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# OFFICE OF THE PUBLIC DEFENDER

## ANNUAL REPORT

2012

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## INTRODUCTION

2012 saw continued challenges in the Monroe County Public Defender's Office. Caseloads in all bureaus of the Office remained higher than historical norms, and the pressures on Office staff to provide high-quality legal representation continued. Furthermore, given the severe financial pressures on local resources, the Office was required to provide greater services while not increasing the costs borne by local taxpayers.

Despite these challenges, due to the extraordinary dedication of the attorneys and support staff, we were able to continue to provide excellent representation for our clients. The attorneys in the Office continued to work significant, unpaid overtime to ensure that we continue to provide excellent representation to our clients. The support staff also expended considerable effort in assisting the attorneys in dealing with the enormous increase in cases.

But the hard work expended by staff led to excellent results for our clients. For instance, in 2012 the attorneys in the Office prevailed in 86% of the trials conducted by the office (a complete acquittal, top count acquittal, or trial order of dismissal granted). Furthermore, the Appeals Bureau had 9 cases heard by the Court of Appeals (the highest court in New York), which is approximately 10% of all criminal cases decided by that court each year.

Additionally, with the continued hard work exhibited by our staff came continued national recognition. As is set forth fully below, in 2012 the Office was again recognized as one of the best public defender offices in the eastern United States when it was selected to host an additional Public Defender Corps Fellow.

Additionally in 2012, the Office continued its efforts in examining how to improve the representation we provide our clients. We also completed several initiatives began in 2011, and began several new initiatives, all designed to improve the quality of services we provide, and assist

the criminal defense bar in providing quality representation to criminal defendants in the Greater Rochester Area.

In Part I of this Report, the Office's efforts to improve client representation, increase contact with the community that we serve, and continue our efforts to recruit highly qualified attorneys to be assistant public defenders are discussed. In Part II of this Report, the Office, its staffing, and caseloads will be outlined. Part III of this Report will discuss office recognition, community involvement and support; and Part IV will discuss future plans for the Office.

## PART I: OFFICE INITIATIVES

### A. Introduction

The strength of this Office is in the enormously talented and committed people who work here. They are truly an asset to our community. It is through their efforts that the following improvements and initiatives were undertaken and accomplished in 2012.

### B. Hiring Committee

The Hiring Committee is responsible for ensuring that each new hire exemplifies the qualities that make an excellent public defender. Chaired by Special Assistant Public Defender John Bradley, the committee members (Special Assistant Public Defender Drew DuBrin, Special Assistant Public Defender Julie Cianca, Second Assistant Public Defender Jill Paperno, Assistant Public Defender Silvia Lopez, and Assistant Public Defender Amanda Conner) screen all applicants for open attorney positions, conduct all initial interviews with prospective applicants and recommend to the Public Defender the top three applicants for each open position.

Based on their excellent work this past year, the Office has hired four attorneys who were well-qualified for the position of assistant public defender and who exhibited a commitment to public defense. All of the new hires possessed excellent academic credentials and a dedication to public interest law. Three of the new hires were interns with the Office prior to being admitted to practice law. The remaining hire was a Public Defender Corps Fellow (see below for further information on this program).

### C. Continuing Legal Education (CLE) Committee

In order to effectively represent our clients, our attorneys must be provided with frequent and regular trainings on changes in the law, and how to improve their trial skills. Additionally, given the enormous amount of legal talent in this Office, staff attorneys routinely conduct CLE programs for



the outside defense and family law communities.

The Monroe County Public Defender's Office is an accredited CLE provider and strives to provide staff attorneys and attorneys in the legal community with high-quality CLE programs. It is the responsibility of the CLE Committee to organize continuing legal education programs for staff attorneys and the legal community. In 2012, it was chaired by First Assistant Public Defender Roger Brazill.

In 2012 alone, the Office sponsored the following CLE programs for the attorneys in the Office, and the private defense bar:

February 6, 2012	Summary Criminal Contempt
February 8, 2012	Prisoners' Rights Cases: What to Expect When Handling a Prisoners Rights Case
March 9, 2012	Use of Social Media in Trial Prep
March 16, 2012	DWI Field Sobriety Tests
March 19, 2012	Understanding New York's "Mode of Proceeding" Muddle
March 21, 2012	Law & Lunch Program: Recent Developments in Criminal Law
March 30, 2012	Representing Clients in Monroe County Treatment Courts
April 11, 2012	Law & Lunch Program: Theory & Law of Lesser Included Offenses
April 13, 2012	What is Happening in Federal Criminal Court? A Primer for State Court Practitioners
April 27, 2012	Collateral Consequences of Convictions and Re-Entry Issues
May 11, 2012	Things They Didn't Teach You in Law School
May 16, 2012	Law & Lunch Program: What Not to Do When Client Alleges Ineffective Assistance
June 8, 2012	Parole Overview
June 15, 2012	Calculation of State Prison Sentences and Recent Developments in Sentencing Law
June 20, 2012	Law & Lunch: Everything You Wanted to Know About Grand Jury But Were Afraid To Ask
June 29, 2012	Automobile/Bicycle Stops
July 18, 2012	Law & Lunch Program: K9 Science and Recent Developments in Criminal Law
August 15, 2012	Law & Lunch Program: "Can You Come Back To Court? The Jury Has A Note"
September 7, 2012	Defense of Weapons Class
September 19, 2012	Law & Lunch Program: SORA: Pre-Trial and Trial Issues For Consideration
September 28, 2012	Grand Jury Practice
September 29, 2012	Mental Health Issues in the Criminal Justice and Family Court Systems

October 17, 2012	Law & Lunch Program: Amending the Indictment: What to Do When the Prosecutor Does this Before or During Trial
October 26, 2012	Multiple DWI Offenses: Relicensing and Collateral Consequences at the NYS Department of Motor Vehicles
November 21, 2012	Law & Lunch Program: Prosecutorial Misconduct on Summation
December 14, 2012	Criminal Law: Lunch & Learn

Hundreds of attorneys from upstate New York attended the above CLE programs. All of the above programs were **provided at no cost to the attendees.**

Attorneys in the Office are often asked to present at various CLE programs throughout New York State. In 2012, Office attorneys presented at CLEs sponsored by the Monroe County Bar Association, the New York State Defenders Association, and the New York State Association of Criminal Defense Lawyers.

Because of the work of this committee, and the attorneys in this Office who donated their time and effort speaking at CLEs, the legal community received valuable instruction in both criminal and family law.

D. Internship Committee and Program

In 2012, the Office continued our internship program. In addition to placing college students as interns, the Office continued to place law students, and in select cases, high school students. The Office hosted over 30 student interns (from law schools, local colleges, and high schools) throughout the year. All of the student interns obtained valuable experience working in a large law office, and gained additional insight into the criminal justice system.

The Office also continued its "externship program" with participating law schools last year. Student externs receive course credit towards their degree requirements, while also obtaining valuable knowledge about our criminal justice system. Additionally, the student externs assist attorneys in the Office by conducting legal research, drafting motions, and other forms of legal assistance.

Special Assistant Public Defender Andre Vitale continued his efforts last year to place law students as interns/externs in the Public Defender's Office. Law students who are interested in criminal defense volunteer their time learning about the criminal justice system, and gain valuable experience in criminal law and trial practice. Additionally, they assist staff attorneys in the preparation of motions, briefs, memorandums of law, and research.

In addition to the internship programs offered to local college students throughout the year, the program was also offered to select high school students. Kelly Sands, our internship coordinator, works very hard to provide our interns a challenging, positive experience as they work in the criminal justice community. Ms. Sands works with Special Assistant Public Defender Andre Vitale and Assistant Public Defender Don Scalia to place interns with our paralegal bureau, our investigators sections, or individual staff attorneys.

Both college and high school interns observe the criminal justice system from a unique perspective; all while gaining necessary/valuable experience that will help them to decide a career path. Working with their attorney-supervisors, interns review client files, assist staff during court proceedings and observe a variety of court proceedings. Our interns also assist the Office, as we ask each intern to volunteer a few hours per week performing office work, such as filing and copying. We receive very positive reviews from the student interns, and have successfully placed students from SUNY Brockport, SUNY Geneseo, the University of Rochester, Nazareth College, the Rochester City School District and the BOCES 2 "New Visions Justice Professions" Program.

Finally, the Office continued its collaboration with the Strong Hospital Legal Nurse Consultant Program. Students in the program are registered nurses who are seeking to become legal nurse consultants. As part of their instruction, students from the program interned in the Office and assisted staff with reviewing and interpreting medical records, and researching medical issues.



## PART II: OFFICE ORGANIZATION

### A. Creation of Office and its Jurisdiction

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."

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 745,000 people.

The office handles cases in:

- A. Town and Village Justice Courts
- B. Rochester City Court (including Rochester Drug Treatment Court)
- C. County Court (including Mental Health Court, Veterans Court, and Judicial Diversion Program Court)
- D. Supreme Court
- E. Family Court



- F. Appellate Division, Fourth Department
- G. Court of Appeals
- H. 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, or who are entitled to representation in family court, truly competent legal representation which exceeds that which they would expect to obtain from privately retained counsel. An individual's constitutional rights must be protected regardless of his or her financial circumstances.

B. Staff

During 2012, our staff included 60 attorneys, 1 confidential assistant, 5 investigators, 6 investigative assistants, 9 full-time secretaries and 2 receptionists, both of whom are bilingual. The attorneys are precluded from engaging in private practice.

Assistant public defenders are assigned to work in the Town Court Bureau, the City Court Bureau, the Superior Court Bureau (Non-Violent Felony Section and the Violent Felony Section), the Family Court Bureau, or the Appeals Bureau.

The Office staff takes great pride in the quality of the work they provide to our clients. Their work results in high-quality representation that advances justice in our community. **As an example, in 2012 the Office conducted 62 felony trials (40 VFOs, 16 NVFOs and 6 Drug cases). Of those, we obtained favorable dispositions (Complete Acquittals, Top Count Acquittals and Trial Orders of Dismissal) in 44 cases (or 71% of the time).**

The quality of trial representation was not limited to felony trials. The Office conducted a

total of 175 trials (felony, misdemeanor, or violation) and obtained a complete acquittal in 85 trials, conviction on a lesser offense in 48 trials, or had the charged dismissed by a trial order of dismissal in 10 trials. **That means that the prosecution obtained a verdict of guilty as charged in only 14% of trials in which the Office represented the defendant.**

C. City Court Bureau

The Rochester City Court 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, investigating and preparing a defense to the charges, 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, and individuals whose cases have been transferred to Rochester Drug Treatment Court, Monroe County Mental Health Court, the Integrated Domestic Violence Court, or Monroe County Veterans Court.

In 2012, all of these responsibilities were carried out by a total of fourteen 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.

In 2012, this Office was called upon to represent clients in approximately 13,500 cases in the City Court of Rochester. In addition, the attorneys in this section were assigned to represent more

than 810 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 1,000 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.

D. Town Court Bureau

The Office is required to represent persons accused of crimes in the various town and villages throughout the County. In 2012, the Office increased the staffing in this Bureau to account for the increased number of cases in the towns and villages of Monroe County. There are eight assistant public defenders (overseen by a Special Assistant Public Defender) assigned to cover the Town and Village Justice Courts within the 21 towns and villages of Monroe County.<sup>1</sup>

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.

In 2012, approximately 4,500 clients were assigned to our Justice Court Staff of eight full-time attorneys. Therefore, each of the newly hired attorneys in the section was assigned to an average of approximately 562 cases. This number of 140% is of the recommended caseload guideline of 400 misdemeanor level cases per year.

E. Superior Court Bureau

In 2012, the Superior Court Bureau (divided into the non-violent felony section and the

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<sup>1</sup> Although there are 21 Town and Villages in Monroe County with a justice court, almost all of those courts have at least



violent felony section) was staffed with 20 attorneys, including the First Assistant Public Defender, 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, including: Supreme Court, County Court, City Court and Town/Justice Courts. The Bureau handled violent and nonviolent felony offenses.

The attorneys in this Bureau handled most aspects of the criminal process, including 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, and 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 select 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.

In 2012, we were assigned to approximately 4,190 felony cases. The felony caseload per attorney ratio is approximately 209 new cases per attorney. That represents a current felony assignment rate which is far above national standards for caseload maximums.

#### F. Family Court Bureau

The role of the Public Defender's Office in Family Court has continually grown. The State

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two judges. The attorneys in the Town Court section must handle 46 separate courts in the 21 Towns and Villages in



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.<sup>2</sup> The State has also passed legislation requiring more court appearances in certain types of family court actions which requires our family court attorneys to devote a significant amount of time to appearing in court.

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.

In 2012, this office was assigned to represent 3,500 new clients. To put this caseload into a historical perspective, in 1987, there were five attorneys in our Family Court section who were assigned to represent 865 clients. That 1987 caseload was within 10% of management guidelines which suggest that a maximum caseload of approximately 150 cases be assigned to each attorney per year. Currently our eight Family Court attorneys are each required to provide representation to significantly greater number of clients each year. Last year, each family court attorney was asked to represent over 425 clients per year.

This number is far above the recommended caseload for family court attorneys.

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."

#### G. 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

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Monroe County.

<sup>2</sup> 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.

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 specialties within the field of criminal law. Proper appellate practice requires not only a strong background in law, but also strong writing skills 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 2012, our authorized appeal staff consisted of the Special Assistant Public Defender in-charge of the section and five Assistant Public Defenders.

The attorneys in the Appeals Bureau of the Monroe County Public Defender are primarily responsible for representing persons appealing felony convictions, and perfecting family court appeals.

Finally, the Bureau has continued to assist in the research, analysis and presentation of trial court cases. This work is instrumental in ensuring 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.

In 2012, the six attorneys in our Appeals Bureau closed approximately 128 cases. Included in this number were nine cases perfected at the Court of Appeals (New York's highest appellate court). As the Court of Appeals typically considers approximately 100 criminal cases per year for the entire State of New York, this is a very impressive number and a testament to the quality of the work performed by the attorneys in the Bureau. The Appeals Bureau is truly one of the best appellate offices in New York State.

H. Investigation Bureau

During 2012, 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 2012 are as follows:

	<u>Criminal Trial Parts</u>	<u>Family Court Appeals Court</u>	<u>Total</u>
Investigations/ Interviews	4,420	319	4,739
Subpoenas	601	220	861
Other Misc. Matters	469	58	527

In 2012, more than 6,000 criminal and family court 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.

PART III: OFFICE RECOGNITION, COMMUNITY  
INVOLVEMENT AND SUPPORT

A. The Jeffrey A. Jacobs Award

In 2010, the Office established an annual award in memory of former Special Assistant Public Defender Jeffrey A. Jacobs. Jeff Jacobs was a truly outstanding attorney and person. His



commitment to justice for the indigent was unparalleled in our community. Jeff was a fierce advocate, and was justifiably proud of his trying over 100 felony cases. Many of those cases were difficult, complex cases requiring Jeff to become familiar with novel scientific theories, and develop effective trial strategies.

Jeff was also a role model for younger assistant public defenders. He generously gave his time to assist younger attorneys on their cases and provide encouragement as they handled difficult cases. His dedication to his clients, perseverance despite the circumstances, and commitment to a fair justice system were a source of inspiration for defense attorneys throughout our community.

Jeff tragically passed away in November of 2006 after a courageous, eight month battle with brain cancer.

The Jacobs Award recognizes a criminal defense attorney from the Greater Monroe County Area who exemplifies the above qualities, and who has performed truly outstanding trial work in the preceding year. The award winner is chosen according to the following criteria:

(a) the complexity of the cases tried, which may include the effective use of experts, and/or litigating complex forensic or scientific issues; and/or (b) fearless advocacy exhibited on behalf of the client; and/or (c) creativity demonstrated in the presentation of the defense.

In 2012, the Office continued its recognition of a local attorney who exemplified Jeff's commitment to excellent defense of the indigent with the awarding of the 2012 Jeffrey A. Jacobs Award to Assistant Federal Public Defender Anne Burger.

B. Defense Community Dinner

In October of 2012, the Office hosted the 3<sup>rd</sup> Annual Defense Community Dinner at the Rochester Institute of Technology. Over 90 attorneys and judges attended and celebrated the excellent work done in our local community by our criminal defense and family law practitioners.



The highlight of the evening was the awarding of the Jeffrey A. Jacobs Award to Anne Burger. Attached is an article from The Daily Record describing the event.

C. Public Defender Corps

Due to its excellent reputation as a public defender office, and the fact it is staffed with dedicated public defenders, in the Fall of 2011 the Monroe County Public Defender's Office became a pilot site for a new nationwide initiative known as the Public Defender Corps (PDC).

PDC is three year fellowship program for recent law graduates interested in pursuing a career in indigent defense. The fellowship program provides a means for top graduates to engage in indigent defense within a strong training and support structure. Fellows undergo a rigorous application and selection program. Once selected, they receive outstanding advocacy training and mentoring, and are integrated into a community of defenders to help them develop the skills needed to provide the highest quality of representation to clients and imbue them with a commitment to indigent defense reform.

PDC is a joint initiative of Equal Justice Works and The Southern Public Defender Training Center (SPDTC). Equal Justice Works leads the largest Fellowship program in the nation for law students and law school graduates. It places its Fellows in public interest organizations and builds leadership capacity to maximize its Fellows' effectiveness. SPDTC is building a community of public defenders -- bound by a common set of values fundamental to public defender excellence -- using recruitment, training, and mentoring to develop its lawyers into great advocates and future leaders in the field. Together, these two organizations built Public Defender Corps, an initiative that promises to spread this growing community of dedicated public defenders nationally through its fellowship model with an eye towards raising the standard of practice immediately and populating

the field with future leaders. More information about PDC may be found at: [www.equaljusticeworks.org/post-grad/public-defender-corps](http://www.equaljusticeworks.org/post-grad/public-defender-corps).

In commenting upon the Office being selected as a host site for the Fellows, Becky Brand, senior communications specialist with Equal Justice Works stated: “[t]he Monroe County Public Defender’s Office is going through a period of improvement for indigent defense and was chosen because they strive to provide outstanding counsel to defendants \* \* \* Monroe County believes in our work and mission to address the justice gap in America by providing public interest opportunities to those passionate about holistic and systemic change \* \* \*.”

The Monroe County Public Defender’s Office placed two PDC Fellows, Katherine Higgins and Felipe Alexandre, who began working in the Office in August, 2011. As continued recognition as an office that provides high-quality representation to clients, the Monroe County Public Defender’s Office was asked to host a third PDC Fellow, Campbell Roth, who began working in the Office in the Fall of 2012.

#### PART IV: THE FUTURE OF THE OFFICE

2013 will be a challenging year for the Office. It is anticipated that caseloads will remain at their very high levels, and that there will be increasing pressure on the Office to provide excellent representation to our clients, while maintaining costs. As such, the Office will continue its efforts at improving efficiencies in each Bureau, ever mindful that our number one priority is our clients. We are confident that given the enormously talented and committed staff at this Office we will meet those challenges.

As we look ahead to 2013 the Office plans to continue its efforts to improve our representation to our clients, continue our discourse with the community we serve, and improve the diversity of our staff. The initiatives outlined above will continue as well. We will continue looking

at how technology may improve Office operations.

In addition, with the help of grant funding from the New York State Office of Indigent Legal Services, the Office hopes to begin two new initiatives in 2013: the creation and staffing of the Western New York Criminal Immigration Advisory Clinic, and providing counsel to indigent defendants who are arraigned in the town and village courts.

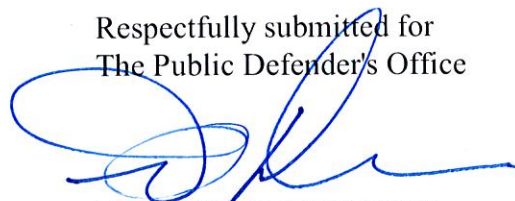
#### PART V: CONCLUSION

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.

It is important to note that the success this Office has achieved is due in part to the support given to us by the Monroe County Legislature and the County Administration. Both the Legislature and the Administration take seriously the obligation of government to ensure justice for all. We would like to take this opportunity to express our thanks for that support, and we look forward to their support in the future.

In conclusion, I would like to note that this Office's excellent reputation is the result of the dedication, commitment, and talent of the attorneys and the support staff of this Office. I am enormously proud of their efforts and the results they achieve for our clients.

Respectfully submitted for  
The Public Defender's Office



TIMOTHY P. DONAHER  
Monroe County Public Defender



COURT ACTIVITY SUMMARY 2012

NEW CLIENTS.....29,565

FELONY..... 2,543

FELONY (Drug A and B).. 423

FELONY (VFO)..... 1,206

HOMICIDE .....18

MISDEMEANOR.....12,565

VIOLATION..... 4,693  
(City and Justice)

PROBATION VIOLATION.... 489  
(Superior)

PROBATION VIOLATION.... 824  
(City and Towns)

APPEALS..... 173

FAMILY COURT..... 5,676

PAROLE..... 810

FUGITIVES..... 80

SORA..... 65

PLEAS AS CHARGED.....2,408

FELONY..... 466

MISDEMEANOR..... 1,483

VIOLATION..... 459

PLEAS TO LESSER

FELONIES.....1,195

To Lesser Felony..... 191

To Misdemeanor..... 1,004

PLEAS TO LESSER (Con't)

MISDEMEANORS.....2,915

To Lesser Misd..... 308

To Violation..... 2,607

CLOSED CASES: [OTHER]:

A.C.D..... 3,723

PRIVATE ATTY..... 952

ASSIGNED COUNSEL..... 5,879

W/D D.A, DIS'D ON MOTION..... 5,344

TRIALS.....175

FELONY..... 61

MISDEMEANOR.....79

VIOLATION..... 35

FINDING AFTER TRIAL

GUILTY AS CHARGED  
(or to part of indict.  
when highest court)..... 24

GUILTY TO LESSER  
(or to part of indict.  
when lesser court)..... 48

NOT GUILTY..... 85

TRIAL ORDER OF DISMISSAL..... 10

MISTRIAL..... 0



PUBLIC DEFENDER STAFF  
(as of 1/28/13)

Administration

Donaher, T. Public Defender  
Brazill, R. 1<sup>st</sup> Asst. Pub. Def.  
Tronolone, T. Conf. Asst. to the Public Defender  
Duerr, C. Exec. Secretary to the Public Defender  
Colon, M. Receptionist-Bilingual  
Rivera, N. Receptionist-Bilingual

Superior Court

Paperno, J. 2<sup>nd</sup> Asst. Pub. Def.  
Vitale, A. Special Assistant  
Doran, M. Special Assistant  
Teifke, E. Special Assistant  
Lopez, M. Special Assistant  
Cook, K. Secretary  
Abdallah, W. Asst. Pub. Def.  
Brach, K. Asst. Pub. Def.  
Clark, M. Asst. Pub. Def.  
Conner, A. Asst. Pub. Def.  
Griffin, J. Asst. Pub. Def.  
Lopez, S. Asst. Pub. Def.  
Oren, A. Asst. Pub. Def.  
Riley, E. Asst. Pub. Def.  
Rosmus, E. Asst. Pub. Def.  
Scalia, D. Asst. Pub. Def.  
Stubbe, J. Asst. Pub. Def.  
Van Hooft, B. Asst. Pub. Def.  
Winward, T. Asst. Pub. Def.  
Yoon, J. Asst. Pub. Def.  
Zoghlin, S. Asst. Pub. Def.

Appeals

DuBrin, D. Special Assistant  
Amiger, S. Secretary  
DeMonte, J.C. Secretary  
Davis, T. Asst. Pub. Def.  
Duguay, K. Asst. Pub. Def.  
Eckert, J. Sen. Asst. Pub. Def.  
Juergens, D., Asst. Pub. Def.  
Somes, J. Asst. Pub. Def.  
(Vacant) Asst. Pub. Def.

City Court

Bradley, J. Special Assistant  
Lamb, P. Secretary  
Morley, L. Secretary  
Graum, M. Secretary  
Sands, K. Invest. Asst.  
Behrndt, D. Invest. Asst.  
Bahr, R. Asst. Pub. Def.  
Caputo, J. Asst. Pub. Def.  
Conner, M. Asst. Pub. Def.  
Daniele, A. Asst. Pub. Def.  
Foti, M. Asst. Pub. Def.  
Hagen, M. Asst. Pub. Def.  
Harned, L. Asst. Pub. Def.  
Haselbauer, K. Asst. Pub. Def.  
Morgan, J. Asst. Pub. Def.  
Murajda, R. Asst. Pub. Def.  
Myers, G. Asst. Pub. Def.  
Newman, E. Asst. Pub. Def.  
Roth, C. Asst. Pub. Def.  
Stare, S. Asst. Pub. Def.

Justice Court

Cianca, J. Special Assistant  
McKie, M. Secretary  
Vargas, J. Invest. Asst.  
Claiborne, K. Invest. Asst.  
Burkhardt, K. Asst. Pub. Def.  
Fiedler, M. Asst. Pub. Def.  
Gunther, N. Asst. Pub. Def.  
Higgins, K. Asst. Pub. Def.  
Naclerio, J. Asst. Pub. Def.  
Santacroce, F. Asst. Pub. Def.  
Seppeler, C. Asst. Pub. Def.  
Syme, H. Asst. Pub. Def.

Family Court

Fine, A. Special Assistant  
Adams, S. Secretary  
Ciaccia, C. Paralegal  
Enright, C. Paralegal  
(Job Share)  
Altman, J. Asst. Pub. Def.  
Buitrago, M. Asst. Pub. Def.  
Fusco, E. Asst. Pub. Def.  
Lugbill, R. Asst. Pub. Def.  
Ponticello, C. Asst. Pub. Def.  
Sartori, S. Asst. Pub. Def.  
Wirley, B. Asst. Pub. Def.  
(Vacant) Asst. Pub. Def.

Investigations

DuMont T. Chief Investigator  
Camacho, M. Spec. Urban Inv.  
Johnson, J. Spec. Urban Inv.  
Pagan, G. Spec. Urban Inv.  
Morse, L. Spec. Urban Inv.

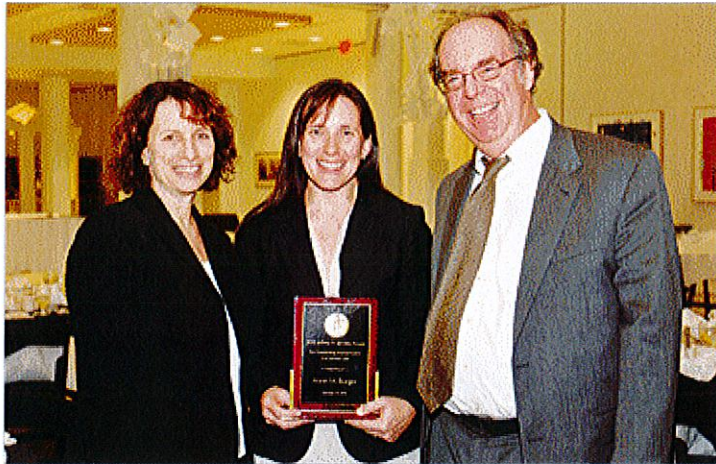
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## Defense community honors Anne Burger

by Denise M. Champagne

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Anne M. Burger, assistant federal public defender, center, is joined by previous recipients of the Jeffrey A. Jacobs Award: Jill Paperno, the first recipient in 2010, left, and Bill Easton, who won in 2011, at the 2012 Defense Community Dinner on Friday at Rochester Institute of Technology.

Assistant Federal Public Defender Anne M. Burger grew up in a household where her father championed the underdog and found it offensive when people were treated unfairly because they lacked money or social status.

It is something that still sticks with her and why, when she became an attorney, she went into criminal

defense work for the indigent.

Her efforts were recognized Friday by her colleagues when she was presented with the 2012 Jeffrey A. Jacobs Award at the 2012 Defense Community Dinner at the Rochester Institute of Technology.

"Anne is a dedicated prepared attorney who provides excellent representation to our clients every day," said Mark D. Hosken, supervisory assistant federal public defender who introduced her at the dinner. "She is an outstanding choice for this year's Jeff Jacobs Award."

Among her standout work, as noted by Roger Brazill, Monroe County first assistant public defender, was a child pornography case Burger successfully defended in January, garnering praise from U.S. District Court Judge David G. Larimer.

Brazill, who chairs the Jeffrey A. Jacobs Awards Committee, said the case involved computer images. He said the defendant was "the neighborhood Mr. Fix-it" who was kind of a hoarder and had piles and piles of computers and related equipment in his home.

"Anne dove into the subject matter and learned what she could about computers, the operating system within the machines, how computer forensic examinations are conducted and, more importantly, what assumptions are made from forensic examinations that are not supported by the facts," said Hosken. "Overall, Anne's



dedicated preparation, her professionalism and outstanding performance at trial resulted in the defendant being found not guilty on both counts."

Burger thoroughly prepared for the case, presenting her own experts, including a DNA expert who testified the DNA evidence on a computer disc was too slight to even test, contrary to containing more than ample samples if the defendant had been using it as claimed.

"She garnered high accolades from the judge in the trial who thought she had done an exceptional job," Brazill said, noting the case fell into the Jeff Jacobs criteria involving forensic evidence and very solid information.

The award recognizes a criminal defense attorney who exemplifies fierce advocacy, dedication to clients, perseverance and a commitment to fair justice — qualities epitomized by Jacobs, who served in the Monroe County Public Defender's Office for more than 20 years until his death in November 2006.

"He was a great, great person to work with on a personal level, but just a great attorney to learn from," Burger said of Jacobs, whom she worked with the county public defender's office for seven years before joining the Federal Public Defender's Office in August 2006.

Brazill said Burger, one of five nominees, was the universal choice of the committee.

"She's an exceptionally bright attorney," he said. "Her strongest suit is extraordinary preparation. She spends a lot of time preparing and she also is an exceptionally good motion writer. She's also somebody who doesn't seek out a limelight. She's a very humble person, but holds herself to a very high standard."

Burger admitted she felt embarrassed about receiving the award; saying there are a number of public defenders assigned counsel who work as hard as she does and have been at it for a lot longer.

"It's very flattering, but it makes me feel uncomfortable for that reason," she said.

Burger first became aware of the legal system during dinner table discussions when her parents would talk about the day's news and social injustices.

Burger first thought she would have an international career. She earned a degree in political science from the University of Pittsburgh. She also studied Chinese before heading to Taiwan where she lived for a year. Then she got "a great offer" from the University of Pittsburgh School of Law, returned and got her law degree in 1994.

While in school, she did a few internships, including one at the Federal Public Defender's Office. She knew she wanted to pursue human rights-related law, again thinking it would be more global, something like working for Amnesty International. Then she had a campus interview with the Legal Aid Society of New York City and the rest, she said, was history. She went to work in Queens, representing indigent people as a trial and an appellate attorney.

"I got a sense of the need first-hand," she said. "I think those internships sent me down that other road, doing public defender work."

While there, she got engaged to Michael A. Burger, another attorney working at

the Legal Aid Society. After they got engaged, they decided they would rather live upstate, seeking a better quality of life and not having to spend three-hours on a daily commute.

Brazill, who had also worked at the Legal Aid Society, told her about an opportunity in Rochester and when former Public Defender Edward J. Nowak was at a conference in New York City, she reached out to him; shortly after that, joining both of them at the Monroe County Public Defender's Office in 1999.

Her husband became part of the Litigation Team at Davidson Fink LLP before branching out with Fernando Santiago and Dennis J. Annechino about a year ago to form their own firm, Santiago Burger Annechino LLP.

"He was great," Burger said of her spouse. "He was on board with the program. It's been great. Our only regret, I think, is we haven't been successful in getting our downstate friends to move up, too."

Like her father, Burger continues to watch out for the underdog, making sure people are treated fairly no matter how much money they have or what challenges they face with language barriers or a lack of education.

"That's what keeps me motivated," she said. "Why should someone receive less of a fair shake because they're poor? We talk about that concept of equal justice under the law. It really shouldn't be about how much money you have or who your parents were."

Burger said the other thing that really helps is the team in her office, working together with staff members getting to know their clients and families.

"I can't say enough about the people I work with here," she said. "They provide a whole lot of support. Everybody's on the same page. Everyone has the same sort of goal in mind; getting the best outcome we can for the client. It's a wonderful place to work. I think it sends a message to the client that they're important; they're not just a file."

When not defending people, Burger likes to do home improvement projects at her fixer-upper in the city where she lives with her husband, their 4-year-old daughter Jane, and their dog.

She said she has a nice collection of woodworking tools. She also likes to work out in a little garden behind their home.

Burger is a member of the New York State Association of Criminal Defense Lawyers and the National Association of Criminal Defense Lawyers.

About 85 people attended the dinner.

"We're very pleased," said Monroe County Public Defender Timothy P. Donaher. "It went very well."

The event also featured local defense attorney Donald M. Thompson, of Easton Thompson Kasperek Shiffrin LLP, speaking about the exoneration of Martin H. Tankleff, a Long Island man who spent 17 years in prison for the murders of his parents.

Tankleff, who was released in 2007 when the Appellate Division, Second Department, vacated the convictions, was supposed to be the keynote speaker,



but had a personal emergency and was unable to attend. He did answer questions via telephone, which Donaher and Thompson held to the microphone.

Tankleff was 17 in 1988 when his parents were killed. He was convicted of their murders in 1990.

— Photos by Vasiliy Baziuk

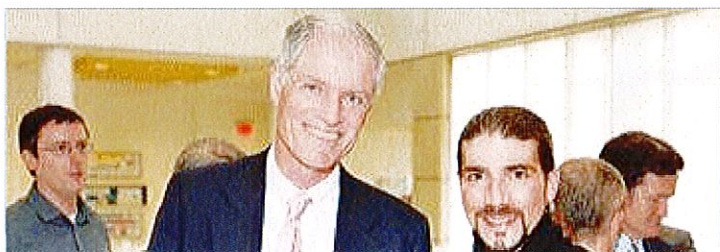


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Mark Hosken, Jerry Grant, Mike and Anne Burger, Judy Middleton, Bob Smith, Karen Francati and Jeff Ciccone.



Donald Thompson delivers keynote remarks during the 2012 Defense Community Dinner Friday at Rochester Institute of Technology.





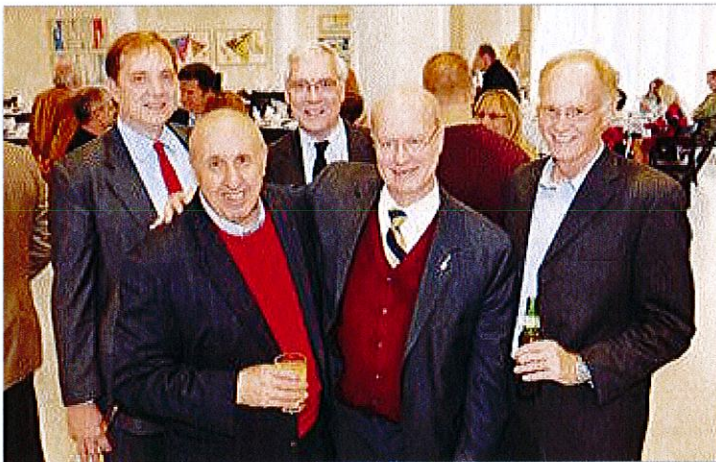


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Paul MacAulay and Andre Vitale.



Stephanie Batcheller, Diane Geary and Gary Horton.



In attendance (front, from left): Chuck Noce, Jeff Wicks and Bob Smith; (back, from left): Michael Doran and Mark Hosken.