

ANNUAL REPORT OF THE
STATE APPELLATE DEFENDER OFFICE
FOR THE 1985 CALENDAR YEAR



State of Michigan

STATE APPELLATE DEFENDER

Third Floor, North Tower
1200 6th Avenue
Detroit, Michigan 48226
Phone: 256-2814

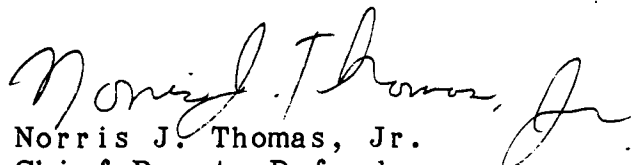
May 13, 1986

Amy Pearson Nelson
State Court Administrative Office
200 Washington Square Building
Lansing, MI 48909

Dear Amy:

Attached is our annual report. If you have any further requirements in this regard, do not hesitate to contact me.

Very truly yours,


Norris J. Thomas, Jr.
Chief Deputy Defender

NJT:vm

1985 ANNUAL REPORT OF THE
STATE APPELLATE DEFENDER OFFICE

HISTORY

The State Appellate Defender Office was established in 1970 pursuant to Michigan Supreme Court Administrative Order 1970-1. Its purpose was to provide competent, quality legal representation of indigent criminal defendants in post-conviction matters. The office currently operates pursuant to 1978 PA 620 (MCL 780.711 et seq), which superceded Administrative Order 1970-1. The State Appellate Defender Office continues to be governed by the seven-member State Appellate Defender Commission, which also oversees the private component of the Michigan Appellate Assigned Counsel System (MAACS). The seven commission members are:

William R. Walsh, Jr., Chairman
Port Huron, Michigan
Occupation: Attorney

Donald L. Dzierbicki,
Lansing, Michigan
Occupation: Chief Clerk,
Michigan Court of Appeals

John C. Emery
Grosse Pointe, Michigan
Occupation: Attorney

Beatrice P. Millender
Detroit, Michigan
Occupation: Law Student

Honorable Richard E. Robinson
Northport, Michigan
Occupation: Retired Circuit Judge
Barry/Eaton Counties

John E. S. Scott
Detroit, Michigan
Occupation: Attorney

Vesta Svenson
Detroit, Michigan
Occupation: Magistrate 36th District Court

Defender James R. Neuhard continues to head all operations of the State Appellate Defender office, the public defender component of the State's assigned counsel system. In early 1985, after the Legislature appropriated adequate funds to run the private roster component of the appellate assigned counsel system, the Commission hired Barbara R. Levine to administer the assignment of all appellate counsel. The commission adopted regulations for operation of the system, and full operations began on December 2, 1985. The mixed (public defender/private roster) representation

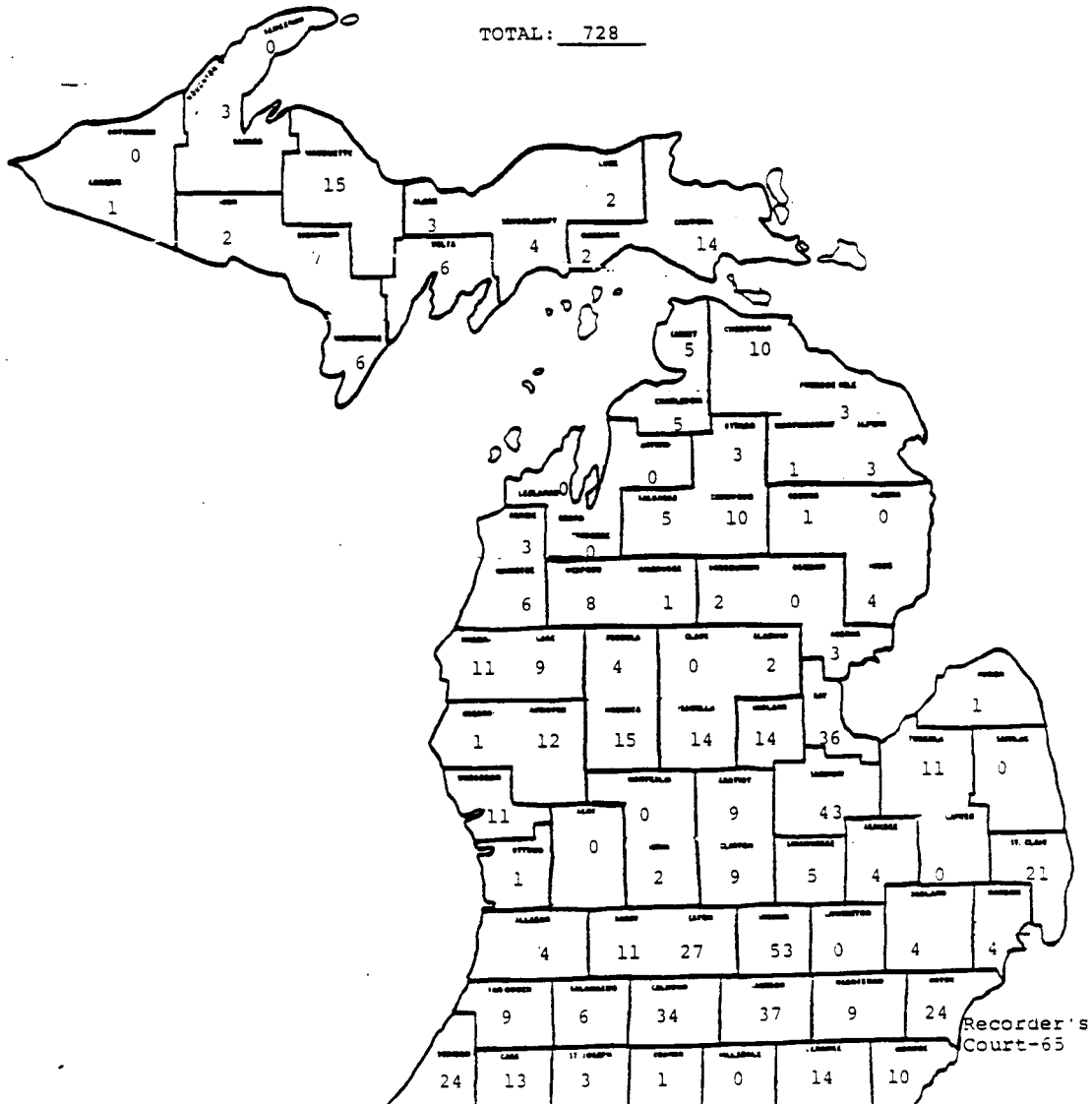
scheme contemplated in 1978 PA 620 and Michigan Supreme Court Administrative Order 1981-7 is on the way to becoming a reality.

Under the Commission's regulatory scheme, the State Appellate Defender appears on the local list of the assigned counsel roster in every third, fourth or fifth slot, depending on the ratio of attorneys to the number of criminal felony appeals taken in the jurisdiction. Thus, the State Appellate Defender Office may receive anywhere from one-third to one-fifth of the appellate assignments from a given jurisdiction, but no less than 25% of the State's total number of indigent felony appeals. The private roster attorneys handle the remaining 75% of indigent criminal appeals.

Over the last eight (8) years, the State Appellate Defender Office has accepted an average of seven hundred (700) cases a year, and based on MAACS figures expects to continue to receive a similar number of assignments over the next few years. At the end of 1985, the State Appellate Defender Office had received appointments from all but fourteen (14) of Michigan's counties: Keweenaw, Ontonagon, Leelanau, Antrim, Grand Traverse, Alcona, Ogemaw, Clare, Montcalm, Sanilac, Lapeer, Kent, Livingston and Hillsdale. (See graphic below showing 1985 assignments by county.)

STATE APPELLATE DEFENDER OFFICE
 APPOINTMENTS BY COUNTY FOR
 1985 CALENDAR YEAR

TOTAL: 728



STAFF

During 1985, fourteen (14) staff attorneys, two (2) research attorneys, the Defender, Chief Deputy Defender, Legal Resources Project Director and Training Coordinator were housed in the Detroit Office. Four (4) staff attorneys and the Deputy Defender were housed in the Lansing office. These attorneys and administrators were supported by ten (10) legal secretaries, an investigator and paralegal assistant, eight (8) administrative assistants, two and one-half (2-1/2) clerks, and one (1) receptionist. Special assistant defenders, part-time law students and post-graduate legal research assistants were employed as funds were available.

As has happened since 1980, paralegal and criminal justice students from Michigan State University, Mercy College, Henry Ford College and other schools have been used to provide paralegal-type assistance to the staff. These students work for credit toward degrees.

As in previous years, the State Appellate Defender Office designated one of its staff attorneys to teach the Criminal Appellate Practice Course at the University of Michigan Law School. Each semester approximately 12 to 14 course students provide research assistance on 12 to 14 real cases assigned to that teaching attorney in return for credits and the unique learning experience the course offers.

With the assistance of research attorneys and researchers, the attorneys in the State Appellate Defender Office's specialized unit, designed to handle appeals requiring expeditious action and to handle a high volume of cases by screening and batch processing simple or similar cases, was able to process twice as many post-conviction matters as its regular attorney unit. The unit manager, one staff attorney, one research attorney and one to two research assistants processed 187 cases in 1985. They obtained some form of relief in over 47% of those cases.

1985 CASE ACTIVITY

The Defender Office is appointed to cases by the Michigan Supreme Court, the Michigan Court of Appeals, the Michigan circuit courts and the Recorder's Court for the City of Detroit to represent indigent criminal defendants on felony appeals and a variety of other post-conviction proceedings.

A State Appellate Defender attorney's work consists of reviewing transcripts and lower court records, interviewing clients, investigating, researching issues, filing all necessary pleadings and conducting hearings and oral arguments at all levels of the Michigan and Federal judiciaries. Attorneys make regular client

visits and lower court appearances in virtually all areas of this state. They appear before the Michigan Supreme Court, the Court of Appeals and, in selected cases, before Michigan's Federal District Courts, the Federal Court of Appeals for the Sixth Circuit and the United States Supreme Court.

During 1985, the office's 18 staff attorneys and 2 deputies handled a mixture of 509 cases, and the Special Unit attorneys took 187 permanent assignments and handled 17 cases that were eventually assigned to others. Attorneys received a total of 696 new cases. Fifty-two of those appeals were special assignments (these range from U.S. Supreme Court briefs to responses to prosecutor appeals) 376 were pleas, and 268 were trials.

Between January 1, 1985, and December 31, 1985, the office received 728 new assignments. At the close of the year, it had 1,021 open-active cases, had closed 763 cases and processed a total of 1,784 cases. The adoption of the new guilty plea rule by the Michigan Supreme Court, requiring that most plea-based post-conviction matters originate in the trial court, and various Court of Appeals holdings, requiring that issues relating to sentencing originate there as well, have caused a substantial increase in attorney travel time. Statistics depicting 1985 case activity follow this narrative.

COLLATERAL SERVICES AND SPECIAL PROJECTS

In addition to the above-described direct client services, the Office was involved in several collateral areas and special projects. The Legal Resources Project, in its eighth year, responded to more than 3,800 requests for assistance, provided more than 50,000 pages of materials, and reached more than one thousand subscribers through the Criminal Defense Newsletter, in addition to providing support for the legal staff through advice and opinion summaries.

With the aid of a grant from the Michigan Justice Training Commission, the Project's director produced the 700+page Defender Trial Book and the State Appellate Defender Office's training director produced the 1200+page, two-volume, second edition of the Michigan Criminal Appeals manual.

Michigan Justice Training funds obtained by the State Appellate Defender Office and the Criminal Defense Attorneys of Michigan enabled those two organizations to continue to conduct general training programs for attorneys representing indigent criminal defendants and provided specific training in criminal appellate practice and procedure for some 300 private assigned appellate defense counsel in conjunction with the Michigan Appellate Assigned Counsel Office (MAACS).

State Appellate Defender Office attorneys played a major role in all these training programs. In addition, the State Appellate Defender Office's Special Unit's manager authored the comprehensive booklet, Felony Sentencing In Michigan and the "Sentencing Benchguide" section of the Michigan Judicial Institute's Trial Court Bench Guides (MJI, 1986).

Through the commendable efforts of its Special Projects Coordinator and the hard work of many others, the State Appellate Defender Office has completed the automation of its word and data processing systems. Barrister, the computer company from which the office purchased its equipment and a leading provider of computer equipment and services for major law firms throughout the country, was so impressed by the office's creative and proficient use of its equipment it contracted with the office to have its Special Projects Coordinator prepare a user's guide for law firms and made the office a beta cite for its data management system.

Finally, office attorneys appeared and testified at legislative hearings on matters relating to criminal justice and worked with legislators and legislative committees on criminal law and procedure and corrections matters. Office attorneys also served on many boards, commissions, committees and task forces working on criminal justice programs, some of these at the national level. The Defender himself is the president-elect of the National Legal Aid and Defender Association.

**STATE APPELLATE DEFENDER OFFICE ANNUAL REPORT
FOR THE YEAR ENDED DECEMBER 31, 1985**

| | |
|--|-----------|
| TOTAL NEW ASSIGNMENTS 01/01/85 to 12/31/85 | 728 |
| CARRYOVER OF OPEN CASES FROM PREVIOUS YEARS | 293 |
| TOTAL CASES CLOSED 01/01/85 to 12/31/85 | 763 |
| TOTAL CASES PROCESSED 01/01/85 to 12/31/85 | 1,784 |

LAST ACTION ON CASES OPEN 01/01/85 to 12/31/85

| | |
|--|------------|
| I. TRIAL COURT | |
| Cases assigned to SADO, no claim filed - transcript not received | 88 |
| Cases assigned to SADO, no claim filed - transcript received | 72 |
| Motion New Trial/Withdraw Plea | 12 |
| Motion Bond/Credit/Other | 10 |
| Motion Resentence | 9 |
| SADO brief/Prosecutor brief filed | 3 |
| Motion/request substitution of counsel - conflict case | 3 |
| No action calendar year | 2 |
| Remanded, hearing/decision pending | 1 |
| Orals held on Probate Court appeal to Circuit Court | 1 |
| TOTAL | 201 |
| II. COURT OF APPEALS | |
| Claim filed - transcript received | 203 |
| SADO and Prosecutor briefs filed | 115 |
| Oral argument had | 107 |
| SADO brief filed | 65 |
| Claim filed - no transcript | 61 |
| Motion Remand pending/granted | 24 |
| Motion Resentencing/Peremptory Reversal/Other | 13 |
| Motion Bond | 8 |
| Supplemental brief | 7 |
| SADO/Prosecutor Motion Rehearing | 7 |
| Motion/Stipulation Dismiss pending | 7 |
| Motion in Trial Court-Court of Appeals action pending | 5 |
| Motion Guidance | 4 |
| Application Leave/Delayed Appeal | 4 |
| Held in abeyance | 2 |
| Request substitution of counsel - conflict case | 1 |
| No action calendar year | 1 |
| TOTAL | 634 |
| III. SUPREME COURT | |
| Application for Leave to Appeal with Brief | 114 |
| Application for Leave to Appeal - held in abeyance | 23 |
| Leave granted, brief filed | 9 |
| Motion Rehearing | 8 |
| Motion Dismiss | 4 |
| Cases assigned to SADO - transcript received | 3 |
| Leave granted - oral argument had | 3 |
| Prosecutor Application Leave | 3 |
| Motion Bond | 2 |
| Leave granted | 2 |
| TOTAL | 171 |
| IV. UNITED STATES COURTS - DISTRICT/APPEALS/SUPREME | |
| Petition Writ of Habeas Corpus | 4 |
| Motion Dismiss | 4 |
| SADO/Prosecutor briefs | 3 |
| Oral argument had | 4 |
| TOTAL | 15 |

STATE APPELLATE DEFENDER OFFICE ANNUAL REPORT
FOR THE YEAR ENDED DECEMBER 31, 1985

ACTIVITY ON CASES CLOSED 1/1/85 to 12/31/85

I. TRIAL COURT

| | | |
|---|--|-----------|
| Dismissed by motion/stipulation | | 34 |
| Substitute counsel appointed/retained | | 21 |
| Reversed Plea/Sentence/Conviction | | 21 |
| Motion New Trial granted/denied | | 8 |
| Motion Vacate Plea/Sentence/Conviction denied | | 6 |
| Other disposition | | <u>3</u> |
| TOTAL | | 92 |

II. COURT OF APPEALS

| | | |
|---|--|------------|
| Regular disposition | | 250 |
| Appeal dismissed by stipulation/motion | | 129 |
| Consolidated with other SADO case | | 5 |
| Appeal dismissed - client died | | 1 |
| Application Leave/Delayed Appeal denied | | <u>2</u> |
| TOTAL | | 387 |

III. SUPREME COURT

| | | |
|---|--|------------|
| Leave denied - SADO | | 235 |
| Reversed and remanded | | 18 |
| Leave denied - Prosecutor | | 10 |
| Affirmed | | 9 |
| Leave granted - SADO (new case started) | | 5 |
| Appeal dismissed by motion/stipulation | | 2 |
| Other | | <u>2</u> |
| TOTAL | | 281 |

IV. UNITED STATES COURTS - DISTRICT/APPEALS/SUPREME

| | | |
|--|--|----------|
| Petition for Writ of Certiorari denied | | 1 |
| Dismissed court motion | | <u>2</u> |
| TOTAL | | 3 |

FILINGS BY SADO 1/1/85 to 12/31/85

| | | |
|----------------------|--|--------------|
| TRIAL COURT | | 250 |
| COURT OF APPEALS | | 1,662 |
| SUPREME COURT | | 306 |
| UNITED STATES COURTS | | <u>43</u> |
| TOTAL | | 2,261 |

| | | |
|-------------------------|--------------|------------|
| 1985 Assignments | | |
| | Pleas | 408 |
| | Trials | 301 |
| | Specials | <u>19</u> |
| | TOTAL | 728 |

STATE APPELLATE DEFENDER OFFICE ANNUAL REPORT
FOR THE YEAR ENDED DECEMBER 31, 1985

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

| | | |
|---|--------------|---------------------|
| I. TRIAL COURT | | |
| Assigned in error, improper assignment, etc. | | 36 |
| Assigned to advise client only | | 1 |
| Withdrew as counsel | | 38 |
| Client retained own counsel | | 18 |
| Client missing, no possible action | | 2 |
| Case/Appeal dismissed | | 72 |
| Appeal withdrawn | | 32 |
| Client released on habeas corpus | | 1 |
| SADO withdrew as counsel by request/appointment returned | | 70 |
| Substitute counsel appointed | | 183 |
| Final disposition reached | | 443 |
| | TOTAL | <u>896</u> |
| II. COURT OF APPEALS | | |
| Client retained own counsel | | 4 |
| Client missing, deceased | | 14 |
| SADO motion to withdraw as counsel granted | | 228 |
| Prosecutor's motion to dismiss appeal granted | | 2 |
| Application for Delayed Appeal denied | | 68 |
| Confession of error by prosecutor | | 2 |
| Appeal dismissed as moot | | 7 |
| Appeal dismissed by motion/stipulation | | 1,042 |
| Appeal dismissed for lack of progress | | 1 |
| Final disposition reached | | 3,650 |
| | TOTAL | <u>5,017</u> |
| III. SUPREME COURT | | |
| SADO removed as counsel, client found not indigent | | 3 |
| Withdrew as counsel | | 5 |
| Client withdrew appeal | | 3 |
| Case dismissed - client missing/deceased | | 6 |
| Appointment vacated | | 32 |
| Appeal dismissed | | 14 |
| Prosecutor's leave granted | | 43 |
| SADO/Prosecutor leave granted/denied | | 1,762 |
| Disposition by Supreme Court on plea cases for Court of Appeals | | 10 |
| SADO leave granted - client retained own counsel | | 5 |
| Final disposition reached | | 521 |
| | TOTAL | <u>2,410</u> |
| IV. UNITED STATES COURTS - DISTRICT/APPEALS/SUPREME | | |
| Writ of habeas corpus denied | | 9 |
| Writ of certiorari by prosecutor granted/denied | | 9 |
| Substitute counsel appointed | | 1 |
| Final disposition reached | | 18 |
| | TOTAL | <u>37</u> |
| TOTAL FINAL DISPOSITIONS | | <u><u>8,360</u></u> |

**STATE APPELLATE DEFENDER OFFICE ANNUAL REPORT
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| Motion Dismiss | 4 |
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STATE APPELLATE DEFENDER OFFICE ANNUAL REPORT
FOR THE YEAR ENDED DECEMBER 31, 1985

ACTIVITY ON CASES CLOSED 1/1/85 to 12/31/85

I. TRIAL COURT

| | |
|---|-----------|
| Dismissed by motion/stipulation | 34 |
| Substitute counsel appointed/retained | 21 |
| Reversed Plea/Sentence/Conviction | 21 |
| Motion New Trial granted/denied | 8 |
| Motion Vacate Plea/Sentence/Conviction denied | 6 |
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II. COURT OF APPEALS

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|---|------------|
| Regular disposition | 250 |
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III. SUPREME COURT

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|---|------------|
| Leave denied - SADO | 235 |
| Reversed and remanded | 18 |
| Leave denied - Prosecutor | 10 |
| Affirmed | 9 |
| Leave granted - SADO (new case started) | 5 |
| Appeal dismissed by motion/stipulation | 2 |
| Other | 2 |
| TOTAL | 281 |

IV. UNITED STATES COURTS - DISTRICT/APPEALS/SUPREME

| | |
|--|----------|
| Petition for Writ of Certiorari denied | 1 |
| Dismissed court motion | 2 |
| TOTAL | 3 |

FILINGS BY SADO 1/1/85 to 12/31/85

| | |
|----------------------|--------------|
| TRIAL COURT | 250 |
| COURT OF APPEALS | 1,662 |
| SUPREME COURT | 306 |
| UNITED STATES COURTS | 43 |
| TOTAL | 2,261 |

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|-------------------------|--------------|------------|
| 1985 Assignments | Pleas | 408 |
| | Trials | 301 |
| | Specials | 19 |
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FOR THE YEAR ENDED DECEMBER 31, 1985

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

I. TRIAL COURT

| | |
|--|------------|
| Assigned in error, improper assignment, etc. | 36 |
| Assigned to advise client only | 1 |
| Withdrew as counsel | 38 |
| Client retained own counsel | 18 |
| Client missing, no possible action | 2 |
| Case/Appeal dismissed | 72 |
| Appeal withdrawn | 32 |
| Client released on habeas corpus | 1 |
| SADO withdrew as counsel by request/appointment returned | 70 |
| Substitute counsel appointed | 183 |
| Final disposition reached | <u>443</u> |
| TOTAL | 896 |

II. COURT OF APPEALS

| | |
|---|--------------|
| Client retained own counsel | 4 |
| Client missing, deceased | 14 |
| SADO motion to withdraw as counsel granted | 228 |
| Prosecutor's motion to dismiss appeal granted | 2 |
| Application for Delayed Appeal denied | 68 |
| Confession of error by prosecutor | 2 |
| Appeal dismissed as moot | 7 |
| Appeal dismissed by motion/stipulation | 1,042 |
| Appeal dismissed for lack of progress | 1 |
| Final disposition reached | <u>3,650</u> |
| TOTAL | 5,017 |

III. SUPREME COURT

| | |
|---|--------------|
| SADO removed as counsel, client found not indigent | 3 |
| Withdrew as counsel | 5 |
| Client withdrew appeal | 3 |
| Case dismissed - client missing/deceased | 6 |
| Appointment vacated | 32 |
| Appeal dismissed | 14 |
| Prosecutor's leave granted | 43 |
| SADO/Prosecutor leave granted/denied | 1,762 |
| Disposition by Supreme Court on plea cases for Court of Appeals | 10 |
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| TOTAL | 2,410 |

IV. UNITED STATES COURTS - DISTRICT/APPEALS/SUPREME

| | |
|---|-----------|
| Writ of habeas corpus denied | 9 |
| Writ of certiorari by prosecutor granted/denied | 9 |
| Substitute counsel appointed | 1 |
| Final disposition reached | <u>18</u> |
| TOTAL | 37 |

TOTAL FINAL DISPOSITIONS 8,360