

INTRODUCTION

This office was created in mid-1970 and officially began accepting assignments in September of that year. The purpose of this office has been to provide, in criminal post-conviction matters, competent legal representation consistent with constitutional requirements of equal justice and due process.

The Defender depends on the Justices of the Supreme Court of Michigan, Court of Appeals of Michigan, the Circuit Courts in the State of Michigan and Detroit Recorder's Court for all of its appointments to represent indigents on appeal.

Once the Defender is appointed as counsel for a particular client, the court documents are processed and one of the staff attorneys is assigned to handle that case until completion. In general, the attorney's work consists of examining the lower court documents, researching issues, making motions, and oral arguments and writing briefs.

This office has employed junior and senior law students as research assistants in an effort to utilize the attorney's time more efficiently and also to provide a continuing source of well trained criminal appellate attorneys.

The University of Michigan has commenced a program with funds provided by the State Crime Commission providing instruction in appellate practice. Approximately 20 students per semester are involved doing actual research on pending cases. All pending cases are from the Defender. The reciprocal benefits are a meaningful

learning experience for the student as well as a valuable resource for this office.

#### ORGANIZATION AND STAFF

The State Appellate Defender Office is supervised by a seven member commission, the Appellate Public Defender Commission. The commission is appointed by the Governor on the recommendation of various bodies. The trial courts, the Court of Appeals and the Supreme Court each have one recommendation; the State Bar, two recommendations, and the Governor, two recommendations. The present commission is composed of:

##### Chair Person

William Walsh, Jr., Esq., a Port Huron Attorney

##### Commission Members

The Honorable Donald S. Leonard, Recorder's Court Judge  
Ronald L. Dzierbicki, Clerk of Michigan Court of Appeals  
John Foley, Esq., a Kalamazoo Attorney  
John Emery, Esq., a Detroit Attorney  
Seymour Posner, Esq., a Detroit Attorney  
Hondon Hargrove, a Michigan Parole Board Member

The current State Appellate Defender is James R. Neuhard, who succeeded Arthur J. Tarnow, who resigned in the summer of 1972.

Mr. Neuhard graduated from the University of Notre Dame (undergraduate) and the University of Michigan Law School. He was an honor student throughout undergraduate school. In both undergraduate and law school he was involved in commissions dealing with black admissions, civil rights, urban problems and students' rights. Once graduated from law school, he worked two years for the Supreme Court of Michigan as a research attorney and administrative assistant.

As of December 31, 1973, the office employed 12 staff attorneys.

#### STATUS OF STATE APPELLATE DEFENDER CASES AS OF DECEMBER 31, 1973

Since its inception, the State Appellate Defender Office has

10/25  
10/26  
10/27

1973

received 1,235 assignments. The following table shows the status of those cases unresolved as of December 31, 1973.

PRESENT STATUS OF CASES AS OF DECEMBER 31, 1973 (Active)

Cases assigned to the office.....	64
Request to withdraw appeal by client.....	1
Transcript received.....	30
Claim filed - transcript not received.....	40
Claim filed - transcript received.....	136
Application for Leave to Appeal to the Court of Appeals filed.....	6
Motion for new trial/new sentencing filed - further action pending.....	23
State Appellate Defender Office - Brief on Appeal filed.....	45
Prosecutor's Brief filed on Appeal.....	9
Oral argument requested in Court of Appeals.....	100
Oral argument had in Court of Appeals.....	25
Court of Appeals decision rendered - further action pending.....	15
Leave to Supreme Court applied for.....	72
Leave to Supreme Court granted.....	9
Leave to Supreme Court granted; our brief filed.....	6
Prosecutor's and our brief filed in Supreme Court.....	8
Case remanded by Supreme Court; further action necessary.....	1
Federal District Court - Habeas Corpus.....	4

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Each case has been listed in only one category. The category indicates the last procedure which has been done in a particular case. For example, when a case is listed in category nine, a brief has been filed -- that means that the case has been processed to that point. Specifically, a claim of appeal has been filed, the transcript has been received, and, in certain cases, a motion for remand has been filed. When another matter listed on the chart occurs, the case is removed from the category it was previously listed under and placed under the category of the last event.

CLOSED CASES AS OF DECEMBER 31, 1973 AND DISPOSITIONS  
(Closed in 1973 Only)

The following table shows the disposition of all cases which have been closed since the formation of the State Appellate Defender Office:

Assigned in error, improper assignment, etc.....	4
Withdrew as counsel.....	2
Client retained own counsel .....	6
Final disposition reached in trial court.....	24
Application for Leave to Appeal to Court of Appeals Denied....	7
Appeal dismissed as moot.....	2
Appeal withdrawn.....	44
Court of Appeals decision rendered.....	109
Prosecutor's Leave to Supreme Court denied.....	4
Prosecutor's Leave to Supreme Court granted.....	1
State Appellate Defender Office Leave to Supreme Court denied.....	38
State Appellate Defender Office Leave to Supreme Court granted, then client retained own counsel .....	1
Supreme Court decision rendered.....	21
Writ of Certiorari by prosecutor denied U.S. Supreme Court....	1
U.S. Supreme Court Argument and Decision.....	1

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Although the above columns are generally self-explanatory, it is felt that more information should be given as to certain categories. The large number of withdrawn appeals is attributable to several factors: The obvious reason for the appeal being withdrawn is that no substantial grounds for presenting an appeal could be found. Because of the delay in receiving transcripts, it has often been necessary to file a Claim of Appeal before the transcript is received in order to protect the client's right of appeal. Later, after the transcript was received and thoroughly reviewed, it became apparent that no issues were present and the Claim of Appeal was withdrawn. In several cases, the client was paroled during the process of appeal and the client, having regained his freedom, chose

not to pursue his appeal. In certain cases, the client was seeking non-judicial relief.

The following table shows the results obtained for cases closed in 1973:

DISPOSITION OF ALL CASES CLOSED SINCE THE FORMATION  
OF THE STATE APPELLATE DEFENDER OFFICE

Assigned in error, improper assignment, etc.....	11
Withdrew as counsel.....	2
Client retained own counsel .....	9
Assigned to advise client only .....	1
Client missing, no action possible.....	2
Final disposition reached by trial court.....	68
Motion to dismiss charges granted by trial court.....	4
Client released on habeas corpus.....	1
Application for Leave to Appeal to the Court of Appeals denied.....	8
Confession of error by prosecutor received after claim of appeal filed.....	1
Appeal dismissed as moot.....	4
Appeal withdrawn.....	104
Court of Appeals decision rendered.....	194
Prosecutor's Leave to Supreme Court denied.....	6
Prosecutor's Leave to Supreme Court granted.....	1
State Appellate Defender Office Leave to Supreme Court denied.....	77
State Appellate Defender Office Leave to Supreme Court granted, then client retained own counsel.....	1
Client died during Supreme Court appeal.....	1
Supreme Court decision rendered.....	42
Writ of Certiorari by prosecutor denied U.S. Supreme Court.....	1
U.S. Supreme Court argument and decision.....	1

## FINANCING

During the 1973 calendar year, the State Appellate Defender Office was financed through vouchers paid by local counties and by monies supplied by the Legislature through the office of the Supreme Court. This arrangement was a continuation of policy established in fiscal year 1972-1973. Legislation is currently pending in the Michigan Legislature regarding both the intermediate and long-range operation of the State Appellate Defender Office.

## SUMMARY

The statistics presented in this report do not fully describe the work of the State Appellate Defender Office.

The above statistics as noted pertain only to the final action where the State Appellate Defender Office was involved in the case. On the average, each case reported had two other court actions, other than the final one here noted. Actions in the trial court have included: motions for bond pending appeal, evidentiary hearings, motions to vacate sentence and motions for disclosure and production of presentence report. Actions in the Court of Appeals have included: brief on appeal, motions for peremptory reversal, motions for bond pending appeal, interlocutory appeals, motions for disclosure and production of presentence report and applications for leave to appeal. Actions in the Michigan Supreme Court have included: applications for leave to appeal, interlocutory appeals, motions for bond pending appeal and motions for disclosure and production of presentence report.

Another factor intrinsic to an assessment of State Appellate Defender work is travel time for staff attorneys, who must visit clients and make court appearances at numerous locations throughout the State. Regular monthly appearances must also be made before the Supreme Court and at the three locations of the Courts of Appeals.

Input from senior staff attorneys, the Chief Appellate Defender, and Deputy Defender, has been sought by various committees concerned with courts, prisons and law reform. The unique mandate to this Office by the Supreme Court has created an office specialized in the interactions of these areas. These committees, formed by the Legislature, Supreme Court and the State Bar, appropriately seek to use the expertise and wide experience<sup>of</sup> the State Appellate Defender Office legal staff.

It should be noted that while in the process of preparing this report, on December 5, 1973, the Sixth Circuit Court of Appeals decided the case of Mitchell v Perry Johnson, et al, No. 72-1481. While the ramifications of this opinion and future United States Supreme Court action on a similar case now pending in that Court remain unclear, it is apparent that counsel will now be supplied to indigent defendants for purposes of preparing an Application for Leave to Appeal from decision of the Michigan Court of Appeals to the Michigan Supreme Court. The impact of this opinion was not felt by this Office in the calendar year of 1973, but will have its maximum effect early in 1974.

In conclusion, it can be noted that the work load of the State Appellate Defender Office increased during calendar year 1973. Clearly, judging not only from the 1973 increase in work

load from that of previous years, but also from the impact of Mitchell expanding the right to counsel further in the appellate process, the State Appellate Defender Office responsibilities will continue to grow.