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ANNUAL REPORT

STATE APPELLATE DEFENDER OFFICE

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PERSONNEL

## STATE APPELLATE DEFENDER OFFICE COMMISSION MEMBERS

William R. Walsh, Jr., Attorney  
Port Huron  
Chairman  
Appointed by the Supreme Court  
Term Expires May 24, 1987

John E. S. Scott, Attorney  
Detroit  
Secretary  
Appointed by the State Bar  
Term Expires May 24, 1987

Ronald L. Dzierbicki, Chief Clerk  
Court of Appeals, Lansing  
Member  
Appointed by the Court of Appeals  
Term Expires May 24, 1990

John C. Emery, Jr., Attorney  
Grosse Pointe  
Member  
Appointed by the State Bar  
Term Expires May 24, 1987

Beatrice P. Millender, Law Graduate  
Detroit  
Member  
Appointed by the Governor  
Term Expires May 24, 1988

Hon. Richard E. Robinson, Retired Judge  
Northport  
Member  
Appointed by Circuit Judges Association  
Term Expires May 24, 1989

Hon. Vesta Svenson, Magistrate  
36th District Court, Detroit  
Member  
Appointed by the Supreme Court  
Term Expires May 24, 1987

State Appellate Defender Office  
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Detroit, MI 48226  
(313) 256-2814  
Jim R. Neuhard, Defender  
Norris J. Thomas, Jr., Chief Deputy Defender

720 Plaza Center  
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Lansing, MI 48913  
(517) 373-2463  
F. Martin Tieber, Deputy Defender

## ANNUAL REPORT

### State Appellate Defender Office

January 1, 1986 - December 31, 1986

#### II. INTRODUCTION

The State Appellate Defender Office (SADO) 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 The Office currently operates pursuant to 1978 PA 620 (MCL 780.711 et seq.), which superceded Administrative Order 1970-1.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 Office is governed by the seven-member State Appellate Defender Commission, which also oversees the private component of the Michigan Appellate Assigned Counsel System (MAACS).

Defender James R. Neuhard heads all operations of SADO, the public defender component of the State's assigned counsel system. The private roster component of the appellate assigned counsel system is administered by Barbara R. Levine. The Commission adopted regulations for operation of the system, and full operation of the mixed (public defender/private roster) representation scheme began on December 2, 1985.

Except in unusual situations, SADO is appointed to cases by Michigan's trial courts — the 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. Infrequently, the Michigan Supreme Court and the Michigan Court of Appeals direct lower courts to appoint SADO.

Under the Commission's regulatory scheme, SADO appears on the local 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, SADO 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, which according to MAACS, exceeded 3,269 in 1986. According to SADO records, it accepted 741 of these assignments. The private roster attorneys handle the remaining 75% of indigent criminal appeals.

Over the last nine years, SADO has accepted an average of over 700 cases a year. However, if MAACS figures are correct and the regulations are followed, the number of assignments to SADO should approach 900 over the next few years. During 1986, SADO received appointments from all but four (4) of Michigan's Circuits, which included the following counties: Keweenaw, Baraga, Houghton, Sanilac, St. Joseph, and Huron. These counties probably just did not have appeals to assign.

A SADO 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 all areas of this State, 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 1986, thirteen (13) staff attorneys, two research attorneys, the Defender, Chief Deputy Defender, Legal Resources Project Director, and Training Coordinator were housed in the Detroit office. Four staff attorneys and the Deputy Defender were housed in the Lansing office. These attorneys and administrators were supported by ten legal secretaries, an investigator and paralegal assistant, eight administrative assistants, two and one-half clerks, and one receptionist. Special assistant defenders, part-time law students, and post-graduate legal research assistants were employed as support. Pursuant to the long-standing arrangement between SADO and University of Michigan Law School, one SADO attorney was housed at and received clerical support from the Law School while teaching the Appellate Practice Course there.

Paralegal and criminal justice students from Michigan State University, Mercy College, Henry Ford College, and other schools provide paralegal-type assistance to the staff as they work for credit toward degrees. SADO also accepts volunteer referrals from school, government and civil organizations, and other criminal justice programs.

### III. 1986 ACTIVITIES AND WORKLOAD ANALYSIS

#### A. CASE ACTIVITY

In 1986, SADO's eighteen (18) staff attorneys and two deputies handled a mixture of 498 new cases. The Special Unit attorneys took 163 permanent assignments and handled 8 cases that were eventually assigned to others. The Unit is designed to provide expedited relief and to process a high volume of simple cases with similar issues. Unit attorneys handle twice as many cases as regular staff attorneys. SADO's 1986 request for an appropriation for another of these cost-efficient Units was turned down by the Governor and the Legislature.

Attorneys received a total of 661 new cases. Thirty-two of those appeals were special assignments (these range from United States Supreme Court briefs to responses to prosecutor appeals), 330 were pleas, and 299 were trials.

Between January 1, 1986 and December 31, 1986 SADO received 741 new assignments. At the close of the year it had 1,100 open-active cases, had closed 665 cases, and processed some 1,765 cases. As expected, the adoption of the new guilty rule by the Michigan Supreme Court and appellate decisions requiring that most sentencing and plea-based post-conviction matters originate in the trial court substantially increased attorney travel time. Special Unit attorneys alone logged over 40,000 miles!

For years SADO had a standing offer to accept the most difficult and costly appeals to relieve the counties of the economic burden of paying the extraordinary costs often incurred for such cases and because SADO is better equipped to handle them. In 1986, under MAACS regulatory scheme, counties systematically took advantage of that offer — the percentage of trial appeals assigned to SADO increased significantly over previous years. For the first time since such records started being kept, the number of trial appeal assignments exceeded plea assignments.

## B. COLLATERAL ACTIVITY AND SPECIAL PROJECTS

In addition to the above-described client services, the Office was involved in several collateral areas and special projects. The Legal Resources Project, in its ninth year, responded to more than 3,900 requests for assistance, provided more than 34,000 pages of materials, and reached more than 1,500 subscribers in 73 through the Criminal Defense Newsletter, in addition to providing support for the legal staff through advice and opinion summaries. These summaries were also made available to private criminal law practitioners, and 300 subscribed to the service. The Project's brief bank now has over 5,000 briefs.

In 1986, 834 copies of the 700-plus page Defender Trial Book, 3rd ed, and approximately 700 copies of the 1,200-plus page, two volume, second edition of the Michigan Criminal Appeals manual, were distributed to attorneys, judges, legislators, libraries, criminal defendants, and others involved in the criminal justice process.

Michigan Justice Training funds obtained by SADO and the Criminal Defense Attorneys of Michigan enabled those two organizations to continue to conduct general training programs for attorneys representing indigent criminal defendants. Over 400 lawyers registered for seminars held in Detroit and Traverse City. One thousand copies of the materials developed for those seminars were distributed, and video and audio tapes of the events were loaned to interested persons and organizations.

As in the past, SADO attorneys played a major role in CDAM and MAACS training programs.

A SADO staff attorney taught the Criminal Appellate Practice Course at the University of Michigan Law School again in 1986. Each semester 12 to 14 Course students worked on all facets of real appellate cases assigned to that teaching attorney in return for academic credits and the invaluable learning experience the Course offers.

One SADO Course teacher wrote a book on teaching appellate practice while teaching the Course.

Several SADO attorneys lectured at the Cooley Law School and supervised Cooley student interns and work-study students assigned to SADO's Lansing office. Negotiations for a course at the Wayne State University Law School modeled after the Michigan course are currently under way. Plans call for a pilot program there in the Summer of 1987, to be followed by a permanent course if it is successful.

The Special Projects Coordinator completed the computer user's guide for law firms she started writing for the Barrister Computer Company in 1985, and SADO will now begin to concentrate on making all its legal staff computer literate to maximize efficiency.

SADO attorneys were active at legislative hearings on matters relating to criminal justice, working with legislators and legislative committees on criminal law and procedure and corrections matters. They also served on many boards, commissions, committees, and task forces working on criminal justice programs at the state and national level. The Defender is the president-elect of the

National Legal Aid and Defender Association and many SADO attorneys were faculty and participants in its activities.

Two very significant, seemingly contradictory, events occurred in 1986: in recognition of SADO's excellent performance, Harvard University and the Ford Foundation named SADO as one of 75 finalists in a National awards program for all forms of excellence in state and local governmental programs. Simultaneously, the Michigan Senate Subcommittee on General Government Appropriations ordered SADO to undergo a program review to see whether it was successfully meeting the goals it was established to achieve. SADO was not one of the 10 finalists picked by the Harvard/Ford Innovations program, but it did survive a rigorous outcome analysis.

#### IV. GOALS

SADO's immediate goals are to secure the additional funding for personnel, equipment, and technology needed to maintain a staffed office of skilled lawyers who provide high-quality, cost-efficient representation in the 25% of the approximately 3,300 indigent appeals it now accepts annually, and to effectively use the resources and materials generated by its operations to support the private component of Michigan's now-integrated indigent appellate defense delivery system and the criminal defense bar in general.

In the upcoming year, SADO will again seek funding for an additional, cost-efficient specialized Unit, work for full state-funded lawyer compensation, publish training materials, practice and procedure books and manuals, distribute the Criminal Defense Newsletter and opinion summaries, and conduct and participate in training programs.

SADO will maintain its current presence in the Michigan and Cooley law schools and begin a teaching program at the Wayne State University Law School. These law school activities will improve the quality of practice of the graduates who participate in them and provide an excellent source for recruiting competent, inexpensive legal assistance.

Finally, SADO will continue to seek judicial decisions, legislation, and executive action that make the whole criminal justice process open, fair, expeditious, and cost-efficient.

**STATE APPELLATE DEFENDER OFFICE ANNUAL REPORT  
FOR THE YEAR ENDED DECEMBER 31, 1986**

TOTAL NEW ASSIGNMENTS 01/01/86 to 12/31/86	741
CARRYOVER OF OPEN CASES FROM PREVIOUS YEARS	359
TOTAL CASES CLOSED 01/01/86 to 12/31/86	665
 TOTAL CASES PROCESSED 01/01/86 to 12/31/86	 1,765

**LAST ACTION ON CASES OPEN 01/01/86 to 12/31/86**

<b>I. TRIAL COURT</b>		
Cases assigned to SADO, no claim filed - transcript not received		85
Cases assigned to SADO, no claim filed - transcript received		72
Motion New Trial/Withdraw Plea		35
Motion Resentence		23
Motion Bond/Other		5
No action calendar year		3
Remanded, hearing/decision pending		1
Orals held on Probate Court appeal to Circuit Court		1
	<b>TOTAL</b>	<b>225</b>
<b>II. COURT OF APPEALS</b>		
Claim filed - transcript received		231
SADO and Prosecutor briefs filed		135
Oral argument had		129
SADO brief filed		102
Claim filed - no transcript		81
Motion Resentencing/Peremptory Reversal/Other		19
Motion Remand pending/granted		17
Supplemental brief		13
Application Leave/Delayed Appeal		6
Motion Bond		3
SADO/Prosecutor Motion Rehearing		3
Motion/Stipulation Dismiss pending		3
Motion Guidance		3
Interim Application pending in Supreme Court		3
No action calendar year		2
Held in abeyance		1
	<b>TOTAL</b>	<b>751</b>
<b>III. SUPREME COURT</b>		
Application for Leave to Appeal with Brief		71
Application for Leave to Appeal - held in abeyance		19
Leave granted, brief filed		11
Leave granted - oral argument had		6
Cases assigned to SADO - transcript received		2
Motion Bond		2
Motion Rehearing		1
Motion Dismiss		1
Remanded for hearing		1
	<b>TOTAL</b>	<b>114</b>
<b>IV. UNITED STATES COURTS - DISTRICT/APPEALS/SUPREME</b>		
Petition Writ of Habeas Corpus		4
SADO/Prosecutor briefs		4
Motion Dismiss		1
Order for further pleadings		1
	<b>TOTAL</b>	<b>10</b>
 <b>TOTAL OPEN CASES</b>		 <b>1,100</b>

STATE APPELLATE DEFENDER OFFICE ANNUAL REPORT  
FOR THE YEAR ENDED DECEMBER 31, 1986

**ACTIVITY ON CASES CLOSED 1/1/86 to 12/31/86**

<b>I. TRIAL COURT</b>		
Motion Resentence/Credit granted/denied	29	
Substitute counsel appointed/retained	18	
Dismissed by motion/stipulation	15	
Motion Vacate Plea/Sentence/Conviction granted/denied	10	
Motion New Trial granted/denied	6	
Other disposition	4	
	<b>TOTAL</b>	<b>79</b>
<b>II. COURT OF APPEALS</b>		
Regular disposition	215	
Appeal dismissed by stipulation/motion	95	
Application Leave/Delayed Appeal denied	5	
Consolidated with other SADO case	4	
Appeal dismissed - client died	2	
Attorney retained	2	
	<b>TOTAL</b>	<b>323</b>
<b>III. SUPREME COURT</b>		
Leave denied - SADO	233	
Reversed and remanded	9	
Leave denied - Prosecutor	5	
Leave granted - SADO (new case started)	3	
Affirmed	2	
Appeal dismissed by motion/stipulation	2	
	<b>TOTAL</b>	<b>254</b>
<b>IV. UNITED STATES COURTS - DISTRICT/APPEALS/SUPREME</b>		
Affirmed	6	
Reversed	1	
Petition for Writ of Certiorari denied	1	
Motion denied	1	
	<b>TOTAL</b>	<b>9</b>
<b>TOTAL CLOSED CASES</b>		<b>665</b>

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**FILINGS BY SADO 1/1/86 to 12/31/86**

TRIAL COURT	343	
COURT OF APPEALS	1,559	
SUPREME COURT	265	
UNITED STATES COURTS	32	
	<b>TOTAL</b>	<b>2,199</b>
1986 Assignments	Pleas	345
	Trials	356
	Specials	40
	<b>TOTAL</b>	<b>741</b>



STATE APPELLATE DEFENDER OFFICE ANNUAL REPORT  
FOR THE YEAR ENDED DECEMBER 31, 1986

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

<b>I. TRIAL COURT</b>		
Final disposition reached		488
Substitute counsel appointed		200
Case/Appeal dismissed		87
SADO withdrew as counsel by request/appointment returned		70
Withdrew as counsel		38
Assigned in error, improper assignment, etc.		36
Appeal withdrawn		32
Client retained own counsel		19
Client missing, no possible action		3
Assigned to advise client only		1
Client released on habeas corpus		1
	<b>TOTAL</b>	<u>975</u>
<b>II. COURT OF APPEALS</b>		
Final disposition reached		3,869
Appeal dismissed by motion/stipulation		1,137
SADO motion to withdraw as counsel granted		228
Application for Delayed Appeal denied		73
Client missing, deceased		16
Appeal dismissed as moot		7
Client retained own counsel		6
Prosecutor's motion to dismiss appeal granted		2
Confession of error by prosecutor		2
Appeal dismissed for lack of progres		1
	<b>TOTAL</b>	<u>5,340</u>
<b>III. SUPREME COURT</b>		
SADO/Prosecutor leave granted/denied		2,003
Final disposition reached		532
Prosecutor's leave granted		43
Appointment vacated		32
Appeal dismissed		16
Disposition by Supreme Court on plea cases for Court of Appeals		10
Case dismissed - client missing/deceased		6
SADO leave granted - client retained own counsel		5
Withdrew as counsel		5
Client withdrew appeal		3
SADO removed as counsel, client found not indigent		3
	<b>TOTAL</b>	<u>2,658</u>
<b>IV. UNITED STATES COURTS - DISTRICT/APPEALS/SUPREME</b>		
Final disposition reached		25
Writ of habeas corpus denied		10
Writ of certiorari by prosecutor granted/denied		10
Substitute counsel appointed		1
	<b>TOTAL</b>	<u>46</u>
<b>TOTAL FINAL DISPOSITIONS</b>		<u><u>9,019</u></u>