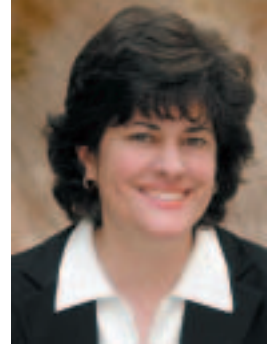


Nancy J. Diehl



What If You Couldn't Afford Perry Mason?

You could say that the reason I am a prosecutor is because of Perry Mason. I grew up on Perry Mason, who for years defined the role of defense attorneys. I did not miss a show—even when my bedtime required me to leave the show midway. Mason's clients came from all walks of life. He defended businessmen, athletes, circus clowns, models, troubled teens, and concert pianists. Each show ended with justice being served. In high school when I decided I was going to be a lawyer, I knew that I would be a defense attorney. Perry Mason had inspired me to right the wrongs by defending the accused.

I started at the Misdemeanor Defenders Office while still in law school and continued there as a lawyer after graduation. I learned defense strategy in the depths of Frank Murphy Hall of Justice. But I also learned that the prosecuting attorney seemed to wield a lot of power in the courtroom. My dream of righting wrongs seemed to be better carried out on the other side! Okay. Long story short, I became a prosecutor in 1981. I still love Perry Mason and though I am not a defense attorney, I have many friends who carry on the Perry Mason tradition.

I respect all the diligent and dedicated defense attorneys who help preserve the integrity of the criminal justice system. Voltaire

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said, "It is better to risk saving a guilty person than to condemn an innocent one." Sir William Blackstone said, "It is better to set ten guilty men free than to convict one innocent man." Our criminal justice system was built on this premise. Presumption of innocence cloaks the defendant. Burden of proof is on the prosecutor to prove guilt beyond a reasonable doubt. It is imperative we abide by these principles. To assure they are upheld, a competent effective defense attorney is needed. If a defendant has money, he or she can hire a "Perry Mason." "Perry Mason" will assure that no stone is unturned and that the accused will receive a fair trial. However, many accused individuals cannot afford to hire their own attorney.

In 1963, the now well known case of *Gideon v Wainwright* declared that it was the duty of the state pursuant to the Sixth Amendment of the United States Constitution to provide counsel for all criminal defendants in felony cases. That is the good news. Our justice system works best with both a strong prosecution and a strong defense. This ensures that the rights of all citizens are protected. The bad news is the low rate of pay that is provided for a court appointed attorney. Michigan has the dubious distinction of being among the lowest in the country when it comes to assigned counsel fees. Robert Spangenberg, of the Spangenberg Group of Massachusetts, is a national expert on assigned counsel rates and systems. He studied the Michigan system in the 90s and again

within the last two years and ranks Michigan in the bottom three states in the country.

This is not a new problem. Issues concerning proper compensation have been debated and lawsuits filed since the 1980s. The Michigan Supreme Court appointed the Honorable Tyrone Gillespie as special master to review the fee schedule in Wayne County. Judge Gillespie presided over 12 full days of hearings that began January 16, 1990, and ended February 16, 1990 and included 32 witnesses. Judge Gillespie found that the system tends to encourage assigned counsel to persuade their clients to plead guilty, stating:

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 fully paid 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.

As unbelievable as it is, compensation rates for assigned counsel were not increased then and have not increased since that time! I spoke to several highly respected criminal defense lawyers regarding the fee schedule. The common lament is that it does not compensate adequately for the time necessary to

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prepare, interview witnesses, and handle the trial. The present fee schedule for time spent on defending capital cases (penalty is life) works out to be somewhere around \$10 an hour! This unfair compensation has resulted in experienced defense lawyers no longer willing to accept any assigned cases or severely limiting the number of cases they are willing to take on. The present schedule encourages abuse. Lawyers will take too many cases to earn enough money to support themselves, and are not able to effectively represent all of their clients.

The fee schedule needs to be improved. The federal system reimburses lawyers \$90 an hour. This is not huge, but at least you can earn a living. Doesn't it seem only fair that

state appointed defense attorneys be fairly compensated for the work they do? Where will the money come from? We are in a budget crisis in our country and state, and fairly compensating defense attorneys is not an easy sell, even in the good times. However, we must not forget that the Sixth Amendment of the Constitution requires the appointment of counsel. Priorities must be realigned, in order to assure equal justice. We need to raise awareness of the situation and lobby for change. Our belief in justice for all should not become justice for only those who can afford to pay.

Perry Mason represented all sorts of people. But, do you think Perry Mason handled any court appointed cases? ♦

