

ANNUAL REPORT

1998

STATE APPELLATE DEFENDER OFFICE

1998 APPELLATE DEFENDER COMMISSION

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MISSION STATEMENT

APPELLATE DEFENDER COMMISSION: To provide a high-quality, efficient and effective, mixed indigent appellate defense system composed of a state-funded public defender office (State Appellate Defender Office) and a county-funded, assigned counsel panel (Michigan Appellate Assigned Counsel System).

STATE APPELLATE DEFENDER OFFICE: To provide cost-efficient, high-quality, timely, public appellate defense services to indigent criminal defendants in cases assigned by the courts. As an outgrowth of that representation, SADO provides legal resources and training materials to support private criminal defense practitioners assigned to represent indigent criminal defendants, to enhance the quality and effectiveness of that representation and reduce indigent defense and overall criminal justice costs to State and local governmental units.

GOALS

- Handle no less than 25% of the assigned indigent criminal appeals.
- Provide high-quality, timely services.
- Distribute services to all counties fairly and efficiently.
- Provide support services seasonably and efficiently to all assigned counsel in the State.

OBJECTIVES

- Maintain quality.
- Reduce delay.
- Increase efficiency through innovation and automation.
- Reduce costs to counties (who pay for all appeals handled by the private bar) while maintaining and supporting a mixed system of representation.
- Lower assigned counsel costs by reducing their need to duplicate work already done by SADO and other contributors and efficiently supply current legal information to all assigned counsel to reduce errors and thereby reduce the need for appeals.

The following report contains narratives and graphs that depict the State Appellate Defender Office's 1998 activities and efforts to accomplish its mission and goals.

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BACKGROUND, STATUTES and GOVERNANCE

The State Appellate Defender Office (SADO) was formed in 1969 as a result of a grant submitted by the Michigan Supreme Court to the Law Enforcement Assistance Administration (LEAA). After receiving the grant, the Court issued Order 1970-1, formally establishing the Appellate Defender Commission. The Supreme Court established the office to provide high-quality, efficient legal representation to indigent criminal defendants in post-conviction matters. In 1979, legislation was enacted that formally established the office. The legislation created a seven-member Appellate Defender Commission, established within the State Court Administrator's Office, to develop and supervise a coordinated system for regulating the assignment of counsel to all indigent criminal appeals in Michigan. 1978 PA 620; MCL 780.711 et. seq.; MSA 28.1114(101) et. seq.

Pursuant to that charge, the Commission held public hearings and determined that a mixed system of full-time defenders and assigned private attorneys would best serve the long-term interests of the entire system. It created the Michigan Appellate Assigned Counsel System (MAACS) to provide training and maintain the roster of appointed counsel and to coordinate assignments between the private bar and SADO. SADO would employ a staff of public defenders to handle its statutory percentage of assigned appeals and provide legal resources to the indigent criminal defense bar. The Michigan Appellate Assigned Counsel System began operation in 1985. Pursuant to 1978 PA 620, the Commission developed standards for criminal appellate counsel, which were adopted by the Michigan Supreme Court.

The enabling legislation specifically limits SADO to criminal post-conviction cases to which a court has appointed the office. It cannot handle civil cases and cannot sue the Department of Corrections.

The Appellate Defender Commission regulates the allocation of assignments between the SADO and private assigned appellate attorneys by adjusting SADO's capacity based on resources and the projected number of appeals there will be during the fiscal year. Standards for the appointment of appellate counsel and counsel's performance are found in Administrative Order 1981-7, 412 Mich lxv. The regulations governing the provision of appellate defense services are published in a booklet available from the Commission through MAACS in Lansing. Administrative Order 1989-3 mandated that all circuit courts comply with Section 3 of the regulations regarding appointing counsel on appeal.

Six Commission members are recommended to the Governor for appointment by the Supreme Court (2), the State Bar (2), the Court of Appeals (1), and the Trial Judges Association (1). The Governor makes one additional non-lawyer appointment.

The Act requires that SADO receive no less than 25% of all indigent criminal appeals, but limits the total intake by adding that SADO may accept only that number of cases that will allow it to provide quality defense services consistent with the funds appropriated by the legislature.

The principal office of SADO is in Detroit. The branch office is located in Lansing, Michigan. In addition, the office runs a criminal appellate practice clinic at the University of Michigan Law School and Wayne State Law School.

The Legal Resources Project (LRP) of the State Appellate Defender Office formally began in 1977. It is located in the Detroit office and provides a brief bank, newsletters, trial and sentencing books, recent case summaries, direct training events, on-line web services, phone support and legal support for both staff attorneys and several thousand assigned counsel throughout the state.

The Appellate Defender Commission Chair is John E. S. Scott, who may be reached at Dickinson, Wright, Moon, VanDusen and Freeman, One Detroit Center, 500 Woodward Avenue, Suite 4000, Detroit, MI 48226-3425; (313) 223-3500. SADO's Director, James R. Neuhard, the Chief Deputy Defender, Norris J. Thomas, Jr. and the Legal Resources Director, Dawn Van Hoek are in the Detroit office. F. Martin Tieber is the Deputy Defender in the Lansing Office at 340 Business and Trade Center, 200 Washington Square, North, Lansing, MI 48913.

THE 1998 ANNUAL REPORT OF THE STATE APPELLATE DEFENDER OFFICE

INTRODUCTION

The intent of the annual report is to review SADO's 1998 caseload and workload activity and place them in a context of available capacity throughout the year, overall office improvements, budget disruptions and legislative or constitutional changes – all of which affect office activity.

BACKGROUND

One of the Appellate Defender Commission's most important functions has been to balance the percentage of appeals assigned between SADO and the private bar. There are three reasons why this balancing of assignments between SADO and assigned counsel is critical.

First, because the State pays the cost of appeals assigned to SADO and the counties pay the cost of the appeals assigned to appointed private attorneys, the Commission must assure that the state-funded resource is fairly distributed to all counties.

Second, to assure experienced counsel is readily available in all counties to handle complex or too costly cases. Fees to the private bar are so low that there may be insufficient private bar readily available to accept costly or complex cases.

Third, because the state pays the cost of appeals handled by SADO, there is great pressure to assign more cases to SADO than the staff can handle.

To this end, the Commission adopted the Michigan Appellate Assigned Counsel System regulations and regularly reviews and apportions appeals between SADO and MAACS roster attorneys. The distribution formula provides that SADO accept varying numbers of assignments from the circuits: 1 out of 4, 5, 6, or 7, depending on the ratio of qualified attorneys willing to accept appeals in particular jurisdictions, the needs of those jurisdictions and SADO's capacity. MAACS compiles rosters of qualified private attorneys and slots SADO in at the appropriate percentage. Local appointing authorities sequentially appoint either SADO or private defense counsel from those rosters. The system also allows counties to assign SADO out of sequence if the judge believes the case will be costly, difficult or otherwise a problem to handle. This is an "insurance policy" for the counties and allows them to avoid extremely large fee cases, one or two of which could totally deplete their assigned counsel funds.

The extreme growth in the total number of assigned appeals over the 1980's and early 1990's, resulted in chronic overloads and a growing backlog of cases. Beginning in the mid 1980's, prison populations and the resultant criminal appeals rapidly increased. Indigent defense funding, however, did not keep pace. In fact, funding decreased dramatically in 1989 and 1990. From 1986-1989, SADO attempted to control its rapidly growing caseload by restricting new assignments a month at a time. MCLA 780.716 (c) directed that SADO "accept only that number of assignments and maintain a caseload which will insure quality criminal defense appellate services consistent with the funds appropriated by the State." This moderated the intake for brief periods, but so abruptly turned on and off the flow of work that it created unpredictable peaks and valleys of new work that proved very difficult to coordinate with attorney staffing levels. For example, record high assignments to the office for 11 months might force the office to reject assignments the 12th month. While this reduced the assignments to the office on a yearly basis, it did not reduce the workload for the other 11 months. Moreover, the Court of Appeals severe restriction on extensions of time to file briefs, created greatly magnified pressure on the first 11 months' work. Attorneys were overloaded during those months and could not get extensions to move the work into the open month.

When it appeared clear that the overall growth in cases would continue indefinitely, on March 29, 1990, the Appellate Defender Commission, after considering the resources available, reduced SADO's percentage of cases from "no less than 25%" of the assigned appeals to "no more than 17%." This unprecedented step reduced the intake each month, eliminated the abrupt peaks and valleys of the workload and made the workflow more predictable. The new assignment levels became effective in June of 1990. By the close of 1990, SADO began to receive slightly over 17% of the state's indigent criminal appeals.

While the workload of the criminal justice system grew dramatically during these years, as drug-enforcement and other funds were poured into law enforcement, funding and staffing levels for the Court of Appeals and indigent criminal defense lagged far behind. This negatively affected the capacity of the entire system and created a serious backlog of cases in the courts and at SADO. Even though SADO's assignments were reduced to 17% of the total, the raw number of assignments still grew, peaking in 1992 at 1,250 of the total 6,500 assigned appeals that year.

SADO (and the courts) did receive some funding from the Office of Drug Enforcement Policy. From 1991 to 1993, SADO used those funds to operate a Delay Reduction/Backlog Project, which was achieving commendable success until there was a policy change in 1994 which ended all ODEP funding to indigent criminal defense agencies in the State.

SADO's backlog problem deepened as law enforcement and the Court of Appeals continued to receive funds and vigorously pursue their backlog elimination efforts and the Court of Appeals' expedited filing and timing requirements to rapidly reduce its docket and increase its output. Matters were further complicated by hiring freezes that

periodically prevented SADO from filling critical vacancies. As a result, SADO could not keep pace.

In 1987, the Defender Commission voted to match SADO's case intake with its staff attorneys case-handling capacity. Under that continuing resolution, in 1994, the office attempted to restrict its intake to 75 new cases a month until the backlog of some 320 cases was eliminated. From that point, while there were fluctuations, the office's capacity increased from 86/month in 1993 to 96/month in 1997 (18% to 24% of total appeals). In 1996, as the backlog came under control, at SADO's request, the Commission voted to increase SADO's new case intake by 10 per month, effective in 1997 and finally in the spring of 1998, SADO again was accepting 25% of all the appeals.

SADO's 1998 ANNUAL REPORT

1998 GOALS AND OBJECTIVES:

- (1) ACCEPT 25% OF THE ASSIGNED APPEALS**
- (2) INCREASE PERCENTAGE OF COMPLEX, LEVEL III CASES AND 50% OF THE TOTAL**
- (3) REDUCE DELAY**
- (4) INCREASE QUANTITY OF SUPPORT TO THE PRIVATE BAR AND INCREASE ACCESS TO SERVICES WITH THE INTERNET**

(1) ACCEPT 25% OF THE ASSIGNED APPEALS

SADO's principal goal for 1998 was to increase its percentage of total assignments to no less than 25%. Using a multi-faceted plan, by the end of 1997, SADO had increased its percentage of all appellate assignments from 17% to over 21% of the appointments, had eliminated its backlog of overdue cases and had reached its capacity to accept 25% of the cases in 1998. In the spring of 1998, the goal of receiving 25% of the assignments was achieved.

This goal was achieved as SADO developed significant enhancements of its brief production and data processing. These improvements allowed support positions to be converted to attorney positions, thus expanding case production. SADO expanded its cost-efficient arrangements with the University of Michigan and Wayne Law Schools for clinical programs. It utilized contract attorneys to help staff attorneys keep pace and finally, SADO tightly monitored its budget, and its smaller cadre of very experienced and capable attorneys and support staff assumed more and more responsibility. As can be seen in Table I (Attorney Output Activity/Workload) over the last 5 years, SADO attorneys' output has exceeded their assignments, thus making it possible to eliminate SADO's backlog.

In addition to its increased productivity, SADO projected in 1993, during the height of the appellate overload, that crime would drop and along with it the appellate caseload. This indeed did occur. SADO used this drop in case intake to increase its productivity and thus cut deeply into its backlog.

In 1998 the total number of assigned appeals dropped to the lowest levels since the late 1980's: 3,983 cases – 24% of the total and on a weighted basis over 27% of the total.

After 5 attorneys were hired in the fall of 1997 to fill vacancies and the backlog under old standards was eliminated¹, the Commission voted to raise SADO's intake to the 25% level by the spring of 1998.

Since 1992, there has been a steady decline in the number of appeals, from 6,400 in 1992 to 5,927 in 1993 to 5,047 in 1994, 4,080 in 1997 and 3,983 in 1998. However, over that same period of time SADO's percentage of the total increased. The increase has now exceeded 8% of the total assignments (See Table II) from 16% to 25% for the last 6 months of 1998.

(2) INCREASE PERCENTAGE OF COMPLEX, LEVEL III CASES AND 50% OF THE TOTAL

The passage of Proposal B in 1994 eliminated appeals of right in guilty plea cases. However, the number of plea appeals and the ratio of plea appeals to trial appeals continued much the same after Proposal B as before. While there was little impact on the caseload - the number of plea assignments to SADO remained about the same - there was an increase in workload. In addition to the applications for leave that must now be filed if the case proceeds beyond the initial filing in the trial court, there is additional travel necessary in these appeals. Proposal B shifts plea appeals and their workload from the Court of Appeals to the trial court dockets across the state.

Further, the percentage of complex, difficult Level III cases handled by SADO far exceeded its overall percentage of the total assignments (See Table II). Thus, while the total number of assigned appeals continued to drop over the last 5 years, the work coming to SADO has consistently been more dense and complex than the ordinary assignment of one in four appeals would produce. SADO's percentage of Level III cases more than doubled the counties allotted percentage of appeals during this period. Instead of 17% of SADO's cases being Level III, SADO constantly received 33-37% of the Level III cases. (See Table II.) So, although in raw number terms SADO was not carrying its 25% of the indigent appellate defense caseload, in weight terms it has more than carried its 25% share of that workload.

Because of this pattern of use by the circuits, the Appellate Defender Commission voted to change the mix of cases from a strict 25% of all cases, to 50% of the Level III cases, 25% of the Level II cases and 20% of the Level I cases. This allowed all circuits to use the more experienced and less costly SADO more fairly. In addition it assumed the complex cases would be handled more expeditiously in the Court of Appeals.

¹ SADO had 320 backlogged cases under the old 8-month no progress court rule. In 1997 it averaged only 35 to 40 overdue cases under the new rule, which abolished the 8-month no progress rule and required that overdue briefs or pleadings be filed within 21 days.

SADO STAFFING AND DIRECT CLIENT SERVICES

SADO is committed to providing high-quality, efficient defense services to its clients. SADO attorneys obtain all transcripts and court records and review them for appealable issues. They then visit and interview clients at the 60-odd Michigan prison facilities and all the county jails around the State. Attorneys litigate cases at all levels of the Michigan and Federal courts. They investigate facts, research, analyze and write legal issues, file appropriate pleadings, conduct post-conviction hearings and present oral arguments in State and Federal courts, handling many of the landmark cases.

By the end of 1998, the Director, Chief Deputy Director, 24 Assistant Defenders and the Legal Resources Project Director were housed in the Detroit (Main) office, and the Deputy Director, Special Unit Director and four (4) Assistant Defenders were located in the Lansing office. Two paralegals/secretaries, 8 legal secretaries, the Chief Investigator and her paralegal/investigator assistant directly supported the legal staff. The office managers in the Detroit and Lansing offices, the executive assistant, the financial analyst, the computer systems manager, administrative assistants, clerks and receptionist assisted the administration and provided secondary support to the legal staff.

Two SADO lawyers were housed and received secretarial/clerical and legal research support from the University of Michigan while teaching the Criminal Appellate Practice Course. Another taught the other SADO-established Criminal Appellate Practice Course at the Wayne State University Law School. These courses enjoy excellent reputations among both students and faculty, provide excellent client representation and often provide future SADO lawyers.

PRODUCTION

(3) REDUCE DELAY

In 1998, SADO Assistant and Deputy Defenders were assigned 992 cases and produced some 3,345 filings, 930 of which were major pleadings. (Table I depicts their workloads over the last six years.)

The Unit Manager and four attorneys in SADO's Special Unit for Pleas and Early Releases continue to expeditiously handle non-trial-based (mostly plea) appeals. Even though Proposal B dramatically reduced the number of guilty plea appeals reaching the Court of Appeals and diverted them to the trial court dockets, there has been very little reduction in the total number of assigned guilty plea appeals.

SADO was assigned 544 guilty pleas appeals in 1993 and 509 in 1994, prior to Proposal B, and an equal number afterwards; most recently 539 in 1997. In 1998, SADO was assigned 497 pleas or 55% of its total cases.

After review of the entire file, preliminary research and consultation with and advice to the client, the Special Unit voluntarily dismisses between 38% to 42% of its cases.² The Unit's overall relief rate³ exceeds 32%, with a relief rate of over 75% in the cases taken to hearings in the trial courts. In 1996 and 1997 the 4 Unit attorneys handled 79% of the plea appeals assigned to attorneys. The goal is to assign the Unit over 95% of plea appeals in the future.

INCREASED INTERNAL EFFICIENCY MONITORING AND QUALITY CONTROL

Beginning in 1978, through a series of grants and internal cost savings, SADO became one of the most automated law offices in America. Starting in 1980, the office automated brief production and management information systems. It now has automated its case tracking system and brief bank library. The entire staff is highly proficient on computers, and assigned counsel from all parts of the state are permitted electronic access to all its legal resource materials. This has allowed the office to convert typing and clerical positions to staff attorney positions, and increase office production, even though the budget remained static or decreased.

INNOVATION AND AUTOMATION

² This percentage is quite significant, because voluntary dismissals markedly reduce work for the courts and prosecutors since no pleadings are filed and therefore no oral argument or opinions are required.

³ On cases where relief is sought – excludes dismissals.

As part of its continuing effort to provide high-quality, cost-efficient representation, SADO created another special work team, composed of 4 staff attorneys and 1 paralegal. The attorneys do virtually all of their own word-processing and many other tasks formerly done by legal secretaries. In exchange, the paralegal assists the lawyers on a much broader range of activities than they would receive from a regular legal secretary. Other such groups are in the planning stage.

Over the last three years, SADO has gone from a very good caseweighting system (probably the first appellate defender office in the nation to do so) for determining appropriate attorney and office workloads, to a sophisticated, automated system of caseweighting, monitoring and supervision. Computer-generated reports now show the precise overall position of the office and the individual attorney caseloads at chosen intervals, permitting the efficient regulation of the workload and workflow and assuring that deadlines are met.

In 1997, the office completed its third generation case-related management information system (MIS). The tiring DOS-based non-compliant database was overhauled and upgraded to a Year 2000 compliant windows-based, Client / Server system. SADO employed additional contractual staff on a per project basis to assist the in-house Information System team in designing and implementing the new system. The new Windows based system is user-friendly and intuitive, helping SADO reduce its training requirements and improve productivity. The system utilizes selection lists wherever possible. These lists allow all SADO staff to update selected fields while maintaining database accuracy. The open systems, Client / Server design of the new case management system allows access to backend data from many applications such as a traditional database utilities, Web Pages, E-Mail applications, and MS Word. This is the first phase of a two-phase project that will streamline SADO's business applications.

SADO's main IS project for 1998 was upgrading its word processing system from WordPerfect 5.1 for DOS to MS-Word 97. This is the second phase in streamlining SADO's business applications. This goal was to effortlessly convert existing boilerplates to templates (codes and all), create master templates for all types of legal documents, merge templates with case management data from a live database, utilize a familiar intuitive interface, and reduce overall training requirements.

The Detroit and Lansing offices have been solidly linked electronically and more powerful equipment has been purchased and installed recently, creating even greater efficiency. SADO is exploring the possibility of electronically linking the office with the Court of Appeals and cooperating circuit courts to further improve efficiency and reduce costs.

COLLATERAL ATTORNEY SERVICES AND ACTIVITIES

As has historically been the case, SADO attorneys are expected to and continued in 1998 to again serve as officers on boards and commissions, members of sections and

committees of many national, state and local bar organizations and task forces, on the Legislative Sentencing Commission, the Michigan Justice Training Commission, legislative workgroups, and committees of the Michigan and American Bar Associations, and National Legal Aid and Defender Association. Office attorneys have testified before Michigan and Federal legislative committees and the Attorney General of the United States, taught classes in virtually all of the Michigan law schools and served as faculty for many legal and cross-professional seminars and conferences. They taught criminal law and procedure to law students, high school students, paralegals and prisoners. Some wrote practice and procedure manuals for both the bench and bar. Some volunteered to mentor pre-law and law students. Many were deeply involved in civic and community-based activities.

LEGAL RESOURCES PROJECT REPORT

1998

OVERVIEW AND GOALS ACHIEVED

PRIMARY GOAL: INCREASE QUANTITY OF SUPPORT TO THE PRIVATE BAR AND INCREASE ACCESS TO SERVICES WITH THE INTERNET.

1998 marked the twenty-second year the Legal Resources Project (LRP) has served Michigan's criminal defense community with services essential to the competent practice of criminal law in Michigan. The LRP's objectives for the year remained to deliver core services through traditional means, while expanding their delivery through new, and Web-based, means. Core services included publication of a monthly newsletter, trial and sentencing books, summaries of appellate decisions, maintenance of a research database which includes a brief bank, and provision of legal advice by phone to attorneys across the state. Staff remained at 1997 levels.

Significant efforts were made during the year to increase the contents of online databases which could be accessed over the web, to promote use among attorneys of the online discussion group (the SADO Forum), and train as many attorneys as possible on use of online resources. The advantages of web-delivered services are many, including access at all times, from any location, for unlimited lengths of time. Many attorneys find that research needs are well-met by their own "browsing" or "searching" of the SADO databases. Such online access is very cost-effective, and serves the LRP goals of (1) improving the quality of criminal defense representation, (2) reducing the possibility of errors and need for appeals, and (3) reducing costs for the state and counties by reducing the hours of research for which appointed appellate counsel might otherwise submit a bill.

LRP operations were once again funded through a combination of SADO budgetary support, user fees and grants from both the Michigan Justice Training Commission and the Michigan State Bar Foundation. User fees supported a portion of the costs of books, newsletters, copying, and operation of the SADO web site. Grants from the MJTC supported a portion of the costs of books and direct training events; a grant from the Michigan State Bar Foundation supported development of online video training and teleconferencing, and direct training events.

SERVICES DELIVERED BY MAIL AND PHONE

During the report period, the Legal Resources Project continued all services delivered through traditional methods of mail and phone. These services included:

- (1) **Criminal Defense Newsletter.** This monthly newsletter delivered an average thirty pages of essential information to approximately 1,000 subscribers. Each issue contains a lead article providing in-depth analysis of an issue, news, announcements, a training calendar, practice notes, summaries of appellate decisions, news of pending and recently-passed legislation, and much more. An annual index issue provides a comprehensive listing of issues covered during the year.
- (2) **Summaries of Appellate Decisions.** Twice a month, approximately 150 subscribers to the LRP's summaries service received summaries of the most recent appellate decisions (Michigan Court of Appeals, Supreme Court, Sixth Circuit Court of Appeals and United States Supreme Court). Summaries of over 800 decisions were mailed to subscribers during 1997-98.
- (3) **Defender Trial, Sentencing and Post-Conviction Books.** Renamed to better reflect their contents, 3000 sets of the popular books were printed. Over 1600 pages of relevant information was delivered to users, covering developments through December of 1997. These two annually-updated looseleaf books contain well-organized summaries of the law on all aspects of criminal law and procedure, from arrest through appeal. Summaries and analysis of case law, statutes, court rules and legal practice are included. Users also receive a diskette version of the books, along with full text of any unpublished Court of Appeals decisions cited in them; the books are installed on a user's own computer and bundled with a powerful search program which allows full text search and retrieval of useful information. Users include criminal defense attorneys, judges, probation departments, and prison and county law libraries. Asked in 1998 about how frequently they use the books, 17.8% of the users said daily, 55% said weekly, 23.7% said monthly and 3.5% said less than monthly. These results reflect heavier use than ever before. Approximately 75% said they use the books to browse a topic to learn the law, 64% used them to quickly identify a case, rule or statute, and 34% used them to browse a topic to refresh their memories. Many indicated that the books provide a useful starting point in research. Asked about the value of the books to their practices, 55% said they were indispensable, 44% said they were helpful and only one said they were of minimal value. Many indicated that they found the diskette version of the books extremely useful: 39% found it indispensable, 55% found it helpful and only 6% said it was of minimal value.
- (4) **Legal Consultation and Brief Bank Service.** During the report period, approximately the same number of users were served as in the previous year: this number consisted of approximately 1,300 attorneys, 550 inmates, and 1,400 others, who called, wrote or visited the LRP for help with a legal issue. Their questions ranged from help framing a legal issue

to advice on strategy, and were answered by the LRP's two experienced legal research attorneys. An estimated 300 automated research requests were completed for SADO attorneys, in addition. Legal consultation and brief bank services were used by attorneys in virtually all of Michigan's 83 counties. Prison inmate support was limited to mailing of information packets on how to pursue relief on their own, or advice on how to obtain counsel.

SERVICES DELIVERED BY THE WEB

Web-delivered support services grew in popularity and use during 1998, as more attorneys upgraded their home and office computer systems, and more attorneys were trained by LRP staff. Overall, the trend was clearly reflected in statistics on use of SADO's web site: this year saw increased numbers of user sessions, web page "hits" and Forum messages, while the numbers for traditionally-delivered services declined somewhat. This means that more attorneys are dialing up online databases, with fewer relying on mail-delivered or printed resources. The advantages of this delivery method remain that:

- ❑ Attorneys may perform online research from their office or home computers, at any time of night or day, downloading useful material and legal pleadings;
- ❑ Research and downloaded materials are available immediately, without the delay inherent in surface mailing;
- ❑ Research results improve, as attorneys adapt their own searches, without filtering requests through another person; and
- ❑ The currency of information is vastly improved over traditional methods, as the web site is updated on a near-daily basis.

During 1998, growth was experienced in both the public and restricted sides of the web site. Materials were added in all segments, including descriptions of legal processes, training events, legal databases, and summaries of appellate decisions. The value of the site to users was demonstrated by the number of web site hits, user sessions and Forum messages, all of which continued to climb. The most revealing statistic tracked, user sessions, grew from approximately 3600 per month to nearly 6600 per month during the year. Membership in the SADO Forum grew to approximately 400 criminal defense attorneys. Graphs tracking site usage accompany this report.

DIRECT TRAINING EVENTS

With funding support from the Michigan Justice Training Commission and State Bar of Michigan Foundation, the LRP once again offered statewide training events on the subject of Automated Research and Writing for Criminal Defense Attorneys. Twenty-three events took place, each four hours long, reaching a total of 326 trainees. The average size of the group trained was twelve, a small-group format ideal for this type of

training. Each trainee had good access to the trainer, for questions and demonstrations. Taking the events directly to the attorneys' communities allowed for more participation by those unable to take the time to travel to a central location.

Direct training is not only effective, but essential. A comparison of those handling assigned trials and appeals statewide reveals nearly one-third turnover on an annual basis. With so many new attorneys taking assignments, training prevents many costly blunders attributable to lack of knowledge. The hundreds of attorneys trained annually by the LRP gain the skills needed to navigate the Web for its legal research capabilities, and to incorporate their findings into legal pleadings. Without timesaving automated research, counties would be billed much more time for traditional research.

Evaluations of the direct training events showed their great value to practicing attorneys. Asked to what degree the training would be helpful, 96% of trainees said it would be very helpful. Asked about the effectiveness of the trainer, 74% rated him excellent, and 25% rated him very good. The surveys revealed that nearly 67% of trainees increased their use of the Internet for legal research after receiving the training. Asked how often they use the Internet for legal research, 57.2% said that they used it at least once a week (an increase from last year's 51.5%). Asked how often they include the SADO site in a research session, 60.9% of the trainees said that they use it most or all of the time (increased from 50% in 1997). Trainees also were asked how much research time was saved by using the SADO online databases: 29.7% said more than 10 hours monthly (11.4% in 1997), 51.6% said between 5 and 10 hours monthly (45.7% in 1997), and 15.6% said under 5 hours monthly (34.3% in 1997). Asked if they would continue to use the SADO site for research and writing purposes, nearly 100% gave an affirmative answer.

SHARING WITH THE LEGAL SERVICES COMMUNITY

The LRP continued in 1998 to share its resources and expertise with others, including particularly Michigan's legal services community. Staff participated in the State Bar of Michigan's Technology Task Force, a large group designing and implementing the "Michigan Plan." This Plan is intended to unite legal services programs through technology, allowing more cost-effective sharing of resources and improved legal representation of clients. The LRP provided a major service to that community by deciding to host the pleadings collection of the Michigan Poverty Law Program, creating a searchable database accessible via the web. The LRP also continued to field inquiries from other programs nationally, providing technical consulting.

The LRP's success in serving the appointed criminal defense bar is largely due to its relationship with a fully-functional law office, the State Appellate Defender Office. LRP staff interact constantly with SADO's practicing attorneys, developing expertise on substantive issues. The LRP's databases, particularly its brief bank, consist primarily of pleadings prepared during the normal course of SADO's business. Administrative support and overhead are shared, as are computer resources. Both SADO and appointed

counsel benefit from the symbiosis, as both SADO and outside attorneys draw upon the collective expertise and work product. A freestanding support office would lose the cost-effectiveness of this relationship, which encourages re-use of pleadings and expertise.

CONCLUSION

By the end of 1998, SADO achieved its goal of increasing its capacity to handle no less than 25% of all assigned cases and dramatically reduced the time for the filing of all of its opening pleadings. The Legal Resources Project increased its subscribers to all services and dramatically increased electronic access to resources. In all, SADO reasonably met its goals and objectives for 1998.

**STATE APPELLATE DEFENDER OFFICE ANNUAL REPORT
FOR THE YEAR ENDED DECEMBER 31, 1998**

Total New Assignments 1/1/98 to 12/31/98	1,033
Cases Open as of 12/31/98	1,806
Cases Closed 1/1/98 to 12/31/98	883
TOTAL CASES PROCESSED 1/1/98 TO 12/31/98	2,689

Last Action on Cases Open as of 12/31/98*

I. TRIAL COURT	
Pending	98
Due and Owing	31
Disposition	67
Done (cases sent to closed files)	21
Total	217
II. COURT OF APPEALS	
Pending	25
Due and Owing (No Brief/App)	158
SADO Brief	99
Prosecutors Brief	244
Orals	61
Delayed Applications	54
Disposition	166
Done (cases sent to closed files)	11
Total	818
III. SUPREME COURT	
SADO Application	189
Prosecutor Application	3
Motion for Rehearing	6
Brief Due	0
SADO Brief	2
Prosecutor Brief	1
Orals	4
Abeyance	2
Disposition	175
Reopened	1
Done	8
Total	391
IV. UNITED STATES COURT – DISTRICT/APPEALS/SUPREME	
Pending	24
Orals	2
Disposition	9
Done	1
Total	39
V. OPEN COURT	
Due and Owing	341
Total	341
TOTAL OPEN CASES:	1,806

*This chart tracks the status of all cases on the 31st day of December 1998. "Open Court" cases are those where SADO was assigned but the choice of court in which to file the opening (first) pleading has not yet been made. Cases where there is a "disposition" will have either a "rehearing" filed, or application to the next highest court filed by defense or prosecution, or be closed.

**STATE APPELLATE DEFENDER OFFICE ANNUAL REPORT
FOR THE YEAR ENDED DECEMBER 31, 1998**

Disposition of Cases Closed 1/1/98 to 12/31/98

I.	TRIAL COURT	
	Motion Resentence/Credit/Presentence Report/ Granted/Denied	66
	Substitute Counsel Appointed/Retained	24
	Dismissed by Motion/Stipulation/Order	158
	Motion Vacate Plea/Sentence/Conviction Granted/Denied	3
	Motion New Trial/Withdraw Plea Granted/Denied	11
	Motion for Relief of Judgment	1
	Appeal Dismissed-Client Died	2
	Other Disposition	1
	Closed Without Disposition*	31
	Total	297
II.	COURT OF APPEALS	
	Regular Disposition	87
	Appeal Dismissed By Stipulation/Motion/Guidance/Court	55
	Application Leave/Delayed Appeal Denied	89
	Appeal Dismissed-Client Died	0
	Substitute Counsel Appointed/Retained	7
	Closed Without Disposition*	3
	Prosecutor App Denied	1
	Total	242
III.	SUPREME COURT	
	Leave Denied – SADO	310
	Leave Denied – Prosecutor	4
	Reversed, Remanded and Vacated	3
	Reversed – Prosecutor	1
	Affirmed	1
	Affirmed – Prosecutor	1
	Leave Granted – SADO (New Case Started)	1
	Appeal Dismissed by Motion/Stipulation	0
	Appeal Dismissed – Client Died	1
	Total	324
IV	UNITED STATES COURTS – DISTRICT/APPEALS/SUPREME	
	Petition for Writ of Certiorari Denied	1
	Petition for Writ of Habeas Corpus	0
	Motion Granted/Denied	0
	Reversed	0
	Affirmed	2
	Total	3
IV.	MISCELLANEOUS	
	No Disposition	0
	Total	0
	TOTAL CLOSED CASES:	866

*"Closed without Disposition" means closed without litigation or order.

**STATE APPELLATE DEFENDER OFFICE ANNUAL REPORT
FOR THE YEAR ENDED DECEMBER 31, 1998**

Filings by SADO 1/1/98 to 12/31/98

TRIAL COURT	851
COURT OF APPEALS	1,714
SUPREME COURT	367
UNITED STATES COURTS	<u>61</u>
Total Filings:	2,993

Major Filings by SADO 1/1/98 to 12/31/98

TRIAL COURT	658
COURT OF APPEALS	770
SUPREME COURT	329
UNITED STATES COURTS	<u>29</u>
Total Filings:	1,786

Assignments of SADO 1/1/98 to 12/31/98

PLEAS	546
Probation Violation Pleas	65
JURY TRIALS	314
BENCH TRIALS	67
Probation Violation Trials	8
PROSECUTOR APPEALS	10
RESENTENCING	10
LEAVE GRANTED - SADO	2
LEAVE GRANTED - OTHER	6
SC APPLICATION - OTHER	0
SPECIALS	<u>5</u>
Total:	1,033

TABLE I
CASE ACTIVITY AND WORKLOAD

	Average Staffing Level	Office Appointments	Attorney Assignments	Average Assignment Per Attorney ***	Total Filings	Average Filing Per Attorney	Average Filing Per Case	Total *Opening Pleadings	Total **Major Filings	Average Major Filing Per Attorney	Average Major Filing Per Case
1993	23	1,078	1,127	49.0	4,581	199	4.0	1,167	1,492	64.86	1.32
1994	27	1016	907	33.6	4,083	151	4.5	1,083	1,638	60.66	1.61
1995	21	951	1,029	49.0	3,871	184	3.8	1,043	1,715	81.66	1.80
1996	25	874	1,071	42.84	3,699	148	3.5	944	1,554	62.16	1.77
1997	25	931	992	39.68	3,345	134	3.4	930	1,532	61.28	1.64
1998	27	1,033	1,125	41.66	2,993	110.8	2.08	885	1,786	66.14	1.59

* An opening pleading seeks relief from a conviction or sentence – e.g., a brief on appeal, motion for peremptory reversal with supporting brief, motion for new trial or resentencing with brief/memo in support and motion for relief from judgment under Chapter 6 of the Michigan Court Rules or dismissal or withdrawal from the case.

** Major filings include opening pleadings and all non-ministerial pleadings, such as motions to remand, motions to correct sentence or presentence report, motions for credit and motions for rehearing or reconsideration.

*** Some national standards recommend that criminal appellate attorneys handle only 25 appeals a year. See National Advisory Commission on Criminal Justice Standards and Goals, Courts 13.12 (1973); ABA Special Committee On Criminal Justice In A Free Society, Criminal Justice In Crisis 43 (1989); ABA Standards for Criminal Justice – Providing Defense Services, Standards 5 – 5.3 Workload (3ed 1992).

The National Legal Aid and Defender Association rejects fixed numbers, opining that workload standards depend on the jurisdiction and type of work, but suggests from its surveys about a 22 weighted non-death penalty work unit limit. NLADA Indigent Defense Caseloads and Common Sense: An Update, pp 10-11, citing NLADA Standards and Evaluations Design for Appellate Defender Offenses, Standards I.F., I.H.; II.C. (1980).

+ Although the Commission officially increased SADO's new case intake for 1997, it simultaneously reduced the number of assignments to regular staff attorneys by two (2) weighted work units, due to the reduced time to file briefs in the Court of Appeals and the penalties personally imposed by the Court on staff attorneys if their briefs are filed untimely.

TABLE II

**SADO'S PERCENT OF COMPLEX (LEVEL III JURY TRIAL APPEALS)
APPELLATE ASSIGNMENTS 1993-1998
AS COUNTED BY MAACS**

	GRAND TOTAL	SADO'S PERCENT* OF GRAND TOTAL*	LEVEL III CASES PERCENT OF TOTAL	SADO'S PERCENT OF LEVEL III CASES
1993	5,927	953 16.1%	824 13.9%	286 34.7%
1994	5,047	917 18.2%	698 13.8%	271 38.8%
1995	4,762	837 17.6%	636 13.4	241 37.9%
1996	4,287	763 17.8%	687 16.0%	235 34.2%
1997	4,080	832 20.4%	581 14.2%	199 34.3%
1998	3,983	948 23.8%	612 15.4%	216 35.3%

* The totals in this table differ from those in other tables because the numbers here are MAACS' MAACS subtracts assignments if another attorney is substituted for the original attorney. SADO, however, counts those assignments and reconciles with MAACS at year's end. That is because these cases can have varying amounts of work done before the substitution. The original attorney may have done virtually all of the work. The "new" attorney still must do a significant amount of work to familiarize him/herself with the case, to correct any deficiencies and to complete the work. Thus, each attorney will want to count the assignment, even though MAACS only credits one of them.

In addition, judges assign appeals of pre-conviction rulings, not all of which are sent to MAACS for inclusion in the total number.

TABLE III
ASSIGNMENT OF CASES BY TYPE

	PLEAS	JURY TRIALS	BENCH TRIALS	OTHER	TOTAL
1993	577 *[53.5%]	412 [38.2%]	81 [7.5%]	8 [0.7%]	1078
1994	532 [52%]	412 [41%]	57 [6%]	15 [1%]	1016
1995	508 ** (87) [53%]	378 [40%]	50 [5%]	15 [2%]	951
1996	441 (307) [50%]	356 [41%]	53 [6%]	23 [3%]	874
1997	539 (434) [58%]	315 [34%]	50 [5%]	27 [3%]	931
1998	618 [60%]	332 [32%]	68 [7%]	15 [1%]	1033

* Bracket = Percentage of total assignments

** Parenthesis = Number of Proposal B Cases

TABLE IV
SUBSTITUTION APPOINTMENTS

	APPOINTMENTS	SUBSTITUTIONS*
1993	1078	110
1994	1016	131
1995	951	95
1996	874	97
1997	931	107
1998	1033	124

* Many of these cases are problematic. They often involve alleged ineffective assistance of private counsel, or MAACS, a court or the Grievance Commission removal of prior counsel. Many involve unmanageable clients (some going through as many as 5 trial and appellate attorneys) and/or very complex issues. Sometimes private counsel are simply underpaid and/or overwhelmed by these cases and needed to withdraw due to economic necessity.

TABLE V

SADO OVERALL RELIEF RATES* 1993-1998

	TOTAL	NO RELIEF GRANTED	RELIEF GRANTED	PARTIAL- RELIEF GRANTED	RELIEF RATE COMBINED %
1993	712	531 (74.5%)	139 (19.5%)	42 (5.9%)	25.4
1994	819	633 (77%)	145 (17.7%)	141 (5%)	22.7
1995	802	641 (79.9%)	112 (13.96%)	49 (6.11%)	20.07
1996	800	649 (81.1%)	107 (13.37%)	44 (5.5%)	18.87
1997	929	776 (83.5%)	119 (12.8%)	34 (3.65%)	16.45
1998	763	643 (84.2%)	108 (13.76%)	25 (3.27%)	17.03

* Cases where relief sought – excludes dismissals and withdrawals. MAACS' analysis of a 5.6% random sampling of 5,255 post conviction cases assigned in 1990 (including SADO appointments) produced the following results in the 93% of the cases that had reached disposition by October 1993:

<u>TOTAL</u>	<u>AFFIRMED</u>	<u>DISMISSED</u>	<u>RELIEF</u>
Pleas (N = 185)	87 (47.0%)	75 (40.5%)	23 (12.4%)
Trials (N = 103)	73 (70.9%)	12 (11.7%)	18 (17.5%)
Total (N = 288)	160 (55.6%)	87 (30.2%)	41 (14.2%)

"While data on appellate relief rates, in criminal and civil cases, is scarce, these rates are within the 10-20% range reported nationally. Notably, when the cases dismissed without any decision on the merits are excluded, the relief rate in plea cases rises dramatically. Among the plea appeals left after assigned counsel have screened for merit and risk, 21% bring relief in the trial court or the Court of Appeals."

Source: A Decade of Challenges, Report of the Michigan Appellate Assigned Counsel System April 1985 – April 1995, pp. 20-21, updated for brief in People v Bulger.

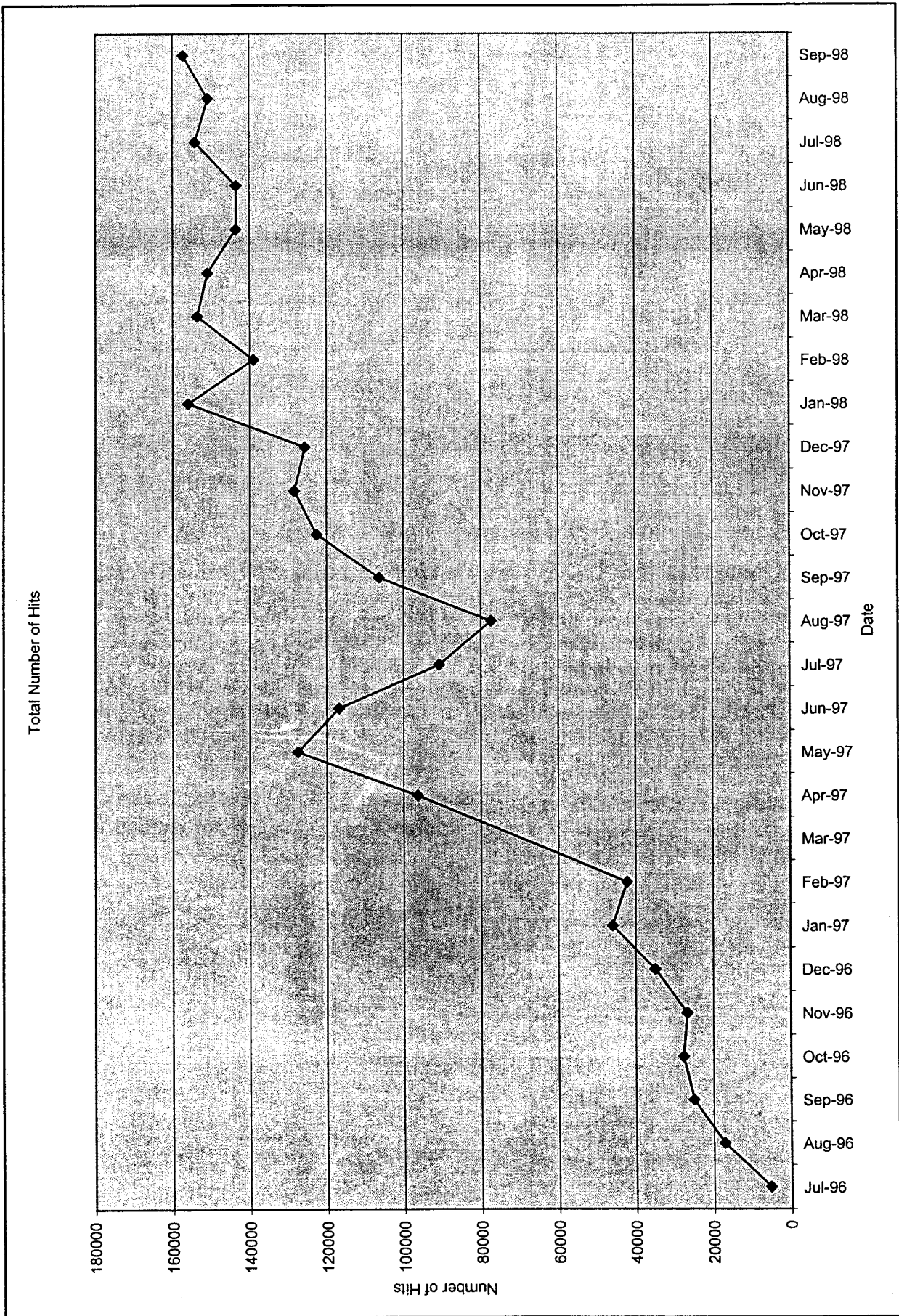
The decline in relief rate over recent years is caused by several factors: better training of the bench and bar, standardized jury instructions, refined sentencing guidelines, clarification of existing law and broadened use of harmless error doctrines.

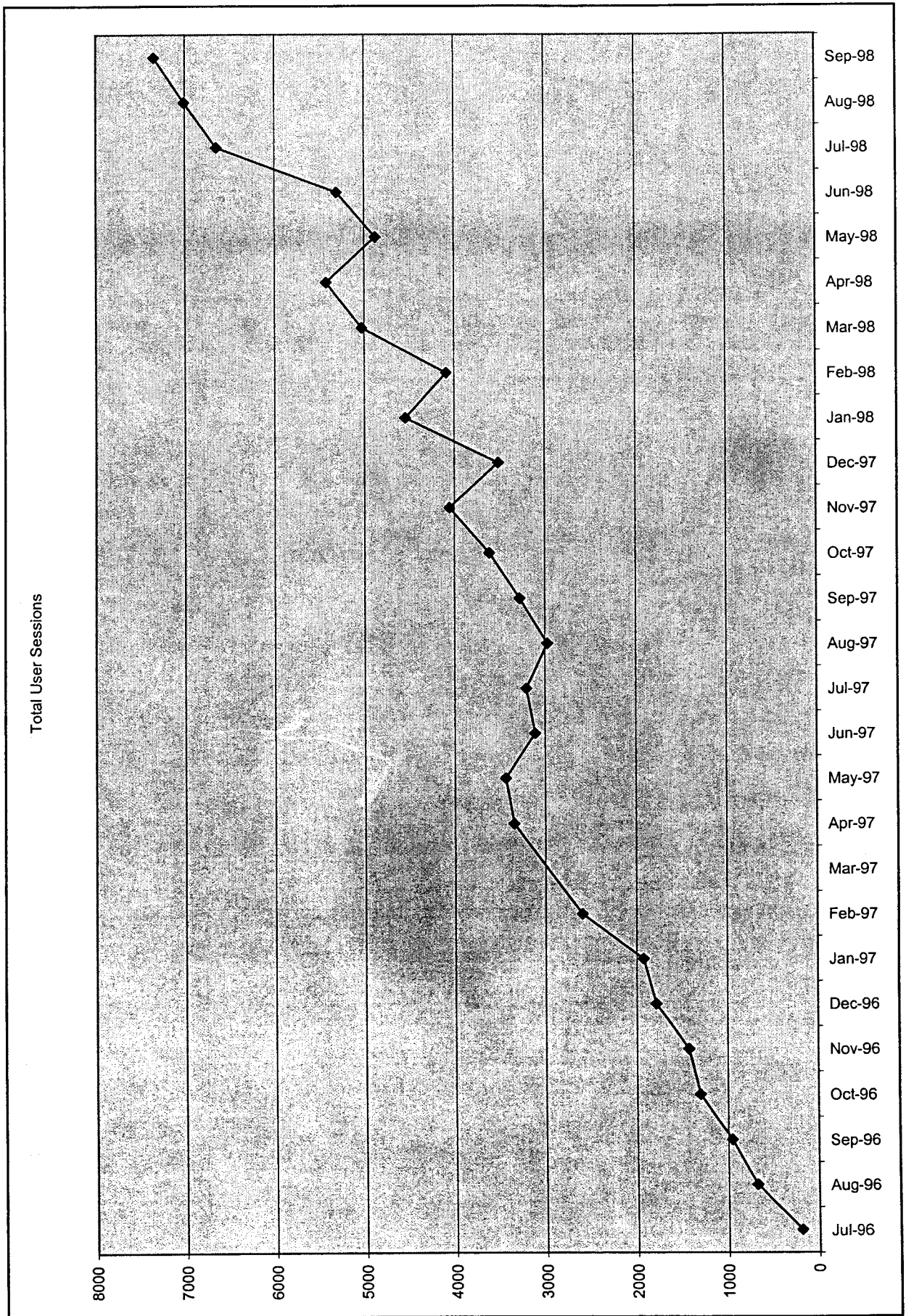
TABLE VI
DISMISSALS AND WITHDRAWALS

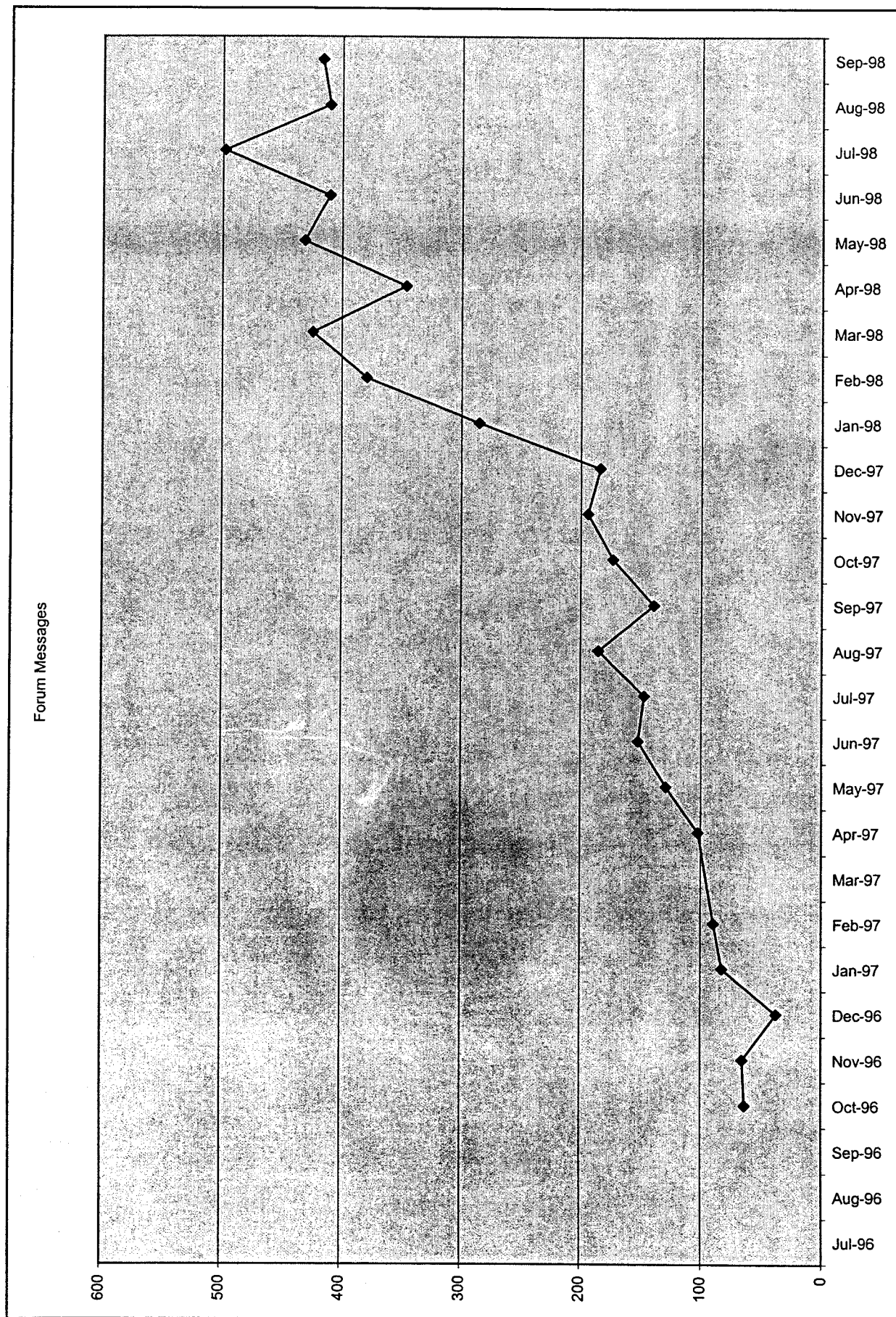
	TOTAL DISPOSITIONS	DISMISSALS *	WITHDRAWALS **
1993	1005	224 (24.27%)	69 (6.86%)
1994	1086	231 (21.27%)	36 (3.3%)
1995	1011	175 (17.31%)	34 (3.36%)
1996	1051	221 (21.02%)	30 (2.85%)
1997	1224	266 (23.66%)	24 (2.36%)
1998	1063	216 (20%)	32 (3%)

* Dismissals usually occur after complete review of the case and consultation with the client. This generally involves much substantive work for the defense attorney, but only minor or no work for the courts and prosecution. SADO only does voluntary dismissals. These save the system a tremendous amount of resources. SADO does not use the laborious and time-consuming dismissal of appeals without the approval of the client required by United State Supreme Court ruling in Anders v California, 386 US 738 (1967): See also MCR 7.211(C)(5) on Michigan's procedure for "Anders" withdrawal. Counseling clients on dismissals also prevents many from pursuing unnecessary, time-consuming and potentially harmful appeals.

** Withdrawal can occur before any substantial work is done, for example, in known conflict of interests cases, or at any point thereafter, even after full briefing and oral argument. None of these withdrawals is for overload.







APPELLATE DEFENDER COMMISSION

