



OFFICE OF THE PUBLIC DEFENDER

ANNUAL REPORT

2005

CREATION OF OFFICE

In a 1963 landmark decision, the Supreme Court of the United States ruled that all indigent defendants had the right to be represented by counsel in criminal proceedings. In order to comply with the Supreme Court ruling, Article 18-B of the County Law of the State of New York was adopted by the State Legislature in 1965. This law required the various counties throughout the State to adopt a plan for the representation of indigent defendants. In compliance with the state mandate, on May 23, 1968, by virtue of Resolution No. 250 of 1968, the Monroe County Legislature adopted Local Law No. 5 of 1968, thus creating the Office of the MONROE COUNTY PUBLIC DEFENDER.

By law, the Public Defender is required to "represent, without charge, at the request of the defendant, or by order of the court with the consent of the defendant, each indigent defendant who is charged with a crime...in the county...in which such public defender serves."

JURISDICTION

The Monroe County Public Defender's Office represents individuals in the courts within Monroe County, including the City of Rochester and the towns and villages within the geographical boundaries of the County. This area has a population of approximately 700,000 people.

The office handles cases in:

- A. Justice Courts

- B. City Court
- C. County Court
- D. Supreme Court
- E. Family Court
- F. Appellate Division and Court of Appeals
- G. United States Supreme Court (when required)

The Public Defender represents the indigent accused at every stage of the criminal proceeding from the arraignment through final disposition, including, when appropriate, appeals from adverse judgments and decisions.

Our goal is to provide to the poor who are accused of a crime truly competent legal representation which is at least equal to that which they would obtain from privately retained counsel. An individual's constitutional rights must be protected regardless of his or her financial circumstances.

STAFF

During 2005, our staff included 55 attorneys, 1 confidential assistant, 6 investigators, 5 investigative assistants, 9 full-time secretaries and 2 receptionists, both of whom are bilingual. The attorneys are precluded from engaging in private practice.

COURTS

A. CITY COURT/PAROLE BUREAU

The City of Rochester has a heavier caseload than any other Criminal Court in Monroe County. All felonies, misdemeanors and violations of the law committed within the geographical boundaries of the City of Rochester are handled by City Court. A City Court

judge has preliminary jurisdiction over all felonies and complete jurisdiction over misdemeanors and violations.

The responsibilities of the Assistant Public Defender assigned to City Court include gathering information to assist the court in determining a defendant's eligibility for representation, appearing at arraignment, making bail applications, participating in pre-trial conferences, preparation and argument of various types of motions, pre-trial hearings, preliminary hearings, trials, social service agency referrals, and sentencing. The City Court Section also has the added responsibility of representing individuals who were charged with violations of their parole. The Executive Law was amended, effective January 1, 1978, to require that counsel be assigned to alleged parole violators in order to provide legal representation at their final parole revocation hearings. Counsel may also be assigned to represent parolees at their preliminary parole revocation hearings.

In 2005, all of these responsibilities were carried out by a total of twelve Assistant Public Defenders and one Special Assistant Public Defender, who is in charge of the City Court Section. The attorneys share the enumerated responsibilities on a rotating basis.

B. JUSTICE COURT

The office is required to represent persons accused of crimes throughout the County. There are seven attorneys (one Special Assistant Public Defender and six Assistant Public Defenders)

assigned to cover the Town and Village Justice Courts within the 21 towns and villages of Monroe County.

The newly hired Assistant Public Defenders are traditionally assigned to the Town Courts. The Town Courts have heavy case loads, erratic court hours and varying local court procedures. The assignment of a Special Assistant Public Defender to the section enables us to provide our new attorneys with the appropriate training and orientation to the local justice court process and essential supervision so as to ensure quality representation for our clients.

C. SUPERIOR COURTS

In 2005, the Superior Court Bureau was staffed with eighteen attorneys, including the Second Assistant Public Defender, and four Special Assistant Public Defenders.

The attorneys in the Bureau handled felony cases, the most serious charges against the indigent accused. The attorneys appeared in all courts to include: Supreme Court, County Court, City Court and Town/Justice Courts. They handled violent and nonviolent felony offenses.

The attorneys in this Bureau handled most aspects of the criminal process, to include: some local court preliminary hearings, local court pleas and sentencing; superior court pleas and sentencing, hearings, motions, and trials. In addition, these attorneys handle: probation violation proceedings, parole cases (preliminary hearings, final hearings, administrative appeals);

habeas corpus proceedings; and mental health proceedings under the Criminal Procedure Law.

While our present staffing level does not permit us to provide vertical representation in all felony cases, we do provide this type of representation in violent felony offender and repeat offender cases. Vertical representation was also provided in all homicide cases and to selective clients charged with other serious felonies, such as class A and B drug offenses.

This office remains committed to providing vertical representation whenever possible since it provides the indigent accused the most effective representation possible. Our goal is to provide vertical representation to all those accused of a felony offense.

D. FAMILY COURT

Over the last ten years the role of the Public Defender's Office in Family Court has continually grown. The State Legislature has consistently expanded the right to counsel for indigent persons involved in the Family Court process to include more cases where counsel is required.

The Public Defender's jurisdiction in Family Court is specifically set forth in §262 of the Family Court Act which includes representing indigent respondents in child abuse, child neglect, permanent termination of parental rights, family offense, custody, paternity/support and support violation cases.

Our Family Court staff is comprised of one Special Assistant Public Defender and seven Assistant Public Defenders. Each

attorney is assigned to the "intake part" on a rotating basis and is responsible for handling the cases assigned to our office through completion.

The goal of our office is to try and maintain the family unit whenever possible and to assist clients to negotiate the network of court ordered services and providers thereby holding the state to its statutorily mandated obligation "to help the family with services [in order] to prevent its breakup."

E. THE APPEALS BUREAU

A person who is aggrieved by the final determination of a court has the constitutional right to at least one appeal. The Public Defender's Office is assigned by the Appellate Division or the appropriate appellate court to handle such proceedings. The Public Defender is assigned to appeal not only cases of our clients, but also for those defendants who want to appeal, but have exhausted their funds and who, after it is determined by the Court, cannot afford to retain private attorneys for purpose of an appeal.

The preparation and argument of appeals are a specialty within the specialized field of criminal law. Proper appellate practice requires not only a strong background in law, but also writing ability and the ability to orally argue the law before an appellate court. The appellate attorney must first familiarize himself with what went on in the court below and then must research the law pertaining to the issues which have been discovered. The appeals attorneys argue cases before the Monroe County Court, Appellate

Division (Fourth Department), Court of Appeals and the United States Supreme Court (when required).

In 2005, our authorized appeal staff consisted of the Special Assistant Public Defender in-charge of the section and the full-time equivalent of six Assistant Public Defenders.

ANALYSIS

A. CITY COURT/PAROLE

In 2005, this Office was called upon to represent clients in approximately 10,450 cases in the City Court of Rochester. In addition, the attorneys in this section were assigned to represent more than 900 parolees who were charged with violating the conditions of their parole release. That means, on average, each Assistant Public Defender would have been assigned to approximately 950 cases during the course of the year. That number of case assignments is **more than double** the recommended maximum caseload as established by the National Legal Aid and Defender's Association.

Our City Court staff was involved in defending 112 trials last year. Despite the enormous strain created by a heavy caseload, the results of our trial activity are excellent. Seventy-Eight (78) of our trials were "successful" in that our client was either acquitted of the pending charge or found guilty of a lesser charge.

The number of parolees represented by the Monroe County Public Defender on charges of violating conditions of their release increased from last year. In 2005, the Monroe County Public Defender was assigned to represent 933 parolees. This work

included representation of clients at 804 parole hearings. We are particularly proud of the fact that in 254 cases our attorneys were successful in advocating for the placement of our client in two different alternative drug treatment programs. In 2005, 224 clients were placed in the Willard Drug Treatment Program and 30 clients were placed in the High Intensity Incarceration Program (HIIP) at the Monroe County Jail. Additionally, in 11 cases our attorneys, with the assistance of the Alternative to Incarceration Program, were able to find a community based treatment program for chemical dependency which the Parole Board accepted as an alternative to the reincarceration of our clients. Such placement in treatment programs save considerable money at both the County Jail and State Department of Corrections in terms of prison days saved. It is our hope that the placement of parolees in appropriate treatment programs increases the likelihood that the parolees will successfully control their chemical addiction and eventually become productive members of our community.

Throughout the year our student internship program continued to be successful. Various local colleges send students to our office where, for course credit, they are involved in the interviewing of potential clients, as well as performing other functions of great assistance to our attorneys. Given the tremendous caseload of our attorneys, without the additional assistance provided by this volunteer program, it would be virtually impossible for our staff to effectively carry out their assignments.

B. JUSTICE COURT

In 2005, approximately 4,200 clients were assigned to our Justice Court Staff of six full-time attorneys. Therefore, each of the newly hired attorneys in the section was assigned to an average of approximately 700 cases. In the busier courts, our caseload is compressed due to the fact that the court is only in session once or twice a week. This means that an attorney may be required to represent as many as fifty clients during a single court night. Last year our Town Court staff tried 41 cases. In 32 of those 42 cases (approximately 76%), our client was either acquitted or found guilty of a lesser charge or the charges were dismissed by the court.

We continued to utilize and rely upon volunteer student interns who assist our staff in interviewing defendants who are incarcerated after their Town Court arraignment. This volunteer program enables us to promptly interview our clients and gather the information necessary to make a bail application on their behalf. This volunteer program, coupled with a great deal of effort by our attorney staff, results in the judges releasing the majority of our clients from jail before their next court date, preventing needless pre-trial incarceration.

C. FAMILY COURT

In 2005, this office was assigned to represent 3,015 new clients. To put this caseload into a historical perspective, in 1987, the five attorneys in our Family Court section were assigned

to represent 865 clients. That caseload was within 10% of management guidelines which suggest that a maximum caseload of approximately 150 cases be assigned to each attorney per year. By contrast, currently our Family Court attorneys are each required to provide representation to approximately 375 clients each year. This caseload is more than double the recommended caseload guidelines.

Our office was assigned to 1035 cases involving child custody matters. Abuse and neglect cases including violations of dispositional orders and extensions of placement, comprised of almost 500 of the total cases to which our Family Court attorneys were assigned. This figure includes representation of 32 clients whose parental rights were sought to be terminated by the Department of Social Services. In the next most significant area of representation, alleged family offenses, we were assigned to approximately 651 cases.

D. SUPERIOR COURT

In 2005, we were assigned to approximately 2,700 felony cases. The felony caseload per attorney ratio is approximately 150 new cases per attorney. That represents a current felony assignment rate which is approximately 25% above National Standards for caseload maximums.

In 2005, our felony trial staff was involved in 89 trials. In 35 of those cases our client was acquitted or had the charges against them dismissed by the judge. Additionally, in 16 cases our client was acquitted of the charge for which they were on trial and

convicted of only a lesser charge. Therefore, we were "successful" in almost two-thirds of our felony trials.

E. APPEALS BUREAU

The attorneys in the Appeals Bureau of the Monroe County Public Defender are primarily responsible for representing persons appealing felony convictions and providing assistance to trial court attorneys in researching or preparing pretrial motions, trial evidentiary issues, and requests for jury instruction.

In 2005, the seven attorneys in our Appeals Bureau filed 159 Appellate briefs. We also filed legal papers in 152 other matters on behalf of our appellate clients.

Finally, the Bureau has continued to assist in the research, analysis and presentation of trial court cases. This work is instrumental in insuring that our attorneys are able to provide the best possible representation for our clients. This work occurs on a variety of levels. Pretrial motions and written requests for jury charge in felony cases are regularly reviewed and edited by attorneys from this Bureau. Additionally, Bureau attorneys research numerous evidentiary issues, -- sometimes preparing memoranda or motions. Bureau attorneys have also assisted trial attorneys on collateral issues which sometimes arise.

F. INVESTIGATIVE SECTION

During 2005, the Monroe County Public Defender's Office employed five full-time investigators, one of whom is the Chief Investigator in charge of the section.

The statistics for 2005 are as follows:

	Criminal Trial Parts	Family Court Appeals Court	Total
Investigations/ Interviews	2,355	387	2,742
Subpoenas	786	401	1,187
Other Misc. Matters	242	22	264

From these statistics it is clear that in 2005 more than 2,700 criminal investigation requests were handled by our investigative staff. The work performed by our investigative staff is reflected in our ability to successfully resolve cases for our clients either by disposition or trial.

COMMUNITY INVOLVEMENT

I feel it is important to indicate that the staff of this office does a truly outstanding job. Not only are we committed to the service of the indigent accused, but we also want to make a contribution to our community and to agencies or groups who are concerned about those in need. This commitment is reflected in the fact that many members of this office are active members, volunteers, and/or board members in more than 20 agencies and organizations within the community.

Before concluding, I would like to indicate that members of the community are interested in and take an active role in this office. Since becoming Public Defender in April 1977, I have established a Public Defender Advisory Committee. The individuals on this committee have been of valuable assistance to me in planning to meet the needs of our community. The members of this

committee represent the following agencies or organizations: Action for a Better Community; Ibero-American Action League; Jail Ministry; Judicial Process Commission; League of Women Voters; Monroe County Bar Association; and the Urban League of Rochester.

CONCLUSION

Each and every member of the Public Defender's Office is proud of the amount of work done in the past year, but each individual takes a great deal more pride in the quality of the services we provide. We continue to stress respect for the judicial process and absolute integrity in the handling of all cases assigned to this office.

In concluding, it is important to note that the success that we as an office have achieved is due in part to the support given to us by the Monroe County Legislature. We would like to take this opportunity to express our thanks for that support, and we look forward to your support in the future.

PUBLIC DEFENDERS

Charles L. Willis	Jul., 1968 - Dec., 1969
Nicholas P. Varlan	Jan., 1970 - Dec., 1973
Peter L. Yellin	Apr., 1974 - Jan., 1977
Edward J. Nowak	Apr., 1977 - present

Respectfully submitted for
The Public Defender's Office

EDWARD J. NOWAK
Monroe County Public Defender

COURT ACTIVITY SUMMARY 2005

<u>NEW DEFENDANTS</u>23,552	<u>PLEAS TO LESSER (Con't)</u>
FELONY..... 1,649	MISDEMEANORS..... 2,602
FELONY (Drug A and B).. 577	To Lesser Misd..... 505
FELONY (VFO)..... 998	To Violation..... 2,097
MISDEMEANOR.....11,171	
VIOLATION..... 3,447	<u>CLOSED CASES: [OTHER]:</u>
(City and Justice)	A.C.D..... 2,714
PROBATION VIOLATION.... 577	PRIVATE ATTY..... 544
(Superior)	ASSIGNED COUNSEL..... 3,315
PROBATION VIOLATION.... 840	W/D D.A..... 897
(City and Towns)	DIS'D ON MOTION..... 1,349
APPEALS..... 254	NO BILL BY GRAND JURY..... 251
FAMILY COURT..... 3,015	<u>TRIALS</u> 243
PAROLE..... 933	FELONY..... 89
FUGITIVES..... 45	MISDEMEANOR..... 101
SORA..... 54	VIOLATION..... 53
<u>PLEAS AS CHARGED</u> 3,648	<u>FINDING AFTER TRIAL</u>
FELONY..... 613	GUILTY AS CHARGED
MISDEMEANOR..... 2,431	(or to part of indict.
VIOLATION..... 604	when highest court)..... 77
<u>PLEAS TO LESSER</u>	GUILTY TO LESSER
FELONIES..... 1,133	(or to part of indict.
To Lesser Felony..... 660	when lesser court)..... 55
To Misdemeanor..... 111	NOT GUILTY..... 90
To Misdemeanor..... 362	TRIAL ORDER OF DISMISSAL..... 15
(Local Ct.)	MISTRIAL..... 5
	ABATED BY DEATH..... 1

SENTENCES:

JAIL.....	3,860
FELONY.....	902
MISDEMEANOR.....	2,958
PROBATION.....	1,189
FELONY.....	494
MISDEMEANOR.....	695
PROBATION & JAIL.....	396
FELONY.....	293
MISDEMEANOR.....	103
COND. DISCHARGE.....	2,773
MISDEMEANOR.....	2,773
UNCOND. DISCHARGE.....	27
YOUTHFUL OFFENDER.....	226
FELONY.....	115
MISDEMEANOR.....	111
<u>APPEALS CASES CLOSED</u>	165
<u>APPEALS PENDING</u>	538
<u>BRIEFS FILED</u>	159
<u>FAMILY COURT CLOSED</u>	2,329
<u>PAROLE HEARINGS</u>	804
<u>PAROLE CASES CLOSED</u>	812

PUBLIC DEFENDER STAFF
(as of 4/1/06)

Administration

Nowak, E. Public Defender
Shiffrin, B. 1st Asst. Pub. Def.
Lonardo, C. Conf. Asst. to the Public Defender
Prescott, M. Exec. Secretary to the Public Defender
Colon, M. Receptionist-Bilingual
Rivera, N. Receptionist-Bilingual

Superior Court

Brazill, R. 2nd Asst. Pub. Def.
Davis, T. Spec. Asst.
(Non-VFO Assignments)
Russell, D. Spec. Asst.
(A&B Drug Felony Assignments)
Jacobs, J. Spec. Asst.
(VFO Assignments)
Teifke, E. Spec. Asst.
(Superior Court Supervisor)

Appeals

Lamb, P.	Secretary	DuBrin, D.	Spec. Asst. (Appeals)
Li Muti, F.	Secretary	Graham, S.	Secretary
Bailey, K.	Asst. Pub. Def.	Abbatoy, D.	Asst. Pub. Def.
Bartus, K.	Asst. Pub. Def.	Clauss, W.	Asst. Pub. Def.
Bradley, J.	Asst. Pub. Def.	Dolan, E.	Asst. Pub. Def.
Buitrago, M.	Asst. Pub. Def.	Donaher, T.	Asst. Pub. Def.
Burger, A.	Asst. Pub. Def.	Eckert, J.	Asst. Pub. Def.
Cianca, J.	Asst. Pub. Def.	Somes, J.	Asst. Pub. Def.
Doran, M.	Asst. Pub. Def.		
Lopez, M.	Asst. Pub. Def.		
Ratchford, B.	Asst. Pub. Def.		
Sartori, S.	Asst. Pub. Def.		
Staropoli, L.	Asst. Pub. Def.		
Vitale, A.	Asst. Pub. Def.		
Winward, T.	Asst. Pub. Def.		

City Court

Paperno, J. Special Assistant
Cook, K. Secretary
DeMonte, J. Secretary
Allen, F. Invest. Asst.
Warner, S. Invest. Asst.

Chamblee, M. Asst. Pub. Def.
Griffin, J. Asst. Pub. Def.
Hawes, K. Asst. Pub. Def.
Hill, J. Asst. Pub. Def.
Houghton, K. Asst. Pub. Def.
Karnyski, K. Asst. Pub. Def.
Maure, H. Asst. Pub. Def.
Meyer, M. Asst. Pub. Def.
Riley, E. Asst. Pub. Def.
Scalia, D. Asst. Pub. Def.
Stubbe, J. Asst. Pub. Def.
Willkens, M. Asst. Pub. Def.

Family Court

Guglin, T. Special Assistant
Stephens, E. Secretary
Ciaccia, C. Paralegal
(Job Share)
Lucania, S. Paralegal
(Job Share)

Altman, J. Asst. Pub. Def.
Bayer, P. Asst. Pub. Def.
Fine, A. Asst. Pub. Def.
Lacagnina, M. Asst. Pub. Def.
Redfield, C. Asst. Pub. Def.
Turner, R. Asst. Pub. Def.
Wirley, B. Asst. Pub. Def.

Justice Court

Duguay, D. Special Assistant
Morley, L. Secretary
Rivers, J. Secretary
Camacho, M. Invest. Asst.
Sands, K. Invest. Asst.

Abdallah, W. Asst. Pub. Def.
Haselbauer, K. Asst. Pub. Def.
Johnson, N. Asst. Pub. Def.
Judge, C. Asst. Pub. Def.
Newman, E. Asst. Pub. Def.
Van Hooft, B. Asst. Pub. Def.

Investigations

DuMont T. Chief Investigator

Brugnoni, J. Spec. Urban Inv.
Johnson, J. Spec. Urban Inv.
Pagan, G. Spec. Urban Inv.
Ramos, A. Spec. Urban Inv.
Swift, L. Spec. Urban Inv.

Alternatives to Incarceration

Crabb, S. ATI Worker
Begley, J. ATI Worker