

**STATE OF MICHIGAN
IN THE SUPREME COURT**

WAYNE COUNTY CRIMINAL)	
DEFENSE BAR ASSOCIATION, and)	
THE CRIMINAL DEFENSE)	
ATTORNEYS OF MICHIGAN.)	
)	
Plaintiffs,)	
)	Case No. _____
v.)	
THE CHIEF JUDGES OF WAYNE)	
COUNTY CIRCUIT COURT,)	ORAL ARGUMENT
)	REQUESTED
Defendant.)	
)	

**AFFIDAVIT OF ROBERT L. SPANGENBERG IN SUPPORT OF PLAINTIFF S
COMPLAINT FOR SUPERINTENDING CONTROL**

I, ROBERT L. SPANGENBERG, being first duly sworn, hereby depose and say:

1. I am submitting this affidavit in support of the Wayne County Criminal Defense Bar Association and the Criminal Defense Attorneys of Michigan Complaint for Writ of Superintending Control. This affidavit is made on my own personal knowledge, unless otherwise stated below.

I. Introduction

2. For almost 25 years, I have conducted studies and evaluations, provided technical assistance and information and helped to design and improve indigent defense systems throughout the United States. I have been employed in this regard by the U.S. Department of Justice, the United States Department of State, the American Bar Association, private foundations, state and local bar associations, judicial, legislative and executive agencies and public defender agencies throughout the country. Since 1985, this work has been performed by my consulting firm, The Spangenberg Group. Prior to that time, I worked in other private and public organizations performing work pertaining to legal services for low-income persons.

3. For over 20 years, I have testified frequently on the condition of indigent defense programs at the county, state and national level before state and county legislative bodies, committees of the United States Congress, and other national organizations. I have written extensively on the subject of indigent defense, and I have spoken frequently before interested groups throughout the country. Furthermore, I am familiar with the indigent defense system in Michigan and Wayne County through testimony in a prior case and other work. I most recently visited the Wayne County Circuit Court.

II. Background and Qualifications

4. I am currently the President of The Spangenberg Group (TSG), a private, legal consulting firm located in West Newton, Massachusetts that specializes in the study and implementation of policies in the criminal justice system with a particular emphasis on the delivery of legal services to low income persons in civil and criminal cases. I have been a member of the Bar in Massachusetts since 1961.

5. I graduated from Boston University Law School in 1961. I was Editor-in-Chief of the Boston University Law Review. From August 1967 to January 1975, I was the Executive Director of the Boston Legal Assistance Project. The Project had 11 neighborhood offices and was the provider of civil legal services to the poor in the City of Boston.

6. Prior to the creation of TSG in July 1985, I was the Deputy Area Manager for Law and Justice at Abt Associates in Cambridge, Massachusetts. Abt Associates is a leading private social science research firm with several branches across the country. I held that position from August 1976 until July 1985.

7. I have, individually and as part of The Spangenberg Group, conducted the following work in Michigan regarding the provision of indigent criminal defense services, dating to 1986:

(a) In 1982, while employed by Abt Associates in Cambridge, Massachusetts, I conducted the first National Criminal Defense Systems Study for the United States Department of Justice Statistics. The study provided quantitative data on systems, caseload and expenditures for indigent defense in all 50 states for the year 1982. Seventeen of the counties in Michigan were surveyed, including Wayne County.

(b) In 1986, The Spangenberg Group conducted the second national study of indigent defense for the U.S. Department of Justice, Bureau of Justice Statistics. The report, Criminal Defense for the Poor, 1986 was published in September of 1988 and contained similar data to the earlier report. The same seventeen counties in Michigan were sampled, including Wayne County.

(c) In 1986, the Defender Systems and Services Committee of the Michigan State Bar proposed to the State Bar Commissioner that a special task force be created to recommend standards for providing defense services to the indigent in Michigan. The Task Force on Standards for Assigned Counsel was then established by the Commissioners. Eventually, the Task Force chaired by attorney Frank D. Eaman recommended a new, state-funded system for providing indigent defense representation throughout Michigan. During the course of the Task Force's work, The Spangenberg Group provided technical assistance and information on various types of indigent defense systems then in existence throughout the United States.

(d) In 1990, the Michigan Supreme Court asked The Spangenberg Group to provide detailed information on provisions in other states permitting appointment of counsel in limited appeals from Intermediate Courts of Appeal to its State Supreme Court. In May of 1990, TSG provided to the court a document entitled System for Appointment of Attorneys Appealing Cases From an Intermediate Court of Appeals to a State Supreme Court. The report included detail on a number of state systems including types of systems, who appoints, rate of compensation, etc.

(e) In January of 1990, I was asked to testify as an expert witness on behalf of the plaintiffs in Wayne County regarding a Complaint for Superintending Control regarding the fee scheduled for court appointed counsel in criminal cases in the Wayne County Circuit Court and the Detroit Recorders Court. In my testimony, heard by Special Master Tyrone Gillespie, I gave evidence on my opinion regarding the then current system and provisions in other states for the delivery of indigent criminal defense services.

(6) In 1996, we were contracted by the Legal Aid and Defender Association of Detroit (LADA) regarding a proposed contract between LADA and the Wayne County Probate Court to provide representation to indigent juveniles in a number of different cases. Subsequently, we were contracted by LADA in 1998 on a similar matter. In both instances, TSG provided technical assistance and information on these matters to LADA.

8. Over this 25-year period, I have also conducted statewide studies of indigent defense systems in 26 states, including the following:

(a) In 2000, TSG completed a statewide study of indigent defense in Texas. The report, which documents the on-site research conducted in 23 of Texas 's 254 counties, has served as a catalyst for a major legislative overhaul of the State 's indigent defense system which was primarily a county-by-county assigned counsel system whereby each criminal judge would select his or her own set of court-appointed attorneys and their own method of compensation.

(b) In 1998, the Kentucky Blue Ribbon Group on Improving Indigent Defense in the 21st Century, consisting of members of all three branches of government, contracted with TSG to address chronic under-funding of the Kentucky Department of Public Advocacy (the state public defender) and to propose solutions in light of national information and standards. The final report of the Blue Ribbon Group, prepared by TSG, was instrumental in increasing the state public defender 's budget by \$10 million in FY 2000.

(c) From 1995 to 1996, TSG conducted a study of Florida 's publicly elected circuit public defender program for the Florida Public Defender Association. The

study resulted in the publication of a report profiling the program and making recommendations for its improvement, with particular emphasis on redesigning the program's funding formula.

(d) From 1995 to 1996, TSG conducted a year-long case-weighting study of the Colorado State Public Defender and its 18 regional offices to measure time spent by public defenders across the state through a three-month, day-to-day, time-keeping study. The study resulted in a new set of caseload and workload standards for the program.

(e) In the spring and summer of 1994, TSG conducted a study of the public defender system in Connecticut under a grant from the Connecticut Civil Liberties Union Foundation.

(f) From 1992 to 1994, TSG conducted a study of Louisiana's indigent defense system for the Louisiana Supreme Court Task Force on Indigent Defense appointed by the Chief Justice of the Louisiana Supreme Court. In July 1994, the Louisiana Supreme Court created by court rule a new statewide indigent defense system substantially based upon the recommendations of the report.

(7) From 1992 to 1993, TSG conducted a statewide study for the Nebraska Indigent Defense Task Force appointed by the Chief Justice of the Nebraska Supreme Court. The study resulted in the creation of the Statewide Nebraska Commission on Public Advocacy, which now provides state funding and technical assistance to county indigent defense programs in Nebraska. In Nebraska, a substantial number of counties have a private court-appointed system whereby each judge selects his or her own attorneys and the individual amounts of compensation.

(h) From 1990 to 1991, TSG undertook a nationwide study of fees and expenses of private counsel in capital cases on direct appeal, state post-conviction and federal habeas corpus proceedings for the Chief Justice of the California Supreme Court and the California Judicial Council.

(1) In 1990, TSG, along with Maximus, Inc. and the National Center for State Courts, conducted a study of the Connecticut Judicial Department, Division of Public Defender Services, Division of Criminal Justice and County Sheriffs. At the conclusion of the study, we prepared a report outlining our conclusions and recommendations regarding caseload, staffing, program operation and program management of the state public defender.

(10) From 1989 to 1991, TSG conducted, at the request of the Minnesota State Legislature, a 16-month case-weighting study of the State Public Defender and its ten Judicial District Offices in Minnesota to determine time spent on public defender cases through a three-month, day-to-day, time-keeping study. The study resulted in a new set of caseload and workload standards for the program statewide. These standards were adopted by the Legislature for budgeting purposes.

(11) From 1989 to 1991, TSG conducted a federal, State Justice Institute study examining efforts to contain costs of indigent defense services within the context of the entire criminal justice system. The research was conducted in Oregon and Washington under the auspices of two statewide blue ribbon commissions, both of which included representatives of each branch of government and key leaders of all criminal justice agencies. Important legislation regarding new indigency standards, new decriminalization of some misdemeanors and public defender standards was enacted following the study.

(12) In March 1989, TSG also conducted a ten-month study of the indigent defense systems in each of Oregon's 36 counties for the State Court Administrator, Judicial Department and Supreme Court of Oregon. At the conclusion of the study, we presented various alternatives for improving the current system in the most cost-efficient manner consistent with quality representation.

(13) In 1988, TSG conducted a study for the Oklahoma State Bar gathering comprehensive data on the entire indigent defense system in each of Oklahoma's 77 counties.

(14) From 1986 to 1987, TSG undertook a project for the State Public Defender Commission of Ohio which included a state-wide study of indigent defense services in municipal and county courts throughout Ohio's 88 counties assessing requirements for misdemeanor representation.

9. I also have performed extensive work for the ABA's Bar Information Program. Since 1985, TSG has worked for the ABA on a project designed to provide assistance to local jurisdictions for purposes of improving their indigent defense systems. This project assists state and local bar associations, judges, court officials, public defenders, private attorneys and funding agencies in their efforts to improve their indigent defense systems. TSG has provided such technical assistance in every state. Our work has included assisting state commissions in reviewing their indigent defense systems, providing cost analyses of alternative delivery systems, reviewing workload and developing funding formula tied to workload, developing written indigency standards and assisting in the design of

special projects to provide defense counsel in death penalty cases, and assessing numerous private court-appointed systems, their costs, their effectiveness and their quality.

10. From 1991 to 1994, TSG performed work for the ABA's Special Committee on Funding the Justice System. For this project, TSG gathered data on the funding needs of all components of the justice system (civil and criminal) and assisted local and state jurisdictions in obtaining balanced and adequate funding for those components.

11. In 1986, TSG was hired by the Maine State Bar to assist their commission to review indigent defense in Maine. Maine is the only state in the country where each of the sixteen counties has its own private court-appointed system for indigent defense. The Committee presented its final report to the Board of Delegates at the end of 1986.

12. In the year 2000, the North Carolina Legislature created a Study Commission on Indigent Defense to review the cost and quality of indigent defense in the state. Eighty-five of the one hundred counties in North Carolina have a system of private court-appointed counsel and the other fifteen have public defenders. The Commission hired The Spangenberg Group to assist them in this one-year study. In 2001, the legislature enacted and the governor signed a bill to create a new system for indigent defense in North Carolina.

13. In early 2000, the New York County Lawyers Association brought action against the State of New York and the state Governor in his official capacity in the Supreme Court of the State of New York, County of New York. The action alleges that the system to provide private court-appointed counsel to criminal adults and juveniles in New York City is in a state of crisis, primarily because there are not enough qualified private attorneys available and able to represent all those who are constitutionally and statutorily entitled to

adequate representation. The Spangenberg Group has continually acted as expert for the plaintiff since the filing of the suit.

14. In 2001, The Chief Justice of the Georgia Supreme Court appointed a Blue Ribbon Commission to study the cost and effectiveness of indigent defense in Georgia. The Spangenberg Group was hired earlier this year by the Supreme Court and the Commission to study the system extensively by on-site work in nineteen counties. Over half of the counties in Georgia operate a private court-appointed system. TSG is in the final phase of completing its on-site work and will present its report by the end of the summer.

15. In the past 15 years, I have been employed as an expert witness in state and federal court in eighteen different cases involving adequate representation for indigent defendants and just compensation for private court-appointed lawyers. In four of these cases, my role as expert witness focused on efforts to challenge indigent defense programs in states and counties on the basis of a systemic denial of the right to counsel under federal and/or state law. The cases challenged whether, due to the overall surrounding circumstances in a particular jurisdiction, there existed a serious risk that its indigent defense program could not sufficiently safeguard the rights of indigent defendants or insure adequate, meaningful and/or competent representation for criminal defendants found to be indigent by the court. In other cases, my role centered around competent representation and adequate compensation for private court-appointed counsel.

16. In seven of these cases, I testified before a judge or a special master. In each of these cases, I was qualified as an expert on the delivery of indigent defense services throughout the country.

III. A Comparison of the Wayne County System for Indigent Defense to Systems Across the Nation.

17. The United States Supreme Court has placed responsibility for establishing and funding indigent criminal defense systems totally on the states. A number of states have accepted the full responsibility, while other states have shifted the total responsibility to their counties for both the type of system and either full funding or partial funding. In other words, indigent criminal defense is funded in our states either one hundred percent by state government, one hundred percent by county government or a mixture of state and county government funding. There are no federal funds for indigent defense at the state or county level.

18. There are twenty-four states in which one hundred percent of the indigent requirements throughout the states are paid for by the state government. This is clearly a slowly moving trend.

19. There are sixteen states in which the counties provide a large percentage of the total cost of indigent defense in the state courts. Among these states are several which are the most populated states in the country, including California, Texas, New York, Illinois, Pennsylvania, Michigan, Georgia and Washington state.

20. There are currently only 4 states in the country in which the state government provides no funds whatsoever for indigent criminal defense at the trial level. Those states are Michigan, Pennsylvania, South Dakota and Utah. It is true that in Michigan, the state pays for the cost of the State Appellate Defender Office, but I am not aware of any other indigent defense service paid for by the state.

21. Of the twenty-five largest counties by population gathered from the 2000 US Census, twenty-two of the largest counties pay all or a substantial amount of indigent defense expense at the county level and only three provide either one hundred percent or close to one hundred percent through state funds.

22. In looking further at the twenty-five largest counties by population in the year 2000, we find that twenty-two of the twenty-five counties have a primary major public defender program which is either a county agency or a private non-profit corporation. In this group, only Harris and Bexar Counties in Texas and Wayne County in Michigan do not have a primary large public defender program in their counties that provides a substantial majority of representation for indigent defendants.

23. The last year that both expenditures and caseload data were collected for all 50 states was in 1986 in a study done by The Spangenberg Group for the United States Justice Department. No nationwide study has been done since 1986 to look at either the total expenditures or the total caseload for all 50 states. However, in its ongoing work, The Spangenberg Group has collected reliable expenditure data for a number of states for the year 2000. We also have reliable expenditure data for 9 of the 17 largest populated counties in the country for the year 2000. The following chart sets out the total expenditure, total population for the year 2000 and the cost per capita for those 9 counties.

Rank by Population of County (2000)	County and State	Total Expenditures for Indigent Defense (2000)	Population (2000)	Cost per capita (2000)
4	Maricopa County, AZ	\$44,837,273.00	3,072,149	\$14.59

5	Orange County, CA	\$37,031,952.00	2,846,289	\$13.01
7	Kings County, NY	\$33,067,567.00	2,465,326	\$13.40
8	Dade County, FL	\$31,385,336.00	2,253,962	\$13.90
11	King County, WA	\$28,013,638.00	2,465,326	\$12.99
12	Wayne County, MI	\$13-14 million (approx.)	2,061,162	\$ 6.30 (approx.)
13	Santa Clara County, CA	\$24,933,597.00	1,682,585	\$14.80
14	New York, NY	\$45,948,476.00	1,537,195	\$29.89
17	Philadelphia County, PA	\$36,023,185	1,517,550	\$23.70

An analysis of this table shows that if the figure of \$13-14 million is accurate in Wayne County, it is at the bottom of the list of large populated counties in terms of the cost per capita. It should be noted, however, that the total expenditures for indigent defense for any particular county should include both felony and misdemeanor cases, juvenile delinquency, criminal appeals, dependencies and any other requirement under state law for appointment of counsel for indigents. In most states, they will include more than one court, as they do in Wayne County where there are district courts, a juvenile court, probate court and the circuit criminal court.

IV. Court Appointed Assigned Counsel Systems Across the U.S.

24. There are several methods used to compensate court-appointed counsel for representation of indigent defendants. The first is to establish an hourly rate of compensation. Some states have a lower hourly rate for out-of-court time than in-court time. Some states have the same rate for both.

25. Some states establish a maximum payment for an individual case commonly known as a cap. However, virtually all such states have provisions for extra compensation based upon complexity and the amount of work required. In every instance, the extra compensation must be approved by the trial judge or administrator.

26. Second, some states have a flat fee for court appointments, such as \$300 for a misdemeanor and \$1,000 for a non-capital felony. Typically, the flat fee will be paid whether there is a plea or trial. In a few cases, the flat fee covers only a plea with additional compensation for trial.

27. The third method is the event-based fee schedule. Under this method, court appointed counsel are paid a fixed amount for various tasks that they perform; e.g. arraignment, pre-trial conference, motion, etc. The event-based method in most instances is payment by particular tasks rather than payment by the hour for work required to be done.

28. Two decades ago, event-based schedules were relatively common, but there are few remaining. The primary reason for repealing this method is because there proved to be no rational basis between the event and the amount of work required to be performed. In fact, in addition to Wayne County and a few other counties in Michigan, Georgia and Texas, I am not aware of any other event-based schedules currently in operation in the country. With the exception of Wayne County, none of the other twenty-five largest counties currently employ the event-based method.

V. Work Done By Robert L. Spangenberg With Specific Reference to This Case

29. Earlier this year, I was contacted by the plaintiffs in the current lawsuit to work with them as an expert, which I agreed to do. Since then, I have received a substantial

amount of material regarding the history of the problems with court-appointed counsel in the Circuit Court of Wayne County. I have also conferred with other individuals who were involved in the lawsuit before Judge Gillespie in 1990 for which I appeared as an expert witness.

30. I have also reviewed extensive material that I have collected in the last twenty years relative to indigent defense in Michigan and Wayne County as well as comparable counties and states across the country.

31. During the week of March 18th, I spent approximately two and a half days in Detroit investigating the status of the current fee system in the Circuit Court of Wayne County. I had an opportunity to speak to over twenty lawyers who are taking assigned counsel cases under the event-based system, although none of these discussions included what I would call a full interview. Overall, I found the lawyers to be quite frank, quite direct, very unhappy with the system and not at all reluctant to talk about how the system unfairly affects their work and their representation of indigent defendants in felony cases in the Circuit Court. I also had an opportunity to review a computerized database that is available on three terminals in the Recorder's Court Bar Association lobby on the third floor of the Circuit Court. I found this database to offer potentially accurate, reliable statistical information on the system of appointment and compensation for court-appointed lawyers in criminal cases in the Wayne County Circuit Court. I did not yet, however, have an opportunity to examine the database in any detail.

32. I also had an opportunity during the week to observe several sessions of the arraignment court in Wayne County and spoke informally to assistant county prosecutors,

private attorneys and assigned counsel during the course of the arraignments, particularly in the AOI Court. I also spoke with several experienced criminal lawyers in Wayne County who no longer take court appointments.

33. The following are observations based upon my visit:

- ! Up until five years ago, the Circuit Court and the Recorder's Court were located in the same building, and had equal jurisdiction, but the Recorder's Court had criminal jurisdiction for cases involving arrest in the city of Detroit and the circuit criminal judges had jurisdiction for defendants in felony cases arrested outside of the city of Detroit. Four or five years ago, these two courts were merged into one.
- ! I was told repeatedly during my visit that many of the lawyers on the assigned counsel list did not routinely appear on behalf of the defendant on an exclusive vertical basis. Rather, they make some arrangement with another court-appointed attorney on the list to cover for them, whether it be an arraignment, a motion, a plea or any other proceeding that is required. This appears to be an everyday, common way of providing representation to individual defendants and also a way to accumulate a larger number of cases which allow the individual court-appointed lawyer to handle a large enough number of cases to eke out a living. I asked a number of attorneys what happens if someone substitutes for the first court-appointed lawyer. I was told that in some cases the second lawyer is paid and that in other cases the second lawyer is not paid, but in any event the counsel of record submits time for the appearance, even though he or she may not have actually appeared in court. In some cases, lawyers trade off appearances back and forth. If the lawyers feel that there is a required amount of fairness involved in the trade offs, then there is no net payment effect, and the lawyer of record submits the voucher whether or not he or she appears and keeps the money.
- ! One attorney told me that she takes court appointments from 12 different courts in a three-county area around Detroit. She takes criminal, probate, juvenile and district cases in several districts. Last year, she told me she handled between 100 and 120 cases for between \$80,000 to \$100,000 total. She said the biggest problem was traveling from one court to another, but that she was able to get other people to cover for her. She covered for others as well. She said that sometimes they didn't determine the fee in advance or until after the appearance was concluded. It seemed like the back and forth was about even. She said, "I always put in a voucher for the work when someone covered for me."

- ! Another lawyer told me: When I agreed to cover for someone, the other person may tell their defendant or I will meet with their defendant to tell them about the change in counsel. Some counsel will actually sit down with me and explain the case, others will give me a memo. Others will simply give me the name of the defendant, the date and place of hearing and goin cold.
- ! I asked if the clients ever complained about the fact that they were not seeing their same or original lawyer and I was told that this occurs on occasion, but when it does, the lawyer will say that he is in partnership with other lawyer or that he is a supervisor of the other lawyer or something else. I was told that there were two judges in the circuit criminal court that will absolutely not allow substitutes, but only two.
- ! This system has been encountered rarely in other jurisdictions and other states that I have observed, and never to the extent and degree to which it is going on in the Wayne County Circuit Court.
- ! I was also told a couple of times that if an attorney gets a really bad case at arraignment, such as someone with severe mental problems or someone that does not speak English, sometimes the lawyer will simply withdraw and let somebody else take the case.
- ! Lawyers told me that the event-based schedule creates, in most cases, a disincentive to do more work on the case because the amount of payment for investigation and preparation is abysmal. All of the incentives seem to be to move the case as quickly as possible and to get an early plea. One lawyer told me: The biggest problem we have is that they do not pay us for the time necessary to do the work. This is part of their strategy for pleas.
- ! Another attorney told me that he had eighty-two open cases at the time of our visit and I noted that fifteen of them were open murder cases.
- ! Some lawyers told me they have not asked for a single expert in a non-murder case for two to three years. We know we won t get them, so why ask? Overall, there appears to be a serious problem in obtaining both investigators and experts on motion from the circuit court. When they are allowed, the compensation is extremely small, such as \$200 for an expert to conduct an interview and written evaluation and \$150 for attendance in court.
- ! A number of attorneys who did not ask for investigators told me that some judges tell them to do their own investigation. Then, in fact, they go out to the scene, look for witnesses and do other investigation that a criminal investigator should do. They do

their own subpoenas. Sometimes, they take money out of their pockets for minor things connected with a case.

- ! There is a provision in the fee schedule for extraordinary fees, but I was informed that such fees are seldom granted. A few attorneys said that they had asked once or twice, but they were turned down, so they simply do not file anymore. The only cases which I was told about where excess compensation is allowed were capital cases.
- ! It appears that several lawyers on the court-appointed list do not have a private office and some operate out of their cars or homes. Most have answering machines and all have cell phones, but frequently there is no place to conduct a private interview with a client or to do legal research.
- ! Last fall, because of a fiscal crisis, the county fell behind five to six months in paying court-appointed counsel. Several of those attorneys told me that they almost had their car repossessed, were almost evicted from their apartment and received other heavy pressure from creditors.
- ! Furthermore, I was informed that by administrative order on June 25, 2001, all fees paid to court-appointed counsel were decreased by 10%.
- ! There was a lot of confusion about what the trial rate was in the county with some saying it is as high as ten percent and others saying it is as low as five percent. Two lawyers told me that they will occasionally have bench trials, but these will only be cases in which the defendant refuses to take a plea and the assigned counsel does not want to aggravate the judge by the necessity of calling in the jury.
- ! I inquired a little bit about the 36th District Court and was told that there is also house counsel in that court who is given \$100 a day for appearing in the court. I was told that when the cases are drawn by the judges in the 36th District, there is favoritism and contributing to one's campaign is considered important.
- ! Finally, after spending a good portion of two days in the lawyers' lounge listening and talking to a number of people, it appears to me like many other assigned counsel programs I have visited. There is a small number of very dedicated first-rate lawyers; there is a middle group who are eking out a living, probably with no other income than what they obtain from assigned counsel; and, there are a few lawyers who do not seem to care, other than to see how many vouchers they can file and how quickly they can get paid.

VI. Violations of the Law

34. Based upon a limited investigation of the Wayne County Circuit Court's current fee schedule for court-appointed counsel in felony cases and over twenty years of experience evaluating, observing and designing indigent defense systems involving court-appointed counsel in criminal cases, I offer the following professional opinions:

(a) The compensation provided to court-appointed attorneys in felony cases under the current fee schedule is not reasonably related to the legal services required to be performed, or to the difficulty of those services. Further, the payments made are not based upon the time spent to perform the tasks necessary to assure adequate and competent counsel.

(b) There is no provision under the current fee schedule to assure that court-appointed counsel are paid for required and necessary overhead to maintain a law office.

(c) The fees paid by Wayne County Circuit are per se unreasonable and the very lowest among the twenty-five largest counties in the country.

(d) It is my professional judgment that several court-appointed counsel in Wayne County are handling an unacceptably large number of cases and that there is a high risk that these and other court-appointed attorneys are not currently able to provide meaningful and effective representation of their clients.

(e) It is my opinion that the current fee schedule acts primarily as an incentive to recommend an early plea by court-appointed counsel to their clients, without proper investigation and preparation.

(f) Based upon preliminary data provided to me, it appears that the cost-per-capita for court-appointed counsel in Wayne County is approximately one-half of comparable counties in the twenty-five most populated counties in the country.

35. Overall, I found that a majority of assigned counsel in Wayne County fail to meet many of the minimum qualifications requirements for representation in all criminal cases as recommended by the American Bar Association or many of the minimum performance standards for criminal defense representation recommended by the National Legal Aid and Defender s Association.

36. While the inadequate rates of compensation paid to panel attorneys are a major cause of the problem, there are other important reasons why the assigned counsel system is on the verge of collapse. Many panel attorneys have no support staff, up-to-date computers or a law library and many of them lack a health plan or fringe benefits. Many panel attorneys do not have a private office in which they can meet with their clients and perform necessary office work. Adequate and necessary investigators and expert witness services are frequently not available or of sufficient quality. Morale among many panel attorneys also appears to be at an all-time low. They feel a lack of support from the County, the State, the court or even from many of their brethren who have exclusively civil law practices. There is very little training, supervision, monitoring or oversight currently available to assigned counsel in the Circuit Court of Wayne County.

37. In my judgment, the spirit of the Sixth Amendment is barely alive in the Circuit Court of Wayne County, in substantial part because of the unwillingness of the County and the State to adequately fund and support the assigned counsel system.

Robert L. Spangenberg

Sworn before me this ____ day of May, 2002

Notary Public