

## STATE APPELLATE DEFENDER

### ANNUAL REPORT

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 and University of Detroit Law Schools offer courses in Criminal Appellate Practice involving approximately 25 students per semester which are taught by an Assistant Defender from the State Appellate Defender Office, and in which the students do actual research on pending cases 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 the seven-member Appellate Public Defender Commission, appointed by the Governor.

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: Chairman, William Walsh, Jr., Esq., a Port Huron Attorney; The late Honorable Donald S. Leonard, Recorder's Court Judge; John Foley, Esq., a Kalamazoo Attorney; John Emery, Esq., a Detroit Attorney; Ben Gibson, Esq., a Lansing attorney, John Stenger, Esq., a Lansing Attorney, and Hondon Hargrove, a Michigan Parole Board member.

The current State Appellate Defender is James R. Neuhard. He succeeded Arthur J. Tarnow, who resigned in the summer of 1972. As of June 30, 1976 the Office employed 15 staff attorneys, 6 research attorneys, 7 part-time student researchers, 8 secretaries, 1 investigator and 8 administrative personnel (1 Defender, 1 Deputy, 2 administrative assistants, 1 Fiscal Analyst, 1 Administrative Clerk, 1 Receptionist, 1 Xerox/File Clerk.

Present Status of Cases  
As of June 30 (Active)

I. TRIAL COURT

1. Cases assigned to office.....	41
2. Request to withdraw appeal by client pending.....	2
3. Transcript received.....	22
4. Preliminary action taken/further action pending.....	4
5. Motion for New Trial/New Sentencing filed - further action pending.....	4
6. Hearings on remand.....	10

II. COURT OF APPEALS

1. Claim filed -- Transcript not received.....	52
2. Claim filed -- Transcript received.....	105
3. Preliminary action taken/further action pending.....	18
4. Withdrawal as counsel pending.....	6
5. Motion to dismiss appeal pending.....	1
6. Prosecutor's Application for Leave to Appeal Pending.....	1
7. Application for Leave to Appeal filed.....	6
8. S.A.D.O. Brief on Appeal filed.....	28
9. Prosecutor Brief filed.....	38
10. Oral Argument had.....	44
11. Motion for Remand granted/further action pending.....	5
12. Decision rendered/further action pending.....	7

III. SUPREME COURT

1. Assignments to prepare Application for Leave to Appeal.....	84
2. Application for Leave pending from assignment.....	23
3. Application for Leave pending (S.A.D.O.).....	30
4. Prosecutor's Application for Leave pending.....	9
5. Leave Granted/S.A.D.O.....	1
6. Leave Granted/Prosecutor - Brief filed.....	4
7. Leave Granted/S.A.D.O. Brief filed.....	1
8. Prosecutor's and S.A.D.O. Brief filed.....	12
9. Oral Argument had.....	4
10. Decision rendered/further action pending.....	4

IV. FEDERAL COURT

1. Federal District Court Habeas Corpus pending.....	2
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568

Each case has been listed in only one category. The category indicates the last procedure in a particular case. For example, when a case is listed in category II 8, 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.

Cases Closed July 1, 1975 to June 30, 1976

I. TRIAL COURT

1. Withdrew as counsel.....	5
2. Appeal withdrawn.....	7
3. S.A.D.O. withdrew as counsel by request/appointment returned.....	30
4. Final disposition reached.....	6

II. COURT OF APPEALS

1. Withdrew as counsel (no appealable issues).....	4
2. Client retained own counsel.....	1
3. Client missing, no possible action.....	1
4. S.A.D.O. Motion to Withdraw as counsel granted.....	159
5. Prosecutor's Motion to Dismiss Appeal granted.....	1
6. Application for Leave to Appeal denied.....	3
7. Appeal dismissed.....	52
8. Final disposition reached.....	247

III. SUPREME COURT

1. Withdrew as counsel.....	4
2. Appointment vacated.....	2
3. Appeal dismissed.....	5
4. Prosecutor's leave denied.....	4
5. S.A.D.O. Leave denied.....	91
6. S.A.D.O. Leave granted - Client retained own counsel.....	1
7. Disposition by S.Ct. on plea cases from C.A. (Lost 10).....	10
8. Final disposition reached.....	20

IV. FEDERAL COURT

1. Writ of Habeas Corpus denied..... 1

V. U.S. SUPREME COURT

1. Writ of Certiorari by prosecutor denied..... 1

TOTAL CLOSED CASES 1975-1976 FISCAL YEAR: 655

Although the above categories are generally self-explanatory, some information should be given as to the large number of withdrawn appeals (Category II 5).

In fiscal year 74-75 in response to an increasing number of assignments, State Appellate Defender Office personnel increased dramatically. In fiscal year 75/76, however, the State Appellate Defender Office budget was unexpectedly and drastically reduced, necessitating a staff reduction from 75 to 41 full-time employees. During the transition period the full staff voluntarily took rotational two-week lay-offs, with many of the staff continuing to work during that period without pay. It was necessary to return 159 assignments to the counties in order for the appeals to be processed in a timely manner.

As a result of the appropriation reduction the Office's capacity to accept new cases was diminished. However, the figures in Closed Cases reflect an increased capacity to dispose of the case-load backlog that had been growing steadily during the expansion period of the previous year.

In recent months the Office has regained its stability. The steady increase in assignments to the Office reflects the confidence of various circuit judges throughout the state in that stability.

Disposition Of All Cases Closed  
Since the Formation of the State Appellate Defender Office

I. TRIAL COURT

1. Assigned in error, improper assignment, etc.....	30
2. Assigned to advise client only.....	1
3. Withdrew as counsel.....	26
4. Client retained own counsel.....	14
5. Client missing, no possible action.....	2
6. Case dismissed - client died.....	3
7. Appeal withdrawn.....	7
8. Client released on habeas corpus.....	1
9. S.A.D.O. withdrew as counsel by request/appointment returned.....	30
10. Final disposition reached.....	115

II. COURT OF APPEALS

1. Withdrew as counsel.....	4
2. Client retained own counsel.....	1
3. Client missing, no possible action.....	1
4. S.A.D.O. Motion to withdraw as counsel granted.....	159
5. Prosecutor's Motion to Dismiss Appeal granted.....	1
6. Application for Leave to Appeal denied.....	27
7. Confession of error by prosecutor.....	1
8. Appeal dismissed as moot.....	5
9. Appeal dismissed.....	254
10. Final disposition reached.....	955

III. SUPREME COURT

1. S.A.D.O. removed as counsel, client found not indigent..	3
2. Withdrew as counsel.....	4
3. Case dismissed - client died.....	1
4. Appointment vacated.....	18
5. Appeal dismissed.....	5
6. Prosecutor's Leave denied.....	25
7. Prosecutor's Leave granted.....	1
8. S.A.D.O. Leave denied.....	373
9. S.A.D.O. Leave granted - Client retained own counsel....	5
10. Disposition by S.Ct. on plea cases from C.A. (lost 10)..	10
11. Final disposition reached.....	132

IV. FEDERAL COURT

1. Writ of Habeas Corpus.....	4
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V. U.S. SUPREME COURT

1. Writ of Certiorari by prosecutor denied.....	2
2. Final disposition reached.....	1

Summary

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

The above statistics pertain only to the final action in cases where the State Appellate Defender Office was involved. On the average,

each case reported had two additional court actions other than the final one here noted. Actions in the trial court have included: motions for bond pending appeal, evidentiary hearings, and motions to vacate sentence. Actions in the Court of Appeals have included: brief on appeal, motions for peremptory reversal, motions for bond pending appeal, interlocutory appeals, motions for superintending control, 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 superintending control.

Another major factor in assessing work of the State Appellate Defender is time required of staff attorneys, who must visit clients and make court appearances at numerous locations throughout the State. Regular monthly appearances are also made before the Supreme Court and at the three locations of the Court of Appeals.

Recently, the Office of Criminal Justice Programs approved a \$50,000 grant in recognition of both the need, and this Office's expertise in utilizing the skills of non-attorneys to perform some of the time-consuming tasks required of appellate attorneys (e.g., travelling to counties throughout the state to read pre-sentence reports when they cannot be obtained by mail, resolving client problems which threaten their well-being, but not their substantive appeal, preparing for, obtaining, and executing resentencings and bond orders, etc.).

Every year since the inception of the State Appellate Defender Office a dramatically increasing number of requests for assistance has been received on cases not assigned to this Office. Last year the requests for assistance totalled over 2,500. >

The vast majority of the requests sought advice on both procedural and substantive questions of law in the criminal appellate area. Legislators requesting information and assistance for their constituents

or opinions on pending legislation, as well as professional and citizen groups interested in the area of criminal law and corrections also appropriately seek to use the expertise and wide experience of the State Appellate Defender Office legal staff.

Additionally, an increasing number of attorneys have been supplied with briefs from our brief bank or forms on appellate procedures. We presently have in process the preparation of two grant proposals to fund a form book and the streamlining of our extensive brief bank. It is expected that these grants will enable us to retrieve and disseminate the requested information more rapidly.

Thus, the State Appellate Defender Office serves not only its appointed clients, but many others involved in the criminal justice system throughout the state.

January 7, 1977

STATE APPELLATE DEFENDER

STATUS OF CASES AS OF JUNE 30, 1976 (ACTIVE)

Each case has been listed in only one category. The category indicates the last procedure in a particular case. For example, when a case is listed in category II (8), 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.

I. TRIAL COURTS

1. Cases assigned to office.....	41	
2. Request to withdraw appeal by client pending.....	2	
3. Transcript received.....	22	
4. Preliminary action taken/further action pending.....	4	
5. Motion for New Trial/New Sentencing filed - further action pending.....	4	
6. Hearings on remand.....	10	73 - 73

TOTAL 83

II. COURT OF APPEALS

1. Claim filed -- Transcript not received.....	52	
2. Claim filed -- Transcript received.....	105	
3. Preliminary action taken/further action pending.....	18	
4. Withdrawal as counsel pending.....	6	
5. Motion to dismiss appeal pending.....	1	
6. Prosecutor's Application for Leave to Appeal Pending.....	1	
7. Application for Leave to Appeal filed.....	6	
8. S.A.D.O. Brief on Appeal filed.....	28	
9. Prosecutor Brief filed.....	38	
10. Oral Argument had.....	44	
11. Motion for Remand granted/further action pending.....	5	
12. Decision rendered/further action pending.....	7	

330

335

III. SUPREME COURT

1. Assignments to prepare Application for Leave to Appeal.....	84
2. Application for Leave pending from assignment.....	23
3. Application for Leave pending (S.A.D.O.).....	30
4. Prosecutor's Application for Leave pending.....	9
5. Leave Granted/S.A.D.O.....	1
6. Leave Granted/Prosecutor - Brief filed.....	4
7. Leave Granted/S.A.D.O. Brief filed.....	1
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9. Oral Argument had.....	4
10. Decision rendered/further action pending.....	4

LOW 307  
HIGH 434 } 370.5



ANNUAL REPORT

IV. FEDERAL COURT

- 1. Federal District Court Habeas Corpus pending..... 2

CASES CLOSED JULY 1, 1975 TO JUNE 30, 1976

I. TRIAL COURT

- 1. Withdrew as counsel..... 5
- 2. Appeal withdrawn..... 7
- 3. S.A.D.O. withdrew as counsel by request/appointment  
returned.....30
- 4. Final disposition reached..... 6

II. COURT OF APPEALS

- 1. Withdrew as counsel (no appealable issues)..... 4
- 2. Client retained own counsel..... 1
- 3. Client missing, no possible action..... 1
- 4. S.A.D.O. Motion to Withdraw as counsel granted.....159
- 5. Prosecutor's Motion to Dismiss Appeal granted..... 1
- 6. Application for Leave to Appeal denied..... 3
- 7. Appeal dismissed.....52
- 8. Final disposition reached.....247

III. SUPREME COURT

- 1. Withdrew as counsel..... 4
- 2. Appointment vacated..... 2
- 3. Appeal dismissed..... 5
- 4. Prosecutor's leave denied..... 4
- 5. S.A.D.O. Leave denied.....91
- 6. S.A.D.O. Leave granted - Client retained own counsel..... 1
- 7. Disposition by Supreme Court on plea cases from C.A.....10
- 8. Final disposition reached.....20

IV. FEDERAL COURT

- 1. Writ of Habeas Corpus denied..... 1

V. U.S. Supreme Court

- 1. Writ of Certiorari by prosecutor denied..... 1

TOTAL CLOSED CASES 1975-1976 FISCAL YEAR.....655

## ANNUAL REPORT

Although the preceeding categories are generally self-explanatory, some information should be given as to the large number of withdrawn appeals (Category 11, 4).

In fiscal year 74-75 in response to an increasing number of assignments, State Appellate Defender Office personnel increased dramatically. In fiscal year 75-76, however, the State Appellate Defender Office budget was unexpectedly reduced, necessitating a staff reduction from 75 to 41 full-time employees. During the transition period the full staff voluntarily took rotational two-week lay-offs, with many of the staff continuing to work during that period without pay. It was necessary to return 159 assignments to the counties in order for the appeals to be processed in a timely manner.

As a result of the appropriation reduction the Office's capacity to accept new cases was diminished. However, the figures in Closed Cases reflect an increased capacity to dispose of the case-load backlog that had been growing steadily during the expansion period of the previous year.

ANNUAL REPORT

DISPOSITION OF ALL CASES CLOSED  
SINCE THE 1970 FORMATION OF THE STATE APPELLATE DEFENDER OFFICE

I. TRIAL COURT

1. Assigned in error, improper assignment, etc.....	30
2. Assigned to advise client only.....	1
3. Withdrew as counsel.....	26
4. Client retained own counsel.....	14
5. Client missing, no possible action.....	2
6. Case dismissed - client died.....	3
7. Appeal withdrawn.....	7
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2. Withdrew as counsel.....	4
3. Case dismissed - client died.....	1
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10. Disposition by Supreme Court on plea cases from Court of Appeals (lost 10).....	10
11. Final disposition reached.....	132

IV. FEDERAL COURT

1. Writ of Habeas Corpus.....	4
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V. U. S. SUPREME COURT

1. Writ of certiorari by prosecutor denied.....	2
2. Final disposition reached.....	1