

Jim H.

1987 ANNUAL REPORT
STATE APPELLATE DEFENDER OFFICE

APPELLATE DEFENDER COMMISSION MEMBERS

William R. Walsh, Jr., Attorney
Chairman (Deceased in January, 1988)
Appointed by the Supreme Court
Term Expires May 24, 1991

John E. S. Scott, Attorney
Secretary
Appointed by the State Bar
Term Expires May 24, 1991

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

John C. Emery, Jr., Attorney
Member
Appointed by the State Bar
Term Expires May 24, 1991

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

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

Hon. Vesta Svenson, Magistrate
Member (Part of 1987)
Appointed by the Supreme Court
Term Expires May 24, 1991

Janet E. Findlater, Associate Professor
Member (Successor to Magistrate Svenson)
Appointed by the Supreme Court
Term Expires May 24, 1991

Barbara R. Levine
Administrator
Michigan Appellate Assigned Counsel System

James R. Neuhard
Defender
State Appellate Defender Office

STATE APPELLATE DEFENDER OFFICE

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 The Office currently operates pursuant to 1978 PA 620 (MCL 780.711 et seq.), which superceded Administrative Order 1970-1, and is governed by the seven-member State Appellate Defender Commission, which also oversees the private component of the Michigan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 (MAACS) 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) appellate representation scheme began on December 2, 1985.

SADO appears on local assigned counsel rosters in every third, fourth, or fifth slot, under the Commission's regulatory scheme, depending on the ratio of attorneys to the number of criminal felony appeals taken in that particular 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, was approximately, 3,831 in 1987. SADO accepted 851 of these assignments, counting substitutions (MAACS puts the total at 840 without substitutions). This is 110 (15%) more cases than SADO accepted in 1986 (yet only 22% of the total number of indigent criminal appellate assignments), work absorbed without an increase in SADO's resources.

From 1979 to 1986, SADO accepted an average of about 700 cases a year. However, as predicted last year, the number of assignments to SADO would have exceeded 900 this year if the Commission had not shut off intake in August and all jurisdictions had started up immediately thereafter. During 1987, only two (2) of Michigan's Circuits did not appoint SADO - Circuits 12 and 52 - no doubt because they simply had no indigent appeals.

SADO attorneys review transcripts and lower court records, visit and interview clients at Michigan's 42 prisons and camps and community corrections centers scattered across the state, investigate, research issues, file all necessary pleadings, conduct post-conviction hearings in state and federal trial courts and present oral arguments at all levels of the Michigan and Federal judiciaries.

During 1987, the Defender, Chief Deputy Defender, fifteen (15) Assistant Defenders, Legal Resources Project Director, and Training Coordinator were housed in the Detroit office. Four Assistant Defenders and the Deputy Defender were housed in the Lansing office. Ten (10) legal secretaries, the Chief Investigator and her paralegal assistant, eight (8) administrative assistants, two and one-half clerks, and one receptionist supported the legal staff. Special Assistant Defenders, post-graduate legal research assistants, and part-time law students were also periodically employed as support. As has been done for some 17 years now, one SADO attorney was housed at and received clerical support from the University of Michigan Law School while teaching the Appellate Practice Course there.

Students from Michigan's universities, colleges, and other schools and programs provided paralegal-type assistance to the staff as they worked for credit toward degrees. Volunteer referrals from schools, government and civic organizations, and other criminal justice programs also help out.

Activities and Workload Analysis

Case Activity

1987 was a record-breaking year for SADO in many ways. SADO's eighteen (18) Assistant Defenders and Lansing Deputy handled a mixture of 547 new cases (10% more than in 1986). The Special Unit, which included the Chief Deputy Defender, the Unit Manager and four (4) other Assistant Defenders handled 321 assignments - 88% more than the 171 total for 1986. The Unit is designed to provide expedited relief and to process a high volume of simple cases with similar issues. Unit attorneys handle about twice as many cases as regular assistant defenders. Unit case-handling capacity was boosted by 88% in 1987 by the addition of an Assistant Defender II and an Assistant Defender I position.

Attorneys received a combined record total of 868 new cases - an increase of 31% over 1986's total of 661! Thirty-five of those appeals were special assignments (these range from United States Supreme Court briefs to responses to prosecutor appeals), 456 were pleas, and 377 were trials.

Despite the Commission's one-month shutdown of intake, SADO received a record 851 new assignments in 1987. At the close of the year, it had 1,264 open-active cases, had closed 656 cases, and processed some 1,920 cases.

The statistical report on case activities follows this narrative.

Collateral Activity and Special Projects

In addition to its direct client services, the Office continued its involvement in collateral areas of the criminal justice system. The Legal Resources Project celebrated a decade of service to the criminal justice community. It responded to over 4,000 requests for information and assistance from attorneys (assigned and retained) and incarcerated individuals, provided more than 25,000 pages of materials and maintained a mailing list and database of over 1,800 individuals. Of those, approximately 300 were judges and 1,300 were attorneys. Nine issues and an index of the Criminal Defense Newsletter were distributed to over 1,500 subscribers. The Project summarized over 285 opinions and orders issued by the Court of Appeals, Michigan Supreme Court and federal courts. Approximately 400 individuals subscribed to the Project's opinion summaries. The Project reached individuals in 78 counties and 174 cities in Michigan. There were 34 out-of-state requests. The brief bank contained over 5,600 SADO briefs, and over 300 non-SADO briefs (MAACS attorneys and other contributors). Work began on the 1987 Supplement to the Defender Trial Book, with a projected distribution date to be in early 1988. The Supplement will number over 300 pages. There were over 250 orders pending for the reprint of the 1985 edition of the Defender Trial Book, 3rd edition, which should be available in early 1988.

Under the auspices of the State Appellate Defender Commission Michigan, Justice Training Funds obtained by SADO, MAACS and the Criminal Defense Attorneys of Michigan enabled those organizations to continue conducting general training for attorneys representing indigent criminal defendants. CDAM presented two-day seminars in Detroit and Traverse City on advanced trial practice. Over 200 lawyers registered for each event. Handout materials were distributed at these seminars and

are being distributed to about 1,000 assigned counsel throughout Michigan. Copies of audio tapes of these conferences were distributed to defender offices and are available on loan through CDAM. The videotapes were also shown and loaned by CDAM.

CDAM again presented a two-day seminar on medicolegal investigation of death in conjunction with the Wayne State University Medical School. The seminar was attended by lawyers, medical personnel and law enforcement personnel, and featured a trial demonstration of cross-examination of a medical examiner.

MAACS, CDAM and Prison Legal Services co-sponsored one-day seminars on Department of Corrections issues held in Detroit and Lansing.

SADO maintained its presence in Michigan's law schools in 1987. One SADO staff attorney taught the Criminal Appellate Practice Course at the University of Michigan Law School, and several other SADO attorneys lectured at the Cooley Law School and supervised Cooley and Wayne State University law student interns and work-study students assigned to SADO's Detroit and Lansing offices. During the summer of 1987, SADO ran a successful pilot Criminal Appellate Practice course at Wayne, modeled after the University of Michigan course. A permanent course will begin in 1988.

SADO's Special Projects Coordinator (now called Systems Manager) continued efforts to make all its legal staff computer literate to maximize efficiency. Although she was very successful, her efforts were hampered by a switch to new equipment and an emphasis on personal micro-computer training. She also spent time developing a methodology for generating automated database reports, such as the statistical data in this report.

SADO attorneys again participated in legislative hearings on matters relating to criminal justice, working with legislators and legislative committees on criminal law and corrections matters. They also served on many boards, commissions, committees, and task forces working on criminal justice programs at both the state and national levels. The Defender was installed as president of the National Legal Aid and Defender Association, and many SADO attorneys were faculty and participants in its activities.

The late William R. Walsh, Jr., Chairman of the State Appellate Defender Commission for over 18 years, finally achieved most of a long-sought-after personal goal of a unified appellate defense delivery system with performance standards and an assignment system that assures lawyer independence for indigents, before his untimely death in early January, 1988.

Goals

SADO will continue its quest for funding for additional personnel, equipment, and technology needed to maintain a staffed office of skilled lawyers who provide high-quality, cost-efficient representation in its 25% of the now approximately 4,000 indigent appeals taken annually, and to effectively use its resources to support the private component of Michigan's unified indigent appellate defense delivery system and the criminal defense bar in general. It will use any additional funding received next year to add support to its cost-efficient specialized Unit and develop similar units.

SADO will redouble its efforts to obtain full state-funding for appellate defense services, and continue to publish training materials, practice and procedure books and manuals, distribute the Criminal Defense Newsletter and opinion summaries, and conduct and participate in various training programs.

Where possible, SADO will expand its teaching role in Michigan's law schools in fulfillment of its twofold commitment to provide high-quality indigent representation, by improving the quality of Michigan law school graduates, and to provide an excellent source for recruiting its own staff attorneys and inexpensive legal assistance.

As always, SADO will 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, 1987

TOTAL NEW ASSIGNMENTS 01/01/87 to 12/31/87	851
CASES OPEN as of 12/31/87	1,264
CASES CLOSED 01/01/87 to 12/31/87	<u>656</u>
TOTAL CASES PROCESSED 01/01/87 to 12/31/87	<u>1,920</u>

LAST ACTION ON CASES OPEN as of 12/31/87

I. TRIAL COURT		
	Cases assigned to SADO, no claim filed - transcript not received	114
	Cases assigned to SADO, no claim filed - transcript received	91
	Motion Resentence	44
	Motion New Trial/Withdraw Plea	39
	Leave case - transcript received	16
	Motion Bond/Other	4
	No action calendar year	3
	Remanded, hearing/decision pending	1
	TOTAL	<u>312</u>
II. COURT OF APPEALS		
	Claim filed - transcript received	298
	SADO and Prosecutor briefs filed	167
	Oral argument had	131
	Claim filed - no transcript	69
	SADO brief filed	40
	Motion Remand pending/granted	36
	Motion Resentencing/Peremptory Reversal/Other	24
	Supplemental brief	17
	SADO/Prosecutor Motion Rehearing	14
	Motion/Stipulation Dismiss pending	8
	Application Leave/Delayed Appeal	8
	Motion Bond	3
	Held in abeyance	2
	No action calendar year	1
	TOTAL	<u>818</u>
III. SUPREME COURT		
	Application for Leave to Appeal with brief	81
	Application for Leave to Appeal - held in abeyance	21
	Leave granted, brief filed	7
	Leave granted - oral argument had	5
	Motion Rehearing	3
	Leave granted	2
	Motion Dismiss	2
	Remanded for hearing	1
	TOTAL	<u>122</u>
IV. UNITED STATES COURTS - DISTRICT/APPEALS/SUPREME		
	SADO/Prosecutor briefs	7
	Petition Writ of Habeas Corpus	3
	Oral argument had	1
	Order for further pleadings	1
	TOTAL	<u>12</u>
	TOTAL OPEN CASES	<u><u>1,264</u></u>

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FOR THE YEAR ENDED DECEMBER 31, 1987

DISPOSITION OF CASES CLOSED 01/01/87 to 12/31/87

I.	TRIAL COURT		35
	Motion Resentence/Credit granted/denied		24
	Substitute counsel appointed/retained		20
	Dismissed by motion/stipulation		10
	Motion Vacate Plea/Sentence/Conviction granted/denied		10
	Motion New Trial granted/denied		2
	Other disposition		<u>2</u>
	TOTAL		101
II.	COURT OF APPEALS		
	Regular disposition		263
	Appeal dismissed by stipulation/motion		104
	Consolidated with other SADO case		8
	Application Leave/Delayed Appeal denied		5
	Appeal dismissed - client died		3
	Attorney retained		<u>3</u>
	TOTAL		386
III.	SUPREME COURT		
	Leave denied - SADO		146
	Leave denied - Prosecutor		5
	Reversed and remanded		4
	Affirmed		4
	Leave granted - SADO (new case started)		1
	Appeal dismissed by motion/stipulation		<u>1</u>
	TOTAL		161
IV.	UNITED STATES COURTS - DISTRICT/APPEALS/SUPREME		
	Petition for Writ of Certiorari denied		4
	Reversed		2
	Affirmed		1
	Motion denied		<u>1</u>
	TOTAL		8
	TOTAL CLOSED CASES		<u>656</u>

FILINGS BY SADO 01/01/87 to 12/31/87

TRIAL COURT	412
COURT OF APPEALS	1,804
SUPREME COURT	214
UNITED STATES COURTS	<u>31</u>
	2,461

1987 Assignments	Pleas	471
	Trials	349
	Specials	<u>31</u>
		851

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FOR THE YEAR ENDED DECEMBER 31, 1987

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

I.	TRIAL COURT	
	Final disposition reached	545
	Substitute counsel appointed	222
	Case/Appeal dismissed	107
	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	21
	Client missing, no possible action	3
	Assigned to advise client only	1
	Client released on habeas corpus	1
	TOTAL	<u>1,076</u>
II.	COURT OF APPEALS	
	Final disposition reached	4,140
	Appeal dismissed by motion/stipulation	1,238
	SADO motion to withdraw as counsel granted	230
	Application for Delayed Appeal denied	78
	Client missing, deceased	19
	Client retained own counsel	9
	Appeal dismissed as moot	7
	Prosecutor's motion to dismiss appeal granted	2
	Confession of error by prosecutor	2
	Appeal dismissed for lack of progress	1
	TOTAL	<u>5,726</u>
III.	SUPREME COURT	
	SADO-Prosecutor leave granted/denied	2,155
	Final disposition reached	540
	Prosecutor's leave granted	43
	Appointment vacated	32
	Appeal dismissed	17
	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
	TOTAL	<u>2,819</u>
IV.	UNITED STATES COURTS - DISTRICT/APPEALS/SUPREME	
	Final disposition reached	28
	Writ of certiorari SADO/Prosecutor granted/denied	14
	Writ of habeas corpus denied	10
	Appeal dismissed	1
	Substitute counsel appointed	1
	TOTAL	<u>54</u>
	TOTAL FINAL DISPOSITIONS	<u><u>9,675</u></u>