<br>462 Gratiot Avenue<br>Detroit, Michigan 48226 |
| November, 1988 to May, 1989 | Acting Chief Defender<br>State Defender Office |
| 1982 to 1986 | Coordinating Attorney-Wayne County<br>Circuit Court Division<br>State Defender Office |
| May 1980 to 1982 | Staff Attorney<br>State Defender Office |
| July 1978 to May, 1980 | Staff Attorney<br>Misdemeanor Defender Office for Indigents Inc.<br>1441 St. Antoine, Room G-2B<br>Detroit, Michigan 48226 |
| June 1978 to February 1979 | Research Assistant and Aid<br>Michigan Environmental Review Board |
| May 1978 to July 1978 | Student Attorney<br>Wayne State University<br>Free Legal Aid Clinic |

BAR AND OTHER AFFILIATIONS

- Member of State Bar of Michigan Criminal Law Section
- Admitted to Federal Bar
- Member of Criminal Defense Attorneys of Michigan (CDAM), Board of Directors
- Member of National Association of Criminal Defense Lawyers (NACDL)
- Founding member of Armenian American Bar Assoc., Former member of Board of Directors
- Member of Women Lawyers Assoc. of Michigan

ADDITIONAL PROFESSIONAL ACCOMPLISHMENTS

- Contributor to Defender Trial Book
- Contributor to Criminal Advocacy Program (C.A.P.) 1984 and 1985 Handbooks
- Speaker and Group Leader - Wayne County Criminal Advocacy Program
- Member of Wayne County Bench/Bar Committee on Delay Reduction - Criminal Task Force
- Speaker - Advanced Criminal Defense Practice Conference - (CDAM)

COMMUNITY AFFILIATIONS

- Founder's Society, Detroit Institute of Arts
- NAACP - Life Sustaining Member
- Detroit Zoological Society
- Friends of Belle Isle

**RESUME**

**JEFFREY L. EDISON**

BUSINESS: CURTIS & EDISON
One Kennedy Square Bldg., Ste. 2330
Detroit, Michigan 48226
(313) 964-5755

RESIDENCE: 15770 Ashton
Detroit, Michigan 48223
(313) 272-4580

MARRIED: Janette, wife
Children: Jamal Malik,
Jefani Makia
Jumoke Mzee

EDUCATION: Mumford High School, 1969

5/1973 Howard University, Washington, D.C.
B.A., Cum Laude

12/1975 Wayne State University Law School
Juris Doctorate

EMPLOYMENT:

5/72 - 12/75 Student Attorney
Model Neighborhood Drug Abuse Clinic

12/75 - 5/76 Law Clerk
Defender's Office

5/76 - 4/80 Trial Attorney
Defender's Office

5/80 - Present Private Practice

BAR MEMBERSHIP:

Criminal Defense Attorneys of Michigan
Federal District Court, Eastern District of Michigan

Michigan Bar Association
National Conference of Black Lawyers
United States Court of Appeals, Second Circuit
United States Court of Appeals, Sixth Circuit
United States Supreme Court Bar

BAR ACTIVITIES:

National Co-Chairperson, National Conference of Black lawyers, 1988 - Present

Past President, Michigan Chapter, National Conference of Black Lawyers

Past Board of Director, National Conference of Black Lawyers

Board of Directors, Detroit/Wayne County Criminal Advocacy Program

LECTURES/TRAINING SEMINARS:

Lectured on various aspects of criminal trial advocacy and skills development:

Criminal Defense Attorneys of Michigan
Detroit/Wayne County Criminal Advocacy Program
National Conference of Black Lawyers

# VITA

| | |
|---|---|
| **NAME** | GEORGE L. GISH |
| **ADDRESS** | 1441 St. Antoine, Detroit, Michigan 48226 |
| **DATE OF BIRTH** | March 13, 1940 |
| **EDUCATION** | Western Michigan University-Kalamazoo, Michigan<br>B.A. (Major: Sociology; Minor: English) 1964 |
| | University of Detroit-Detroit, Michigan<br>M.A. (Corrections Administration) 1971 |
| | Wayne State University-Detroit, Michigan<br>20 Hours Post-Master's courses |
| | Institute for Court Management of the National Center for State Courts. Fellow of the Institute. |
| **SCHOLARSHIPS & AWARDS** | University of Michigan-Regents Alumi Scholarship |
| | University of Detroit-High Pass on Master's Essay |
| | University of Detroit-4.0 grade point average |
| **EMPLOYMENT & MANAGEMENT EXPERIENCE** | December 3, 1979 - Present: Court Administrator/Clerk, Recorder's Court |
| | February, 1978 - December, 1979: Director of Probation, Recorder's Court |
| | 1974 - January, 1978: Deputy Director of Probation, Recorder's Court |
| | March, 1972 - 1974: Director, Recorder's Court Drug Program |
| | August, 1971 - February, 1972: Assistant Director, Recorder's Court Drug Program |
| | May, 1971 - July, 1971: Probation Officer, Recorder's Court Drug Program |

**EMPLOYMENT & MANAGEMENT EXPERIENCE (continued)**

June, 1969 - April, 1971: Probation Officer, Men's Felony Division, Recorder's Court Probation Department

December, 1964 - May, 1969: Probation Officer, Youth Division, Recorder's Court Probation Department

August, 1964 - November, 1964: Burroughs Corporation, Purchasing Division

**TEACHING EXPERIENCE**

ICM Caseflow Management Seminars
ICM Seminar - Improving the Interactions of the Justice & Mental Health Systems
Satellite T.V. - Delay Reduction
IBM Seminar for Justice Administrators
Michigan Judicial Institute Faculty - Seminar on New Rules of Criminal Procedure
NACM - Seminar on Grants; Seminar on Technology in the Courts

**CONSULTING**

Boston - Court Delay & Jail Population

Ontario - Court Delay

Phildelphia - Court Delay & Jail Population

Chicago - Court Delay

Rockford, Maryland - Court Delay

New Jersey - Court Delay - Four Jurisdictions
Special Seminars for Visitors from other states & countries

**CERTIFICATES**

Affirmative Action Leadership Executive Training Session

Certified Social Worker, State of Michigan

Substance Abuse Plan for Detroit & Wayne County

**CERTIFICATES (continued)**

Drug Abuse & Alcoholism State Plan for Michigan

New Systems in Law Enforcement-New York University

Records Management

Managing Diminishing Fiscal Resources, National Leadership Institute

Managing Court Delay

American Arbitration Association Contract Administration & Grievance Handling

Management in the Courts & Justice Environment

Detroit-Wayne County Criminal Advocacy Program

Jury Management

Victim-Witness Programs for Courts

Juvenile Justice Management

**MEMBERSHIPS**

Michigan Court Administrators Association

National Association of Trial Court Administrators

Search Group, Inc.

**BOARDS - PAST & PRESENT**

Detroit Area Chapter of National Council on Alcoholism

Project Start; Project Transition; ARISE

Detroit/Wayne County Criminal Advocacy Program

Neighborhood Services Department Drug Treatment Program

**COUNCILS/ COMMITTEES - PAST & PRESENT**

Mayor's Manpower Planning Council Technical Advisory Committee

Michigan Corrections Association Program Committee

Southeast Michigan Substance Abuse Council

Detroit-Wayne County Criminal Justice System Advisory Council

Detroit Hearings Coordinating Council

Wayne County Prison Needs

**GRANTS**

Recorder's Court Drug Program

Pre-Trial Diversion Program

Male Halfway House

Female Halfway House

T.A.S.C.

G.E.D. & Job Development

Welfare Fraud

Differentiated Case Mangement

Computerized Microfilm System

Community Restitution

P.R.O.B. (assisted)

RESUME

ELIZABETH L. JACOBS
One Kennedy Square, Suite 1930
Detroit, Michigan 48226
(313) 962-4090

EDUCATION:

| | |
|---|---|
| University of Michigan | 1966-1970 |
| Wayne State University Law School | 1971-1974 |

Admitted to practice - November 1, 1974

PROFESSIONAL:

| | |
|---|---|
| Sole Practitioner | 1981 to present |
| Bove, McKnight & Jacobs | 1979 - 1981 |
| Legal Aid & Defenders | 1974 - 1979 |

COMMITTEES:

| | |
|---|---|
| State Bar Criminal Jury Instruction Committee | 1985 to present |
| Wayne County Criminal Advocacy Program Board of Director | 1987 to present |

LECTURER:

Wayne County Criminal Advocacy Program
Michigan Appellate Assigned Counsel System

PUBLISHED:

Criminal Law Survey Wayne State University Law Review - 1975

Defender Office Notebook (compiled the first edition; now sold statewide through the State Appellate Defender Office) - 1974


HONORABLE RICHARD C. KAUFMAN
WAYNE COUNTY CIRCUIT COURT
701 CITY-COUNTY BUILDING
DETROIT, MI 48226

| | |
|---|---|
| Personal: | Married to Elaine J. Lenart. Two sons, Sean T. Kaufman, born 5/4/81 and Samuel P. Kaufman, born 3/13/86. |
| Educational Background: | Wayne State University Law School, Juris Doctor, graduated 1977, cum laude<br><br>University of Michigan, Bachelor of Arts, Philosophy, graduated 1973, cum laude |
| Legal and Professional Experience | -Re-elected Chief Judge of Wayne County Circuit Court in September '87 and '89<br>-Elected Executive Chief Judge of Wayne Circuit & Recorder's Court in March '87<br>-Member of Supreme Court Medical Malpractice Mediation Committee March '87<br>-Member of Executive Committee of Michigan Judges Association January '87<br>-Elected Chief Judge of Wayne County Circuit Court in March of 1986<br>-Elected to Wayne County Circuit Court starting January, 1981<br>-Member of Executive Committee of Wayne County Circuit Court<br>-Chairman of Criminal Consolidation Committee of Wayne Circuit/Recorder's Court<br>-Chairman of the subcommittee investigating judges' exchanges of courtrooms, Wayne County Circuit Court<br>-Member of the Rules Committee of the Michigan Judges' Association<br>-Presiding Judge over Wayne County Citizens Grand Jury, June 1983-May 1984<br>-Presiding Judge of the Criminal Division of Wayne County Circuit Court, July 1984-December 1984<br>-Member of Wayne County Circuit Court-Detroit Bar Association Committee on Proposed Michigan Court Rules<br>-Associate and partner in the law firm of Colista, Green, Green, and Adams, Renaissance Center, Detroit, Michigan<br>-Law clerk to the Wayne County Organized Crime Task Force |
| Publications: | -"What Every Lawyer Should Know About Anti-Trust But Didn't Know He Was Supposed To Ask" Detroit Lawyer<br>-"GCR 522: "To Enter Or Not To Enter" Detroit Lawyer September-October 1981 |

-"Money Damages for Personal Injuries: What's It All About?" For The Defense

Seminars and Speeches

-Speaker at Detroit Wayne County Criminal Advocacy Program at session concerning sentencing, 11/18/83
-MTLA Premises Liability Seminar on Judicial Perspective in a Civil Case, May, 1983
-Keynote Speech to New Admittees to State Bar, May, 1983
-MTLA Seminar on Complex Litigation, June, 1984
-Participant and Speaker in numerous other seminars and lectures

## MARY A. LANNOYE

Mary A. Lannoye has been employed as the Budget Director for Wayne County since January, 1987. Prior to accepting her current position, she was employed by Ingham County for almost eight years. During her tenure with Ingham County, she held a number of different positions including: Deputy Controller (1983-1987); Prosecuting Attorney Administrator (1982-83); and the Supervisor of Financial Analysis (1979-82). Ms. Lannoye holds a Bachelor of Arts Degree in Political Science and a Master of Public Administration Degree both from Michigan State University.

BARBARA R. LEVINE

Residence:

9685 Looking Glass Brook
Grand Ledge, Michigan 48837
(517) 626-6984

Business:

Michigan Appellate Assigned
Counsel System (MAACS)
Hollister Building, Ste. 365
106 West Allegan
Lansing, Michigan 48913
(517) 373-8002

EDUCATION

| | |
|---|---|
| 1974 | Juris Doctor<br>University of Michigan Law School |
| 1968 | Bachelor of Arts<br>University of Michigan |

EMPLOYMENT

| | |
|---|---|
| 1985 to Present | Administrator<br>**Michigan Appellate Assigned Counsel System**<br>Lansing, Michigan<br><br>**Agency is responsible for qualifying and training attorneys eligible to handle indigent felony appeals, monitoring the case assignment process, enforcing compliance with attorney performance standards, and collecting data.** |
| 1984 to 1985 | Commissioner<br>**Michigan Supreme Court, Lansing, Michigan**<br><br>**Reviewed applications for leave to appeal in civil and criminal cases, requests for review by indigent criminal defendants, and related pleadings. Prepared reports assessing the claims of the parties and recommending disposition.** |
| 1980 to 1983 | Assistant Professor<br>Director, Criminal Defender and Juvenile Guardian Clinics<br>**University of Toledo College of Law, Toledo, Ohio**<br><br>**Taught Criminal Procedure I and II, Constitutional Law I and II. Directed clinical programs in which students represented criminal defendants or served as guardians ad litem for neglected, dependent and abused children. Developed simulation course in criminal defense representation.** |

1979 to 1980 — Adjunct Assistant Professor
Wayne State University Law School
Detroit, Michigan

Taught Criminal Procedure I and II.

1979 — Reporter
Special Advisory Committee on Assigned Counsel Standards

Drafted proposals and commentary for committee charged with formulating an administrative scheme for appointment of and minimum performance standards to be met by counsel assigned to represent indigent felony defendants on appeal.

1974 to 1979 — Assistant Defender
State Appellate Defender Office
Detroit, Michigan

Represented approximately 150 indigent clients convicted of felonies on appeal to Michigan Court of Appeals and/or Michigan Supreme Court.

1977 to 1978 — Lecturer
University of Michigan Law School
Ann Arbor, Michigan

Taught Criminal Appellate Practice course, including classroom component, to students who participated in representing instructor's clients from State Appellate Defender Office

**PROFESSIONAL ACTIVITIES**

State Bar of Michigan
- Criminal Law Section
  - 1974 to Present — Member
  - 1989 to Present — Council Member
- Defender Systems and Services Committee
  - 1985 to Present — Member
  - 1989 to Present — Chairperson
- 1986 to Present — Task Force on Assigned Counsel Standards

Prison Legal Services of Michigan, Inc.
- 1985 to Present — Chairperson, Board of Directors

Michigan Justice Training Commission
- 1989 to Present — Co-Vice Chairperson

1986 to 1987 — Michigan Supreme Court Committee on Rules of Criminal Procedure

PUBLICATIONS

Indigent Defense: Costs and Concerns, 13 Criminal Defense Newsletter No. 1, p. 1 (October, 1989)

The Revised Rules of Criminal Procedure: Appellate Rules, 12 Criminal Defense Newsletter No. 9, p. 1 (September, 1989)

Preventing Defense Counsel Error - An Analysis of Some Ineffective Assistance of Counsel Claims and Their Implications for Professional Regulation, 15 U. Tol. L. Rev. 1275 (1984)

Executive Editor, Improvement in Appeals Project, Michigan Criminal Appeals: Practice and Procedure, State Appellate Defender Office, 1980, 750 pp.

# THOMAS M. LOEB

ATTORNEY AND COUNSELOR AT LAW
NORTH PARK PLAZA • 17117 W. NINE MILE ROAD • FIFTH FLOOR • SOUTHFIELD, MICHIGAN 48075 • (313) 559- 2466
FAX(313) 559- 5359

Of Counsel:
Gerald E. Thurswell
Harvey Chayet


January 31, 1990

Mr. Frank D. Eaman
Attorney at Law
2815 Cadillac Tower
Detroit, MI 48226

Dear Mr. Eaman:

Enclosed with this letter please find a photocopy of pertinent portions of the Magistrate's Special Master Report and Recommendation on a class action - prison condition's lawsuit of which I had the privilege of being one of the attorneys. The documents included fairly represent my "resume" through the time the report was prepared, September 1986. You should know that since the date of the preparation of this Report I have associated as "Of Counsel" with the firm of Thurswell, Chayet & Weiner, located in Southfield. Additionally, I have continued to be a faculty member of the Detroit/Wayne County Criminal Advocacy Program for each subsequent year, and am currently on its Board of Directors, being invited to join the Board last year.

Additionally, I have now received a copy of my 1099 from Wayne County reflecting all monies earned for accepting assigned criminal cases. The total amount for 1989 is $18,921.25 (see enclosed).

I hope this is sufficient for your purposes. If not, kindly please advise. As always, if you have questions regarding this or anything else, please do not hesitate in contacting me.

Very truly yours,

Thomas M. Loeb

TML/cj
Enclosures

Subscribed and sworn to before me
this 31st day of January, 1990.

CYNTHIA JOUPPI
Notary Public, Wayne County, MI
My Commission Expires: 5-11-92
Acting in Oakland County, MI

☐ CORRECTED (if checked)

| PAYER'S name, street address, city, state, and ZIP code | 1 Rents | OMB No. 1545-0115 |
|---|---|---|
| S-69-0353818<br>COUNTY OF WAYNE<br>600 RANDOLPH<br>DETROIT MI 48226 | $ | 1989<br>Statement for Recipients of |
| | 2 Royalties<br>$ | **Miscellaneous Income** |

| PAYER'S Federal identification number | RECIPIENT'S identification number | 3 Prizes and awards | 4 Federal income tax withheld |
|---|---|---|---|
| 38-6004895 | 382390039 | $ | $ |

| RECIPIENT'S name, address, and ZIP code | 5 Fishing boat proceeds | 6 Medical and health care payments |
|---|---|---|
| LOEB THOMAS M<br>17117 W 9 MILE RD 5FL<br>SOUTHFIELD MI 48075 | $ | $ |
| | 7 Nonemployee compensation<br>$ 18921.25 | 8 Substitute payments in lieu of dividends or interest<br>$ |
| | 9 Payer made direct sales of $5,000 or more of consumer products to a buyer (recipient) for resale . . . . . ▶ ☐ | |
| Account number (optional) | 10 Crop insurance proceeds<br>$ | |

**Copy B For Recipient**

This is important tax information and is being furnished to the Internal Revenue Service. If you are required to file a return, a negligence penalty or other sanction will be imposed on you if this income is taxable and the IRS determines that it has not been reported.

Form **1099-MISC**

Approved I.R.S. Department of the Treasury—Internal Revenue Service 13-2570063

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

EVERETT HADIX, et al.,

Plaintiffs,

vs. No. 80-CV-73581-DT

PERRY JOHNSON, et al., HONORABLE JOHN FEIKENS
MAGISTRATE STEVEN D. PEPE

Defendants.

_____/

# MAGISTRATE'S SPECIAL MASTER REPORT AND RECOMMENDATION

## TABLE OF CONTENTS

## APPENDIX A

Summary of Testimony and Exhibits Submitted in the Special Master Hearings on Fee Petitions of Plaintiffs' Attorneys

17. Thomas Loeb

Thomas Loeb was brought into the Hadix litigation in May of 1981. Mr. Loeb has practiced law since 1976. He is experienced as a trial attorney and has substantial experience in civil rights litigation. Mr. Loeb has lectured on civil rights litigation and taught criminal trial advocacy. Mr. Loeb was principally involved when it was believed Hadix would go to trial. His relative involvement in Hadix was substantially reduced after the January 28, 1983, pretrial conference when a settlement was proposed. Mr. Loeb did not have the degree of responsibility or involvement in Hadix as did attorneys Bennett or Magid. Mr. Loeb testified that he has in the past routinely billed at $125 per hour which he seeks in his fee petition. A reasonable hourly rate for the services Thomas Loeb performed on the merits of Hadix is $110 per hour.

Unlike other petitioners, Mr. Loeb has not submitted by the June 9, 1986, cut-off on all fee petition submissions any itemization or other breakdown of the $3,195.17 in costs he claims. Mr. Loeb represented himself on the fee petition and has submitted a supplemental itemization of hours that are found to be necessary and reasonable except for three hours attending the Bennett deposition.

TESTIMONY OF THOMAS M. LOEB

Thomas Loeb testified at the hearing and provided an affidavit on his claim for attorney's fees. Mr. Loeb has a Bachelor's of General Studies from The University of Michigan and a Juris Doctor from Wayne State University Law School conferred in 1975. He was admitted to the practice of law in Michigan in 1976. He began practice in the area of criminal defense work for the State Felony Defenders Office in Detroit where he practiced until 1978. In 1978, Mr. Loeb went into private practice with Simon and Fried (now Fried and Saperstein), a surburban Detroit law firm specializing in criminal defense, police misconduct, and prisoner civil rights cases. Since 1984, when Mr. Loeb left the law firm of Fried and Saperstein, he has been in solo practice specializing in these same areas. Mr. Loeb has been a faculty member of the Detroit/Wayne County Criminal Advocacy Program since its inception in 1983 and was asked to be a faculty advisor for its 1985 series of seminars. On

four occasions Mr. Loeb has lectured for the Macomb County Community College Criminal Justice Training Center to police officers, supervisors, and investigating officers on civil and governmental liability.

Mr. Loeb was attorney of record in the case of People v. DeFillipo from its inception in Detroit Recorder's Court through the United States Supreme Court, Michigan v. DeFillipo, 443 U.S. 31 (1979). Petitioner Loeb second chaired the case before the United States Supreme Court. Mr. Loeb is also a member of the Criminal Jurisprudence Section of the State Bar of Michigan and an elected representative to its Criminal Law Section Council.

Mr. Loeb testified that he has successfully represented numerous prison inmates, jail detainees, and other citizens involved in civil rights damage actions in the United States District Court for the Eastern District of Michigan and various state courts in Michigan. These cases include:

Amburgy v. Fusion, 78-CV-71962, before Judge James Churchill (1983), (lead counsel);

Pike v. City of Dearborn, 80-CV-72135, before Judge Philip Pratt, (lead counsel);

Marcella v. Oakland County Sheriffs Dept., 82-CV-70795, before Judge George Woods, (lead counsel);

Sweeton v. Johnson, 77-CV-72230, before Judge Anna Diggs Taylor, (co-counsel);

Parrish v. Giles, 79-CV-71796, before Judge John Feikens;

Bacon v. Richardson, 81-CV-60078, before Judge Charles Joiner.

Mr. Loeb has also been involved in other state claims involving prisoners, police, and detention centers.

Mr. Loeb became involved in the Hadix case in the Spring of 1981, while he was still with the law firm of Fried and Saperstein. His involvement in the case caused difficulty at his law firm. They believed that he was spending too much time on the Hadix case, whereas Larry Bennett, the lead counsel in Hadix felt that he was not devoting enough time to Hadix. The tension within the law firm led to Mr. Loeb's departure in 1984. Mr. Loeb also testified to the strain of the Hadix case on Larry Bennett and how his relationship with Larry Bennett suffered due to Thomas Loeb's time limits and the feeling among the co-counsel on the Hadix case that Thomas Loeb was not carrying his fair load.

Mr. Loeb was brought into the case because of his extensive trial experience which was greater than the other attorneys for the plaintiff. Mr. Loeb was also familar with defense counsel Brian MacKenzie and David Edick who had practiced in the Recorder's Court prior to their joining the Attorney General's office. It was believed that the case would go to trial and that Mr. Loeb's relationship with Mr. MacKenzie, the defendants' trial attorney, would be of benefit to the plaintiffs.

Mr. Loeb asserted that the case was a difficult one, made more difficult because the defendants fought every issue. In early October of 1981, Mr. Loeb and Larry Bennett met David Fogel, the plaintiff's expert on prisons, and toured the Jackson prison on October 2nd and 3rd. That tour

took them into every cell block in the Central Complex and allowed them to talk to the prisoners and employees. Mr. Loeb noted that 7 Block was sinking, the bars in the prison cells were curved, and the cell doors would not completely close or lock so that it was easy to unlock and enter the cell of another inmate. Mr. Loeb stated that assault and loss of property were common experiences among the inmates. He estimated that between 33% and 40% of the cells would not lock properly. He noted, however, that the defendants would not admit this and other facts.

Mr. Loeb felt that it was inappropriate for the defendants in this case not to admit having problems with the prison. He asserted that the Hadix consent decree was a significant and beneficial advance for the prisoners in the Central Complex. He noted the consent decree was significant in making enforceable by the United States District Court the Department of Corrections' own Policy Guidelines and Directives when the Department failed to follow them. Mr. Loeb testified that many prisoner suits have been dismissed when the Attorney General provides prison Policy Directives in support of motions to dismiss or for summary judgment. He submitted that the actual practices that occurred in the Jackson prison made the Policy Directives "look like science fiction". He said the consent decree made significant improvements in the protection of the prisoners, in providing adequate sanitary food, and in providing decent conditions of confinement.

Mr. Loeb suggested that a reasonable hourly rate for a person with his experience in a case of the complexity of Hadix is $125 per hour. He testified that in addition to the time it took him away from his practice, his involvement in the suit also put pressures on his ability to develop his private practice and caused him to miss a number of educational seminars. His involvement in the case has made him a contact source for numerous prison inquiries, as well as referrals from federal magistrates for review of prisoners' petitions for which time he cannot bill. Mr. Loeb asserted that he and others made conscientious efforts to avoid duplication of efforts. He noted that the negotiation process was positive and that various attorneys needed to be involved because of the complex interrelation of the issues. Mr. Loeb felt that, given the extreme complexity of the issues in the Hadix case, the substantial periods of time away from his practice, and the excellence of the result, an appropriate fee enhancement would be a multiplier of 1.25.

Mr. Loeb itemized 493.65 hours on the case. Mr. Loeb also testified to having had $3,195.17 in expenses.

Mr. Loeb's time records show that he was involved in numerous planning and strategy sessions with Larry Bennett and other co-counsel, as well as in the prison tour with plaintiffs' expert, David Fogel. He was also involved in the drafting of the First Amended Complaint and responding

to defendants' Motion for a Protective Order. Mr. Loeb was involved in the pretrial discovery regarding the case, as well as the drafting of plaintiffs' Motion for a Preliminary Injunction. Mr. Loeb had contacts with individuals from the American Civil Liberty Union's National Prison Project and with Assistant United States Attorney Steven Berlin, who was involved in the U.S.A. v. Michigan CRIPA case in the Western District federal court.

Since the defendants opposed the filing of the First Amended Complaint, Mr. Loeb was involved in plaintiffs' reply to their opposition to the First Amended Complaint. Mr. Loeb was also involved in the prison visits with their witnesses, Pat Sommerville, Brent Koster, and others. Mr. Loeb was also involved directly with prisoners and with prison legal services in helping to prepare the case for trial and later for settlement.

In addition to the itemized hours of services rendered through May 13, 1985 on the merits of the case, Mr. Loeb submitted a supplemental affidavit and itemized listing of 56.95 billable hours for supplemental services rendered in conjunction with the Petition for Attorneys Fees.1/

At the hearing, Mr. Loeb submitted the affidavit of John H. Dise, who is a graduate of Michigan State University

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1/ A review of his earlier submission shows that 1.75 hours dealt with attorney's fees. Thus the earlier figure should be adjusted to 491.90 hours, and the 1.75 added to the 56.95 hours submitted for time spent on the attorney's fees issue from July 1, 1985, through March 21, 1986.

with a degree in Electrical Engineering and a Juris Doctor from the Detroit College of Law in 1976. Mr. Dise has practiced law in the State of Michigan since 1977. Prior to becoming a lawyer, he was a police officer for the City of Detroit from 1972 to 1976. He was legal advisor to the Detroit Police Department, involved in defense of police officers in tort suits brought against them. After leaving the Corporation Counsel's Office of the City of Detroit in 1982, Mr. Dise became a member and partner of the firm of Craig, Faber, Downs, and Dise, P.C.. He has been actively involved in the defense of various police officers, sheriffs, and supervisory personnel, as well as municipalities in §1983 litigation. He has also been extensively involved in the continuing education of police officers. Mr. Dise's affidavit asserts his knowledge that Mr. Loeb has extensive trial experience in all facets of §1983 litigation and is competent in handling complex civil rights trial matters. He further asserts that in his experience an hourly rate of $125 is a customary and prevailing market rate for attorneys in the greater metropolitan area with the same experience and background as Thomas M. Loeb.

Mr. Loeb was not represented by counsel in the petition for attorney's fees. With the consent of the court, Mr. Loeb did not attend all of the court sessions before the undersigned on this fee petition.

:rald M. Lorence

Attorney and Counselor, P. C.

1750 Penobscot Building • Detroit, Michigan 48226 • phone 961-9055 (313)

March 21, 1990

Honorable Tyrone Gillespie
Special Master
c/o John Grewell
State Court Administrator's Office
1400 Comerica Building
Detroit, MI 48226

Re: Wayne County Fee Suit

Dear Judge Gillespie:

Mr. Frank Eaman, attorney for the Plaintiff in the captioned Wayne County Fee Suit, has requested that I supply a Resume which I do not have printed up, but I will attempt to give you some indication of my background as follows:

Professional Background:

Admitted to practice State of Michigan 1968 and practicing law in the City of Detroit from 1968 to present, specializing in criminal trial and appellate practice

Judge, Wayne County Panel of the Attorney Grievance Commission since 1980

Member, Nominating Committee of Detroit Bar Association since 1984

President, Recorder's Court Bar Association

Member of the Board of Directors of the Detroit-Wayne County Criminal Advocacy Program since inception, 1984

Defense counsel in the following landmark decisions in the Michigan Supreme Court:

People v. Ned Ladd Bobo
People v. George White
People v. George Summers
People v. Askia Shabazz

Appeared before the U.S. Supreme Court, 1982

Faculty, Department of English, Speech & Foreign Language, College of Education, Wayne State University 1963-66

Chairman, English Department, Denby High School, Detroit Public Schools, Detroit, MI, 1966-68

Teacher and administrator, Detroit Public Schools, Detroit, MI, 1954-68

Teacher, Lincoln Park Public Schools, Lincoln Park, MI 1952-54

Educational Background:

Graduate of Central High School, Detroit, MI, 1946

B.A. Eastern Michigan University, 1952
Major: English, History, Sociology
Minor: Science, French

M.Ed. Wayne State University, 1960
Major: English, Secondary School Curriculum and Administration

J.D. Wayne State University Law School, 1967

Personal Data:

Gerald M. Lorence
61 years old

U.S. Army, Yokohama and Tokyo, Japan, 1946-49
Aviation and Solid Fuel Officer, Tokyo Quartermaster and General Headquarters

Wife: Sandra S. Lorence
Sons: Jeffrey and Matthew Lorence

Judge Gillespie, if you have further inquiry, please advise through Mr. Eaman.

Very truly yours,

Gerald M. Lorence

GERALD M. LORENCE

GML/s

# AUTOBIOGRAPHICAL SKETCH

Charles D. Lusby, P24661
1575 E. Lafayette, Suite 205
Detroit, Michigan 48207
(313) 567-2977

## Education

B. A., Morehouse College, Economics Major, History Minor, 1961

J. D., University of Detroit, 1974

## Employment History

Assembly line worker and arc welder, Ford Motor Company, 1954-59.
Tree artisan, City of Detroit, 1957.
Social worker, City of Detroit, 1961-63.
Right-of-way agent (buyer and appraiser of real estate),
State of Michigan Highway Department, 1963-75.
Attorney, sole practitioner, 1975 - Present.

## Professional Experience

Criminal defense attorney, 1975 - present.

# RESUME

JOAN ELLERBUSCH MORGAN
Suite 240, 577 E. Larned
Detroit, Michigan 48226
Home: (313) 542-1467
Work: (313) 963-1455

## LEGAL EMPLOYMENT

| | |
|---|---|
| August 1984 to present | Engaged in the private practice of law in civil and criminal matters, including family law, probate matters, negligence, drunk driving and numerous criminal matters. Edited and researched Defender Trial Manual for State Appellate Defender's Office and various publications for Institute of Continuing Legal Education. |
| January 1983 to August 1984 | Law Clerk to the Honorable Steven W. Rhodes, United States Magistrate, Room 238, United States Courthouse and Federal Building, 231 W. Lafayette, Detroit, Michigan 48226. Researched and drafted opinions in areas of federal criminal and civil matters. |
| November 1980 to December 1982 | Associate and Law Clerk. Gromek, Bendure & Thomas, 577 East Larned, Suite 210, Detroit, Michigan 48226. Researched commerical, contract, medical malpractice, personal injury and criminal matters. Prepared pleadings, briefs, and memoranda. |
| March 1981 to July 1981 | Law Clerk. State Appellate Defender's Office, 1200 Sixth Avenue, Third Floor, North Tower, Detroit, Michigan 48226. Researched criminal matters for appellate briefs. Drafted briefs and memoranda. |
| December 1980 to March 1981 | Law Clerk. United States Attorney's Office, United States Courthouse and Federal Building, 231 W. Lafayette, Detroit, Michigan 48226. Researched criminal and civil issues for trial and appellate practice. Prepared memoranda and pleadings. |

EDUCATION

May 1982 — J.D. received, University of Detroit School of Law; Detroit, Michigan. Rank 6/43.

LAW SCHOOL HONORS

Elected to Order of the Coif, 1982.

Received Clarence M. Burton Scholarship monies, 1982.

LAW SCHOOL ACTIVITIES

Law review. Article and Book Editor, March, 1981 to May, 1982. Junior staff member, October, 1980 to March, 1981. Casenote published: Journal of Urban Law, Volume 58:3: People v. Wright, 408 Mich 1 (1980), "Criminal jury instructions which shift the burden of proof from the prosecutor to the defendant violate the due process clause of the United States Constitution."

Oral advocate, first place team. Craven National Moot Court Competition. Chapel Hill, North Carolina, March, 1982.

Gallagher Moot Court Competition. Placed second of twenty-two entrants. November, 1981.

Moot Court finalist. Best oral advocate in two rounds of competition. February, 1981.

Student Bar Association Class President. Elected March, 1980; re-elected March, 1981.

August 1977 — M.S.W. received, with Certificate in Gerontology. University of George School of Social Work; Athens, Georgia.

August 1974 — A.B. received, major: American history. University of Michigan College of Literature, Science and the Arts; Ann Arbor, Michigan.

Admitted to practice before Michigan state courts and United States District Court for the Eastern District of Michigan, November, 1982.

References available upon request.

# RESUME

VERNON ALVIN RAYFORD
12296 E. Outer Drive
Detroit, MI 48224
885-4596

Birth: February 27, 1932
Detroit, Michigan
Marital Status: Married

## EDUCATIONAL HISTORY

| Institution and Location | Degree |
|---|---|
| Wayne State University<br>Detroit, Michigan | B.A. and J.D. |
| University of Wisconsin<br>School of Information and<br>Library Science<br>Milwaukee, Wisconsin | Certificate-<br>Law Librarianship |
| Ashland Theological Seminary<br>Ashland, Ohio | D. Min. |

## PROFESSIONAL EXPERIENCE

Law Librarianship Internship
Detroit Bar Association (1961 - 1965)

Reference Librarian
Wayne State University Law Library (1965 - 1974)

Law Librarian
Detroit Recorder's Court (1974 - Present)

Instructor: Wayne State University Library School - Law Reference, Research, and Legal Bibliography

Wayne State University Summer Minority Program Legal Research and Writing

Author: A Black Librarian Takes A Look At Discrimination By A Law Library Survey, 1972

Bail and Prevention Detention - An Annotated Bibliography, 1969

**CURRICULUM VITAE**
**JUSTIN C. RAVITZ**

| | |
|---|---|
| Born: | Omaha, Nebraska<br>August 29, 1940 |
| Married: | Berna Jane Friedman Ravitz<br>Three Children |
| Graduate: | Babson College, 1961 -- B.S. (highest distinction)<br>University of Pennsylvania, 1964 -- M.A. in Internatial Relations<br>University of Michigan Law School, Dec. 1965, J.D. |
| 1966-1967: | Otis & Ravitz |
| 1967-1968: | Neighborhood Legal Services, Supervising Attorney |
| 1968-1972: | Philo, Maki, Moore, Ravitz, Pitts, Cockrel & Robb |
| 1973-1986: | Detroit Recorder's Court Judge |
| 1986 to Present: | Sommers, Schwartz, Silver & Schwartz, P.C. |

PUBLICATIONS:

Author: "Reflections of a Radical Judge, Beyond the Courtroom," Verdicts on Lawyers, Edited by Ralph Nader and Mark Green, Crowell, N.Y., 1976.

"Murder in the Court," The Human Side of Homicide, Edited by Bruce L. Danto, et al, Columbia University Press, 1982.

1983 Detroit College of Law Review 1409, "Birthrights: Yours and Mine and Humankind."

3 Law and Inequality: A Journal of Theory and Practice, No. 1, 245, Book Review on Money and Justice: Who Owns the Courts?

The subject of Chapter-long interview in Partial Justice: A Study of Bias in Sentencing by Willard Gaylin, Alfred A. Knopf, 1974.

"Answering the Call: A Judge's Reply," 60 U. Det. J. Urban Law 535, 1983.

FOUNDER:

Founder and first President of the Detroit/Wayne County Criminal Advocacy Program.

Frequent lecturer at Universities around the country, law schools and various other assemblages.

PROFESSIONAL AFFILIATIONS:

Detroit Bar Association; Michigan Trial Lawyers Association; National Lawyers Guild; Oakland County Bar Association; State Bar of Michigan.

# RESUME

DALTON A. ROBERSON, SR.
3297 Sherbourne Drive
Detroit, Michigan 48221
Telephone: (313) 342-9076
224-2444 - Business

Date of Birth: May 11, 1937
Marital Status: Married, former Pearl Janet Stephens
(Two children - Portia and Dalton, Jr.)
Military Status: Honorable Discharge -
United States Air Force
Four Years
Highest Rank Held: S/SGT (E-5)

## EDUCATIONAL BACKGROUND

Elementary and Secondary Schools - Mobile (Alabama) County Public School System

Michigan State University - Bachelor of Arts Degree, B.A.
Detroit College of Law - Juris Doctor. J.D.

## EMPLOYMENT RECORD

| | |
|---|---|
| January, 1990 | Executive Chief Judge for the Circuit Court for the Third Judicial Circuit of Michigan and The Recorder's Court for the City of Detroit |
| February, 1987 to Present | Chief Judge of the Recorder's Court for the City of Detroit |
| June 18, 1974 to February, 1989 | Judge, Recorder's Court for the City of Detroit<br>1441 St. Antoine<br>Frank Murphy Hall of Justice<br>Detroit, Michigan<br>(Appointed by Governor William G. Milliken June 18, 1974) |

Lecturer

Center for Administrative Justice
(Wayne State University)

Criminal Justice Institute
Detroit, Michigan

| | |
|---|---|
| October, 1970 to<br>June 17, 1974 | Senior Partner (Law Firm)<br>Harrison, Friedman and Roberson, P.C. |
| January, 1970 to<br>October, 1970 | Assistant United States Attorney<br>Office of the United States Attorney - Detroit, Michigan<br>(Trial Attorney) |
| March, 1969 to<br>January, 1970 | Assistant Wayne County Prosecuting Attorney - Office of the Wayne County Prosecutor<br>(Trial Attorney) |
| April, 1968 to<br>March, 1969 | Attorney Trainee<br>Wayne County Neighborhood Legal Services - Detroit, Michigan |
| July, 1963 to<br>April, 1968 | Public Welfare Worker<br>State of Michigan<br>Wayne County Bureau of Social Services |
| May, 1963 to<br>July, 1968 | Recreation Aide (Summer)<br>City of Detroit |

BAR MEMBERSHIP

United States District Court for the Eastern District of Michigan
State Bar of Michigan

GOVERNMENTAL APPOINTMENTS

July, 1972, Michigan Civil Rights Commission
(January, 1973 to January, 1974, Elected Vice Chairman)
(January, 1974, Elected Chairperson)

PROFESSIONAL ASSOCIATIONS AND CIVIC AFFILIATIONS

Community Corrections Board - Chairperson Executive Director Search Committee
Wolverine Bar Association - Second Vice President 1972-74
Treasurer - 1970-72

Detroit College of Law Alumni Association
Big Ten Alumni Association
Kappa Alpha Psi Fraternity

National Bar Association
National Bar Association Judicial Council
NAACP Subscribing Life Member

| | |
|---|---|
| 1972 - Present | Detroit Executive Board |
| 1974 | Chairman, Sip-In Committee |

Michigan State University Alumni Association
National Bar Foundation
Michigan Judges Association
National Lawyers Guild
Urban Alliance
World Peace Through Law

Participant on Various Committees and Ad Hoc Groups between Bar Associations

# RESUME

MYZELL SOWELL

Home Address: 18659 Woodingham
Detroit, Michigan
(313) 342-1455

**VITAL STATISTIC**

Born: November 16, 1924
Detroit, Michigan

Married: One Son - 33 years of age

**EDUCATIONAL BACKGROUND**

1. 1952 - Admitted to Practice State Bar of Michigan, January, 1952

2. 1952 - Detroit College of Law - LLB Degree, June, 1952

3. 1953 - Wayne State University - B.S. Business Administration Accounting Major

4. January 4, 1980 to August, 1981 University of Detroit - General Motors Dealer Development Academy Graduation date, August 21, 1981

Additional Training:

General Motors Business Management Program Financial Management Series

I Predicting Profit
II Cash Management
III Working Capital
IV Expense Sense

General Motors Dealer Marketing Development

I Fundamentals of Automotive Selling
II Professional Sales I
III Professional Sales II
IV Conference for Service Advisors
V Conference for Service Management
VI Conference on Sales Management

Pat Ryan and Associates, Inc.,
Finance and Insurance Sales Seminar

**EMPLOYMENT BACKGROUND**

1953-1967 Engaged in general practice of law, specializing in criminal law.

1968-1980 Chief Defender, Legal Aid and Defender Association of Detroit Defender Office.

Responsibilities: overall administration of office with staff ranging from 30-40 individual. Functions include supervision of fiscal operations, office management, personnel training and general program development.

1982-Present Senior Partner, SOWELL & EVELYN, 1717 Ford Building, Detroit, MI 48226. Engaged in general practice of law, specializing in criminal law.

**PROFESSIONAL ASSOCIATIONS**
**AMERICAN BAR ASSOCIATION**

Member, Criminal Justice Section:
Council Member, 1977-1979
Criminal Justice Nominating Committee, 1977
Criminal Justice Grand Jury Committee, 1975-1979

Member, General Practice Section:
Council Member, 1973-1977
Co-Chairman, Committee on Representation of Defendants in Criminal Cases, 1975-1978
Special Committee on Administration of Criminal Justice-Task Force NO. 1, 1977-1979

Member, Special Committee of Federal Rules of Procedure 1971-Chairman
Special Committee on Federal Practice and Procedure, 1973-1975 terms.

Member, House of Delegates, 1979-1980

Member, Standing Committee on the Federal Judiciary 1979-1980

**DETROIT BAR ASSOCIATION ACTIVITIES**

Member, Board of Directors, 1971-1976
Member, Public Advisory Committee, 1970-1979
Co-Chairman, Bi-Centennial Committee, 1975-1976

**STATE BAR OF MICHIGAN**

Commissioner, served on Ad Hoc Committe on Public Relations, 1970-1979
Personnel Committee, 1974-1975
Executive Committee, 1975-1976
Nominating Committee, 1977-1979
Delegate, American Bar Association House of Delegate 1978-1980

Member of the following Committees:

| | |
|---|---|
| Criminal Code Revsion, | 1976-Present |
| Rule 908 Committee, | 1965-1969 |
| Criminal Jurisprudence, | 1963-1972 |
| Committee to Revise Criminal Procedures, | 1979-1980 |
| Grievance Committee, | 1970-1973 |
| Character and Fitness, | 1970-1979 |
| Civil Liberties, | 1969-1971 |
| Public Defender Committee, | 1970-1976 |
| Special Committee to Restructure State Bar, | 1970-1971 |
| Member, Michigan Supreme Court's Felony Sentencing Project | 1978-1980 |
| Standard Jury Instructions-Criminal | 1983-1986 |

**MICHIGAN ASSOCIATION OF CRIMINAL DEFENSE LAWYERS**

President, 1971-1979

**MICHIGAN CIVIL RIGHTS COMMISSION**

| | |
|---|---|
| Referee, | 1971-1979 |

**NATIONAL BAR ASSOCIATION**

| | |
|---|---|
| Life Member | |
| Member, Executive Board | 1970-1974 |
| Special Consultant to the President | 1970-1973 |
| Member, Institutional Lawyers Section | 1976-1979 |
| Sergeant at Arms, Executive Board | 1979-1980 |

**NATIONAL LAWYERS GUILD**

| | |
|---|---|
| Past Member, National Executive Board | 1960-1964 |

**NATIONAL LEGAL AID AND DEFENDER ASSOCIATION**

| | |
|---|---|
| Executive Committee of the Board | 1975-1979 |
| Defender Committee | 1970-1975 |

**WOLVERINE BAR ASSOCIATION**

| | |
|---|---|
| Treasurer, | 1961-1963 |
| President, | 1963-1965 |
| Executive Board Member, | 1969-1975 |
| Chairman, Judiciary Committee | 1969-1975 |
| Chairman, Community Relations Committee | 1978-1979 |
| Chairman, Special Projects Committee, | 1978-1979 |

**CIVIL ORGANIZATIONS**

| | |
|---|---|
| Founder and Sponsor - Black Law Student Scholarship Fund | 1971-1980 |
| Homes for Black Children, Member, Board of Directors | |

N.A.A.C.P., Life Member
Urban Alliance, Member, Board
of Directors 1970-1980
Mayor's Committee on Civil Disturbances
Booker T. Washington Businessmen's
Association
Detroit-Wayne County Criminal Justice
System Coordinating Council 1971-1980:
Member, Bi-Law Committee,
Personnel Committee, Chairman
of Planning Committee, 1975-1980
New Detroit, Inc., Judiciary
and Corrections Committee 1973-1980
Michigan Commission of Law
Enforcement and Criminal
Justice, Task Force on
Adjudication 1973-1979
Commissioner, State of
Michigan Commission on
Criminal Justice 1973-1979
Rotary Club Community Service
Committee 1977-1980
N.A.A.C.P. Board of Directors 1984-1986
Commissioner, State of Michigan
Commission on Criminal
Justice 1985-1988
Participant, "Ask the
Lawyers", WTVS Channel 56 1973-1978
Wayne County Jail Advisory
Committee
Chamber of Commerce, Member
Treasurer, LAWPAC (Lawyer's
Political Action Committee) 1978-1980
Treasurer, Erma L. Henderson,
President's Club
Congressional Black Caucus,
Criminal Justice Brainstrust
Optimist Club 1977-Present
Detroit Black United Fund
Board of Directors 1981-1983

**FACULTY ACTIVITIES**

Wayne State University Law School
Minority Program Advisory Committee
Committee of Visitors of the Law School

Wayne State University - Member Board of Governor's Sub-Committee on Student Affairs

Manufacturer's National Bank Business Security Seminars, 1974

Committee of the Board of Governors for Equality in the Law School

Criminal Justice Institute:
Board Member 1974-1979
Secretary 1976-1977

Wayne State University, Wayne State Fund
Member, Board of Directors 1972-1974

National College of Criminal Defense Lawyers and Public Defenders,
Board of Regents 1975-1979
Secretary 1976-1977
Vice-Chairman 1977-1978
Chairman 1978-1979

ICLE Student Disruptions; Criminal Law

Prosecuting Attorneys Association of Michigan

National College of District Attorney Houston, Texas

Northwestern University Law School-Guest Lecturer 1970-1980

Yale University Law School-Guest Lecturer

State Bar of Michigan - Young Lawyer's Seminar

University of Denver Law School Criminal Defense Lawyer Seminar

Advisory Committee - Office of Continuing Legal Education, University of Detroit Law School

Detroit College of Law - Guest Lecturer

**AWARDS**

| | |
|---|---|
| 1978 | Detroit City Council Testimonial Resolution |
| 1978 | Wayne County Commissioner's Resolution |
| 1978 | University of Detroit B.A.L.S.A. (Black American Law Student Association) Recognition Award |
| 1979 | National College of Criminal Defense Certificate of Commendation |
| 1978 | Detroit Urban Center - Man of The Year Award |
| 1979 | State Bar of Michigan Commissioner's Resolution |
| 1976-1980 | Wayne State University Law School's Dean Club |
| 1979 | Reginald Heber Smith Award - National Legal Aid and Defender Association |
| 1973 | Institute of Continuing Legal Education-Commendation |
| 1978 | Wolverine ar Association - Lawyer of The Year Award |
| 1974 | Certificate of Appreciation, Wayne State Fund |
| 1979 | Certificate of Merit, National College of Criminal Defense |
| 1983 | Friends of Distinction Award |
| 1980 | Federal Bar Association - Award of Achievement |
| 1980 | Michigan Chapter of National Conference of Black Lawyers Award |
| 1980 | Black Student Scholarship Fund Award |
| 1976 | Elected a Member of the Permanent Lecturing Faculty - National College of Criminal Defense Lawyers and Public Defenders, Houston, Texas |

Listed in Who's Who in Black America

Listed in Who's Who in American Law

1980 Distinguished Recognition Award - Detroit City Council

1980 Testimonial Resolution - Wayne County Board of Commissioners

1980 Joint Testimonial Resolution - Michiagn House of Representatives and Michigan State Senate

1983 Friends of Distinction Award

1985 Judge Damon J. Keith Humanitarian Award

1987 Certificate of Achievement - Wolverine Student Bar Association - Detroit College of Law Chapter

ROBERT L. SPANGENBERG

Education

LL.B., Boston University School of Law, Editor-in-Chief, 1961, Law Review
B.S., Business Administration, Boston University School of Business, 1955

The Spangenberg Group, 1001 Watertown Street, W. Newton, MA 02165

- President (1985-present). Providing technical assistance program evaluation, research and other consultant services on legal and court-related topics to government agencies (both state and local) and private organizations.

For the American Bar Association Section of Individual Rights and Responsibilities Post Conviction Death Penalty Project. Under this contract, The Spangenberg Group is providing technical assistance to bar associations, judges and other groups throughout the country with responsibility for making policy, or managing organizations responsible for providing attorneys for persons convicted of capital crime and unable to obtain counsel for postconviction proceedings in both state and federal court.

- Project Director (1987-present). Responsible for assigning each task; conducting technical assistance in certain key states working directly with ABA Coordinator and Task force.

For the Georgia Criminal Defense Lawyer's Association and the ACLU of Georgia. A statewide study of the indigent defense system in Georgia with a research plan designed to obtain cost, caseload and program characteristics of indigent defense delivery in each of Georgia's 159 counties.

- Project Director (1987-present). Supervising all aspects of the research and primarily responsible for management and administration of the project.

For the Illinois Lawyer's Trust Fund, the Chicago Bar Association and the Illinois State Bar Association. This study, sponsored by the three organizations is designed to assess the civil legal needs of low income residents throughout the state. The methodology includes an extensive randomly selected telephone interview of 1500 low income residents; a mail questionnaire to all present providers, both public and private; and site visits throughout the state.

- Research Director (1987-present). Responsible for management and administration of the project. Will participate on all major research tasks. Primary contact with Illinois Project Director, Project Coordinator and State Advisory Committee.

For the Oklahoma State Bar. A study to gather comprehensive data on the entire indigent defense system in each of Oklahoma's 77 counties through questionnaires to each program in the county and individual questionnaires to judges, prosecutors, public defenders and private attorneys seeking to join information on the strengths and weaknesses of the systems and recommendations for improvement.

- Project Director (1987-present). Responsible for management and administration of all aspects of the project and will be directly involved with each research task.

For the Virginia Law Foundation, the non-profit corporation of the Virginia State Bar. This project will review the area of representation of defendants charged with capital crime in Virginia, with an emphasis on postconviction representation in state and federal court. A final report will be prepared to recommend changes in the current system based upon an analysis of the data collected in the study and experiences in other states.

- Deputy Project Director (1987-present). Will work closely with the Project Director on the various research tasks undertaken in the study. Will be responsible for legal analysis overall and collecting data from other states who have addressed this problem in the past few years.

For the State Court Administrator, Judicial Department, Supreme Court of Oregon. This 10 month study will attempt to gather data on the indigent defense system in each of Oregon's 36 counties. The project will also present various alternatives for improving the current system in Oregon in the most cost efficient manner consistent with quality representation.

- Research Director (1987-present). Responsible for all aspects of the research. Will lead up one of the primary teams conducting the on-site work and will play a major role in the preparation of the final report and will participate in necessary briefings.

For the New York State Bar Association. This study will assess the civil legal needs of the poor in New York state and will provide a similar methodology to that set out for the Illinois study.

- Project Director (1987-present). Responsible for the administration and management of all aspects of the study. Will actively participate on all aspects of the research and will play a primary role in the preparation of the final report.

For the South Carolina Bar. This project will develop data on the indigent defense system for each of South Carolina's 46 counties. The purpose of the study is to develop a series of recommendations for improvement in the system statewide.

- Project Consultant (1987-present). Will act as outside consultant on each phase of the research. Will have particular responsibility to collect and present data on other state systems that might be considered in South Carolina.

For the American Bar Association, Bar Information Program -- a project to provide technical assistance to local jurisdictions for purposes of improving their indigent defense system. This project is designed to assist state and local bar associations, judges, court officials, public defenders, private attorneys and funding agencies to improve their indigent defense system.

- Project Director (1985-present). Responsible for supervision of all task assignments. Technical assistance has been provided in 25 states to date. Work has included assisting state commissions reviewing their entire system, cost analysis of alternative delivery systems, development of written indigency standards and assisting in the design of special projects to provide defense counsel in death penalty cases.

For the Bureau of Justice Statistics, U.S. Department of Justice. This project is designed to update the 1982 National Criminal Defense Systems Study conducted for BJS from 1981-1984. The data elements to be updated are expenditures, caseload and systems description. The second part of the study will analyze transactional case statistics in five metropolitan public defender programs around the country.

- Project Director (1986-present). Responsibilities include all aspects of management and administration including survey design and extensive site work.

For the Massachusetts Trial Court -- a project to assess the operation of the total probation system in Massachusetts. Under subcontract to the Massachusetts Council for Public Justice, Inc., The Spangenberg Group was responsible for all aspects of the research. Among the important issues addressed were: (1) the clarification of probation's mission within the justice system; (2) major organizational and structural issues; (3) management; and (4) methods and procedures for providing optimal services for clients and the justice system.

- Project Director (1986-1987). Responsibilities included the management of all aspects of the research. Participated in each major task of the study.

For the Massachusetts Legal Assistance Corporation, the Massachusetts Bar Association and the Boston Bar Association -- a project to assess the civil legal needs of Massachusetts low income citizens. This project sponsored by the aforementioned organizations involved a statewide study including: (1) a scientifically designed telephone survey of 1200 low income residents; (2) a mail survey of all service

providers (including public and private attorneys); (3) a three month on-site assessment; and (4) public hearings throughout the state. The purpose of the study was to assess the civil legal needs of Massachusetts low income residents and to design a plan of action to improve the existing service delivery system.

- Research Director (1986-1987). Was responsible for the overall management of all aspects of the research which was the responsibility of The Spangenberg Group. Personally involved in all major tasks conducted under the contract.

For the State Public Defender Commission of Ohio -- a statewide study of indigent defense services in Municipal and County courts throughout Ohio's 88 counties. This project assessed requirements for misdemeanor representation throughout the entire state. Tasks included a mail questionnaire to all programs providing misdemeanor representation to indigent defendants; an individual mail questionnaire to judges, public defenders, private attorneys, prosecutors and probation officers; and extensive on-site review throughout the state.

- Project Director (1986-1987). Was responsible for all aspects of the research study and actively participated in the on-site work.

For the County of Los Angeles Countywide Criminal Justice Coordination Committee -- a study to review the policy of the Los Angeles County Public Defender's office in conflict of interest cases. This project reviewed the conflicts policy of the Los Angeles County Public Defender's Office. It consisted of a legal analysis of California law in conflicts cases; a survey of all large public defender offices in California; an analysis of cost and caseload data in conflicts cases and an on-site assessment of the handling of conflict cases throughout the county.

- Project Director (1985-1986). Participated in all aspects of the study and was primarily responsible for the preparation of the final report. Presented final briefing to the full Committee.

For the State Public Defender of Wisconsin -- a project to assist in the design of a private bar contract program in a designated county in Wisconsin.

- Project Director (1985-1987). Responsible for assisting in all aspects of the project design, site selection criteria, evaluation design, and preparation of final report.

Experience with Abt Associates Inc.

- Deputy Area Manager for the Law and Justice Area (1981-1984) Responsible for the administration of area-wide personnel management and labor allocation, staff support, recruiting and corporate reporting. Also responsible for providing technical direction and supervision for state and local sales and project development.

For the Bureau of Justice Statistics, U.S. Department of Justice -- a project to conduct a national survey of indigent defense services and costs. This project collected statistics from 718 counties throughout the country to profile in each state information on existing indigent defense services including expenditures, caseload and program characteristics. The project created the first national database since 1973. The study was successful in providing a sound basis to achieve greater efficiency and effectiveness in the constitutionally mandated requirement of effective assistance of counsel. The report has been used extensively by policymakers in many states concerned about improvements in their local system.

- Project Director (1981-1985). Responsibilities included all aspects of management and administration including overall coordination of data collection and substantial involvement in preparation of the final report.

For the National Institute of Justice, U.S. Department of Justice -- a project entitled Maximizing Public Defender Resources. This study reviewed innovative practices of a number of public defender programs around the country who had developed unique and useful methods to cope with a rising caseload in times of fiscal constraints. The final report addresses a number of practices and methods including the use of paralegals; early representation; vertical representation; team management; methods of limiting caseload; caseload/workload standards; and the use of innovative computers and management information systems.

- Project Director (1981-1985). Responsibilities included all aspects of management and administration. Responsible for coordination of site teams and assignment of all staff to individual tasks. Served as senior site participant for field work.

For the Massachusetts Trial Court -- a project to conduct an evaluation of the Massachusetts Court Clinic System. This project was conducted for the Massachusetts Trial Court in response to a legislatively mandated requirement. The study involved an assessment of mental health services to each of Massachusetts' 103 trial courts. The work included an extensive mail survey to defense counsel, judges, probation officers and providers of mental health services to the courts in both civil and criminal matters, and substantial site work.

The final report provided descriptive information on the current services being provided in Massachusetts, data on both cost and caseload and a series of recommendations designed to improve the system throughout the state.

- Project Director (1984-1985). Responsible for both the management and administration of all research tasks under the contract. Participated extensively in the drafting of the final report and conducted several post report briefings.

For the Los Angeles County Public Defender's Office -- a project to determine the feasibility of expanding the paralegal program. This project was designed to assess the paralegal program in the public defender's office and to conduct a cost analysis of the then current use of paralegal staff. The study included a literature review of the current use of paralegals within the legal field across the country; analysis of cost and caseload data; and a full site visit to review firsthand the operation of the paralegal program. The final report describes the program in action and develops a series of cost estimates for expanded use of paralegals in more than 20 functions within the office.

- Project Director (1984-1985). Responsible for the supervision and administration of all aspects of the study and conducted post report briefings in Los Angeles County.

For the National Institute of Justice, U.S. Department of Justice -- a study to assess the effective use of indigency standards and cost recovery methods in criminal cases around the country. This study looked at effective programs around the country which have developed both comprehensive eligibility standards and cost recovery methods. The final report examines a series of issues including constitutional concerns, eligibility screening, cost recovery procedures in recoupment and contribution programs, and sets out a series of recommendations for those jurisdictions concerned about improving these methods in a manner consistent with the due process rights of indigent defendants.

- Project Director (1983-1985). Was responsible for the management and administration of all aspects of the study. Participated in each site visit and assisted substantially in the writing of the final report.

For the Virginia Bar Foundation -- a project to conduct an analysis of costs for court appointed counsel in Virginia. This study was undertaken on behalf of the Virginia State Bar and the Virginia Bar Foundation to assess the then current costs of indigent defense services in Virginia and to provide cost data for several alternative increased fee proposals. The final report outlines the history of the right to counsel in Virginia; the legal requirements for compensation of the

private bar; detailed cost and caseload analysis; and a set of cost projections based upon several alternative proposals for increased fe levels.

- Project Director (1984-1985). Responsible for all management an administrative functions. Primarily responsible for drafting o the final report. Provided testimony on the project results the Virginia General Assembly.

For the National Institute of Justice, a project to develop synthes of research findings for dissemination to the criminal justice co munity. This project involved four types of tasks in support of th Institute's Program Development Process: (1) assessing the progra matic implications of one or several related research or evaluati studies and presenting the findings in formats suitable for prac titioner audiences; (2) developing "Program Models" documents whi provide an overview of the state-of-the-art in a given program ar and identify options for the development of new programs; (3) prepar ing designs suitable for testing the effectiveness of selecte programs and their transferability to other jurisdictions; and ( developing replication guides based on the results of field test e periences.

- Co-Principal Investigator (1984-1985). Researched and develop an analysis of the use of medical examiners in criminal case throughout the country. The study looked at the professiona qualifications, the legal authority and the responsibilities medical examiners in each of the 50 states.

- Co-Principal Investigator (1981). Prepared a program test desi on Early Representation which was applied in field tests in thre public defender offices around the country. The design teste the value of early entry by counsel both on behalf of the clie and for its effects upon the whole criminal justice system.

- Principal Investigator (1979). Prepared a program test design Structured Plea Negotiations which was applied in field tests various courts of general trial jurisdiction around the country. The principal program elements included a structured conferenc attendance by victim and defendant; and active participati the judge.

- Senior Research Associate (1979). Researched and developed validated program design on jury utilization and management, incorporating the experience of eighteen LEAA-funded demonstration programs and results of a comprehensive program evaluation on t demonstration sites.

For the Governor's Office, the Division of Public Safety Programs, Office of Criminal Justice Programs of the State of South Carolina This projected developed a comprehensive description of the current system of providing defense services to indigents, a detailed assessment of the problems with the current system in meeting the legal requirements of the 1977 Defense of Indigents Act and recommendations for the funding of indigent defense services. A follow-up study developed a cost estimate of implementing a statewide system.

- Project Director (1981-1982). Responsibilities included all aspects of management and administration. Responsible for coordination of site team and assignment of all staff to individual tasks and as a senior site participant for field investigation.

For the Adjudication Division, Office of Criminal Justice Programs (OCJP) of LEAA -- a project to provide technical assistance to criminal defense agencies across the country. The purposes of this contract was threefold: (1) to provide expert, consultative services to state and local agencies in response to requests for such assistance. This form of assistance ranged from large state systems studies to smaller, individual requests by local defender agencies; (2) to play an instrumental role in the development and implementation of national discretionary programs supported by OCJP, insofar as they relate directly to the improvement of legal defense delivery systems; (3) to prepare written and other materials on subjects selected by the Government Project Monitor for use by representatives of local defense agencies, planning entities, bar groups, and others interested in indigent defense delivery system improvement.

- Project Director (1979-1982). Responsibilities included all aspects of management and administration. Responsible for recruitment and selection of consultants and assignment of all staff and consultants to individual tasks. Major site participant and coordinator of large system-wide studies. Responded to over 100 requests in 42 states.

For the Department of Youth Services -- a project to evaluate the Department of Youth Services' Female Offenders Program. This project involved three main tasks: (1) conduct of a state-of-the-art literature review of legislation, criminal justice policy, and program options relevant to female juvenile delinquents; (2) preparation of a guide to program development; and (3) evaluation and cost analysis of three Massachusetts programs for female juvenile delinquents.

- Project Director (1979-1981). Responsibilities included all aspects of management and administration.

For the Massachusetts Committee on Criminal Justice -- a diagnost study of CHINS (Children in Need of Supervision), designated statu offenders in the Commonwealth of Massachusetts. The objectives of t study were to: trace the development and history of the CHI program; analyze the statewide CHINS population; analyze how the CHIN process is implemented on a region-by-region and court-by-court basi provide a survey of social service providers and analysis of servi gaps; perform a legal analysis of the CHINS legislation and propose amendments; perform a cost analysis of current costs and implication and changes in the service delivery network.

- Project Director (1977-1978). Responsibilities included al aspects of management and administration.

For the U.S. Department of Justice, Law Enforcement Assistant Administration -- a contract to assess the Pennsylvania Reintegrati Officers Project for Youth. This was an extensive assessment of juvenile justice project designed to provide alternatives to correctional institutionalization for serious juvenile offenders. The objectives of the project were to remove juvenile offenders from t Camp Hill institution and place them in regional residentia facilities, and to provide community based treatment for youth wh would have been placed in Camp Hill prior to the development of n services. A detailed assessment of the project's history and a evaluation feasibility report were produced.

- Senior Research Analyst (1976-1977). Responsible for conducti interviews with state officials and juvenile court judges; site visits to juvenile institutions; writing of final report.

For the National Institute of Law Enforcement and Criminal Justice, LEAA, a project to validate and document criminal justice progra proposed as exemplary projects. This project has involved: conduct ing short-term validation studies of projects which appear to be either successfully reducing crime or improving the administration of justice; documenting selected projects through the preparation operational manuals and briefing materials; and for one project, co ducting nationwide training workshops to assist local criminal justice planners in developing and operating similar programs.

- Senior Analyst (1979). Conducted an assessment of the California Judicial Education Program which provides training each summe for all new judges appointed to the court system over the pr vious year.

- Senior Analyst (1979). Conducted a study of the use of stat grand juries in criminal cases throughout the country. The emphasis of this report was on new and innovative practices in grand jury practices. The report includes a 50-state analysis legislation in grand jury procedures.

- Senior Analyst (1978). Conducted a review of the Economic Crime Unit of the Connecticut State Attorney General's Office to assess the effectiveness of the unit and to provide a series of recommendations for improvement.

- Senior Analyst (1977). Responsibilities included directing research and field work as well as writing and supervising the preparation of a monograph on the Illinois Court Watching Project and the Court Monitoring Project of New York.

- Senior Analyst (1976). Conducted an assessment of an experimental program in Wayne County, Michigan, designed to improve the jury system by requiring all registered voters to participate in the new one day/one trial system. The program subsequently replaced the 30 day requirement previously in effect.

Other Professional Experience

Boston Bar Association, Boston, Massachusetts

- Executive Director, Action Plan for Legal Services (1975-1976). Designed and administered a comprehensive research project analysis of the legal needs of low-income residents of Massachusetts and proposing new methods and procedures for delivering comprehensive legal services. Resulted in publication of two volumes, one for civil and one for criminal delivery systems.

Boston Legal Assistant Project, Boston, Massachusetts

- Executive Director (1967-1974). Administered the neighborhood legal services program for the City of Boston. Through a variety of funding sources, the project employed a full-time staff of over 100 and approximately 55 full-time attorneys with an annual budget of approximately $1.2 million.

Office of Legal Services, Office of Economic Opportunity, Washington, D.C.

- Special Assistant to the Director (1969-1970). For a six month period of time, was on leave of absence from Boston Legal Assistance Project to serve as Terry Lenzner's Special Assistant in Washington. Assisted the National Legal Services Director on all major policy-making matters.

Boston University, Boston, Massachusetts

- Assistant to the President for Research Development (1967). Responsible to the President as Boston University's representative with all federal agencies that allocate funds for higher education. Assignment was to stimulate Boston University requests to the federal government for grants and other forms of financial support and to maintain personal contact with officials of these agencies.

- Director, Roxbury Defenders Project (1964-1966). A program which provided student counsel to indigent misdemeanants in the Roxbury District Court under Rule 3:11 of the Supreme Judicial Court.

Boston University School of Law, Boston, Massachusetts

- Director, Legal Services Institute (1964-1966). The Institute was established under his direction with the goal of bringing to the Law School programs relating to research, training, clinical, education and community-related projects. Grants were obtained to create the Roxbury Defenders Project, Student Prosecutors Project and the Law and Poverty Project.

- Assistant Dean (1964-1966).

Swartz & Spangenberg, Boston, Massachusetts

- Partner (1961-1965). Law Practice.

Professional Memberships

Massachusetts

Member, Board of Directors, Massachusetts Public Counsel Services Committee, 1984-present. The Committee, appointed by the Supreme Judicial Court, is responsible for administering the indigent criminal defense program for both public and private lawyers throughout the state.

Co-Chairman, Committee on Indigent Representation, Massachusetts Trial Court. Committee appointed by Chief Administrative Judge Arthur Mason to develop statewide indigency standards for indigent defense, 1982-1984.

Member, Board of Directors, Massachusetts Council on Public Justice, 1977-present.

Member, Wilkin's Committee. Supreme Judicial Court Committee to examine all aspects of the right to counsel in the lower courts of Massachusetts, 1976-1977.

Member, Task Force on Court Reorganization and the Judicial Budget to the Senate Committee on Ways and Means, 1978-1979.

Member, Governor's Select Committee on Judicial Needs (Cox Committee), 1975-1976.

Member, Board of Director's, Greater Boston Legal Services Program, 1975-1977.

Member, Massachusetts Bar Association, Committee on Spanish Affairs, 1975-1977.

Member, Advisory Committee, Civil Liberties Union of Massachusetts, 1974-1978.

Member, Committee on Family Advocacy, Family Services Association of Greater Boston, 1974-1976.

Member, Board of Directors, Prisoners' Rights Project, 1972-1977.

Member, Ad Hoc Committee on Judicial Appointments. Committee established by Governor Sargent to recruit and screen applicants for judicial appointments created by adoption of Constitutional Amendment requirement retirement at age 70. 1972-1973.

Member, State Advisory Committee to the Legal Services Corporation, 1972-1974.

Member, Boston Bar Association Committee on Legal Services to the Indigent, 1972-1978.

Member, Massachusetts Bar Association Committee on Legal Services to the Poor, 1966-1973. Charter Member and Chairman, 1966-1968.

Member, Executive Committee, Boston University Law School Alumni Association, 1965-1968.

Member, Massachusetts Bar Association, Committee on Judicial Administration, 1964-1970.

Member, Advisory Committee, Massachusetts Correctional Assistance Project, 1965-1967.

Member, Committee on Bail, Massachusetts Council on Crime and Delinquency, 1964-1967.

National

Member, Advisory Committee, Management and Technical Assistance Project, National Legal Aid and Defender Association, 1981-1985.

Member, Board of Directors and Executive Committee, National Legal Aid and Defender Association, 1970-1980.

Member, Board of Director's and Executive Committee, Action for Legal Rights, Inc. A non-profit corporation established in the District of Columbia to lobby for the National Legal Services Corporation, 1972-1974.

Member, Project Advisory Group. The PAG consisted of 30 legal services project directors around the country formed to provide policy input into decisions of the National Office of Legal Services, Office of Economic Opportunity. 1968-1974. Chairman, 1969-1972.

Member, Advisory Committee, National Health Law Project, 1973-1975.

Member, Advisory Board, Project on Legal Research and Services for the Elderly, 1970-1973.

Member, Committee on Legal Clinics, American Association of Law Schools, 1965-1967.

Publication, Monographs and Reports

Recent Trends in Indigent Defense Systems, Criminal Justice Magazine. Fall, 1986.

An Introduction to Indigent Defense Systems (with Patricia Smith), American Bar Association, June 1986.

An Evaluation of the Provisions of Indigent Defense Services in Oklahoma, for the ABA Bar Information Program, April 1986.

A Study of the Practical Alternatives That Would Reduce the Number of Public Defender Conflict of Interest Cases (with Patricia Smith) for the County of Los Angeles Countywide Criminal Justice Coordination Committee, January 1986.

Preliminary Report on Indigent Defense Services in the State of Washington (with Patricia Smith) on behalf of the ABA Bar Information Program, January 1986.

An Analysis of PD 5289 and Its Fiscal Impact on the Provision of Indigent Defense Services in Indiana (with Patricia Smith) on behalf of the ABA Bar Information Project, December 1985.

Probation At A Crossroads: Innovative Programs in Massachusetts (with Russell Immarigeon and Patricia Smith) for the Massachusetts Council for Public Justice, October 1985.

Projecting Costs For Various Indigent Defense Systems in Virginia for FY 1986 (with Patricia Smith), on behalf of the ABA Bar Information Program, October 1985.

Issues and Practices: Recoupment and Indigency Screening (with Beverly Lee), draft report for the National Institute of Justice, 1985.

Feasibility of Expanding the Paralegal Program in the Los Angeles County Public Defender's Office (with Patricia Smith), for the County Commissioner of Los Angeles, 1985.

Evaluation of the Massachusetts Court Clinic System (with William Rose, Larry Kerpelman, Elizabeth Shapiro, Patricia Smith, Jonathan Zax), for the Office of the Administrative Justice of the Commonwealth of Massachusetts, April 1985.

Analysis of the Costs for Court-Appointed Counsel in Virginia (with William Rose), for the Virginia State Bar Association, April 1985.

Maximizing Public Defender Resources (with Nancy Ames and Patricia Smith), for the National Institute of Justice, July 1985.

National Indigent Defense Systems Study (with Beverly Lee et al.), for the Bureau of Justice Statistics, August 1984.

Improving Indigent Defense Services in South Carolina: A Cost Estimate (with Criminal Defense Group (CDG) staff), for the State of South Carolina, January 1983.

Contract Defense Systems Under Attack: Balancing Cost and Quality, National Legal Aid and Defender Association Briefcase (with A. David Davis and Patricia Smith), Fall, 1982.

Final Report, Criminal Defense Technical Assistance Project, for the Law Enforcement Assistance Administration (LEAA), August 1982.

Criminal Defense Services for the Poor: Methods and Programs for Providing Legal Representation and the Need for Adequate Financing, Professor Norman Lefstein, American Bar Association, May 1982. We (CDG staff) prepared extensive appendices for this report.

A Study of Defense Services for Indigent Criminal Defendants in South Carolina: Analysis and Recommendations (with CDG staff), for the State of South Carolina, January 1982.

San Diego County, Office of Defender Services: Evaluation and Recommendations (with CDG staff), for LEAA, December 1981.

Early Representation in Public Defender Programs: A Test Design (with Ronald Brandt and Bonnie Lewin), for the National Institute of Justice, U.S. Department of Justice (NIJ), May 1981.

Program Development Guide for Community Based Programs (with Vicki Garvin) for the Department of Youth Services, Commonwealth of Massachusetts, March 1981.

Nashim Program Evaluation (with Vicki Garvin), for the Department of Youth Services, Commonwealth of Massachusetts, February 1981.

Dollars for Defense (with A. David Davis), NLADA Briefcase, Winter, 1980.

A Statewide Public Defender System, Marion County, Indiana: Current and Projected Costs (with CDG staff), for LEAA, January 1980.

Structured Plea Negotiations: A Test Design (with Kenneth Matthews and Deborah Day), for NIJ, May 1979.

Status and Operation of State Grand Juries (with Deborah Day), for LEAA, March 1979.

Diagnostic Study of the Massachusetts Children in Need of Services Program (with Laura Studen and Deborah Day), for the Committee on Criminal Justice, Commonwealth of Massachusetts, October 1978.

Effective Juror Utilization and Management (with Laura Studen and Deborah Day), for NIJ, October 1978.

Connecticut's Economic Crime Unit, An Exemplary Program, for NIJ, August 1978.

Action Plan for Legal Services, Part 2: Report on Criminal Defense Services to the Poor in Massachusetts (with William Rose), for the Boston Bar Association, June 1978.

Citizen Court Watching: The Consumer's Perspective (with Kenneth Carlson and Lewis Morris), for NIJ, October 1977.

Report on the Legal Problems of the Poor in Boston, Part I: Civil Legal Needs, for the Boston Bar Association, January 1977.

The Camp Hill Project: An Assessment (with Daniel McGillis), for the Office of Juvenile Justice and Delinquency Prevention, U.S. Department of Justice, December 1976.

Wayne County, Michigan, One Day/One Trial Jury System: An Experiment in Jury Reform, for NIJ, October 1976.

Recent Developments in Consumer Law (with Jayne Tyrrell), Massachusetts Law Quarterly, Winter 1975.

Symposium on Legal Services to the Poor, Illinois Law Review, Spring, 1966.

Data Processing and Court Administration, Massachusetts Law Quarterly, March 1965.

The Boston University Roxbury Defender Project, Journal of Legal Education, Vol. 17, No. 3, 1965.

Auditing the Auditor System: A Study of Auditor Referrals in Suffolk County, Massachusetts, Boston University Law Review, Summer, 1964.

Legal Services for the Poor Symposium, Massachusetts Law Quarterly, December 1964.

Fall Down Cases, Part III, Massachusetts Law Quarterly, March 1963.

Fall Down Cases, Part II, Massachusetts Law Quarterly, September 1962.

Fall Down Cases, Part I, Massachusetts Law Quarterly, March 1961.

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## EMPLOYMENT

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|---|---|
| 1973-present | Practice of Law |
| 1970-72 | Foundation State Appellate Defender, State of Michigan |
| 1969-70 | Chief Deputy Defender, Legal Aid and Defenders. |
| 1973-present | Member and legal adviser to Team for Justice. |
| 1981-present | MERC Arbitration panelist. |
| 1981-present | Hearing panelist for Attorney Discipline Board. |
| 1970, 1980-present | Adjunct Professor, University of Detroit Law School, Criminal Procedure. |
| 1967-8 | Lecturer in Law, University of Papau New Guinea, Contracts and Sales. |
| 1966 | Teaching Fellow, University of Melbourne, Contracts and Torts. |
| 1967 | Law Clerk, Michigan Court of Appeals for Judges Fitzgerald, Quinn and McGregor. |
| 1964 | Law Clerk, Wayne County Circuit Court, Judge Montante. |

## PROFESSIONAL AND PUBLIC COMMITTEES

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| 1980-present | Chairperson, State Bar Committee to Draft Standard Jury Instructions for Criminal Trials. |
| 1981-present | Officer, Criminal Defender's Association of Michigan. |
| 1979 | Member, Special Advisory Committee on Assigned Counsel. |

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| 1975-78 | Member of Supreme Court Committee to Review General Court Rules. |
| 1975-77 | Member of Supreme Court Committee to adopt Rules of Evidence. |
| 1973-80 | Member of State Bar Committee to Draft Standard Jury Instructions for Criminal Trials. |
| 1973 | Chairman, Police Community Relations Committee established by the Detroit City Council. |
| 1972 | Member of Supreme Court Committee to draft rules to insure Due Process Standards for the Acceptance of Guilty Pleas. |

PUBLICATIONS AND PRESENTATIONS

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| 1982 | Preparation, Criminal Law Survey, Wayne Law Review. |
| 1982 | Lecture, Protecting the Record for Appeal, to Michigan Trial Lawyers Association. |
| 1980 | Lecture, Representing the Appellant at the Sixth Circuit Court of Appeals, to Federal Bar Association. |
| 1977 | Lecturer, Constitutional Developments, to National Convention of National Legal Aid and Defender Associations. |
| 1975 | Lecture, Use of Standard Criminal Jury Instructions, to Annual Meeting of Michigan Judges. |
| 1974 | Author, What Every Defendant Should Know About Recorder's Court, Published by the State Bar of Michigan and the Detroit Bar Association. |
| 1972 | Author, Criminal Law Survey, Wayne Law Review. |

EDUCATION

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| 1965 | Juris Doctor with Honors, Wayne State University. |
| 1963 | Bachelor of Arts Degree, Wayne State University. |

ADMITTED TO PRACTICE

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| 1970 | United States Court of Appeals, Sixth Circuit |
| 1972 | United States Supreme Court |
| 1965 | United States District Court for the Eastern District of Michigan |
| 1965 | State of Michigan |

PERSONAL

Date of Birth: February 3, 1942

DONALD TIPPMANN
11135 McClumpha
Plymouth, Michigan 48170
313-455-8625

## EMPLOYMENT HISTORY

1981-1990 President of privately owned research and consulting firm, Tippmann Associates. Also part time instructor in Management Information Systems and Statistics at Marygrove College and Detroit College of Businesss. From 1984 to 1990 conducted numerous research projects for the Recorder's Court Administrator's Office in such areas as risk prediction, effects of policy changes on prison and jail populations, sentencing guidelines, case processing, effects of sanctions on recidivism, and attorney fees.

1978-1981 Director of Research and Planning in Recorder's Court Probation Department. Work included the design and direction of research projects. Part time instructor of Criminology at U of Michigan, Dearborn.

1976-1978 Director of Management Efficiency Program in Recorder's Court Probation Dept. Respsonsibilities included the analysis of information needs, purchase and install a minicomputer system, develop a data management system.

1967-1976 Probation Officer in Recorder's Court. Work included supervising offenders on probation.

1967-1967 Teacher at Federal Correctional Institution in Milan, Michigan. Developed curriculum, counseled, and taught prison inmates.

1965-1966 Employment Specialist for Chicago Committee on Urban Opportunity. Work included development of an employment evaluation, training, and referral system.

## EDUCATION

1985 Summer workshop in Criminal Justice Statistics ICPSR, University of Michigan.

Ed.D. Education from Wayne State University in 1976 with major in Advanced Research Methodology.

M.A. Sociology from the University of Detroit in 1966.

B.A. Liberal Arts from Loyola University Chicago in 1960.

## MEMBERSHIPS

American Statistical Association.
American Correctional Association.
Michigan Correctional Association.

# LEGAL BIBLIOGRAPHY

## LEGAL BIBLIOGRAPHY BEARING ON FEES FOR INDIGENT DEFENDANTS

The most recent decision in Michigan is In re Frederick,[1] decided October 25, 1990, by the Court of Appeals 186 Mich App 29 (1990):

> Docket No. 126643. Submitted October 10, 1990, at Grand Rapids. Decided October 25, 1990.
>
> James A. Frederick, a private attorney, was appointed as appellate counsel for an indigent criminal defendant, David Cook, who had been convicted in Presque Isle Circuit Court. Following completion of his representation of Cook, Frederick submitted a bill for his fees and expenses to the chief judge of the twenty-sixth judicial circuit which includes the Presque Isle Circuit Court, Joseph P. Swallow, J., who refused to order the county to pay Frederick any part of the bill. Frederick brought an action for superintending control in the Court of Appeals, seeking an order directing Judge Swallow to issue an order directing the county to pay the bill for the fees and expenses arising out of Frederick's appellate representation of Cook. Presque Isle County intervened as a defendant. The Michigan Appellate Assigned Counsel system was permitted to appear as an amicus curiae.
>
> The Court of Appeals held:
>
> Superintending control lies only where there is a clear legal duty requiring the lower court to act. A court cannot require a county to pay the cost of counsel without some specific legislative authority. The present statutory scheme does not mandate compensation by a county of a roster attorney appointed to represent an indigent criminal defendant on appeal where the attorney so appointed was not also the trial attorney. Since there was no clear legal duty requiring the circuit court to order the county to pay Frederick's bill for legal services, an order of superintending control is inappropriate.
>
> Complaint dismissed.
>
> **Criminal Law -- Appeal -- Appointed Counsel -- Attorney Fees -- Superintending Control**
>
> A circuit court cannot require a county to pay the cost of appointed counsel without some specific legislative authority; there exists no statutory mandate requiring a county to pay an

[1] Now pending in the Michigan Supreme Court on leave granted November 13, 1990; orally argued March 7, 1991.

attorney appointed from the roster of private attorneys for hi representation of an indigent criminal defendant on appeal where that attorney was not also appointed as trial counsel; accordingly, since there exists no clear legal duty on the part of the county to pay such attorney fees, there exists no duty on the part of a circuit court to order the payment of such fees; the failure of a circuit court to order payment under such circumstances will not support the issuance of an order of superintending control.

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## IN RE ATTORNEY FEES OF JACOBS (PEOPLE v JOHNSON)
185 Mich App 642

Docket No. 116414. Submitted August 9, 1990, at Grand Rapids. Decided October 2, 1990.

Following his representation of Ronald Allen Johnson in his appeal from a felony conviction, attorney James Edward Jacobs submitted a Michigan Appellate Assigned Counsel System statement seeking $6,416.80 in attorney fees. The Clinton Circuit Court, Randy L. Tahvonen, J., ordered payment of $3,612.37. Jacobs appealed.

The Court of Appeals held:

1. There was no denial of due process. The existing procedures, if followed by Jacobs, were sufficient to satisfy the requirements of due process. Jacobs failed to avail himself of the opportunity for a hearing at which he could have presented evidence or elicited the trial court's reasons for reducing the requested fee. There was no clear abuse of discretion by the trial court.

2. Jacobs' due process and equal protection arguments and those regarding the indigent defendant's rights to counsel, appeal, due process and equal protection were rejected.

Affirmed.

1. **Attorney and Client -- Attorney Fees -- Court-Appointed Counsel.**

An attorney appointed by the court is entitled to receive from the county treasurer, on the certificate of the chief judge that the services have been rendered, the amount which the chief judge considers to be reasonable compensation for the services performed; the determination as to reasonable compensation will not be disturbed on appeal absent an abuse of discretion (MCL 775.16; MSA 28.1253).

2. **Constitutional Law -- Due Process.**

The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner; due process is a flexible concept, and the amount of process due depends on the circumstances.

3. **Constitutional Law -- Due Process.**

Identification of the specific dictates of due process generally requires consideration of three distinct factors: first, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; third, the government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

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## In re ATTORNEY FEES OF KLEVORN (PEOPLE v KOSCIECHA)
185 Mich App 672

Docket No. 121333. Submitted August 9, 1990, at Grand Rapids. Decided October 2, 1990.

Following his representation of indigent criminal defendant John Kosciecha in a criminal matter in Charlevoix Circuit Court, attorney Kevin G. Klevorn submitted a request for the payment of nearly $10,000 in attorney fees and a request for the payment of $2,605.89 for Kosciecha's accident reconstruction expert. Klevorn had signed contracts with Charlevoix County to accept indigent criminal appointments for which he had received monthly payments. The request for the expert witness fee was submitted despite the fact that the trial court, Richard M. Pajtas, J., had denied a pretrial motion for the payment of such fee. The trial court denied the request for the payment of the expert witness fees and awarded Klevorn only $1,830.50 in additional fees. Kosciecha and Klevorn appealed.

The Court of Appeals held:

1. The trial court did address the issue of reasonable compensation. Since the contract to accept indigent criminal

appointments expressly addressed the situation which occurred here, the trial court's original approval of that contract, and Klevorn's as well, in addition to the court's opinion ordering additional fees under the contract terms, constituted a determination that the fee provided by its terms was reasonable. The trial court did not abuse its discretion.

2. Establishing a fixed fee schedule for assigned counsel does not violate the lawyer's due process and equal protection rights or the indigent defendant's rights to counsel, appeal, due process and equal protection.

3. The denial of payment of the expert witness fee was an abuse of discretion. The trial court should have granted the motion to appoint the accident reconstruction expert since Kosciecha argued that the tests and conclusions of the prosecution's experts were faulty, that their results were in error, and that their testing procedures were inadequate. The trial court's finding regarding the payment of such fees is reversed.

Affirmed in part and reversed in part.

1. **Attorney and Client -- Attorney Fees -- Court-Appointed Counsel.**

An attorney appointed by the court is entitled to receive from the county treasurer, on the certificate of the chief judge that the services have been rendered, the amount which the chief judge considers to be reasonable compensation for the services performed; the determination as to reasonable compensation will not be disturbed on appeal absent an abuse of discretion (MCL 775.16; MSA 28.1253).

2. **Attorney and Client -- Attorney Fees -- Court-Appointed Counsel.**

A trial court's original approval of a contract for an attorney to accept indigent criminal appointments and the attorney's agreement to its terms may be found to constitute a determination by the court that the contract provides reasonable compensation for the subjects it covers.

3. **Attorney and Client -- Fixed Fee Schedules -- Court-Appointed Counsel.**

The establishment of a fixed fee schedule for assigned counsel does not violate assigned counsel's due process and equal protection rights or an indigent defendant's rights to counsel, appeal, due process and equal protection.

4. **Criminal Law -- Witnesses -- Expert Witnesses -- Indigent Defendants.**

**A trial court erred in refusing an indigent defendant's request for the appointment of an expert at public expense where the defendant argued that the expert was necessary to respond to the testimony of the prosecution's expert and argued that the tests and conclusions of the prosecution's expert were faulty, that the results were in error, and that the testing procedures were inadequate (MCL 775.15; MSA 28.1252).**

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Another Court of Appeals case is In re Jamnik, 176 Mich App 817:

**Docket No. 107084. Submitted October 19, 1988, at Lansing. Decided May 1, 1989.**

**Harold B. Hunter was convicted of armed robbery in the Genesee Circuit Court. Thomas Jamnik was then appointed by the trial court to represent Hunter on appeal. Mr. Jamnik visited Hunter in prison in the Upper Peninsula, filed a claim of appeal and brief, and orally argued the case in the Court of Appeals. The Court of Appeals affirmed Hunter's conviction and Mr. Jamnik petitioned the trial court for payment of $1,412.22 in fees and expenses. The trial court, Philip C. Elliott, J., awarded Jamnik $87.50 for transcript review, $19.60 for photocopying, $2.12 for postage and $300 for ten hours of research and briefing at $30 per hour. The total award was $409.22. The court refused to award any compensation for counsel's meeting with his client or for oral argument. Jamnik appealed.**

**The Court of Appeals held:**

**The trial court did not abuse its discretion in granting the award of $409.22. However, it abused its discretion in denying any compensation for counsel's meeting with his client or for counsel's oral argument. The award of $409.22 is affirmed and the matter is remanded for a determination of reasonable compensation for the client visit and oral argument and entry of an appropriate order.**

1. **Attorney and Client -- Criminal Law -- Appointed Appellate Counsel -- Attorney Fees.**

**The determination of a trial court as to reasonable compensation for services rendered by appointed appellate counsel for an indigent defendant will not be disturbed on appeal absent an abuse of discretion; it**

is an abuse of discretion to simply deny any compensation for services which are inherent in the attorney-client relationship, such as counsel's meeting with his client or counsel's oral argument, provided for in the minimum standards for indigent criminal appellate defense services promulgated by the Michigan Supreme Court, and contemplated in the trial court's own indigent attorney fee schedule (Supreme Court Administrative Order 1981-7).

2. **Attorney and Client -- Criminal Law -- Appointed Appellate Counsel -- Attorney Fees.**

Factors considered in determining reasonable compensation for services rendered by appointed appellate counsel for an indigent defendant are: (1) the complexity and difficulty of the case and the time and expense of counsel which can be reasonably justified, (2) the trial court's policy as to compensation, and (3) the minimum standards for indigent criminal appellate defense services promulgated by the Michigan Supreme Court (Supreme Court Administrative Order 1981-7).

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In re Attorneys Fees of Mullkoff, reported in 176 Mich App 82:

Docket No. 108737. Submitted February 8, 1989, at Lansing. Decided March 20, 1989. Leave to appeal applied for.

Attorney Douglas A. Mullkoff was appointed by the Genesee Circuit Court as appellate counsel for Vechem Elvis Canamore, who was convicted of criminal sexual conduct. Mullkoff filed a claim in the trial court for his fees and expenses and submitted an itemized statement in support of the claim. The trial court, Judith A. Fullerton, J., awarded Mullkoff an amount which was less than the claim after reducing the number of hours claimed for review of the trial transcript and preparation of the appellate brief and disallowing fees and expenses claimed for an in-prison conference with his client, oral argument before the Court of Appeals, and attendance at the hearing on the prosecution's motion to set a date for resentencing. Mullkoff filed, and the trial court denied, a motion for full payment of attorney fees and expenses. Mullkoff appealed.

The Court of Appeals held:

The statute which authorized the appointment of an attorney to represent an indigent defendant imposes an obligation on the trial court to determine and award reasonable compensation

for the appointed attorney. The trial court's determination as to reasonable compensation for services and expenses will not be disturbed on appeal absent an abuse of discretion. Here, the trial court did not abuse its discretion in reducing the number of hours claimed for review of the trial transcript and preparation of the appellate brief. However, the trial court abused its discretion in denying Mullkoff's reasonable claim for fees and expenses related to the conference in prison, oral argument before the Court of Appeals, and the prosecution's motion to set a resentencing date.

Affirmed in part, reversed in part and remanded for payment of additional fees and expenses to attorney Mullkoff.

**Attorney and Client -- Court-Appointed Counsel -- Compensation -- Appeal.**

The statute which authorizes the appointment of an attorney to represent an indigent, criminal defendant imposes an obligation on the trial court to determine and award reasonable compensation for the appointed attorney; the trial court's determination as to reasonable compensation for services and expenses will not be disturbed on appeal absent an abuse of discretion (MCL 775.16; MSA 28.1253).

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In 1976, at 69 Mich App 699, 245 NW2d 348, the Court of Appeals decided <u>In the Matter of Attorney Fees of Burgess</u>:

1. **Courts--Judges--Appointed Attorneys--Criminal Law--Indigents--Statutes.**

   A presiding judge of a trial court has a statutory right to appoint and determine compensation for counsel for an indigent defendant (MCLA 775.16; MSA 28.1253).

2. **Courts--Judges--Appointed Attorneys--Attorney Fees--Criminal Law--Indigents--Appeal and Error.**

   A trial judge's determination of fees for appointed counsel will not be disturbed on appeal absent a gross abuse of discretion.

3. **Courts--Recorder's Court--Appointed Attorneys--Criminal Law--Attorney Fees--Judges--Discretion--Court Rules.**

   A Recorder's Court judge may allow compensation for a court-appointed attorney in an amount either greater or less

than that provided by the fee schedule appended to a Recorder's Court Rule (Recorder's Ct Rule 10, Appendix).

4. **Courts--Appointed Attorneys--Criminal Law--Attorney Fees--Judges--Discretion--Abuse of Discretion.**

Refusal of a Recorder's Court judge to allow court-appointed counsel any fees for their appellate services was a gross abuse of discretion where counsel, after furnishing capable representation for their client in the trial court, pursued the matter through the Court of Appeals and eventually secured the dismissal of charges in the Supreme Court.

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In 63 Mich App 24 (1975), 233 NW2d 876, will be found

IN THE MATTER OF THE ATTORNEY FEES OF RUTH RITTER AND RAYMOND E. WILLIS
(PEOPLE v RITCHIE)

1. **Courts--Supreme Court--Court Rules--Local Court Rules--Statutes--Constitutional Law.**

The Supreme Court is vested with constitutional authority to formulate general rules of procedure and such rules take precedence over legislative enactments; local court rules, however, must given way to statutory directive and are subject to approval by the Supreme Court (Const 1963, art 6, § 5, GCR 1963, 927[2]).

2. **Attorney and Client--Court-Appointed Counsel--Attorney Fees--Discretion--Statutes--Court Rules.**

A trial judge before whom an indigent defendant's court-appointed attorney appears may exercise judicial discretion in determining reasonable compensation to the attorney for services performed; a local court rule containing a fee schedule for appointed counsel must give way to the statute authorizing judicial discretion in setting the fees (MCLA 775.16, Recorder's Court R 10).

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In 1972 the Supreme Court decided the case of In the Matter of Attorneys Fees of Sheldon R. Meizlish, 387 Mich 228. It should be noted that while this is a Supreme Court case it was decided within the rule of Wayne County Circuit Court Rule 14.13 which was abrogated in 1982.

1. **Attorney and Client--Fees--Assigned Counsel--Indigents--Criminal Law--Court Rules.**

   **System of compensation for attorney assigned to defend an indigent charged with a crime under a Wayne Circuit Court Rule is not irrational and does not promote assembly line justice as distinctions are made in the amount of money a lawyer receives if he conducts a preliminary examination as opposed to waiving a preliminary examination and additional fees are granted if a case is appealed to a higher court (Wayne Circuit Court Rule 14.13).**

2. **Attorney and Client--Fees-Assigned Counsel--Indigents--Criminal Law--Court Rules.**

   **Wayne Circuit Court Rule regarding compensation for an attorney assigned to defend an indigent charged with a crime does, in general, provide reasonable compensation for court appointed attorneys for indigents (Wayne Circuit Court Rule 14.13).**

3. **Attorney and Client--Fees-Assigned Counsel--Criminal Law--Constitutional Law--Due Process-Equal Protection.**

   **An attorney was not deprived of due process and equal protection under the United States and Michigan Constitutions where he was assigned to represent an indigent defendant in a criminal case for post-conviction and appellate proceedings, he requested the trial court for a fee for his services, an award of a fee was made, and the attorney, being dissatisfied with the amount, filed a motion for rehearing which was denied (US Const, Am XIV; Const 1963, art 1, §§ 2, 17).**

4. **Constitutional Law--Indigents--Attorney and Client.**

   **An indigent defendant is not deprived of his constitutional rights by the appointment of unpaid counsel as dedication and diligence to a client's cause should not**

be altered because of the payment of a higher fee and most attorneys are dedicated and will zealously protect the rights of any client they defend.

5. **Criminal Law--Constitutional Law--Indigent Defendants--Attorney and Client.**

An indigent defendant in a criminal case was not denied his constitutional right of representation by counsel where he was provided with the services of three attorneys for post-conviction and appellate proceedings, the first two were permitted to withdraw, and the third attorney was then appointed.

6. **Attorney and Client--Indigents--Criminal Law--Court Rules--Constitutional Law--Due Process--Equal Protection.**

Wayne Circuit Court Rule providing compensation for an attorney assigned to defend an indigent charged with a crime is not arbitrary and capricious and does not violate the attorney's rights under the due process and equal protection clauses of the United States Constitution or the Michigan Constitution (US Const, Am XIV; Const 1963, art 1, §§ 2, 17; Wayne Circuit Court Rule 14.13).

**Dissenting Opinion**
**Black, J.**

7. **Attorney and Client--Indigents--Constitutional Rights.**

Experience has shown that forcing a lawyer to do professional work on behalf of an indigent for little or no compensation results in the denial of the indigent's constitutional rights to adequate representation.

8. **Courts--Attorneys--Compensation.**

The Michigan Supreme Court should proceed on its own motion, in the exercise of its inherent power to take such action as is reasonably necessary to fulfill its constitutional responsibility for efficient judicial service, to establish a policy regarding adequate payment for lawyers appointed to represent the indigent.

9. **Attorney and Client--Professional Duty--Compensation.**

The lawyer, by entering the legal profession, has rejected financial gain as his sole objective, and has voluntarily offered his capabilities and talents to the service of the public, but he is entitled to acquire

proper tools for his work and an adequate standard of living for himself and his family.

10. **Attorney and Client--Compensation--Indigents.**

A lawyer's professional time is a property right, and has been stolen from him when by compulsion of a judicial order he represents an indigent for an inadequate fee.

11. **Attorney and Client--Compensation--Indigents--Fairness-Equality.**

Lawyers forced to serve the indigent in this state are not treated fairly or equally in the matter of compensation; much in that regard depends upon the varying attitudes of assigning trial judges.

12. **Attorney and Client--Compensation--Indigents.**

The Michigan Supreme Court should not continue to require members of the Bar to absorb the cost of the defense of the indigent.

13. **Attorney and Client--Compensation--Indigents.**

The circuit court should ascertain and order paid a reasonable fee for the services rendered by an attorney for the defense of an indigent, and the Michigan Supreme Court should immediately adopt a court rule comporting with a resolution of the Board of Commissioners of the State Bar that attorneys assigned to represent indigent defendants in criminal cases be compensated at the rate provided in the State Bar minimum fee schedule.

Dissenting Opinion
**Adams, J.**

14. **Attorney and Client--Compensation--Fees-Indigents--Criminal Law.**

The circuit court should ascertain and order paid a reasonable fee for the services rendered by an attorney for the defense of an indigent in a criminal case.

15. **Attorney and Client--Compensation--Fees-Indigents.**

Until there is a statewide adequate system for providing counsel for indigent defendants, responsibility for setting counsel's fees should be left with the judge who hears the case and is in a position to determine and set an adequate fee for the services performed.

At 111 Mich 568, we find DeLong v Board of Supervisors of Muskegon County:

1. **Attorneys at Law -- Indigent Prisoners.**

**While it is the duty of an attorney to undertake the defense of an indigent prisoner if ordered to do so by the court, the statute (2 How. Stat. § 9047) expressly relieves him from any obligation to follow the case into another county or into the Supreme Court.**

2. **Same -- Costs of Appeal -- Liability of County**

**An attorney, therefore, who, upon his own motion, causes an appeal to be taken to the Supreme Court, cannot enforce a claim against the county for fees and expenses incident to the appeal.**

Certiorari to Muskegon; Russell, J. Submitted January 5, 1897. Decided February 2, 1897.

Mandamus by Nelson De Long to compel the board of supervisors of Muskegon county to allow a claim for attorney's fees and expenses incident to an appeal from the conviction of an indigent prisoner. From an order denying the writ, relator brings certiorari. Affirmed.

The relator, an attorney at law, was appointed by the circuit court of the county of Muskegon to defend one Smith, an indigent prisoner, charged with the crime of assault with intent to do great bodily harm less than the crime of murder. He was convicted. The relator, upon his own motion, and without any petition to or order of the circuit court, brought the case to this court by a writ of error. A bill of exceptions was settled. The relator procured the record and his brief to be printed. The case was affirmed by this court. People v Smith, 106 Mich 431. The relator thereupon presented a claim against the respondent for $356.80, of which $200 was for his services and $156.80 for printing the record and brief. The respondent refused to allow the claim, and the relator petitioned the circuit court for the writ of mandamus to compel its allowance. The court refused to issue the writ, and the relator has brought the proceeding to this court by the writ of certiorari.

Grant, J. (after stating the facts). The relator contends that, when an attorney is appointed to defend an indigent prisoner in the circuit court, he has the right, upon his own motion, upon conviction, to appeal the case to the Supreme Court, and

that the supervisors of the county are required by law to pay the expenses of printing the record and brief, and for his services in taking the case to this court. If such a right exists, it must be found in the statute. The right of appeal in civil and criminal cases is statutory. Section 9046, 2 How. Stat., as amended by Act No. 96, Pub. Acts 1893, provides for the appointment by the court of an attorney to defend an indicted person when he shall be unable to procure counsel, and that the court shall determine his compensation, which shall not exceed $50. Section 9047 is as follows:

> "An attorney shall not, in such case, be compelled to follow a case into another county or into the Supreme Court, and, if he does so, may recover an enlarged compensation, to be graduated on a scale corresponding to the prices above allowed."

These two sections must be construed together. No attorney can defend a prisoner, and subject the county to pay for such expense, without an order of the court. It is the duty of the circuit judge to examine into the circumstances, and determine whether it is his duty to appoint an attorney to defend at the expense of the county. The order of the circuit court is the sole authority for subjecting the county to the expense of the prisoner's defense. Section 9047 means this, and nothing more, viz., the attorney cannot be compelled, even by the order of the court, to follow the case into another county, or into the Supreme Court. The attorney is an officer of the court, and as such is required by law to obey its orders. He may therefore be compelled, though against his wish, to defend the prisoner, when ordered by the court to do so. The purpose of this act is to relieve him from this duty if there be a change of venue, or an appeal to the Supreme Court. If the prisoner desires the attorney so appointed to follow the case into another county, he must obtain an order of the court to that effect. If the attorney refuses, as he may, then the court before which the case is to be tried must take care of his rights. If the prisoner desires to have his case reviewed by the court of last resort, he must apply to the court to obtain an order. This was the course pursued in People v Hanifan, 99 Mich 516. It seems impossible of belief that the legislature intended that any attorney defending an indigent prisoner under the order of the circuit court should, upon his own motion, subject the county to the expense of an appeal to this court. It is a consistent view to take that the legislature did intend to provide for the employment and payment of an attorney to follow the case to this court if, in the opinion of the circuit court, the case should be appealed. Upon conviction the presumption of guilt prevails. There may be cases involving questions which should be determined by the court of last resort, and in such cases it would be very proper for the circuit court to make an order

authorizing the prisoner's counsel to appeal the case, and he would then be entitled to compensation under section 9047. If he chooses to appeal the case upon his own motion, he must look to his client for compensation. We are confirmed in this view by the fact that this section was enacted 40 years ago, and has never been construed by the profession or the circuit courts to confer the power now claimed.

The judgment is affirmed.
The other Justices concurred.

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PEOPLE v THOMAS HANIFAN
[99 Michigan 516 (1894)

1. The case of Springer v Board of Auditors, ante, 513, in which it was held that the "enlarged compensation," to which an attorney appointed to defend in a criminal case, and who removes the case to the Supreme Court, is entitled under How. Stat. § 9047, must be fixed by that Court, is overruled, being in conflict with section 10, art. 10, of the Constitution, to which the attention of the Court was not called, which vests in the board of auditors of Wayne county, and in the boards of supervisors of the counties generally, the exclusive power to prescribe and fix the compensation for all services rendered for, and to adjust all claims against, their respective counties, and provides that the sum so fixed or defined shall be subject to no appeal.

2. The section of the Constitution cited does not give to the boards there mentioned unlimited authority to allow or disallow t will all claims that may be presented to them; citing Endriss v Chippewa Co., 43 Mich 317.

Motion for the allowance of attorney's fees for the defense of a respondent in a criminal case in the Supreme Court. Argued May 1, 1894. Denied June 26, 1894. The facts are stated in the opinion, and in Springer v Board of Auditors, ante, 513.

Long, J. A motion is made in this cause for the allowance of attorney's fees for the defense of Thomas Hanifan in this Court, under the provisions of How. Stat. § 9047. The matter was in this Court at the January term, 1894, and is reported at page 513, ante. It was there held that this Court was the proper tribunal to fix and determine the amount of the

allowance for attorney's fees. Our attention at that time was not called to the provisions of section 10, art 10, of the Constitution of this State, which reads as follows:

> "The board of supervisors, or in the county of Wayne the board of county auditors, shall have the exclusive power to prescribe and fix the compensation for all services rendered for, and to adjust all claims against, their respective counties; and the sum so fixed or defined shall be subject to no appeal."

The legislature, by section 9047, has not fixed and determined the amount of compensation, but the section provides for an enlarged compensation, to be graduated on a scale corresponding to the prices allowed in the circuit court, in which the amount is fixed and determined.

Upon examination of this constitutional provision, we think it is a matter in which this Court cannot act. In People v Wayne Co. Auditors, 10 Mich 307, it was held that the decision of the board on all questions of fact involved in claims against the county could not be reviewed by the Court, directly or indirectly. This view was reaffirmed in Mixer v Manistee Co. Supervisors, 26 Mich 422. See, also, Videto v Jackson Co. Supervisors, 31 Mich 118; People v Manistee Co. Supervisors, 33 Id. 497. Section 10, art 10, of the Constitution, does not, however, give to the board unlimited authority to allow or disallow at will all claims that may be presented to it. Endriss v Chippewa Co., 43 Mich 317. But the question here presented is one of power in this Court to allow the claim, and we are of the opinion that, in overlooking the provisions of the Constitution above quoted, we were in error in holding that the claim might be presented here. It must go before the board of auditors of Wayne county, and that board alone has jurisdiction and can determine the amount proper to be allowed for the services rendered, and not this Court or the court below. In view of this further examination of the subject, what was said of the right of this Court to pass upon such claims must be overruled. No costs will be granted on this motion.

The other Justices concurred.

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## BACON[2] v THE COUNTY OF WAYNE
1 Mich 461 (1854)

**The county is not liable to an attorney for defending a prisoner at the request of the court, where the prisoner is poor and unable to employ counsel.**

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[2] *In this case the court assigned Bacon as counsel for the prisoner on the theory inherited from the English common law, that an attorney is bound to obey an order of the court in this regard. 1 Chit. Crim Law, 413, 414; Rex v Wright, Strange, 1041. But the supreme court of Indiana, in Blythe v State, 4 Ind. 525, and Valkenburg v Jones, has held that under a clause in the state constitution providing that "no man's particular services shall be demanded without just compensation," no attorney can be constitutionally required to defend a prisoner without being paid for his services. And in Webb v Baird, 6 id. 13, and Gordon v The Board, 44 id, 475; 46 id. 380, it is held that the county, ex necessitate rei, is liable for the value of the services of an attorney appointed by the court to defend a poor person on a criminal prosecution. The court should make an allowance which the auditor will draw a warrant for and the county treasurer will pay, Baker v Board of Commissioners, 18 Ind. 170; Board of Commissioners of Fountain County v Wood, 35 id. 70; Board of Commissioners of Fountain County v Wood, 35 id. 70; 6 id. 13. On the contrary in California, it is held, Rowe v Yuba County, 17 Cal 61, that it is part of the general duty of members of the bar to act as counsel for persons accused of crime and destitute of means, upon appointment by the court, when not inconsistent with their duties to others; and for compensation they must trust to the possible future ability of the parties. In Iowa, § 4168 of the revision of 1860 fixes a maximum of fees to be paid by board of supervisors of a county to counsel assigned by the court to defend prisoners, and in Samuels v County of Dubuque, 13 Iowa, 536, it is held that such act establishing a maximum rate of charges is not in conflict with the constitutional provision that private property shall not be taken for public use without just compensation. In Illinois it is held that the court may compel an attorney to defend a prisoner, Vose v County of Hamilton, 19 Ill. 78. Jeremy Bentham, in his Constitutional Code, vide Bentham's Works by Bowring, vol ix, p 577, recommends the employment of eleemosynary advocates or advocates of the helpless by the state, upon the same principles as it employs a public prosecutor, and on the theory that the state has as vital an interest in the protection of innocence as in the punishment of guilt. The laws of France, we are informed, make provision for the compensation of persons unjustly accused of crime by the state, while the English common law gives no redress except against the malicious prosecutor. Whether there is a proper field for legislative reform in the matter of the defense of accused persons and their compensation when falsely accused, is a very fit question for our American publicists. The legal question whether an attorney can constitutionally be required to give his services in criminal cases, and if not, whether the court can constitutionally compel him to serve; and if the court can constitutionally compel him to serve, whether the state is not liable (through its proper political subdivision, the county board of supervisors) for his pay, are questions capable of a much earlier and more explicit settlement.*

Case reserved from Wayne Circuit Court.
J. M. Howard, for Bacon.
Stewart, Prosecuting Attorney, for the county.

By the Court, Green, J. A poor person was brought before a magistrate in the city of Detroit, charged with the crime of murder. The magistrate, having satisfied himself that the prisoner was unable to employ counsel to defend him, requested Mr. Bacon, an attorney and counselor of this court, to undertake the prisoner's defense, which he did. The prisoner was indicted and tried for the offense in the circuit court for the county of Wayne, and Mr. Bacon acted as his counsel on the trial. For these services, Mr. Bacon charged the county of Wayne fifty dollars, and presented his account therefor to the board of county auditors, who rejected the claim. From the decision of the board of auditors, the claimant appealed to the circuit court for the county of Wayne, where the question was reserved for the opinion of this court. On the argument of the case here, it was conceded by the counsel for the appellant that this was not a strictly legal claim against the county, but it was insisted that it was so manifestly just and meritorious in its character, that the board of auditors ought to have allowed it; that the prisoner, being charged with one of the highest crimes known to the law, involving, if found guilty, the utmost punishment inflicted for any crime except treason, and being wholly unable to employ counsel to assist in his defense, must have been entirely undefended, and perhaps unjustly convicted and punished, had not counsel been provided for him, unless some one should have volunteered in his defense as a matter of charity, which it is claimed ought not to be expected of counsel; that under these circumstances, it is due to the administration of justice, and required by the plainest principles of humanity, that counsel be provided to defend the accused, and paid by the county, as a part of its just expenses in the administration of the crimina laws.

The board of auditors for the county of Wayne, and the boards of supervisors of the other counties, are authorized, and it is made their duty, to examine, settle and allow all accounts chargeable against their respective counties. R. S. ch. 14, secs. 3 and 29. And when any claim of any person against a county is disallowed, in whole or in part, such person is authorized to appeal from the decision of the board disallowing it, to the circuit court for the same county. Id. secs. 24 and 32. Appeals from these boards are to be heard and determined in a summary manner by the courts to which they are taken. Id. sec. 26.

Whether it is proper for the board of auditors, under any circumstances, to allow a claim in favor of an individual, which could not be enforced by any action at law or a suit in

equity, because they shall think it morally right and just that it be paid by the county, we do not feel called upon now to decide. It is very certain, however, that if the board should allow such a claim, no appeal can be taken in behalf of the county from their determination.

Supposing them to possess the large discretion claimed for them by the appellant in this case, does it follow that the circuit court, in reviewing their decision on appeal, can control the exercise of such a discretion? I apprehend not. The court acts judicially in determining the appeal, and unless expressly authorized to be governed by its own sense of what is right and just in the premises, it acts only as the exponent of established principles of legal or equitable right, and pronounces in each case, according to the circumstances attending it, the judgment of the law, and not its own sense of what the law ought to be.

The only question for the circuit court to determine in this case is, whether the claim disallowed by the auditors is a legal charge against the county; and, it being conceded that it is not strictly so, the decision of the board of auditors appealed from ought to be affirmed, and judgment rendered in favor of the county against the appellant for costs.

Certified accordingly.

## CASES FROM OTHER JURISDICTIONS

**From 383 SE 2nd 536 (W. Va. 1989):**

Millard E. JEWELL, et al, SER,

v

Hon. Elliott E. MAYNARD, et al.
No. 18320

Supreme Court of Appeals of West Virginia

Rehearing Granted 7/20/89
Decided 7/21/89

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Practicing lawyer brought an original action to prohibit respondent judge of Circuit Court of Mingo County from appointing him to additional criminal cases. The Supreme Court of Appeals, Neely, J., held that: (1) it is an unconstitutional taking of property without just compensation to require lawyer to devote more than 10% of his or her normal work year involuntarily to court-appointed cases, and (2) rates of hourly pay, limits on number of compensable hours, and limits on expenses for court-appointed cases were so low that they failed to meet constitutional standards.

Writ as moulded, awarded.

1. **Criminal Law** - 641.5

Hourly compensation for court-appointed representation that is so low that it fails to cover a lawyer's overhead and makes no contribution to a lawyer's net income creates a conflict of interest between lawyer and client that implicates Sixth Amendment right of indigent client to effective assistance of counsel. U.S.C.A. Const., Amend 6; Code, 29-21-13.

2. **Attorney and Client** - 132

Effective July 1, 1990, no lawyer in West Virginia may be involuntarily appointed to a case unless hourly rate of pay is at least $45 per hour for out-of-court work and $65 per hour for in-court work; furthermore, $1,000 limit on total fees in criminal case, established by statute, must either be raised to at least $3,000 or be eliminated. Code, 29-21-13(g).

3. **Eminent Domain** - 2.(1.1)

It is an unconstitutional taking of property without just compensation to require a lawyer to devote more than 10% of his or her normal work year involuntarily to court-appointed cases. U.S.C.A. Const. Amend 14.

4. **Attorney and Client** - 23

No lawyer in West Virginia may be required to devote more than 10% of his normal work year to court-appointed cases.

5. **Attorney and Client** - 23,132

Lawyers from other circuits may be appointed to represent indigent criminal defendants under guidelines established by applicable statute and reasonable travel expenses of those out-of-circuit lawyers are payable automatically as an additional expense above and beyond $500 expense limit. Code, 29-21-9, 29-21-13(g).

6. **Criminal Law** - 641.6(3), 641.12(3)

Failure to pay for court-appointed work promptly and to provide advances for out-of-pocket expenses places an unconstitutional burden on indigent clients in court-appointed cases.

7. **Attorney and Client** - 132

Effective July 1, 1990, to extent that appointed counsel system is retained, legislature must establish a mechanism that allows lawyers to receive up to $1,500 cash advances for out-of-pocket expenses subject to approval by circuit judge.

8. **Prohibition** - 5(2)

Petitioner, who demonstrated that he was required to spend more than 10% of his working time on appointed basis, was entitled to a writ of prohibition relieving him from further representation in appointed cases to the extent that such appointments exceeded 10% of his law practice.

[Syllabus by the Court]

1. "The requirement that an attorney provide gratuitous service to the court for little or no compensation does not, per se, constitute a violation of the due process clause of the Fourteenth Amendment. However, where the caseload attributable to court appointments is so large as to occupy a substantial amount of an attorney's time and thus substantially impairs his ability to engage in the remunerative practice of law, or where the attorney's costs and out-of-pocket expenses attributable to representing indigent persons charged with crime reduce the attorney's net income from private practice to a substantial and deleterious degree, the requirement of court appointed service will be considered confiscatory and unconstitutional." Syl.Pt. 3, State ex rel. Partain v. Oakley, 159 W. Va. 805, S.E.2d 314 (1976).

2. "In the interest of justice, to protect the rights of indigent persons charged with crime and to assure that the attorneys of this State

will not be subjected to an unconstitutional taking of their time and financial resources, in the absence of legislative action to establish a system of providing counsel for indigent defendants which adequately protects these interests, the Court will, on July 1, [1990,] order that the lawyers of this State may no longer be required to accept appointments as in the past." Syl.Pt. 4, State ex rel. Partain v. Oakley, 159 W.Va. 805, 227 S.E.2d 314 (1976) as modified with respect to date of order.

3. It is an unconstitutional taking of property without just compensation to require a lawyer to devote more than ten percent of his or her normal work year involuntarily to court appointed cases.

4. Hourly compensation for court appointed representation that is so low that it fails to cover a lawyer's overhead and makes no contribution to a lawyer's net income creates a conflict of interest between lawyer and client that implicates the Sixth Amendment right of the indigent client to effective assistance of counsel.

5. Failure to pay for court appointed work promptly and to provide advances for out-of-pocket expenses places an unconstitutional burden on indigent clients in court-appointed cases because lawyers may be financially unable to advance costs or keep their offices operating properly.

6. Circuit courts may appoint lawyers from in-circuit and out-of-circuit pursuant to the guidelines in W. Va. Code, 29-21-9 [1989] to represent indigent defendants in court-appointed cases, and the travel expenses of out-of-circuit lawyers are automatically payable as reasonable expenses in addition to the $500 limitation set forth in W.Va. Code, 29-21-13]1989]; however, out-of-circuit lawyers should not be required to travel an unreasonable distance.

7. The rates of hourly pay, limits on number of compensable hours, and limits on expenses, originally established by the legislature in 1977 (now W.Va. Code, 29-21-13 [1989]) for court-appointed cases, are now so low that they fail to meet constitutional standards; however, the court's order with regard to a remedy will be stayed until 1 July 1990 in order to afford the legislature an opportunity to solve the problem.

Stephen S. DeLISIO, Appellant

v

ALASKA SUPERIOR COURT, Appellee
No. S-608

Supreme Court of Alaska

July 21, 1987.

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Private attorney refused court appointment to represent indigent criminal defendant without compensation. The Superior Court, Third Judicial District, Palmer, Mark C. Rowland, J., found attorney to be in contempt, and attorney appealed. The Supreme Court, Burke, J., held that private attorney could not be compelled to represent indigent criminal defendant without just compensation.

Reversed.
Rabinowitz, C.J., dissented and filed opinion.

1. **Attorney and Client - 132**

Private attorney may not be compelled to represent indigent criminal defendant without just compensation; court appointment compelling attorney to represent indigent criminal defendant is taking of property for which just compensation is required; overruling Jackson v. State, 413 P2d 488; Wood v. Superior Court, 690 P2d 1225. Const Art 1, § 18.

2. **Jury - 24.5**

Attorney who refused court order to represent indigent criminal defendant was not entitled to jury trial in contempt proceeding; contempt proceeding was civil in nature in that sole purpose of proceeding was to compel contemnor to perform act which he was capable of performing.

3. **Attorney and Client - 132**

Attorney appointed by court to represent indigent criminal defendant is entitled to compensation at rate reflecting compensation received by average competent attorney operating on open market.

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John Thor WHITE, Petitioner,

v.

BOARD OF COUNTY COMMISSIONERS OF PINELLAS COUNTY, Respondent.

No. 72170.

Supreme Court of Florida.

Jan. 26, 1989.

Attorney appealed from order of the Circuit Court, Pinellas County, Claire K. Luten, J., which limited award of attorney fees for representation of indigent defendant in capital case to statutory maximum of $3,500. The District Court of Appeal, Ryder, Acting C.J., 524 So.2d 428, denied certiorari. Review was sought. The Supreme Court, Kogan, J., held that attorney was entitled to fees in excess of statutory maximum.

District Court of Appeal's affirmance of trial court decision quashed and case remanded.

Overton, J., filed an opinion concurring specially in the result.

1. Attorney and Client ⇐132

Trial court may exercise its inherent power to depart from statutory maximum of $3,500 in attorney fees for representation of indigent defendant when legislatively fixed attorney fees become so out of line with reality that they materially impair abilities of officers of court to fulfill their roles of defending indigent and curtail inherent powers of courts to appoint attorneys to those roles. West's F.S.A. § 925.036(2)(d).

2. Attorney and Client ⇐132

Attorney, who represented indigent defendant in first-degree murder case, was entitled to attorney fees in excess of statutory maximum of $3,500; attorney expended a total of 134 reasonable and necessary hours, including 63 hours in court, over a period of three and one-half months, attorney had substantial prior experience in capital cases and displayed exceptional expertise during trial, and attorney's private practice suffered as a result of his service. West's F.S.A. § 925.036(2)(d).

3. Attorney and Client ⇐131
Constitutional Law ⇐79

Statute imposing statutory maximum of $3,500 in attorney fees for representation of indigent defendant is unconstitutional when applied in such a manner that it curtails court's inherent power to secure effective, experienced counsel for representation of indigent defendants in capital cases. U.S.C.A. Const.Amend. 6; West's F.S.A. § 925.036(2)(d).

4. Attorney and Client ⇐132

In determining whether to award fees in excess of statutory maximum attorney fee cap for attorneys representing indigent defendants, focus should be on time expended by attorney and impact upon attorney's availability to serve other clients, not whether case was factually complex. West's F.S.A. § 925.036(2)(d).

242 Kan. 336

**STATE of Kansas, ex rel. Robert T. STEPHAN, Attorney General, Petitioner,**

**v.**

**The Honorable James J. SMITH and The Honorable Phillip M. Fromme, Respondents.**

**No. 60643.**

Supreme Court of Kansas.

Dec. 15, 1987.

**Attorney General brought mandamus action against two judges who had issued orders establishing county rules and panels for indigent defense services. The Supreme Court, Miller, J., held that: (1) state has obligation to compensate attorneys appointed to represent indigent defendants accused of crime, and responsibility to provide Sixth Amendment right to counsel is public responsibility that is not to be borne entirely by private bar; (2) attorneys' services are property, and are thus subject to Fifth Amendment protection from taking; and (3) current statutory and regulatory system providing for indigent defender services, as administered, violates equal protection and state constitutional article requiring laws of general nature to have uniform operation throughout state.**

**Mandamus denied.**

**1. Mandamus ⇐7**

**Relief in form of mandamus is discretionary.**

**2. Mandamus ⇐12**

**Mandamus is appropriate proceeding designed for purpose of compelling public officer to perform clearly defined duty, one imposed by law and not involving exercise of discretion.**

**3. Mandamus ⇐3(2)**

**Mandamus is proper remedy where essential purpose of proceeding is to obtain authoritative interpretation of law for guidance of public officials in their administration of public business, notwithstanding fact that there also exists adequate remedy at law.**

**4. Mandamus ⇐53**

**Mandamus was appropriate and proper means to present issues in action brought by Attorney General against two judges who had issued orders establishing county rules and panels for indigent defense services; statutes and regulations imposed upon courts nondiscretionary duties with respect to provision of indigent defense services, and although judge argued mandamus was improper because state was not clearly entitled to relief and orders in question were entered to protect constitutional rights of attorneys and criminal defendants, judges' rulings that did not comply with requirements of statutes and regulations regarding provision of indigent defense presented issues of compelling public importance.**

**5. Mandamus ⇐151(1, 2)**

**Supreme Court rule requiring that judge and all parties to pending litigation be deemed respondents when relief is sought in order and mandamus against judge involving pending litigation before such judge applies to orders in mandamus against judge involving pending litigation. Sup.Ct.Rules, Rule No. 9.01(b).**

**6. Mandamus ⇐151(1)**

**Defendants in four specific criminal cases were not necessary parties to action in mandamus brought by Attorney General against two judges based on judges' issuance of orders establishing county rules and panels for indigent defense services; district court orders challenged by state were general orders governing appoint-**

ment of counsel for indigent defendants in two counties, and state was not attempting to appeal from or affect decision of district court in the pending criminal cases, one or more of which was subject of separate appeal. Sup.Ct.Rules, Rule No. 9.01(b).

**7. Criminal Law ⇐641.2(1, 2, 3), 982.9(2)**
**Habeas Corpus ⇐90**
**Infants ⇐205**

State is required to furnish counsel to all indigent defendants charged in Kansas courts with felonies, as well as to certain defendants charged with misdemeanors, certain habeas corpus petitioners, prisoners in probation revocation proceedings, and juvenile offenders in proceedings which may lead to commitment in institution. U.S.C.A. Const.Amends. 6, 14.

**8. Attorney and Client ⇐14**

Simply because one has license to practice law does not make one competent to practice in every area of law.

**9. Attorney and Client ⇐1**

Fact that indigent defense services system had potential for ineffective assistance of counsel was not sufficient reason to declare statutory and regulatory system providing for indigent defense services unconstitutional; those rare cases in which counsel has been ineffective may be handled and determined individually by appellate courts. K.S.A. 22-4501 et seq.; U.S.C.A. Const.Amends. 6, 14.

**10. Criminal Law ⇐641.13(4)**

Judges should not put attorneys who are not competent on indigent defense service panels nor should they appoint attorneys who are not competent to represent indigent defendants in particular cases. K.S.A. 22-4501 et seq.; U.S.C.A. Const. Amends. 6, 14.

**11. Attorney and Client ⇐23**

Selection of attorneys for indigent defense services panels or for appointments for indigent defendants requires exercise of judicial discretion; selection of attorneys is not a matter which may be handled by administrative board, anything in statutes or regulations regarding provision of the indigent defense services to contrary notwithstanding. K.S.A. 22-4501 et seq.; U.S.C.A. Const.Amends. 6, 14.

**12. Criminal Law ⇐641.7(1)**

Judge has nondiscretionary duty to appoint counsel for indigent defendants, under statutes and regulations governing provision of indigent defense services, although judge's selection of counsel for indigent defense service panels is discretionary. K.S.A. 22-4501 et seq.

**13. Attorney and Client ⇐23**
**Criminal Law ⇐641.12(3)**

General orders issued by judges establishing county rules and panels for indigent defense services violated judges' duty to appoint counsel for indigents as set forth in statutes and regulations, although judges claimed they merely refused to enforce unconstitutional enactments, did not actually rescind current system and replace it with one of their own design, and their actions were supported by rulings of the Supreme Court; judges' orders authorized attorneys to refuse appointment to represent indigent defendants for rate of compensation that would apply, judges refused to enforce what appeared to be mandatory service requirements on attorneys unwilling to work for specified rate of compensation, and indigent defendant, although entitled to competent counsel, had no right to demand that state provide reasonable compensation for his attorney. K.S.A. 22-4501 et seq.

**14. Attorney and Client ⇐14**

It is moral and ethical obligation of bar to make representation available to public. Sup.Ct.Rules, Rule No. 225, Code of Prof. Resp., Canon 2.

**15. Attorney and Client ⇐23**

Obligation to provide counsel for indigent defendants is that of the state, not of the individual attorney. U.S.C.A. Const. Amends. 6, 14.

**16. Attorney and Client ⇐132**

State has obligation to compensate attorneys appointed to represent indigent defendants accused of crime.

17. Constitutional Law ⇐278(1)

Whether violation of due process has occurred depends upon whether "property" has been taken and upon what kind of "process" is due. U.S.C.A. Const.Amend. 5.

18. Constitutional Law ⇐251.3

Essence of due process is protection against arbitrary government action. U.S.C.A. Const.Amend. 5.

19. Constitutional Law ⇐251.3

Test for whether due process has been afforded is whether legislation has real and substantial relation to the objective sought, whether it is reasonable in relation to the subject, and whether it was adopted in the interest of the community. U.S.C.A. Const.Amend. 5.

20. Attorney and Client ⇐131
Constitutional Law ⇐287.2(5)

Requiring attorneys to donate reasonable amount of time to indigent defense work bears real and substantial relation to legitimate government objective sought, of protection of indigent defendants' Sixth Amendment right to counsel, and such a requirement may also be reasonable in light of general ethical responsibility of lawyers to make legal services available; under such an analysis, Indigent Defense Services Act, which was adopted in interest of community, does not on its face violate due process. K.S.A. 22-4501 et seq.; U.S.C.A. Const.Amends. 5, 6, 14.

21. Attorney and Client ⇐23

Responsibility to provide Sixth Amendment right to counsel is public responsibility that is not to be borne entirely by private bar. U.S.C.A. Const.Amend. 6.

22. Constitutional Law ⇐277(1)

One who practices his profession has property interest in that pursuit which may not be taken from him at whim of government without due process. U.S.C.A. Const. Amends. 5, 14.

23. Constitutional Law ⇐287.2(5)

Attorney or physician who is target of disciplinary proceedings is entitled to procedural due process, to procedural notice of charges made and to opportunity to be heard, to appear, and to defend. U.S.C.A. Const.Amends. 5, 14.

24. Constitutional Law ⇐277(1)

Attorneys' services are property, and are thus subject to Fifth Amendment due process protection from taking. U.S.C.A. Const.Amends. 5, 14.

25. Attorney and Client ⇐132
Constitutional Law ⇐287.2(5)

When attorney is required to advance expense funds out-of-pocket for indigent, without full reimbursement, the system violates the Fifth Amendment. U.S.C.A. Const.Amends. 5, 14.

26. Attorney and Client ⇐23
Constitutional Law ⇐287.2(5)

When attorney is required to spend unreasonable amount of time on indigent appointments, so that there is genuine and substantial interference with his private practice, the system violates the Fifth Amendment. U.S.C.A. Const.Amends. 5, 14.

27. Attorney and Client ⇐36(1)

Power to regulate bar, including power to discipline its members, rests inherently and exclusively with the state Supreme Court.

28. Attorney and Client ⇐1
Constitutional Law ⇐52, 79

Neither legislative nor executive branches were infringing upon judicial power through indigent defense services statutes and regulations, although statutes and regulations require judges to appoint attorneys for indigent defendants in certain manner and require attorneys to serve when appointed; nothing requires judiciary to use its powers of contempt or disciplinary action against noncompliant attorney. K.S.A. 22-4501 et seq.

29. Attorney and Client ⇐1
Constitutional Law ⇐52, 79

Current indigent defense services statutory and regulatory scheme did not violate separation of powers doctrine on theory that power to regulate bar included exclusive power to determine reasonable fees

and that determination of reasonableness was judicial function, although statutory and regulatory scheme provided for determining compensation to be paid attorneys paid for indigent defendants; compensation system under current statutory and regulatory scheme was flexible, with Board for Indigents' Defense Services fixing hourly rate to apply statewide, Board then submitting budget to legislature, and trial courts reviewing counsels' vouchers or requests for payment, and passing upon number of hours reasonably spent in individual representation. K.S.A. 22-4501 et seq.

30. Constitutional Law ⇐213.1(2)

Traditional yardstick for measuring equal protection arguments is "reasonable basis" test, and under that test, constitutional safeguard is offended only if classification rests on grounds wholly irrelevant to achievement of state's objective. U.S.C.A. Const.Amend. 14.

31. Attorney and Client ⇐132
Constitutional Law ⇐230.3(9)

While state bar's ethical obligation to provide legal services to indigent accused may justify paying attorneys reduced fee for legal services to the poor, less than fee attorney might charge financially solvent client for the same service, that ethical obligation may not justify paying attorneys less than attorneys' average expenses statewide, without violating equal protection. U.S.C.A. Const.Amend. 14.

32. Attorney and Client ⇐131
Constitutional Law ⇐230.3(9)

Current statutory and regulatory system for providing indigent defense services, as administered, violates federal equal protection clause; those in districts in which attorneys must participate on indigent defense services panel are required to shoulder burden of indigent criminal defense, paying part of the expense out of their own pockets, while being paid fees that average less than their fixed office overhead, while most Kansas attorneys are not required to participate or contribute to indigent defense system, due to availability of public defenders in some districts and voluntary participation on indigent defender service panels in other areas, and assigned attorneys and public defenders are treated differently. K.S.A. 22-4501 et seq.; U.S.C.A. Const.Amend. 14.

33. Attorney and Client ⇐131, 132
Constitutional Law ⇐250.2(2)

Current statutory and regulatory system of providing indigent defender services had not been shown to deny equal protection through differences in quality of defense provided indigent defendants by appointed counsel and public defenders, although public defender is required to provide quality legal representation and must meet certain qualifications, including demonstrated knowledge of criminal law and effective ability to provide actual representation, while only qualifications for appointed counsel specified in regulations are that they be licensed and engaged in private practice; there had been no showing that any defendants had been denied effective assistance of counsel and no showing of deficient performance or that deficient performance adversely affected outcome of any trial. K.S.A. 22-4501 et seq.; U.S.C.A. Const.Amend. 14.

34. Criminal Law ⇐641.13(1)

Sixth Amendment guarantees only effective assistance of counsel; it does not guarantee the best counsel available. U.S.C.A. Const.Amend. 6.

35. Constitutional Law ⇐250.2(2)
Criminal Law ⇐641.13(4)

Even if public defenders were better able to provide defense than attorneys appointed for indigent defendants, which had not been definitely established, defendants for whom attorneys were appointed pursuant to statutory and regulatory scheme were not denied equal protection if appointed attorneys provided effective assistance of counsel guaranteed by Sixth Amendment. K.S.A. 22-4501 et seq.; U.S.C.A. Const.Amends. 6, 14.

36. Criminal Law ⇐641.13(4)

Special qualifications are not necessary to provide effective assistance of counsel in criminal cases. U.S.C.A. Const.Amend. 6.

37. Evidence ⇐19

Supreme Court would take judicial notice that attorney appointed to represent indigent defendants, who was discharged from representing some of the defendants, was an able, effective, and experienced trial attorney.

38. Attorney and Client ⇐23
Constitutional Law ⇐83(2)

Current statutory and regulatory indigent defense services scheme did not offend Thirteenth Amendment proscription of slavery or involuntary servitude; no attorney had been imprisoned for failure to accept appointment to represent indigent defendant. K.S.A. 22–4501 et seq.; U.S.C.A. Const.Amend. 13.

39. Statutes ⇐71

Traditional test of statute's constitutionality applies to statutes challenged as being violative of state constitutional article requiring that all laws of general nature have uniform operation throughout state. K.S.A. Const. Art. 2, § 17.

40. Statutes ⇐72

Indigent Defense Services Act is subject to requirements of state constitutional provision requiring all laws of general nature to have uniform operation throughout state, although the Act applies only to indigent criminal defendants and lawyers in private practice throughout state. K.S.A. Const. Art. 2, § 17; K.S.A. 22–4501 et seq.

41. Statutes ⇐73(2)

Differential treatment of counties and judicial districts by Indigent Defense Services Act cannot lawfully rest entirely upon financial or economic considerations, for Act to be constitutional under state constitutional provision requiring laws of general nature to have uniform operation throughout state. K.S.A. Const. Art. 2, § 17; K.S.A. 22–4501 et seq.

42. Statutes ⇐71

Financial or economic reasons alone cannot provide rational basis for disparate treatment that is otherwise unconstitutional under state constitutional provision requiring that laws of general nature have uniform operation throughout state. K.S.A. Const. Art. 2, § 17.

43. Attorney and Client ⇐1
Statutes ⇐72

Current statutory and regulatory scheme for providing indigent defender services violates state constitutional provision requiring laws of general nature to have uniform operation throughout state. K.S.A. Const. Art. 2, § 17; K.S.A. 22–4501 et seq.

*Syllabus by the Court*

1. Mandamus is an appropriate proceeding designed for the purpose of compelling a public officer to perform a clearly defined duty, one imposed by law and not involving the exercise of discretion.

2. Mandamus is a proper remedy where the essential purpose of the proceeding is to obtain an authoritative interpretation of the law for the guidance of public officials in their administration of the public business, notwithstanding the fact that there also exists an adequate remedy at law.

3. The State of Kansas is required to furnish counsel to all indigent defendants charged with felonies in Kansas courts.

4. The State has an obligation to compensate attorneys appointed to represent indigent defendants accused of crime.

5. It is the moral and ethical obligation of the bar to make representation available to the public.

6. The responsibility to provide the Sixth Amendment right to counsel is a public responsibility that is not to be borne entirely by the private bar.

7. A judge has a duty, under the statutes and regulations, to appoint counsel for indigent defendants.

8. Simply because one has a license to practice law does not make one competent to practice in every area of the law.

9. The essence of due process is protection against arbitrary government action.

10. The test for whether due process has been afforded is whether the legislation has a real and substantial relation to the objective sought, whether it is reasonable in relation to the subject, and whether it was adopted in the interest of the community.

11. Attorneys' services are property, and are thus subject to Fifth Amendment protection.

12. The power to regulate the bar, including the power to discipline its members, rests inherently and exclusively with this court.

13. The traditional yardstick for measuring equal protection arguments is the "reasonable basis" test. Under this test, the constitutional safeguard is offended only if the classification rests on grounds wholly irrelevant to the achievement of the State's objective.

14. The present system for appointment of counsel for the indigent, as administered, violates the Equal Protection Clause of the United States Constitution, and Article 2, § 17 of the Kansas Constitution.

226 Neb. 107

In re Claim of REHM AND FAESSER for Attorney Fees and Expenses.

Rodney J. REHM and Victor Faesser, Appellants,

v.

COUNTY OF RICHARDSON, Nebraska, Appellee.

No. 86-477A.

Supreme Court of Nebraska.

July 24, 1987.

Appointed counsel filed applications for compensation. The District Court, Richardson County, Robert T. Finn, J., disallowed certain hours billed and concluded that combined award of $29,650 was in line with awards in cases researched. Both attorneys appealed. The Supreme Court, Boslaugh, J., held that: (1) finding of district court as to fees and expenses to be paid appointed counsel is binding upon both appointed counsel and county unless appeal is taken from that order; (2) either appointed counsel or county involved may appeal to Supreme Court from order determining amount of fees and expenses allowed appointed counsel, but such appeal is proceeding separate from criminal case and should be docketed separately and disposed of without regard to any appeal in criminal case itself; and (3) trial court abused its discretion in refusing to compensate appointed counsel for several services necessarily performed in representation of defendant, including time billed attorneys for depositions, time billed for taking expert witness to interview defendant, time billed to travel to interview defendant's family, and travel time billed in connection with checking on jury selection process.

Remanded with directions.

1. Criminal Law ⇐1023½

As general rule, right to appeal in criminal case may be exercised only by person aggrieved or injured by judgment.

2. Attorney and Client ⇐132
Counties ⇐139

District court is required to make findings as to reasonable expenses and fees of appointed counsel, which county is obligated to pay. Neb.Rev.St. § 29-1804.12.

3. Attorney and Client ⇐132

Finding of district court as to fees and expenses to be paid appointed counsel is binding upon both appointed counsel and county unless appeal is taken from that order. Neb.Rev.St. § 29-1804.12.

4. Criminal Law ⇐1023½, 1068½, 1082

Either appointed counsel or county involved may appeal to Supreme Court from order determining amount of fees and expenses allowed appointed counsel, but such appeal is proceeding separate from criminal case and should be docketed separately and disposed of without regard to any appeal in criminal case itself. Neb.Rev.St. § 29-1804.12.

5. Attorney and Client ⇐132

Trial court abused its discretion in refusing to compensate appointed counsel for several services necessarily performed in representation of defendant, including time billed attorneys for depositions, where trial court had either specifically approved presence of both attorneys or attorneys reasonably believed that depositions were necessary to prepare adequate defense, based upon State's subpoenas of or references to individuals subpoenaed, as well as time billed for taking expert witness to interview defendant, time billed to travel to Kansas to interview defendant's family, and travel time billed in connection with checking on jury selection process.

6. Attorney and Client ⇐132

Supreme Court declined to apply portal-to-portal doctrine in calculating fees for appointed attorneys.

*Syllabus by the Court*

1. Criminal Law: Appeal and Error. As a general rule, the right to appeal in a criminal case may only be exercised by a person aggrieved or injured by the judgment.

2. **Criminal Law: Attorney Fees: Counties.** Neb.Rev.Stat. § 29–1804.12 (Reissue 1985), requires the district court to make findings as to the reasonable expenses and fees of appointed counsel, which the county is obligated to pay.

3. **Criminal Law: Attorney Fees: Counties: Appeal and Error.** The finding of the district court as to fees and expenses to be paid to appointed counsel is binding upon both appointed counsel and the county unless an appeal is taken from that order.

4. **Criminal Law: Attorney Fees: Counties: Appeal and Error.** Either appointed counsel or the county involved may appeal to this court from an order determining the amount of fees and expenses allowed appointed counsel under Neb.Rev. Stat. § 29–1804.12 (Reissue 1985). Such an appeal is a proceeding separate from the criminal case and should be docketed separately and disposed of without regard to the result of any appeal in the criminal case itself.

5. **Case Disapproved.** *County of Boone v. Armstrong*, 23 Neb. 764, 37 N.W. 626 (1888), is expressly disapproved.

140 Ariz. 355

**STATE of Arizona, Appellee,**

**v.**

**Joe U. SMITH, Appellant.**

**No. 6027-PR.**

Supreme Court of Arizona,
In Banc.

April 3, 1984.

Reconsideration Denied May 8, 1984.

Defendant was convicted in the Mohave County Superior Court, Cause No. CR-5177, Gary R. Pope, J., of burglary, sexual assault, and aggravated assault, and he appealed. The Court of Appeals affirmed, and defendant's petition for review was granted. The Supreme Court, Cameron, J., held that: (1) since an undisclosed alibi witness, whose testimony was precluded, was vital to the defense case, since the State was aware of said witness' existence before trial as well as the alibi defense, since nondisclosure of the witness did not appear to have been due to bad faith or willfulness, and since other less stringent sanctions, such as granting a continuance, were available to effect the ends of justice, it was reversible error to not allow the witness to testify; (2) bid system utilized in Mohave County for obtaining indigent defense counsel militates against adequate assistance of counsel for indigent defendants; (3) the Mohave County bid system for securing counsel for indigent defendants so overworks such attorneys that it violates the right of a defendant to due process and the right to counsel as guaranteed by the Arizona and United States Constitutions; (4) the aforesaid system did not, however, violate equal protection; and (5) even though the system used raised an inference of inadequate representation of counsel, that inference was rebutted by the record in this case.

Reversed and remanded.

1. Criminal Law ⇐629

Four criteria exist for determining whether the sanction of preclusion of an undisclosed witness' testimony should be imposed: (1) how vital the witness is to the case, (2) whether the opposing party will be surprised, (3) whether the discovery violation was motivated by bad faith, and (4) any other relevant circumstances.

2. Criminal Law ⇐629, 1166(1)

Since an undisclosed alibi witness, whose testimony was precluded, was vital to the defense case, since the State was aware of said witness' existence before trial as well as the alibi defense, since nondisclosure of the witness did not appear to have been due to bad faith or willfulness, and since other less stringent sanctions, such as granting a continuance, were available to effect the ends of justice, it was reversible error to not allow the witness to testify in defendant's prosecution for burglary, sexual assault, and aggravated assault. A.R.S. §§ 13-1203, 13-1204, 13-1406, 13-1507.

3. Criminal Law ⇐641.13(4)

Standard for judging effective assistance of counsel is whether, under the circumstances, the attorney showed at least minimal competence in representing defendant.

4. Criminal Law ⇐641.13(1)

In considering whether effective assistance of counsel was afforded defendant, focus is on the quality of performance, not the effect of that performance on the outcome of the proceeding, and disagreements in trial strategy or tactics will not support an ineffectiveness claim as long as the challenged conduct could have some reasoned basis.

5. Criminal Law ⇐641.6(3), 641.12(3)

Bid system utilized in Mohave County for obtaining indigent defense counsel militates against adequate assistance of counsel for indigent defendants, in that the system does not take into account the time the attorney is expected to spend in representing his share of indigent defendants, does not provide for support costs for the attorney, fails to take into account the competency of the attorney, and does not take into account the complexity of each case. U.S.C.A. Const.Amend. 6.

6. Constitutional Law ⇐268.1(6)
Criminal Law ⇐641.12(1)

Mohave County bid system for securing counsel for indigent defendants so overworks such attorneys that it violates the right of a defendant to due process and the right to counsel as guaranteed by the Arizona and United States Constitutions. U.S.C.A. Const.Amends. 5, 6; 17A A.R.S. Sup.Ct. Rules, Rule 29(a), Code of Prof.Resp., DR6-101, DR7-101; A.R.S. Const. Art. 2, §§ 4, 24.

7. Attorney and Client ⇐44(1)

Accepting more cases than can be properly handled may result not only in reversals for failing to adequately represent clients, but also in disciplinary action for violation of the Code of Professional Responsibility. 17A A.R.S. Sup.Ct. Rules, Rule 29(a), Code of Prof.Resp., DR1-102(A)(6).

8. Constitutional Law ⇐250.2(2)

Mohave County bid system for securing counsel for indigent defendants, while the least desirable of the various systems utilized by counties and while it could result in inadequate representation by counsel, did not violate the equal protection rights of defendants. U.S.C.A. Const. Amend. 5; LSA-Const. Art. 1, § 13.

9. Criminal Law ⇐641.13(1)

While the bid system used in Mohave County for securing counsel for indigent defendants raised an inference of inadequate representation of counsel in the instant case, that inference was rebutted by the record.

Merrimack
Nos. 78-081 and 78-137

ERNEST T. SMITH III

v.

THE STATE OF NEW HAMPSHIRE

JAMES R. ANDERSON

v.

THE STATE OF NEW HAMPSHIRE

November 15, 1978

1. Attorney and Client—Obligation To Represent Indigents—Basis

Attorneys are obligated to represent indigent persons when appointed by the court; this obligation is based on ethical canons and court duty.

2. Attorney and Client—Obligation To Represent Indigents—Refusal Constituting Contempt

Refusal of the court's request to an attorney to represent an indigent would in most instances constitute contempt, and an unexcused failure of a court-appointed attorney to represent an indigent would constitute conscious disregard of the Code of Professional Responsibility and thus be grounds for disciplinary action by the supreme court.

3. Constitutional Law—Judicial Power—Interpretation of Constitution

Interpretation of the State Constitution is a traditional function of the judiciary and is not within the competence of the other two branches.

4. Constitutional Law—New Hampshire Constitution—Court-Appointed Counsel

In interpreting the 1966 amendment to the New Hampshire Constitution which provides for counsel to indigent defendants at public expense, the supreme court will give the words the same meaning that they must have had to the electorate on the date when the vote on the amendment was cast. N.H. CONST. pt. I, art. 15.

5. Constitutional Law—New Hampshire Constitution—Court-Appointed Counsel

Language in the 1966 amendment to the New Hampshire Constitution speaking of the right to counsel at the expense of the State requires that the cost of services rendered by attorneys on behalf of indigent defendants be borne by the State. N.H. CONST. pt. I, art. 15.

6. Attorney and Client—Fees—Court-Appointed Counsel

In the absence of an agreed-upon price, what constitutes reasonable compensation for performed services is a matter for judicial determination;

moreover it is peculiarly within the judicial province to ascertain reasonable compensation when the person performing the services is acting under court appointment as an officer of the court.

7. Constitutional Law—Judicial Power—Compensation for Court-Appointed Counsel

Courts of New Hampshire have the exclusive authority to determine the reasonableness of compensation for court-appointed counsel; statutes attempting to impose a fee schedule for court-appointed counsel intrude upon this judicial function in violation of the constitutional separation of powers mandate. N.H. CONST. pt. I, art. 37; RSA 604-A:5.

8. Constitutional Law—Judicial Power—Compensation for Court-Appointed Counsel

Where New Hampshire Constitution requires that the State provide legal representation for indigent defendants and the State transferred a major part of its own burden onto the shoulders of the New Hampshire bar by means of a statutory compensation scheme for court-appointed attorneys, such statutes are unconstitutional insofar as they shift much of the State's obligation to the legal profession and intrude impermissibly upon an exclusive judicial function to determine the reasonableness of compensation for court-appointed counsel. N.H. CONST. pt. I, art. 15; RSA 604-A:5.

9. Attorney and Client—Fees—Court-Appointed Counsel

Court-appointed attorneys should be paid a reasonable fee, but one somewhat less than that which an ordinary fee-paying client would pay. N.H. CONST. pt. I, art. 15.

10. Attorney and Client—Judicial Control

Obligations and responsibilities of the bar are matters of judicial concern alone.

11. Attorney and Client—Fees—Court-Appointed Counsel

Since the obligation to represent indigent defendants is an obligation springing from judicial authority, so too is the determination of reasonable compensation for court-appointed attorneys a matter for judicial determination.

12. Attorney and Client—Fees—Court-Appointed Counsel

It is for the trial courts of New Hampshire to fix the amount of compensation due in each case in which court-appointed attorneys represent indigents; the rate awarded by the court should neither unjustly enrich nor unduly impoverish the court-appointed attorney.

13. Constitutional Law—Right To Effective Counsel—Fundamental Right

Effective assistance of counsel is a fundamental right to criminal defendants, a principle deeply ingrained in the criminal justice system, and is required by both the Federal and State Constitutions. N.H. CONST. pt. I, art. 15.

Hillsborough
No. 82-089

THE STATE OF NEW HAMPSHIRE

v.

MARY A. ROBINSON

August 31, 1983

1. Attorney and Client—Fees—Court-Appointed Counsel

There is a distinction under the indigent defense compensation rule between *expenses* associated with litigation, which may be compensated upon a finding of reasonableness and necessity, and legal *fees*, which are limited to the maximum amounts set forth in the rule and which represent compensation paid to an attorney for the professional services rendered, both in court and out of court, in preparing for the defense of the indigent client he was appointed to represent. Superior Ct. R. 104; Supreme Ct. R. 47.

2. Attorney and Client—Fees—Generally

In common parlance, the compensation paid an attorney is a "fee"; this is in contradistinction to the recovery of "costs" or "expenses" incident to the litigation, which reimburses the attorney for reasonably incurred out-of-pocket expenses in defense of the case. RSA 604-A:6; Supreme Ct. R. 47.

3. Attorney and Client—Fees—Court-Appointed Counsel

A fee for the defense of an indigent criminal defendant need not be equal to that which an attorney would expect to receive from a paying client, but should strike a balance between conflicting interests, which include the ethical obligation of a lawyer to make legal representation available and the increasing burden on the legal profession to provide counsel to indigents. Supreme Ct. R. 47.

4. Attorney and Client—Fees—Particular Awards

Where an attorney appointed in 1981 to represent an indigent defendant in a misdemeanor case submitted to the trial court an itemized bill which consisted of $1,265 of legal fees and $429.38 for expenses associated with the case, and where the trial court originally entered an order allowing only $500 of the total bill, but later amended the award so as to include the $200 expense allowance originally approved for the cost of deposing the State's key witness, thus awarding $700 in total, the supreme court held that the $500 limit on fees for misdemeanor cases might result in unfairness and unreasonableness and amended the supreme court rule governing indigent defense compensation to lift in that case the $500 limit on fees for the defense of misdemeanors. Supreme Ct. R. 47.

5. Attorney and Client—Fees—Court-Appointed Counsel

For all indigent defense appointments made after August 31, 1983, the supreme court would revert, and Supreme Court Rule 47 was so amended, to the pre-June 1, 1982, language of former Superior Court Rule 104 governing counsel fees for indigent defendants which provided that "for good cause shown in exceptional circumstances" the maximum (for misdemeanors) "may be

exceeded with the approval of the trial justice"; this amendment would adequately protect both the indigent defense fund and the right of an accused citizen to effective assistance of legal counsel. Supreme Ct. R. 47.

6. Constitutional Law—Right to Counsel—Generally

The right to counsel, as guaranteed by the sixth amendment and part I, article 15 of the State Constitution, would be meaningless if counsel for an indigent defendant is denied the use of the working tools essential to the establishment of a tenable defense because there are no funds to pay for these items; therefore, the State must provide the defense with these tools. U.S. CONST. amend. VI; N.H. CONST. pt. 1, art. 15.

7. Constitutional Law—Due Process—Right to Counsel

Lawyers have no more obligation to pay the needed expenses of a criminal defense than any other class of citizens, and to require them to do so would raise serious due process issues.

8. Costs—Criminal Proceedings

The supreme court knows of no requirement of either law or professional ethics which requires attorneys to advance personal funds in substantial amounts for the payment of either costs or expenses of the preparation of a proper defense of the indigent accused.

9. Constitutional Law—Due Process—Right to Counsel

The failure to reimburse an attorney who spends his own funds to purchase the reasonably necessary tools of defense is a taking of his financial resources which violates the State and Federal Constitutions. U.S. CONST. amends. V, XIV; N.H. CONST. pt. 1, arts. 2, 12.

10. Attorney and Client—Fees—Particular Awards

Where the attorney appointed in 1981 to represent an indigent defendant in a misdemeanor case submitted an itemized bill to the trial court which consisted of $1,265 of legal fees and $429.38 for expenses associated with the case, and where the court entered an order approving $500 in fees and $200 in expenses, the supreme court remanded the case for a determination as to whether the expenses actually incurred were reasonably incurred, and also a determination whether the $500 maximum fee should be exceeded for "good cause". Supreme Ct. R. 47.

(Slip Opinion)

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Lumber Co.*, 200 U. S. 321, 337.

# SUPREME COURT OF THE UNITED STATES

Syllabus

## FEDERAL TRADE COMMISSION *v.* SUPERIOR COURT TRIAL LAWYERS ASSOCIATION ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 88–1198. Argued October 30, 1989—Decided January 22, 1990*

A group of lawyers in private practice who regularly acted as court-appointed counsel for indigent defendants in District of Columbia criminal cases agreed at a meeting of the Superior Court Trial Lawyers Association (SCTLA) to stop providing such representation until the District increased group members' compensation. The boycott had a severe impact on the District's criminal justice system, and the District government capitulated to the lawyers' demands. After the lawyers returned to work, petitioner Federal Trade Commission (FTC) filed a complaint against SCTLA and four of its officers (respondents), alleging that they had entered into a conspiracy to fix prices and to conduct a boycott that constituted unfair methods of competition in violation of § 5 of the FTC Act. Declining to accept the conclusion of the Administrative Law Judge (ALJ) that the complaint should be dismissed, the FTC ruled that the boycott was illegal *per se* and entered an order prohibiting respondents from initiating future such boycotts. The Court of Appeals, although acknowledging that the boycott was a "classic restraint of trade" in violation of § 1 of the Sherman Act, vacated the FTC order. Noting that the boycott was meant to convey a political message to the public, the court concluded that it contained an element of expression warranting First Amendment protection and that, under *United States* v. *O'Brien*, 391 U. S. 367, an incidental restriction on such expression could not be justified unless it was no greater than was essential to an important governmental interest. Reasoning that this test could not be

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*Together with No. 88–1393, *Superior Court Trial Lawyers Association et al.* v. *Federal Trade Commission*, also on certiorari to the same court.

satisfied by the application of an otherwise appropriate *per se* rule, but instead requires the enforcement agency to prove rather than presume that the evil against which the antitrust laws are directed looms in the conduct it condemns, the court remanded for a determination whether respondents possessed "significant market power."

*Held:*

1. Respondents' boycott constituted a horizontal arrangement among competitors that was unquestionably a naked restraint of price and output in violation of the antitrust laws. Respondents' proffered social justifications for the restraint of trade do not make the restraint any less unlawful. Nor is respondents' agreement outside the coverage of the antitrust laws under *Eastern Railroad Presidents Conference* v. *Noerr Motor Freight, Inc.*, 365 U. S. 127, simply because its objective was the enactment of favorable legislation. The *Noerr* doctrine does not extend to horizontal boycotts designed to exact higher prices from the government simply because they are genuinely intended to influence the government to agree to the conspirators' terms. *Allied Tube & Conduit Corp.* v. *Indian Head, Inc.*, 486 U. S. 492, 503. Pp. 8–12.

2. Respondents' boycott is not immunized from antitrust regulation by *NAACP* v. *Claiborne Hardware Co.*, 458 U. S. 886, which held that the First Amendment prevented a State from prohibiting a politically motivated civil rights boycott. Unlike the boycott upheld in *Claiborne Hardware*, the undenied objective of this boycott was to gain an economic advantage for those who agreed to participate. 458 U. S., at 914–915. Pp. 13–15.

3. The Court of Appeals erred in creating a new exception, based on *O'Brien*, *supra*, to the antitrust *per se* liability rules for boycotts having an expressive component. The court's analysis is critically flawed in at least two respects. First, it exaggerates the significance of the "expressive component" in respondents' boycott, since every concerted refusal to do business with a potential customer or supplier has such a component. Thus, a rule requiring courts to apply the antitrust laws "prudently and with sensitivity," in the Court of Appeals' words, whenever an economic boycott has an "expressive component" would create a gaping hole in the fabric of those laws. Second, the Court of Appeals' analysis denigrates the importance of the rule of law that respondents violated. The court's implicit assumption that the antitrust laws permit, but do not require, the condemnation of price fixing and boycotts without proof of market power is in error, since, although the *per se* rules are the product of judicial interpretation of the Sherman Act, they nevertheless have the same force and effect as any other statutory commands. The court also erred in assuming that the categorical antitrust prohibitions are "only" rules of "administrative convenience" that do not serve any substantial governmental interest unless the price-fixing competitors actually possess market power. The *per se* rules reflect a longstanding judgment that every horizontal price-fixing arrangement among competitors poses some threat to the free market even if the participants do not themselves have the power to control market prices. Pp. 16–23.

272 U. S. App. D. C. 272, 856 F. 2d 226, reversed in part and remanded.

For a review of cases covering right of attorney appointed by the court for indigent accused to, and courts power to award compensation by the public, in absence of statute or court rule, see 21 ALR3d 804 supplemented by:

Right of indigent defendant in criminal case to aid of state by appointment of investigator or expert. 34 ALR3d 1256.

Attorney's refusal to accept appointment to defend indigent, or to proceed in such defense, as contempt. 36 ALR3d 1221.

Construction and effect of statutes providing for office of public defender. 36 ALR3d 1403.

Right of court-appointed attorney to contract with his indigent client for fee. 43 ALR3d 1426.

Determination of indigency of accused entitling him to appointment of counsel. 51 ALR3d 1108.

Inherent power of court to compel appropriation or expenditure of funds for judicial purposes. 59 ALR3d 569.

Indigent accused's right to choose particular counsel appointed to assist him. 66 ALR3d 996.

Appointment of counsel for indigent husband or wife in action for divorce or separation. 85 ALR3d 983.

Validity and construction of state statute or court rule fixing maximum fees for attorney appointed to represent indigent. 3 ALR4th 576.

Court appointment of attorney to represent, without compensation, indigent in civil action. 52 ALR4th 1063.

Right of indigent defendant in state criminal case to assistance of ballistics experts. 71 ALR4th 638.

Right of indigent defendant in state criminal case to assistance of fingerprint expert. 72 ALR4th 874.

Right of indigent defendant in state criminal case to assistance of expert in social attitudes. 74 ALR4th 330.

Right of indigent defendant in state criminal case to assistance of chemist, toxicologist, technician, narcotics expert, or similar nonmedical specialist in substance analysis. 74 ALR4th 388.

Compensation, under subsection (d) of Criminal Justice Act of 1964 (18 USC § 3006A(d), of counsel appointed for accused, 9 ALR Fed 569.

Propriety of order under subsection (f) of Criminal Justice Act of 1964 (18 USCS § 3006(A)(f) directing payment by or on behalf of party for services of court-appointed counsel. 51 ALR Fed 561.

18 Am Jur Trials 1, Coram Nobis Practice in Criminal Cases.

18 Am Jur Trials 341, Handling the Defense in a Rape Prosecution.

Hunter, Slave Labor in the Courts -- A Suggested Solution. 74 Case & Comment 3, July-August 1969.

General rule that assigned counsel for indigent defendant has no right to compensation by public is also recognized by:

Cal -- Arnelle v City and County of San Francisco (1983, 1st Dist) 141 Cal App 3d 693, 190 Cal Rptr 490.

Fla -- Dade County v McCrary (Fla App) 260 So 2d 543 (recognizing rule as to representing indigent).

Ky -- Commonwealth, Dept. of Corrections v Burke (Ky) 426 SW2d 449; Flannery v Commonwealth (Ky) 443 SW2d 638; Jones v Commonwealth (Ky) 457 SW2d 627; Bradshaw v Ball (Ky) 487 SW2d 294.

Miss -- Board of Supervisors v Bailey (Miss) 236 So 2d 420.

Nev -- Brown v Board of County Comrs (Nev) 451 P2d 708 (merely recognizing rule in absence of statute).

NC -- Re Hunoval (1977) 294 NC 740, 247 SE2d 230 (citing annotation).

Common-law tort remedy of injured civilian employee of government against negligent fellow employee, recognized in Allman v Hanley (CA5 Ala) 302 F2d 559, supra, was done away with in 1961 by enactment of Federal Driver's Act which immunized individual federal driver from personal suits and judgments arising out of accidents caused by negligent operation of motor vehicles while in scope of government employment. Noga v U.S. (CA 9 Cal) 411 F2d 943 (recognizing rule), cert den 396 US 841, 24 L Ed 2d 92, 90 S Ct 104.

Although attorney could constitutionally be compelled to represent indigent defendant without compensation, attorney could not be compelled to pay expenses of criminal defense work without reimbursement, since this would have constituted "taking" of attorney's property without just compensation in violation of due process clause of Fourteenth Amendment. Williamson v Vardeman (1982, CA8 Mo) 674 F2d 1211.

Where United States Supreme Court decision established constitutional right of indigent juvenile to be furnished with counsel in proceedings to determine delinquency which might result in commitment to institution in which juvenile's freedom was curtailed, and about 1-1/2 years later, statute was enacted bringing such cases within public defender system, attorneys who were assigned during interim of 1-1/2 years to represent two indigent juveniles charged with delinquency, were not entitled to compensation, but lawyers who provided services in interim would be reimbursed for any out-of-pocket expenditures. The court recognized, however, that if appropriation to public defender proved insufficient in any fiscal year, court would return, for balance of such year, to permitting compensation as to both adult and juvenile courts. State in Interest of Antini, 53 NJ 488, 251 A2d 291.

At present there is no statute or court rule in New Jersey which can be cited as authority for directing compensation to attorneys assigned in municipal court; attorney must render gratuitous assistance pursuant to common-law obligation and tradition of officer of court and as condition of his license to practice law. State v Corey, 117 NJ Super 296, 284 A2d 395 (citing annotation).

Attorneys' fees should not be awarded in absence of statute authorizing such award. Court-appointed attorney was not entitled to fees in amount greater than was authorized by statute. Keene v Jackson County (Or App) 474 P2d 777 (citing annotation), petition den (Or 478 P2d 393.

In constitutional challenge to system by which superior court-appointed attorneys requesting assignment of cases in family division to represent indigent parents in neglect proceedings with little or no reimbursement, plaintiffs' complaint failed to raise genuine issue of involuntary servitude, since plaintiffs could avoid such representation by ceasing practice before family division or by continuing to practice without requesting assignment of cases for which compensation was paid; however, case would be remanded for findings as to whether such appointments constituted "takings" without just compensation or whether system of appointment was so lacking in rationality as to constitute violation of equal protection. Family Div. Trial Lawyers of Superior Court-D.C., Inc. v Moultrie (1984) 233 App DC 168, 725 F2d 695 (applying Dist Col law).

Attorney was not deprived of due process and equal protection of laws when he was required to defend indigent without compensation. Re Meizlish, 387 Mich 228, 196 NW2d 129 (citing annotation).

Even in absence of compensation, requiring practicing attorney to undertake defense of indigent criminal defendant does not violate attorney's constitutional rights of due process and equal protection, and did not herein amount to involuntary servitude.

People v Hutchinson, 38 Mich App 138, 195 NW2d 787 (citing annotation).

System of requiring attorneys to accept assignments to represent indigent defendant in municipal court cases without compensation was not unconstitutional. State v Frankel, 119 NJ Super 579, 293 A2d 196, cert den 409 US 1125, 35 L Ed 2d 257, 93 S Ct 939.

§ 5 [21 ALR3d 828]

View that court has no power to award compensation by public to assigned counsel for indigent accused is also supported by:

Ky -- Commonwealth, Dept of Corrections v Burke (Ky), 426 SW2d 449.

Utah -- Salt Lake City Corp v Salt Lake County (Utah), 520 P2d 211.

Juvenile and Domestic Relations Court, which is strictly creature of statute, does not have power to order payment of reasonable fees for defense of indigent juveniles. Re State in Interest of A.A. 101 NJ Super 385, 244 A2d 356.

Court improperly awarded attorney fees for defending indigent on two disorderly persons charges where indigent defendant, in non-indictable petty offense, was not entitled to payment of fee by county and where statute which provided for legal representation in disorderly persons cases did not appropriate funds necessary for compensation of attorneys. State v Monaghan (1982), 184 NJ Super 340, 446 A2d 185.

§ 6 [21 ALR3d 830]

[a] Generally

General policy in favor of compensation at public expense for appointed counsel should be applied in particular instance of narcotic commitment proceedings and county charged with cost of appointment, even though specific liability had not been imposed on county by statute which authorized appointment. Luke v County of Los Angeles, 269 Cal App 2d 495, 74 Cal Rptr 771.

Burden on legal profession to furnish, without compensation, legal services to indigents charged with crime is more than profession alone should bear, and court will relieve profession of it. After September 1, 1972, court will not compel attorneys to discharge alone duty which constitutionally is state burden. State v Green (Mo) 470 SW2d 571.

Where county court appointed defense counsel to represent indigent charged with misdemeanor for which he might have been imprisoned, such appointment carried with it obligation on part of

county to pay reasonable attorney's fees and expenses. Kovarik v County of Banner, 192 Neb 816, 224 NW2d 761 (citing annotation).

Where duty to appoint and compensate counsel for defendants in parole and probation revocation hearings, and statutes tended in some respects to indicate responsibility in Department of Health and Social Services, court had authority to appoint counsel and to order Department or counties to compensate counsel, but Supreme Court appointed Public Defender and provided compensation from Supreme Court budget. State ex rel. Fitas v Milwaukee County, 65 Wis 2d 130, 221 NW2d 902.

§ 8 [21 ALR3d 832]

See State ex rel. Fitas v Milwaukee County, 65 Wis 2d 130, 221 NW2d 902, § 6[a].

§ 10 [21 ALR 3d 843]

Indigent defendant's constitutional right required reimbursement to his counsel for out-of-pocket expenses incidental to his defense, and trial courts have inherent right to entertain motion seeking such allowances and to order payment of such reasonable amounts as they, in their discretion, deem proper and necessary. Although District Court may not require payment by state, it may require payment by various counties. State v Second Judicial Dist. Court (Nev), 453 P2d 421.

See State in Interest of Antini, 53 NJ 488, 251 A2d 291, §3[a], recognizing right to reimbursement for out-of-pocket expenditures by attorneys representing indigent juveniles charged with delinquency.

Where defendant was without funds to employ medical expert, and court refused to allow him funds for such purpose, he was not deprived of effective representation by counsel in violation of constitutional right. Neither federal nor state constitution mandated that indigent defendant, in addition to counsel, was entitled at public expense to "full paraphernalia of defense." Utsler v State (SD) 171 NW2d 739 (citing annotation).

# FINDINGS OF FACT

## FINDINGS OF FACT

A. The Third Circuit and the Recorder's Court of Detroit were merged in 1987. The Chief Judges of each court still sit as Chief Judge of their courts, but they interchange as Executive Chief Judge.

There are 29 Recorder's Court judges and 35 Circuit Court judges.

The Recorder's Court of Detroit has jurisdiction of all criminal matters arising out of crimes charged in the City of Detroit. Since the merger a panel of five judges from the circuit court are assigned for arraignment and trial purposes to the Recorder's Court so, in essence, it is one court for the county handling all criminal matters within the county. If a defendant is not a resident of Detroit, he or she technically under Local Court Rule 6.102 could demand arraignment before one of the circuit judges, but practically the judges operate interchangeably between the two courts in criminal matters on an assigned basis.

The procedure, upon arrest, is that the defendant is arraigned on the warrant before a magistrate or judge in the 36th District Court, either in the city or out county. At that point it is determined whether the defendant will be incarcerated or bonded and whether he demands or is unable to hire counsel. In the event that he or she wants counsel, the matter is assigned to an assignment judge, which judge is assigned by the Executive Chief Judge for a brief period of one week. This position is not provided for by statute and some judges refuse the assignment.

Consequently, not all judges serve in this capacity. The assignment judge assigns the defendant an attorney from either the public defender's office (which takes 25% of the cases) or from a list of over 600 attorneys who have indicated desire for assignments. Assigned counsel are notified of their appointments by telephone and have 24 hours to appear at the clerk's office to pick up paperwork. If they do not appear in time and have not made other arrangements, the case is reassigned. In addition to the order of appointment, the lawyer is given an early discovery packet that includes the police investigator's report (warrant request), the defendant's prior record, and a standard signed discovery order. In January, 1990, a sentencing guidelines calculation was added to the discovery packet.

Preliminary examinations are scheduled for 7-10 days after arraignment on the warrant. Since early discovery packets are available on the third day after the arraignment, counsel has 4-7 days to confer with the defendant and review the case. If no lawyer appears for the preliminary examination, the case is assigned to "house counsel", a standby lawyer who is assigned to be available in District Court to cover such situations. On occasion, the defender office has been removed from a capital case by a district judge for refusing to conduct a preliminary examination without additional discovery and other counsel was appointed. If the case is bound over, arraignment on the information (AOI) occurs in seven days if the defendant is in jail and fourteen days if the defendant is free on bond. Thus the total

time elapsed from the appointment of counsel to AOI is 17 days in jail cases and 24 days in bail cases. If the defendant pleads guilty at AOI, sentencing is set for 10 days later.

If the defendant is bound over, he or she is next required to appear before one of the executive floor judges who will arraign him or her on the information or indictment. If at that time the defendant stands mute or pleads not guilty, the case is assigned to a judge for trial. The attorneys then meet with the trial judge to establish a trial track for motions to quash, Walker hearings and trial date and other preliminary matters.

The Chief Judge of the Recorder's Court is responsible for moving the docket and he may, and often does if there is an overload, remove a case or cases to his docket for disposition. If the trial lasts for more than three days, the Recorder's Court automatically allows $300 per day for trial time. In circuit court, the attorney must apply to the Chief Judge for extraordinary fees which are often allowed in whole or in part. Many attorneys are reluctant to ask for extraordinary fees or compensation for unusual expenses, fearing that such requests may prejudice their standing or possibilities for assignment with the judges and, accordingly, pay such costs themselves. Petitions for extraordinary fees are filed in two percent of the cases and are rarely granted in full. The Public Defender's Office is rarely granted any fees beyond the schedule amounts.

B. The present system of paying for assigned counsel on a flat fee basis has merit for the following reasons:

1. The system shortens the time between arrest and disposition, thus alleviating some of the pressure for more jail space.
2. The system tends to keep the docket moving and in better control by speeding resolution and disposition of cases.
3. If a client is pled guilty quickly, the compensation is very adequate as it represents payment for only three or four hours of attorney time.
4. Frivolous motions are reduced as there is no financial incentive to do work which merely takes time.
5. Alternative resolutions, such as work release and probation, are encouraged.
6. Dismissals of weak cases occur at an early stage.
7. Much judicial time in review of schedules and expense accounts is eliminated.
8. Padding of hourly accounts is eliminated.
9. The system is administratively easier to operate.

The negative side of paying assigned counsel on a flat fee basis is:

1. The system encourages attorneys who are not conscientious to persuade clients to plead guilty as attorneys compensation is not improved materially by trial. This discourages use of the full panoply

of constitutional rights.

2. While the system discourages the filing of frivolous motions, it also gives disincentive to file serious motions, as no additional compensation is paid for greater effort.

3. The system discourages plea bargaining in that the prosecutor is aware that the defense attorney has no financial incentive to go to trial and will assent to a guilty plea to a higher charge.

4. While the flat fee system is not directly related, the fact that guilty pleas are well rewarded allows assigning judges to appoint favorites to a volume of cases. One case was cited where an assigning judge appointed a female attorney, with whom he was friendly, to the majority of his assigned cases which required only pleas to be entered.

5. The system also supports a group of substandard attorneys, estimated to be 10 to 15% of the criminal bar, to operate without offices, secretaries, files, from pocket notes and to make a living on guilty pleas.

C. At the beginning of 1990, there were 630 attorneys eligible for appointment. One hundred eighty-six of those did not receive appointments, leaving four hundred forty-four who were appointed in 1989. One hundred seventy-seven attorneys who were not on the eligible list did receive assignments; forty-five

attorneys on the list receiving appointments received $1,000 or less.

The total sum paid for services was $7,130,333 in 1989. Seventy attorneys, about 12% of those eligible for appointment, were paid $3,556,662, or approximately 50% of the total payments made. $1,777,674 of the amount paid to the first seventy attorneys was paid to attorneys not qualified to try capital cases.

The payments of the first seventy attorneys break down as follows:

| | | |
|---|---|---|
| Over $100,000 | 1 attorney | $148,102* |
| Between $90,000 and $100,000 | 1 attorney | 91,264 |
| Between $80,000 and $ 90,000 | 1 attorney | 81,510 |
| Between $70,000 and $ 80,000 | 4 attorneys | 302,149 |
| Between $60,000 and $ 70,000 | 5 attorneys | 325,147 |
| Between $50,000 and $ 60,000 | 10 attorneys | 555,123 |
| Between $40,000 and $ 50,000 | 11 attorneys | 476,665 |
| Between $30,000 and $ 40,000 | 37 attorneys | 1,580,633 |
| Total | 70 attorneys | $3,556,662 |

* Public Defender's Office

Eighty-five percent of the criminal cases in both the Recorder's Court and the Circuit Court require assigned counsel. There are about 12,000 assignments annually in Recorder's Court and 3,400 annually in Wayne Circuit. Indigent defense fees approximate three and-a-half percent of Wayne County's General Fund.

D. The finance situation in Wayne County is extremely fragile and an increase in sums paid for attorneys fees for the indigent could have serious financial repercussions. Wayne County at the close of its fiscal year, November 30, 1987, had a deficit of $134 million in its general fund and an additional debt of

$56 million owed to the State from previous loans to help the county's deficit situation.

In order to rectify this situation, the County, in 1988, negotiated the debt settlement agreement with the State of Michigan, wherein the county was able to borrow $120 million from the State Emergency Loan Board and the county received permission to borrow $103 million in fiscal stabilization bonds.

As conditions for the debt settlement agreement, the county, pursuant to state law, its charter and the additional debt settlement agreement, is required to maintain a balanced budget.

A failure on the part of Wayne County to maintain a balanced budget would require it to pay 10% interest on the sum owing to the state, e.g., $10 million, and may result in the state invoking the provisions of the legislation authorizing the solvency package and place the county in receivership.

In 1989, the county's budget for indigent attorney fees was $13.2 million for circuit, Recorder's, and probate courts, and expenses were approximately $16.7 million, an overrun of approximately $3 1/2 million.

The county budgeted approximately $15.8 million for indigent attorney fees for 1990 -- $9.2 million for Circuit and Recorder's Courts and $6.6 million for probate.

In 1989, by comparison, the county budgeted approximately $12.9 million for the prosecutor's office. The prosecutor's office, of course, has no rent factor in its budget. It also has no factor for investigations or fringe benefits and has some income

through grants and forfeiture money which amount to $5- or $6 million a year.

The county receives no reimbursement from the state or any other source for the sums spent on attorneys fees for the indigent. The county has fiscal responsibility for payment of indigent attorney fees, but has no authority to effect the rate structure. The county addresses indigent attorney fees as a priority in its budget process.

E. From the testimony, the average overhead rate in the Detroit area varies from $35 to $45 an hour. Several attorneys who have been assigned to high publicity, complex cases which have resulted in protracted trials have not been paid enough to meet overhead. Some reported receipt of less than $15 per hour on critical cases.

On the other hand, attorneys with no secretaries, no offices and working from telephone contacts may be paid $675 for a non-capital case in which there was a guilty plea which might be concluded in less than three hours.

F. There is no screening process for indigent defendants in Circuit or Recorder's Court and consequently 87% of the criminal cases in Wayne County require the assistance of appointed counsel. It was the opinion of several witnesses that any attempt to set up standards of indigency or to attempt to recover all or part of the fees paid for defense counsel appointed would be counterproductive. No experiments were reported which would verify these opinions.

Experiments in Genesee County of "loaning" attorney

services to defendants who are unable to pay in full for representation have been somewhat successful. This system would refer a defendant who pleads indigency to an assignment attorney who works for the system. The assignment attorney would determine what, if any, assets are available to the defendant to fund the defense. If the defendant is employed or has other assets, the attorney would take an assignment of the assets or note payable over a period of time from the defendant. On some occasions, a credit card has been used. In any case, the payment of the attorney's fee is guaranteed by the court and collection, if any, is made by the assignment attorney. It has been the experience in some counties that 10% of assessed attorney fees are collected from defendants, usually as a condition of probation.

G. The Federal Court for the Eastern District of Michigan reimburses assigned attorneys at a rate of $75 an hour. There is no distinction made between in-court and out-of-court time and expenses are routinely reimbursed.

Testimony revealed that in Wayne County, when extraordinary fees are requested and allowed, the Chief Judge in Recorder's Court utilizes a figure of $300 a day which is fairly automatic. The Chief Judge in Wayne Circuit computes such fee at $35 an hour.

The fees paid for expert witnesses such as psychologists, psychiatrists, medical experts, interpreters, investigators and other supplemental requirements are so low as to make their services unavailable without supplementation of funds by the

attorney. Some costs, such as postage, copy and local travel, are never reimbursed.

H. Wayne County's fee schedule is unique in Michigan. All other schedules in the state are event based. Only Wayne County pays a flat fee based on the potential maximum sentence. Under this system, the amount paid bears an inverse relationship to the amount of effort expended. The lawyer who puts three or four hours into a case may earn $200 per hour; a lawyer who engaged in a protracted jury trial may earn as little as $12 an hour under the Wayne County system.

The flat fee schedule had a decided impact on the Public Defender's Office, which operates in Wayne County, on the same basis as an attorney who accepts appointments in private practice. The result has been a diminution of funds to run that office to the extent of about $200,000 per year.

I. Several witnesses claimed that the schedule currently in effect, which has the result of rewarding a guilty plea and providing disincentive for going to trial, is in some measure supporting overcharging and stiffness in the prosecutor's office in negotiation of pleas as the prosecution is aware that the defense lawyer is at a personal disadvantage by going to trial as it will cost him money personally. No witnesses were called from the prosecutor's office, consequently such statements went unrebutted. These thoughts do sound facially logical and certainly in the realm of probability.

J. From a review of the Prosecuting Attorneys Association Report for 1989 (Pl. Ex. 35) and the State Bar Association Defender and Services Committee Report for 1989 (Pl. Ex. 36) the following information would appear. The reliability of the information was not tested.

The annual budget for prosecutors in Michigan in 1989 was $61.5 million. The annual budget for prosecutors in Wayne County was $14,110,982, or 23% of the total state budget for prosecutors. The state population was shown to be 9,201,716 according to the 1980 census. Wayne County's population was shown as 2,337,240 or 25.4% of the state population. There were 73,857 felony warrants issued in Michigan. 19,024 of such warrants, or 25.75%, emanated in Wayne County. The above figures are fairly consistent, however the statewide budget for felony defense in the state totalled about $22.5 million. The amount spent in Wayne County on felony defense was listed as $9.26 million, or 41% of the state total budget for defense. This figure was affirmed by the testimony of Mrs. Lannoye as to the Wayne County expenditure.

It is interesting to note that statewide the budget for defense is 36% of the budget for prosecution, which does not include rent, investigations and other factors before mentioned.

K. Under the present system of assigning attorneys, there are at all times over 400 attorneys willing to take assignments which is a number that is entirely adequate.

It appears that in a few complex and unpopular cases, such as the famous Easter Case, the judges have had to use their

personal influence with good attorneys to persuade them to take the case.

The Detroit Bar Association has made a giant step toward improving the quality and capability of the defense bar in organizing the Criminal Advocacy Program (CAP) which was testified to by Judge Ravitz and others and funded by 1% of the assigned counsel fees. Judges and competent trial attorneys have lent their support by teaching in this program.

The plaintiffs allege that good attorneys are dropping out of the assignment program because of low fees. This was not borne out by the testimony as a problem in Wayne County. It was shown that a few very capable attorneys who have made their reputations as superior defense attorneys are taking more private work because it is undenied that private, criminal practice pays infinitely better than assigned work. Typical of this phenomena was Thomas Loeb, a witness in this case, who has become a very well known and highly capable defense attorney who no longer seeks assignments because he commands sufficient private clients to occupy his time. There have been some drop out of attorneys seeking assignments, but that has not been in Wayne County.

Assigning judges are well aware of the competent attorneys and tend to assign them to a number of cases. This may cause an imbalance in income of attorneys depending on assignments but, in all probability, it is to the advantage of the defendants that the best lawyers are assigned most often.

L. The 1982 recommendation on assigned attorneys fees was a carefully considered plan of compensation on an event basis. It had the endorsement of attorneys and judges. Fear on the part of Wayne County Administrators induced them to dissuade the Chief Judges from putting it into effect because of a possible impact on the budget.

Criminal defense does not have great popular appeal and administrators and supervisors, when allocating limited money, are not inclined to give top priority to defending people who have committed crimes.

The current schedule was developed by George Gish at the direction of Judge Roberson. The schedule was adopted by Judge Roberson and Judge Kaufman with the best of motives of moving their crowded dockets and keeping the jail from overcrowding.

The record reflects little change in case movement since the advent of the present schedule. There are a few more guilty pleas. There are more short bench trials, known as "long pleas", due to the hard position on plea bargaining taken by the prosecutor. Due to lack of plea bargaining, the success rate on trial has dropped. On cases that go to trial, 63.5% of murder charges result in conviction of lesser offenses. 76.7% of all assault with intent to murder charges are reduced. The Wayne County bench trial rate is 15 times higher than the state average.

# COMMENT

## C O M M E N T

1. The Michigan Supreme Court in response to the complaint filed in this case is taking another step in attempting to alleviate a problem of which all judges and most lawyers are subliminally aware. How to structure and finance a system to provide counsel to all persons charged with crime to insure due process rights. Pressures from the Federal Government, in particular the United States Supreme Court, has made mandatory constantly expanding rights of persons to be represented by competent counsel. This movement also has found support in state constitutions, statutes and court decisions.

Particularly relevant decisions of the United States Supreme Court are:

Powell v Alabama, 287 US 45 (1932) (defense in capital cases)

Johnson v Zerbst, 304 US 458 (1938) (expanded to all federal criminal cases)

Townsend v Burke, 334 US 736 (1948) (sentencing)

Hamilton v Alabama, 368 US 52 (1961) (arraignment)

Gideon v Wainwright, 372 US 335 (1963) (expanded to all state courts in felony cases)

Douglas v California, 372 US 353 (1963) (appeal of right)

Miranda v Arizona, 384 US 436 (1966) (custodial interrogation)

In re Gault, 387 US 1 (1967) (expanded to juveniles)

Johnson v Avery, 393 US 483 (1969) (collateral attack)

Coleman v Alabama, 399 US 1 (1970) (preliminary hearings)

Kirby v Illinois, 406 US 682 (1972) (pre-indictment lineups)

Argersinger v Hamlin, 407 US 25 (1972) (all imprisonments)

Gagnon v Searpelli, 411 US 778 (1973) (parole and probation revocation)

2. The record reflects that certainly enough money is spent in Wayne County for assigned case work. There may be a need for some tuning in the way it is allocated.

3. Guilty pleas under the present compensation system have increased 8.5% after the current system was effected. Dismissals have increased by 16%. Guilty pleas on arraignment have increased 2.5%. Jury trials have decreased by 6%. Waiver trials have increased by 5%. (Testimony of Dr. Donald Tippman.)

4. Chief Judges Roberson and Kaufman are dedicated and efficient. Their strong motivation is moving a large unyielding docket. If the docket does not move, that too can affect due process.

5. The Court Administrator, Mr. George Gish, is a sincere, brilliant person who is an expert in court management. He has an efficient staff.

6. The current system of court assignment and payment has gone far to do what it was designed to do, namely: speed the court docket. It does however, as the plaintiffs allege, encourage defense attorneys to persuade their clients to plead guilty. The incentive, if a lawyer is not paid to spend more time with and for the client, is to put in as little time as possible for the pay allowed. Under the current system, a lawyer can earn $100 an hour for a guilty plea, whereas if he or she goes to trial the earnings may be $15 an hour or less. Essential motions are neglected.

In short, the system of reimbursement of assigned counsel as it now exists creates a conflict between the attorney's need to be paid fully for his services and obtaining the full panoply of

rights for the client. Only the very conscientious will do the latter against his or her own interests.

7. In common with the last comment, there has developed a number of lawyers characterized as "waivers and pleaders" who operate from pocket notes without secretaries or offices who live on guilty pleas.

8. The method of assigning cases in Wayne County appears to use judicial time which could be converted into clerk time if an assignment clerk were appointed to supervise the assignment of cases under direction of the chief judge. This would also terminate the occasional instance of a judge assigning favored people and bring greater equity into the system. The result would free enough judicial time to be the equivalent of adding an additional judge without the ancillary expense of staff and courtroom.

9. The system of payment according to the seriousness of the crime rather than on hours spent or work performed (events) is not reasonable or just and is a disincentive to due process.

10. The testimony of some of the witnesses, particularly the judge witnesses, that no effort is made to determine indigency or no system of recoupment would be anything but counterproductive may be correct. However, experience in other courts indicates that such efforts produce about a 10% return would mean an increase in funds for criminal defense in Wayne County which should net between $1 and $2 million more for criminal justice activity before expenses. There exists significant material on the operation of such systems in the literature.

# RECOMMENDATIONS

**RECOMMENDATIONS**

1. That the fixed fee schedule based on maximum possible sentence be found unreasonable in that it only includes one factor of what this Court found to be the test of reasonableness in WOOD v D.A.I.I.E., 413 Mich 573, 588 (1982). That decision did not determine "reasonableness" in a criminal context but discussed reasonableness in a general context.

The factors to be considered, as in that case defined, are:

1. The professional standing and experience of the attorney;
2. The skill, time and labor involved;
3. The amount in question (in this case maximum potential sentence.
4. The results achieved;
5. The difficulty of the case;
6. The expenses incurred;
7. The nature and length of the professional relationship.

Having found the schedule based solely on maximum possible sentence unreasonable, several alternatives could be offered.

A. That a study be made of reasonable time involved to defend each of the crimes in the present schedule, thus establishing a norm similar to those used by garages in estimating repair work. If the fee request submitted falls within the norm, it would be automatically approved for the time expended at a reasonable rate of $60 to $70 per hour. Excesses would have to be justified.

B. Do as the plaintiff asks and install the Jobes Committee report with a reasonable escalator based on inflation since 1982.

C. Direct the court to devise an alternative plan within a reasonable time which would: (1) compensate attorneys

fairly for time spent, and (2) put no pressure on defendants to plead guilty. It is believed that Mr. Gish could do that if so directed knowing of the criticism of the present plan and in the parameters of present sums expended.

These objectives could be reached by:

1. Conference with the Chief Judges.
2. A letter to the Recorder's and Circuit Court requesting a restudy of the present plan recognizing its weaknesses as defined by these hearings.
3. An Order of Superintending Control.

2. That the Supreme Court in an opinion in this case, or another appropriate case, bring to the attention of the legislature that convictions for felonies are under laws passed by the state, that appeals are to state courts and from state courts and all Michigan prison inmates are state prisoners. Such appeals should, therefore, be state funded.

Circuit and Recorder's Court judges, unless specially assigned, have no control or even knowledge, during the appellate process of the work performed by the assigned attorneys but are expected to approve payment therefor from their respective counties. Each circuit has a different rate or method of payment. In Jewell v Maynard, 383 SE2d 536 (1989), the Supreme Court of West Virginia, in a case with facts very similar to those posed here, called upon the state of West Virginia to pay $45 an hour for out-of-court work and $60 an hour for in-court work in spite of a statute which provided for $20 an hour for out-of-court work and $25 for in-court work and gave the legislature one year to implement the decision. Prior attempts to obtain money for appeals in Michigan have become snarled with debates on judges salaries and

pensions and have been pushed back by the legislature and thereafter forgotten. It seems appropriate that, if due process in Michigan is to be maintained, the state should include the cost in the budget.

In the matter of In re Frederick, SC No. 90310, which was heard by this Court on March 7, 1991, this precise issue was raised. Frederick was appointed to defend an indigent, David Cook, on appeal. The Court of Appeals found no law to effect payment for his services. This Court must find the system to pay Frederick. If this Court finds Frederick must be paid, then it must be decided by whom.

The mechanism for designating attorneys for appeals was set up in detail in MCL 780.711 et seq. (the Appellate Defender Act). In this Act, section MCL 780.717 provides for contracts for special assistant appellate defenders, but does not provide for single appointments of non-contract attorneys.

The Supreme Court could clarify in an appropriate opinion that it was the intent of the legislature to set up an appellate scheme to handle all appeals to the Michigan Court of Appeals and to the Michigan Supreme Court between the State Appellate Defender's Office and the Michigan Appellate Assigned Counsel Service.

That having been decided, then the legislature should be called upon to correct the glaring funding omission of the Appellate Defender Act.

If this were accomplished not only would the system in Wayne County be relieved, but also the system in every county of

the state where the counties are with great difficulty bearing a burden on strained budgets which properly belong to the state.

3. The discussion in the previous recommendation is in reference only to appeals from the 55 circuit courts and Recorder's Court of Detroit.

There is another problem in that each of the 55 circuits has a different plan for compensation of assigned counsel for trial in that circuit. Even the Recorder's Court and the Third Circuit for Wayne County have slight differences in their plans.

As a result of these differences, all Michigan defense representation is not equal. Indigent defendants charged in counties that pay assigned counsel very low rates are treated differently than those defendants who can afford to hire their own attorneys. They are also treated differently than defendants in counties that provide skilled representation. Much of the information on these problems has been gathered by the Supreme Court Administrator and MAACS and should be amenable to fast assembly.

It is recommended that this Wayne County study be expanded to encompass the assignment of counsel throughout the entire state to unify the hodgepodge of plans for indigent representation that now exist.

While much of the information has already been gathered for such a study by existing organizations, it is the recommendation that such study be conducted by an independent group or agency to diminish any appearance of empire building. Too, such a study must consider the responsibilities and sensitivity of

sitting judges who must accept the recommendations, as it is their responsibility to operate their courts efficiently and economically. It is also their responsibility to convince county supervisors to fund the program.

4. In Wayne County, the chief judges should be encouraged to devise a plan to eliminate the criticism of assigning attorneys who operate from their cars and by telephone and live on payment for pleas and waivers.

Likewise chief judges should be made aware that the Supreme Court is aware that instances exist of appointment of attorneys who have personal relationships with assigning judges and that such appointments are not favored. There is, of course, no criticism of those judges who have had to use personal relationships to obtain competent counsel for hard cases.

5. It should be pointed out that MCL 780.711, § 2 specifically puts the supervision of the state agencies whose duties are the operation and management of appellate defense under the State Court Administrator. In practice, it does not operate that way.

If the appellate services were centralized in the Supreme Court Administrator's Office and funded by the state, much of the problems on the appellate level statewide would disappear.

At the trial level, if the 55 circuits were operating under standard rules for those utilizing public defender offices, and a separate set of standards for those not using the public defender system, most of the grievances of the plaintiffs in the Wayne County case would be met.

It is hoped that the comment and recommendations herein contained will be helpful in the solution and not part of the problem posed by this case.

-- Tyrone Gillespie
Special Master

Dated: March 18, 1991