

**TESTIMONY OF MATTHEW EVANS ON BEHALF OF THE
WAYNE COUNTY CRIMINAL DEFENSE BAR ASSOCIATION**

OCTOBER 9, 2012

INTRODUCTION

I am privileged to speak on behalf of the Wayne County Criminal Defense Bar Association (WCCDBA) a group of over 400 of the most highly skilled and experienced criminal defense attorneys in Michigan. I am a past president of this organization. The WCCDBA represents lawyers who practice in the criminal division of the Wayne County Circuit Court, Michigan's busiest and most specialized criminal court. Our members handle the vast majority of the most serious criminal cases in the state.

The WCCDBA has long been in the forefront of the struggle to obtain adequate compensation for attorneys who take on the often-thankless task of defending the poor. The WCCDBA, and its predecessor organization, the Recorder's Court Bar Association, have been the lead plaintiffs in *Recorder's Court Bar Ass'n v Wayne Circuit Court*, 443 Mich 110 (1993) and I was one of the named plaintiffs in *Wayne County Criminal Defense Bar v Chief Judges of Wayne Circuit Court*, 468 Mich 1244 (2003).

I have been a solo practitioner since 1996 concentrating almost exclusively in criminal defense. I have successfully defended thousands of felony cases and have handled some of the most notorious and shockingly brutal cases in Wayne County. In sum, I am thoroughly familiar with the criminal division of the Wayne County Circuit Court and the way Defender Offices, including the criminal division of the Detroit Legal Aid and Defender Association, generally operate. My experience comes not from the ivory towers of academia, nor from a layperson's idealized wish-list, but from over 16 years of real-world experience.

I seek no job and want no salary or elective office. I hope that you will therefore accept my views as

sincere and honest expressions of how the proposed "Michigan Indigent Defense Commission Act" may impact the people who are most likely to be affected by a fundamental and sweeping change in the present system: the poor and underprivileged.

Bar Association Position

It is the position of the members of the Wayne County Criminal Defense Bar Association that the legislation in its current form will cost the taxpayers of the State of Michigan tens of millions of dollars in unnecessary expenses and will not achieve its stated purpose of ensuring competent representation of indigent defendants.

Our members believe that distant administrators and bureaucrats-- the generals who plan strategy from the safety of the rear will get comfortable salaries and nice benefits while the soldiers, the lawyers who actually fight the battles in the trenches, will be left with less money and more "oversight" from people who've never set foot in a courtroom.

Composition of the Commission

Our first objection is to the composition of the commission. In 2003 the Criminal Law Section adopted a recommendation that this commission should include one representative from the criminal law bar associations from the five largest counties. The Criminal Defense Attorneys of Michigan (CDAM) would select two members from counties other than the five largest. The five largest counties handle more than 80% of all criminal cases in the state. By including attorneys from these high volume courts it will ensure that any decisions will be thoroughly vetted by the courts that do the vast majority of the cases.

It is important to note that the CDAM is not a representative organization of criminal defense attorneys. In fact WCCDBA has a larger membership than CDAM with few lawyers being a member of both.

Role of the Judiciary

The act would remove the Judiciary from the process of indigent defense selection. We believe this is an insult to the judges of the State of Michigan and insinuates that there is widespread malfeasance and corruption.

While we agree that Judges should not be assigning attorneys to cases that will go directly before them, we believe that the participation of Judges enhances the process of attorney selection. Judges are in a unique position in that they are able to see attorneys in practice and can better match attorneys and clients based upon their experience in actual practice. Since the judges are already compensated by the state, the counties would not have to hire staffs of attorneys and clerical employees to make the same decision.

By putting this function in the hands of bureaucrats, we estimate that in Wayne County alone they would have to hire a minimum of seven experienced attorneys, at a cost of more than one million dollars per year, to monitor and evaluate panel attorneys, and still not be able to provide the evaluation equal to what the judges are now performing.

In my all my years of practice have I ever been penalized by a judge for taking cases to trial or for vigorously representing my clients by filing motions. The opposite is true: good lawyers are appreciated. Those who work hard for their clients are rewarded for their efforts by the assigning judges. There are at least thirty pairs of judicial eyes at the Frank Murphy Hall of Justice and a lawyer's reputation gets around very quickly. Judges have the unique ability to "monitor" performance and can make case assignments based on experience and skill level. Rarely does a lawyer even end up before the judge who assigned the case. This is what makes our system unique and why we have a rich tradition of fierce and aggressive advocacy. Indeed, we have produced some of the finest criminal defense attorneys in the nation.

We do believe that there should be appropriate limits on how many cases a judge may assign to a particular attorney as well as reports available for inspection listing who the judges are assigning cases to.

Considering the continuing revelations of corruption and cronyism in Wayne County government, it should be no surprise that our members would much rather have their work assigned by elected judges and not bureaucrats that elude public review and scrutiny.

Caseload Standards

There are no agreed upon standards of how many cases an attorney should handle because it is simply impossible to evaluate what an individual attorney can handle. In practice the better the attorney the more cases they can handle. By instituting caseload standards you will ensure competent and experienced attorneys receive fewer cases than they can handle and less competent attorneys receive more than they can handle.

Defender Office Requirement

Section 11(1)(b) requires the establishment of Defenders Offices in counties where this commission deems the volume sufficiently large enough. This is payback for the support of the Legal Aid and Defender's Office (LADA) in Wayne County as well as the other Defenders Offices in the state who are pushing this legislation. It also ensures that LADA continues to get its guaranteed percentage of cases despite a history of inconsistent quality of service.

There is no evidence that the system described in Section 11 is the best way to deliver services. It also circumvents the local governmental units from selecting the delivery system that best suits its individual circumstances.

Conclusion

There is no doubt that there are serious problems with the current system. We must understand that the source of most of these problems is the lack of adequate funding. The current fee schedule used to pay attorneys in Wayne County is virtually identical to the one used in 1982. Is it any surprise to anyone that attorneys are skipping steps when the total paid for ALL investigation and preparation for a First Degree Murder case totals a mere \$275.00? Or when an attorney would be paid more for a plea than they would if they took a case to trial and won?

The creation of a commission this size and with this much concentrated power requires broader participation from the stakeholders and those who will actually do the work. I am reminded of the three big lies told in life:

- 1) Your check is in the mail;
- 2) I love you;
- 3) I'm from the government and I'm here to help you.

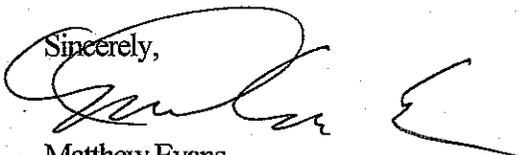
I am here at my own expense, I am not being paid a salary while I am sitting here in front of you as opposed to others you may here today collecting a salary from the state or some other organization.

Myself, and others like me, everyday try to do the best job for their clients in situations that are difficult to say the least. I find it hard to believe that a commission in Lansing knows better what my clients require.

This legislation needs to be examined further and more participation from the attorneys doing the work not those sitting in Lansing second guessing what we should be doing

I am available at your convenience to discuss these issues further.

Sincerely,



Matthew Evans