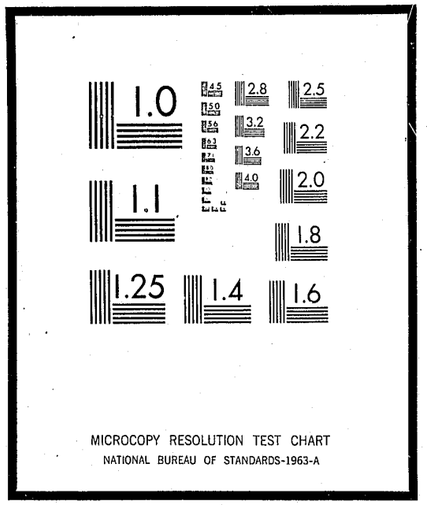

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REGION 5

PROJECT REVIEW AND EVALUATION REPORT

Project: Research Department - St. Louis

Project Number: I-S-MP18-72
II-S-MP2-73

Subgrantee: Missouri Court of Appeals - St. Louis

Subgrant Period: Phase I-10/5/72 to 6/30/73
Phase II- 5/1/73 to 7/30/74

Project Director: Harry L.C.Weier, Judge

Grant Award:

Funding	Phase I	Phase II
Federal	$55,000	$116,270
Hard Match	N/A	38,760
In-Kind	18,391	N/A
TOTAL	$73,391	$155,030

Authorizing Official: Robert G.Dowd, Chief Judge

Date Of Report: April 25, 1974

Prepared By: Robert S. Rosenthal, Evaluation Analyst

Assisted By: Kenneth K. Parks Jr., (Student Intern, Administration of Justice Program, University of Missouri - St. Louis)

PROJECT OBJECTIVES

The objectives included in the grant application were:

1) to research all cases on appeal beginning May 15, 1972

2) to screen all cases on appeals for form content and compliance with rule and practice requirement.

In addition, the evaluation component sought to measure the following major benefits of the project:

3) more rapid disposition of cases

4) reduction of court backlog

5) improved quality of the opinions

Objective 1 has been substantially modifed since the project was implemented.

SUMMARY OF FINDINGS AND CONCLUSIONS

The establishment of the Research Department in 1972 was in response to an expected 100% increase in the caseload of the St. Louis Appellate Court for 1972 over that for 1971, primarily due to the expansion of the jurisdiction of the Court to include all criminal cases and a larger percentage of the civil cases.

The Research Department began operation in October of 1972. It was originally envisioned that the Department would write a pre-hearing report on all cases, and a suggested opinion on some cases. These goals were subsequently revised to require research by the Department on only the easier cases, and the writing of suggested opinions on most of the cases researched. The Research Department now researches and writes opinions for 50 to 60 percent of the cases submitted on appeal.

The objectives and potential benefits of the Research Department examined in this evaluation include:

1. Increased Court productivity

The Court increased the number of cases submitted (heard by the judges) in 1973, as compared to 1972, by 55 %, the number of opinions written by 48%. The Court has thus substantially increased its productivity.

2. More rapid disposition of cases

The average time between the submission of a case and the handing down of the written opinion has been decreased from 114 days in 1971 to 98 days in 1972, and to 81 days in 1973, largely because of the Research Department's activity. The overall case processing time from the filing of the notice of appeal to the handing down of the opinion has risen slightly, due to pre-hearing delays which are outside the control of the Research Department.

3. Reduced Court backlog

A significant backlog of cases existed when the Research Department was instituted. Since that time the backlog has increased. However, the evaluation revealed that the backlog would have been substantially higher without the services of the Research Department.

4. Maintanance of Quality of Opinions

Quality was difficult to measure. The Judges felt quality had improved. The reason given was that the time they saved on researching simple cases (because they were assisted by reaearch reports) could be spent on more thorough analyses of the difficult cases. In addition, the judges felt that they were better prepared to hear oral arguments, and there was no reaction to the contrary from the local Bar Association.

5. Assistance for the Chief Judge and the Clerk of the Court

A docket attorney was hired under the grant to provide assistance to the Chief Judge and the Clerk. Both the Chief Judge and the Clerk are of the opinion that they are more effective in their respective roles as a result of this help.

6. Help Reduce Stranger-to-Stranger Crime in the City of St. Louis

There are several ways that this project conceivably helps cut crime, however because of the small number of Impact crimes handled by the court of Appeals it is doubtful that the project has any significant effect on the overall crime rates in the city.

In conclusion, the Research Department has been a great benefit to the Court. It has allowed the Court to handle a larger volume of cases in a timely fashion without adversly affecting the quality of the opinions. It has benefited the criminal justice system by allowing criminal appeals to be decided much more rapidly than would otherwise be the case. However, it has not been possible to demostrate that the project helps reduce crime in the street. This should not necessarily be held against the project.

The appeals process is an important element of the criminal justice system. Improvements in the Appellate Court have beneficial effects on the entire system. The Appellate Court is in a remote corner of this system and the tracing back of benefits is extremely difficult. This evaluation indicates that the Research Department has proved itself beneficial to the Appellate Court. It is one of the few truly inovative programs to be implemented in the Court System in recent years.

Recommendations

1. A prehearing report should be prepared on all 22nd Circuit criminal appeals.

   The Research Department is meeting its objectives of increasing court productivity, helping to control backlog, and eliminating delays between submission and the handing down of the opinion. It is not objectionable that these benefits have applied to civil as well as criminal appeals. However, since the project is a component of the St. Louis High Impact Anti-Crime Program, its services should be made available to all felony appeals, except post-conviction remedies, arising from cases originally tried in the city of St. Louis. The number of such appeals not currently being researched is relatively small, so it is anticipated that such a change can be implemented with only minor changes in the current mode of operation. Prehearing reports for these cases will assist the judges in preparing for the oral arguments, and should reduce the time between the submission of a case and the writing of the opinion.

2. The number of judges should be increased.

   Despite the Court of Appeal's improved productivity and efficiency, including much higher productivity per judge, the upward trend in number of appeals filed is causing the court backlog to continue to grow. At present the delay from docketing an appeal until submission (hearing by the judges) is a full eleven months. The delay may soon be as much as a year. Under Missouri law the Court of Appeals is required to write opinions on all cases it hears. Until this law is changed to permit decisions without opinions for some of the cases, the only way to reduce the backlog appears

to be to increase the number of judges. The Court itself has recognized the need for additional judges. This evaluation supports the Court's efforts in this regard.

EVALUATION FOR THE RESEARCH DEPARTMENT PROJECT
S-MP14-72

The St. Louis Appellate Court Research Department began operation in October, 1972. The program was designed to help the Court handle its workload more efficiently. The Research Department is staffed by a research director, docket attorney, four research attorneys and a secretary. The research director has administrative control and supervision over the project and personally researches all writ applications. The docket attorney screens all papers and appeals filed to check compliance with rule and practive requirements, monitors the timely progression of each case file, and checks all cases for the jurisdictional requirements. In addition, the docket attorney has assumed the role of administrative assistant to the Chief Judge. The research attorneys prepare pre-hearing reports and recommended opinions on selected appellate cases prior to the actual submission of the case for consideration by the Court.

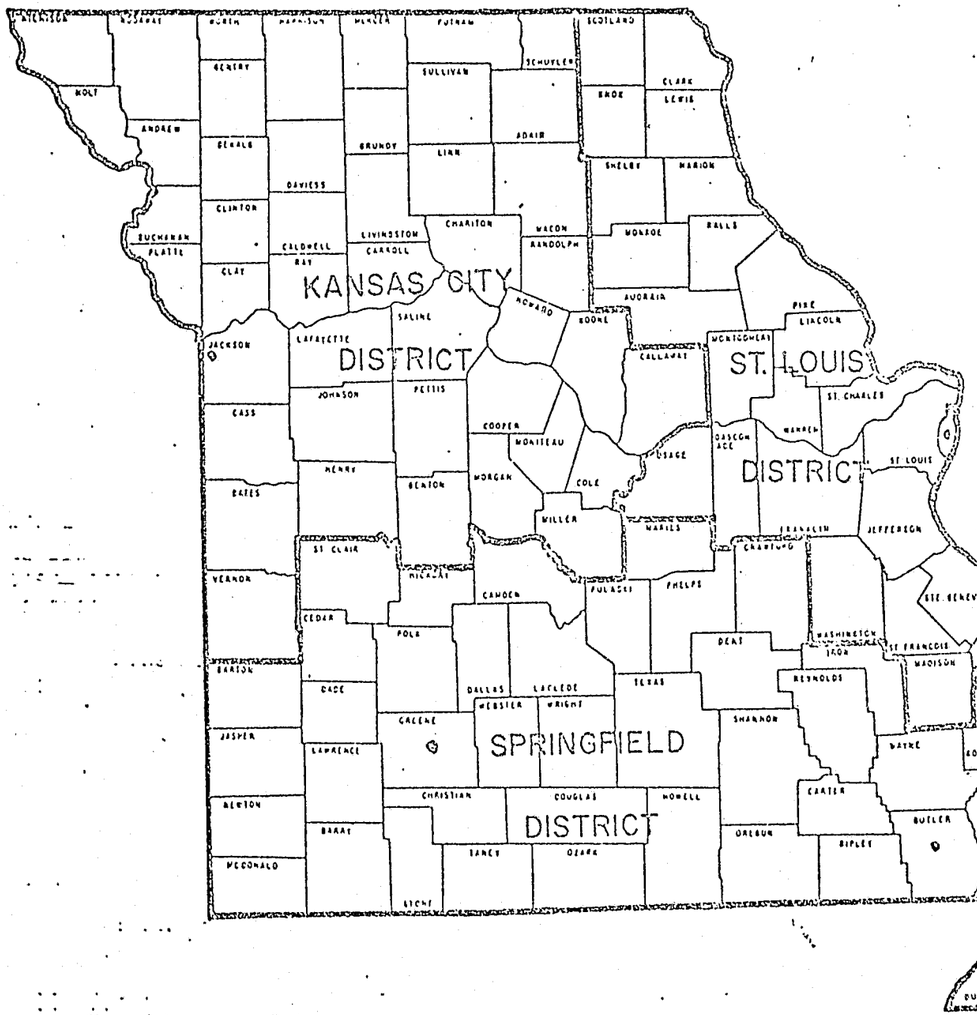
The objectives and potential benefits of the Research Department examined by the evaluation study were:

1. To allow the Court to handle and dispose of a larger volume of cases,
2. To allow for a more rapid disposition of appellate court cases,
3. To reduce court back log,
4. To help maintain the high quality of appellate court opinions,
5. To provide assistance to the court and the clerk of the court in managing the docket;
6. To help reduce stranger-to-stranger crime in the City of St.Louis.

Court records have been examined and pertinent data have been extracted for all cases in which opinions were handed down in the years 1971, 1972, and 1973. Based on this data, trends in the number of cases filed, the number of cases heard, the number of opinions written, the time for processing cases, and the backlog of cases have been examined.

I. PROFILE OF THE APPELLATE COURT

The St. Louis Appellate Court is one of three District Courts of Appeals. The others are Kansas City and Springfield.



COURTS OF APPEALS DISTRICTS

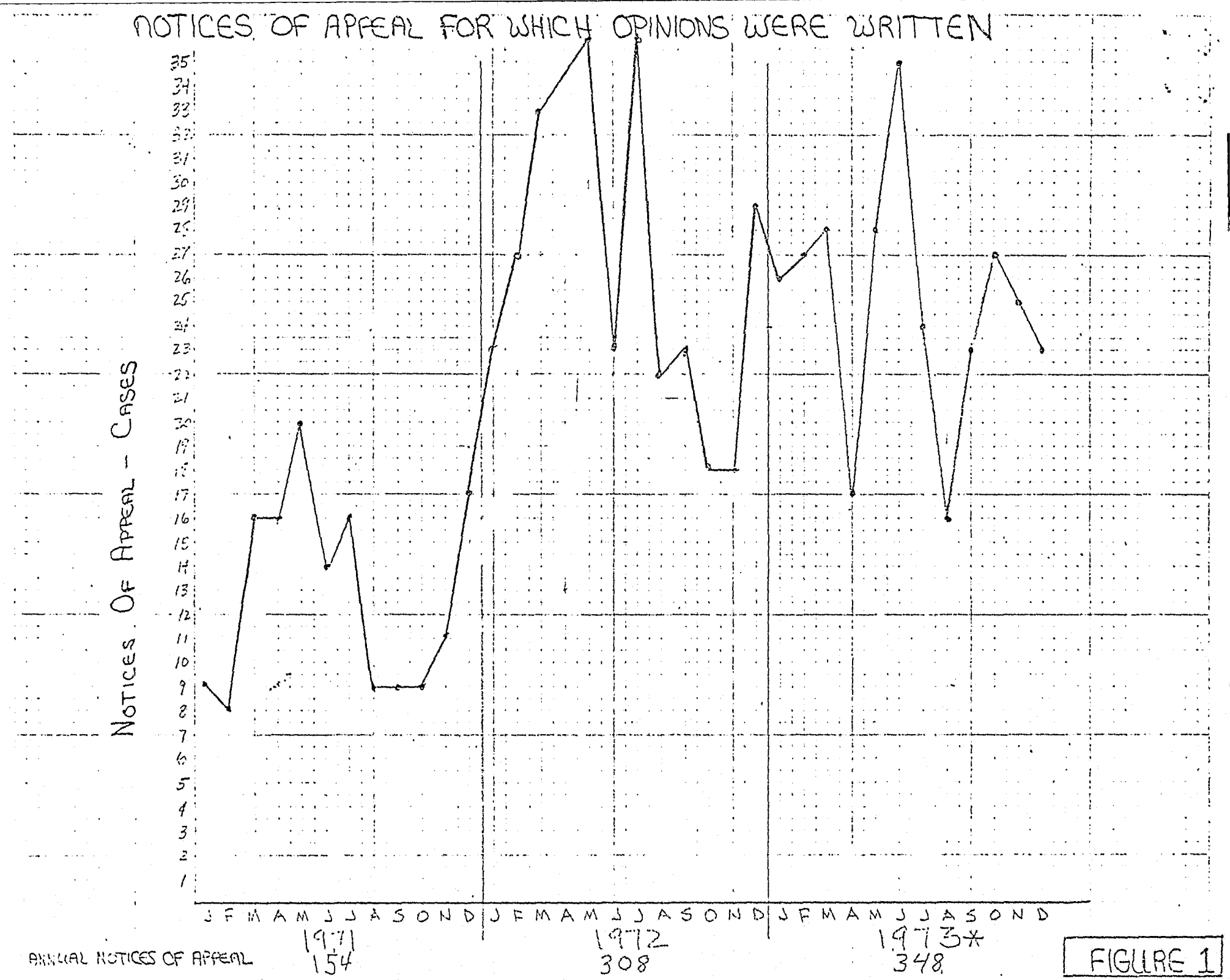
Included in the St. Louis District is the St. Louis City Circuit Court, (22nd Judicial Circuit). Prior to January 1, 1972, the jurisdiction of the three intermediate appellate courts was limited to Civil cases where the amount in controversy was under $30,000 and criminal misdemeanors. For all other cases the Supreme Court had original jurisdiction.

On August 4, 1970, Constitutional Amendment 7 was passed which revised Article V, Section 3 of the Missouri Constitution. The result of this Amendment was to give the intermediate appellate courts original jurisdiction over all cases that the Constitution did not give exclusive jurisdiction to the Supreme Court. The Appellate Courts now have original jurisdiction over all cases except those involving interpretation of the construction of the United States or Missouri Constitution, treaties of the United States, revenue issues, title to government office, and criminal cases where the death penalty or life imprisonment is mandatory. Since there is no death penalty or crimes that have a mandatory life imprisonment sentence, the appellate courts hear all criminal cases. Amendment 7 to the constitution became effective January 1, 1972.

It was anticipated in the project grant application that due to the enlarged jurisdiction of the Court, and the increased detection, apprehension and prosecution of criminals under the Impact program that between 1972 and 1973 the normal case load of the court would be increased 100 percent.

Figure 1 shows this prediction to be extremely accurate. The graph plots the number of notices of appeal filed per month for which opinions were later written. Since all Judges but the Chief Judge have little to do with cases that do not require opinions, notices of appeal for which opinions were written have been interpreted as being the best measure of the Court's actual work load. (1)

(1) The data in the figure 1 for 1971 and 1972 were the actual number of notices of appeal that are in this defined category. Since most notices of appeal filed in 1973 had not yet had an opinion written at the time of the collection of the data, these statistics had to be estimated. Based on the 1972 report of the Judicial Conference of Missouri's Summary of Appellate Court Statistics, it was found that for the past 10 years the percent of



ANNUAL NOTICES OF APPEAL
1971 154
1972 308
1973* 348

FIGURE 1

Comparing the 154 notices of appeal filed in 1971 with the 308 filed in 1972, we observe a 100% increase; and comparing the 1973 figures with those of 1972, a 130 percent increase is noted.[1] An increase in the notices of appeal does not affect the court until the cases are ready to be submitted for the court's consideration. Most cases are not submitted prior to 300 days after the notice of appeal is filed. Thus, the court did not experience the brunt of the increased case load until the last quarter of 1972, which coincided with the establishment of the research department. Of all cases submitted in 1973, over 35% were criminal cases, compared with less than 5% in 1971 and 1972. There is reason to believe that the percentage of criminal cases filed will be even larger in 1974, since in the City of St. Louis of all the notices of appeal filed in 1973 over ½ were criminal.

In the evaluation of the Research Department it is necessary to review the time sequence between significant events that occur in the appellate process. Under the rules of Missouri procedure, a person who is not satisfied with the outcome of the trial court proceding must file a notice of appeal within ten days of the final judgement (against him). The appellant has 90 days from the notice of appeal to have the transcript filed. If the transcript is not filed within the 90 days, the appellant must seek an extension from the trial court. It is not until the transcript is filed, or 180 days have elapsed from the notice of appeal, that the appellate court obtains jurisdiction over the case. Shortly after the transcript is filed, the case is set on the docket for submission.

The appellant is entitled to sixty days from the date of filing of the transcript to file his brief. The respondant is entitled to an additional thirty days from the time the appellant has filed his brief to file the reply

[1] Appeals for which an opinion was written averaged 42.5 percent. This also held true for notices of appeal filed in January and February of 1973.

brief.

Cases are submitted only during the first week of the month, and generally no cases are submitted in July, August, and September. Cases may be submitted on briefs or may be argued orally. The Court is divided into two divisions of four judges each. Generally, a panel of three judges from a division will sit on the hearing of an appeal. Following the hearing, one judge will be assigned to write an opinion. Once he has finished writing the opinion, the "writing judge" circulates the opinion to the other seven judges on the court for their suggestions and approval. If a majority of the judges agree, the opinion is then ready to be handed down, possibly in a form modified from that in which it was circulated. One or more judges may write a dissenting or concurring opinion, which would require a longer time between hearing and opinion, but this happens infrequently. All opinions are handed down on Tuesday afternoon; thus there may be as much as a week's delay between the time an opinion is in final form and the time it is made a matter of public record.

Figure 2 is a time sequence display which presents the average time it takes to process cases in Appellate Court by month and year. The time between significant events was compiled retrospectively for all cases which had opinions handed down in the month indicated. Each of the important time sequence events will be evaluated in subsequent sections of this evaluation.

Figure 3 displays the same findings, but the criminal cases only. Again these findings will be reviewed in depth in subsequent sections.

The average time between the significant events shown on Figures 2 and 3 were calculated and included in Table I-1 below. In addition, the average time between the notice of appeal and the date of submission of the case, and between the notice of appeal and the date the opinion was handed down, are included for cases not transferred to the Appellate Court from

the Supreme Court. This was done to give some indication of the delay factor caused in transferring cases between the courts. There were many cases already filed in the Supreme Court that were transferred to the St. Louis Appellate Court when the jurisdiction of the Appellate Court was enlarged.

Table I-1

		AVERAGE TIME TO PROCESS CASES (in days)					
	Year	Notice of Appeal-Transcript	Transcript-Appellate Brief	Appellant Brief-Respondant Brief	Transcript-Submission	Submission-Opinion	Notice of Appeal-Opinion
All Appeals	1971	132.9	53.8	36.7	167.2	114.4	382.1
	1972	131.9	60.4	35.1	156.1	97.5	380.6
	1973	119.8	96.2	42.6	200.8	80.7	397.3
Criminal Appeals	1973	119.5	103.4	48.0	209.2	61.9	381.8
Appeals Not Transferred from the Supreme Court	1971	132,7	53.9	36.8	147.0	123.3	382.0
	1972	135.5	55.0	36.8	150.7	97.8	376.6
	1973	134.2	82.6	40.9	185.7	74.6	397.7

Table I-1 will be analyzed in depth in the section dealing with court delays.

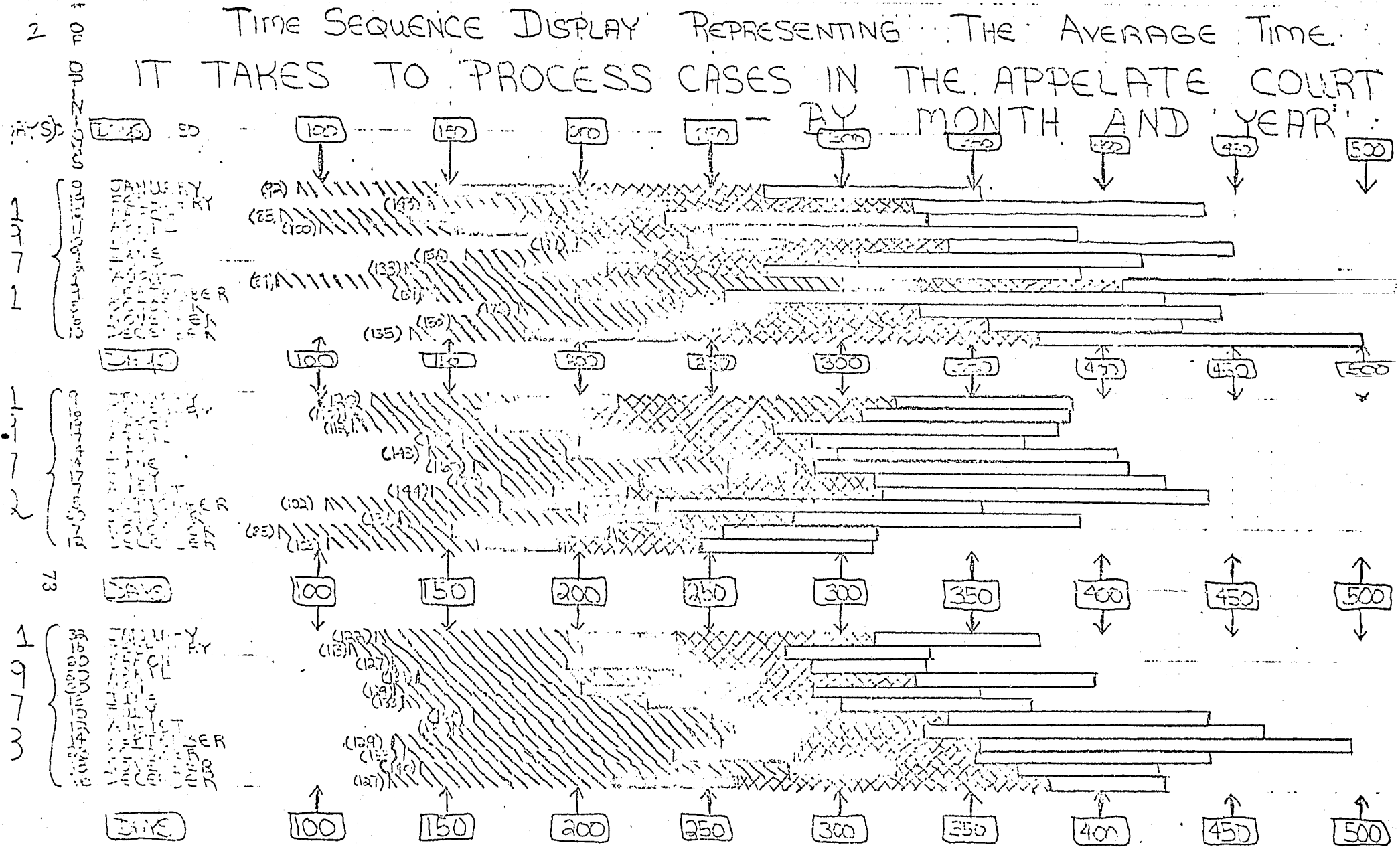
In addition to the court's function of writing appellate opinions, the court also writes brief opinions on cases dismissed prior to submission and considers all writs and writes opinions on a selected number of these. The number of opinions written on writs are included in Table I-2.

Table I-2

WRITS ACTIVITY

Year	Number Submitted	Number of Opinions Written
1971	7	11
1972	12	13
1973	16	21

TIME SEQUENCE DISPLAY REPRESENTING THE AVERAGE TIME IT TAKES TO PROCESS CASES IN THE APPELATE COURT BY MONTH AND YEAR



( ) → AVERAGE TIME BETWEEN FILING OF NOTICE OF APPEAL & WHEN TRANSCRIPT WAS FILED

\\\\→ AVERAGE TIME BETWEEN FILING OF TRANSCRIPT & WHEN APPELANT FILED BRIEF

→ AVERAGE TIME BETWEEN APPELANT'S FILING OF BRIEF AND FILING OF RESPONDENT'S BRIEF

( )\\\\ XX → AVERAGE TIME BETWEEN FILING OF NOTICE OF APPEAL & TIME WHICH CASE WAS HEARD (HEARING)

→ AVERAGE TIME BETWEEN HEARING & TIME IN WHICH THE OPINION WAS RENDERED

FIGURE 2

3

Time Sequence Display Representing The Average Time It Takes To Process Criminal Cases In The Appellate Court -By Month For Year 1973

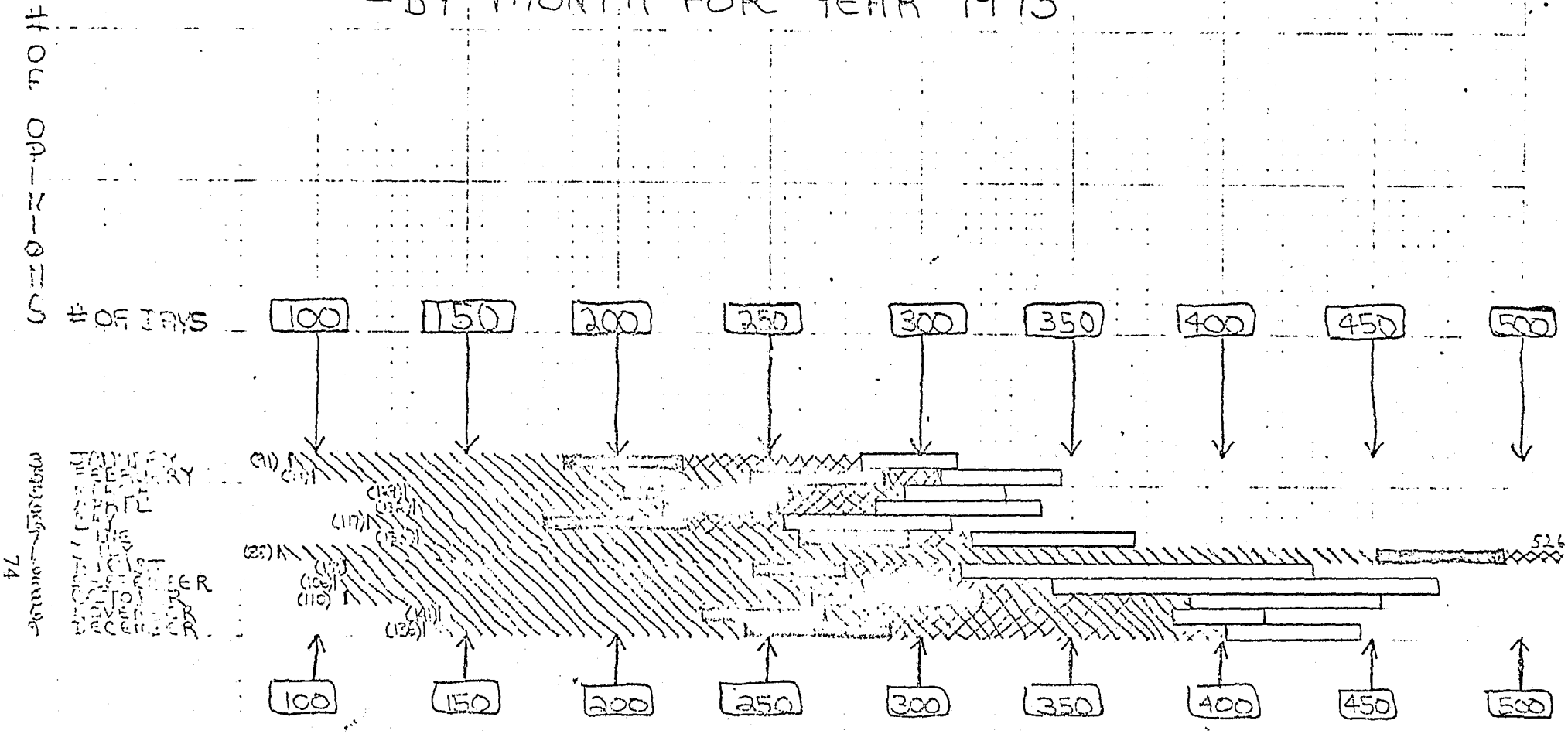
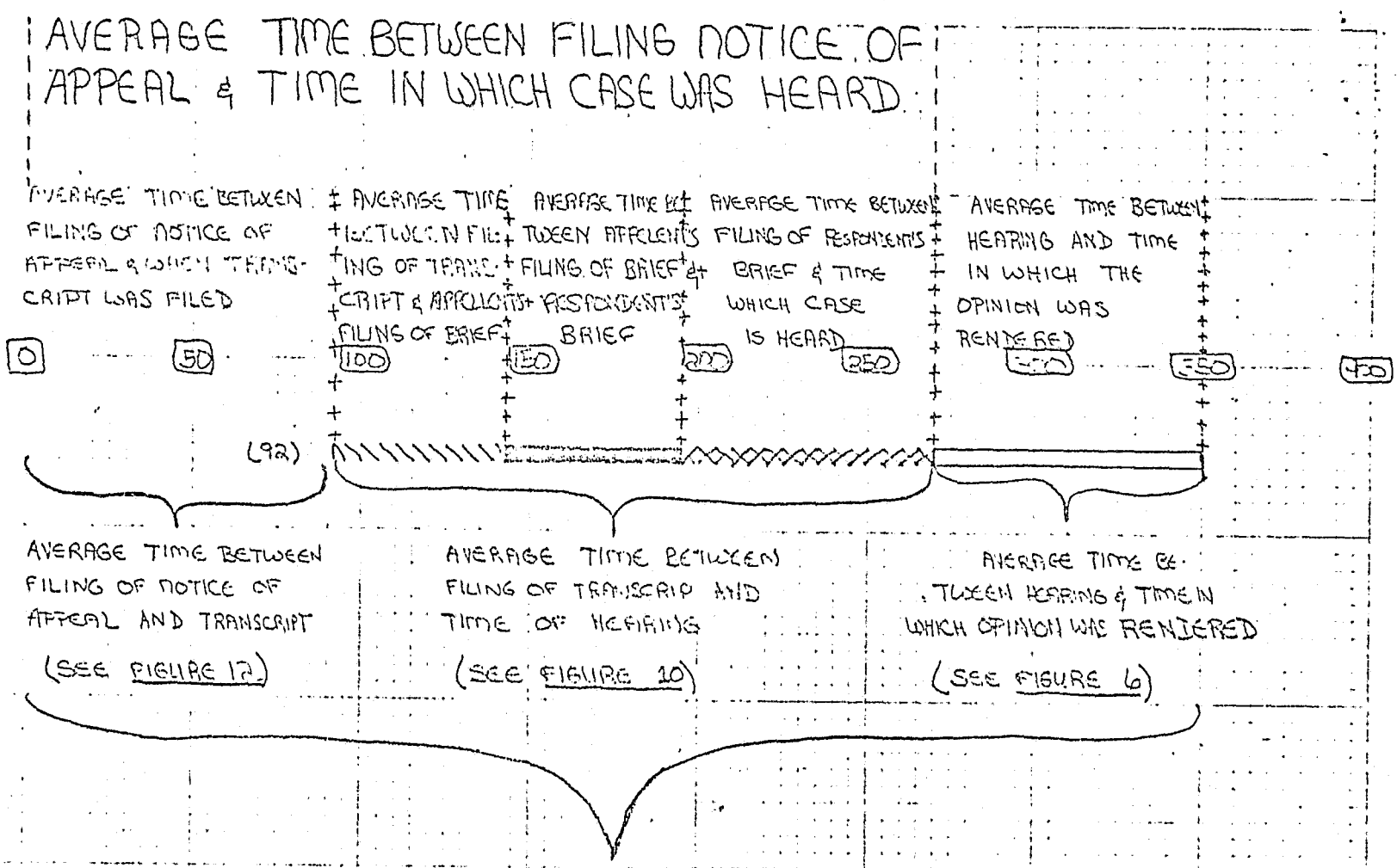


FIGURE 3



AVERAGE TIME BETWEEN FILING OF NOTICE OF APPEAL & TIME IN WHICH AN OPINION WAS RENDERED

(SEE FIGURE 11)

DESCRIPTION OF CASE PROCESSING TIME USING JANUARY 1971 AS AN EXAMPLE

FIGURE 4

Since the Writ and Dismissal activity consumes a relatively small percentage of court time in relation to writing opinions, these will not be considered in this evaluation.

II. RESEARCH DEPARTMENT

The Research Department began operation in October, 1972. The structure and mode of operation was modeled from a similar program being used in Michigan. The staff of the department consisted of three research attorneys and a research director. It was anticipated that when the department became fully operational in the beginning of 1973, they would write a pre-hearing report on all cases and a suggested opinion on some cases.

In preparation of a pre-hearing report or suggested opinions, the research attorney is expected to read and research the transcript and briefs prepared by the litigants. The report contains a statement of the facts, the issue, the determinative authorities, and a recommended disposition of the case. The suggested opinion is a full opinion written as if the research material is to be given to the judge thirty days prior to the date of submission.

During June of 1973 the emphasis of the department changed. Instead of trying to do a research report on all cases, they began doing a research report only on those cases involving fewer, uncomplicated issues. Most of these reports were to be accompanied by sample opinions. It became the job of the research director to screen all briefs to determine which cases will be researched. In some instances the briefs are filed too late to provide adequate time for research.

There were several reasons for this change of procedure. First, the Court realized that the staff of four research attorneys and research director was not adequate to prepare high quality reports on the volume of cases being submitted monthly. Michigan was able to handle such a large volume of cases because they had a larger, more professional staff (career research attorneys). The approach of researching the simpler cases was modeled after that used in California.

The second reason was that the court discovered that they benefited most from research reports and opinions on the simpler cases. It was found

that a good research report accompanied by a suggested opinion required a minimum of additional research time on the part of the Judge. It is estimated that in these cases the Court saved at least 2/3 of the time it would have taken without the research material. It was thus concluded that if resources were not available to handle reports on all cases, the most efficient use of the department would be to limit research to the least complicated cases.

A third reason this approach was used was that many uncomplicated cases could be researched in the time required to research a single difficult one. Thus the Research Department could turn out a larger volume of cases.

Table 3 below gives the number of cases submitted per quarter that had either a pre-hearing report or a pre-hearing opinion included. Table 4 and 5 provide similar information for Criminal Cases and Twenty-Second Circuit Criminal Appellate cases.

Table II-1

Total Cases with Prehearing Reports

Time Periodin Quarters	Number of Prehearing Reports	Percentage of Cases Submited that had Prehearing Reports	Number of Suggested Opinions	Percentage of Cases Submitted that had Suggested Opinions
4th Quarter 1972	49	75.4%	16	24.6%
1st Quarter 1973	60	74.1%	28	46.7%
2nd Quarter 1973	59	76.6%	25	32.5%
3rd Quarter 1973	--	--	--	--
4th Quarter 1973	62	56.4%	54	49.1%

* By quarter the case was submitted

Table II-2

Criminal Cases with Prehearing Reports

Time period in Quarters	Number of Criminal Prehearing Reports	Percentage of Criminal Cases Submitted that had a Prehearing Report	Number of Suggested Criminal Opinions	Percentage of Criminal cases Submitted that had a Suggested Opinion
4 Quarter 1972	5	62.5%	2	25%
1st Quarter 1973	26	81.3%	18	56.3%
2nd Quarter 1973	23	69.7%	22	66.7%
3rd Quarter 1973	--	---	--	---
4th Quarter 1973	22	57.9%	18	47.4%

Table II-3

22nd Circuit Ciminal Cases with Prehearing Reports

Time Period in Quarters	Number 22nd Circuit Criminal Reports	Percentage of 22nd Circuit Criminal Cases with a prehearing Report	Number of 22nd Circuit Suggested Criminal Opinions	Percentage of 22nd Circuit Criminal sub mitted that had Suggested Opinions
4th Quarter 1972	4	66.7%	3	50.0%
1st Quarter 1973	13	68.4%	9	47.4%
2nd Quarter 1973	16	66.7%	14	58.3%
3rd Quarter 1973	--	---	--	---
4th Quarter 1973	12	70.6%	10	58.8%

Several things are apparent from these tables. First the change from researching all cases in the first and second quarters of 1973 to researching only the simpler cases in the fourth quarter of 1973 is clearly seen. Secondly, they demonstrate that the research department gives no preference to criminal cases in general, although a slight prefrence is shown to criminal cases from the Twenty-Second Judicial Circuit in the fourth quarter of 1973. This may be due in part to a large number of instances in which the prosecutor or circuit attorneys file their reply briefs too late to allow a report to be completed. In any cases, the fact that pre-hearing reports and suggested opinions are not prepared on all criminal cases may not necessarily be bad. In a subsequent section of this evaluation, the average time between submission and the handing down of the opinion is compared for those cases that have pre-hearing reports and those cases that do not; at that point the relative merits of doing some, as opposed to all, of the criminal cases is given further consideration.

The manner in which the Court utilizes the research reports varies with the individual judge. All judges, however, use the pre-hearing report to prepare for hearing oral arguments. The pre-hearing reports provide an unbiased statement of the facts and issues, which often are not readily apparent from the briefs alone. Since all cases cited are researched, any inconsistancies in the citations are brought to the judges' attention. The pre-hearing report also raises questions about the case which can be cleared up by a few inquiries during the oral argument. When the judges are well prepared for the oral arguments, the hearings often prove more valuable in terms of conveying new information about the case. This is important in the light of criticism that oral arguments in many cases are a waste of time and should not be used. In the absence of a pre-hearing report, judges must glean as much information as possible from reading the briefs. A criticism might be raised regarding preparation of the pre-hearing reports only for the simpler cases, since it is for these cases that the judges

require the least amount of time to prepare adequately for the hearings; however, when the number of these cases is taken into consideration, the pre-hearing reports result in considerable time savings.

After the submission of a case, the pre-hearing report is used by the judge as a basic source document for his research. If the judge determines that the pre-hearing report does not adequately cover the issues raised, he will do additional research; if it does, he double checks the cited sources before using the report in writing his opinion. Some judges prefer longer more detailed pre-hearing reports than others.[2]

The judges also differ on the use of suggested opinions. Clearly, no judge "rubber stamps" a suggested opinion by signing his name. Some judges will adopt sections or phrases from the suggested opinion, while others refrain from using it at all. Since the pre-hearing reports and suggested opinions are written well before a judge is assigned to the case, there is no way to tailor the research work to fit the style of the assigned judge.

There are several factors in addition to the availability of the Research Department that have served to benefit the Court during the period in which the Department has been in operation. Thus, any improvement in court operations cannot be attributed solely to the Research Department. In May, 1973, the number of judges was increased from seven to eight. Additionally, law clerks were retained as personal assistants to each judge on the court at approximately the same time that the research department began operations (October, 1972). Each judge also has the part-time services of a law student intern.

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2 This difference in style arises from a philosphical difference about the function of an opinion. Some judges feel that in writing opinions the litigants have a right to expect the court to respond to all issues that were raised. Others feel that only those issues that are case dispositive should be addressed. The reasoning behind the latter approach is that by dealing with all issues there is a risk of setting an unfortunate precedent.

The law intern and the law clerk provide services different from those of the Research Department. The Research Department completes its work on an individual case prior to the submission of the case, while the law clerk and intern begin their work after the case is submitted. The law clerks and interns are under the personal supervision of the judge for whom they work. For the most part, the clerks are utilized to research specific issues of concern to the judges, while the Research Department analyzes entire cases.

It is extremely difficult to measure separately the benefits provided by the Research Department, the law clerk, the law intern, and the additional judge. Interviews with the judges indicate that they feel that Research Department has been a major factor in helping them increase their productivity, along with the law clerks, interns, and working additional hours. The judges themselves found it difficult to allocate credit for improvement in court operations between the Research Department, the law clerks, and the interns. They then went on to say that without the Research Department the present level of operation would be impossible.

This evaluation has not attempted to assign quantative values to the various court improvement factors, however some insight may be gained from the statistics in the subsequent sections.

The judges as a group are extremely satisfied with the operation of the Research Department and the present composition of the staff. When judges were asked how the department operations might be improved, they had several suggestions. One suggestion was to raise the pay of the research attorneys to attract attorneys interested in making research a career. Presently the job is seen by the research attorneys and the court as a stepping stone for the attorneys to other legal work. It is expected that attorneys presently on staff will not work for more than two years in the Department; there has already been a 100 percent turn over in the research staff since the start of operations. The average time required to train a research attorney is about six weeks. Only one research attorney has been asked to leave because of

unsatisfactory work.

Other judges prefer having younger, energetic law students on their research staff. They suggest that the increased efficiency expected from a career staff member would not be worth the additional cost. Furthermore, they see benefits for the legal profession, particularly the appelate practice, by providing a training experience for recent law school graduates.

Some judges suggested that more emphasis should be placed on pre-hearing reports, while others thought more should be placed on suggested opinions, results expected because of the variety among the judges in their style of writing opinions and in their use of the pre-hearing research reports.

III. Increase in the Volume of the Courts Workload

As is apparent from Figure 1, the volume of work the Court is expected to do has increased substantially. Between 1971 and 1973 the volume of notices of appeal filed which required an opinion to be written increased over 125 percent. This increase was due primarily to the enlargement of the Court's jurisdiction that occurred in January of 1972. In looking at Figure 1, it should be remembered that there is a substantial time lag between the date when the notice of appeal is filed and the date when the case is submitted, and it is not until the case is submitted that it actually becomes part of the Court's workload. Thus, the number of notices of appeal filed in any week may be viewed as an accurate indication of the court's workload between 300 and 400 days in the future.

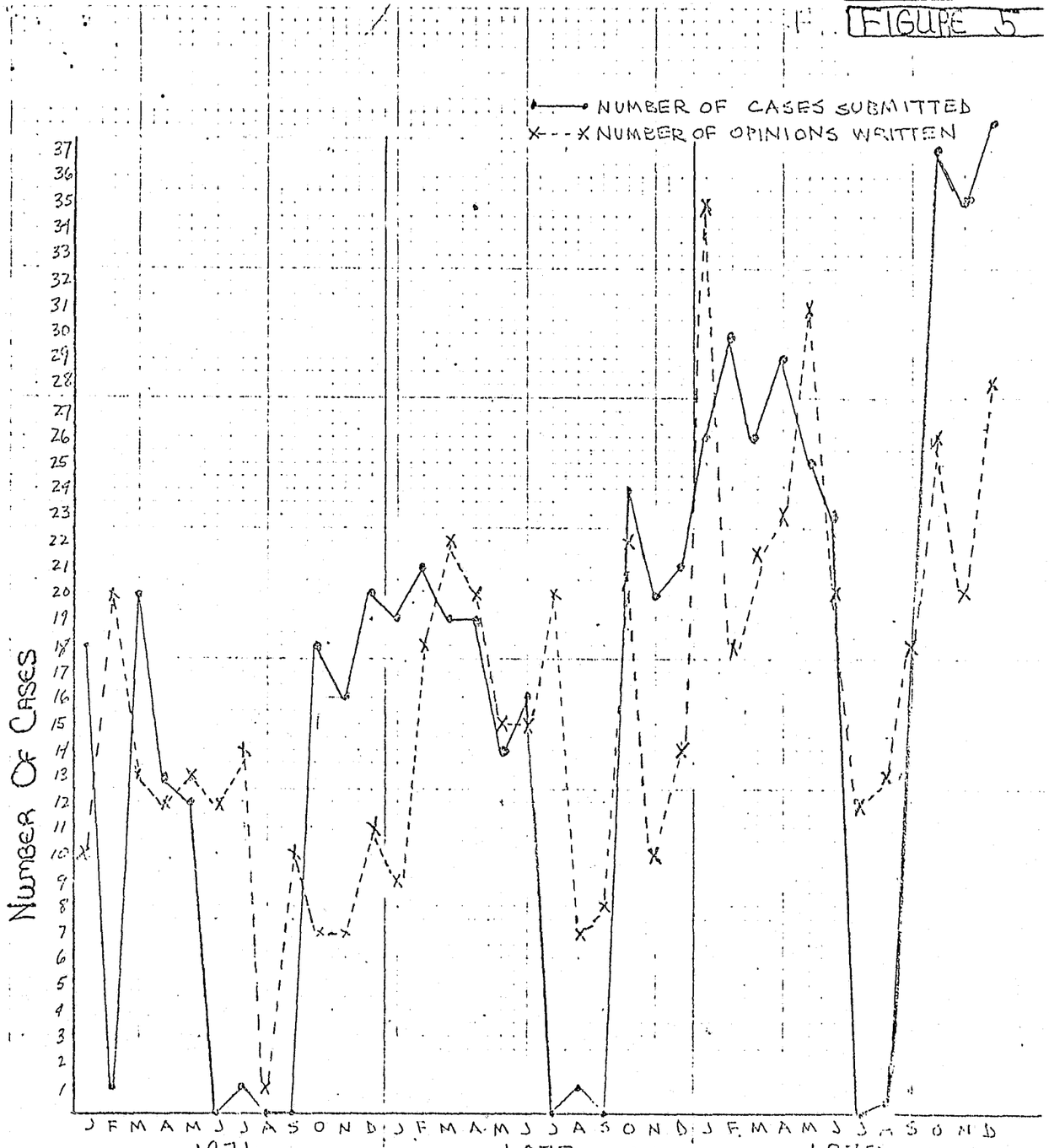
The increase was forseen well in advance, and one of the objectives of the Research Department was to help the court cope with it. There are two measures of the actual work the Court is doing. The first is the number of cases submitted to the Court for its consideration. The second is the number of opinions the Court has written.

Figure 5 shows both the monthly fluctuation in cases submitted and the fuxuation of opinions written from 1971-1973. It should be pointed out that the cases submitted in a given month probably are not included in the opinions written for that month.

There is an obvious seasonal variation in the curves for cases submitted and for opinions written. This is due to the fact that the Appellate Court does generally not take any cases under submission during the summer months. These months are used to write opinions on the backlog of cases that have no opinions written as yet.

Figure 5 clearly demonstrates that the volume of cases submitted, and of opinions written, have increased dramatically during the past three years. The number of cases submitted increased by 45% between 1971 and 1972;

FIGURE 5



	1971	1972	1973
CASES SUBMITTED	120	174	270
OPINIONS WRITTEN	130	180	266

and another 55 % between 1972 and 1973. In three years the number of cases submitted per year has increased 125%. This has been caused by an increase in cases submitted per month and the fact that the Court took cases under submission in June of 1972 and 1973 but not in 1971. It should also be noted that the cases submitted for the last three months of 1973 averaged 36 cases per month. This is considerably more cases than were submitted in any preceeding month. The court anticipates this volume of cases submitted to continue from this point on. The number of opinions written per year has increased in no lees a dramatic fashinn. Between 1971 and 1972 the number of opinions written per year increased by 48%, and betwecn 1972 and 1973 it increased 48%. Overall, between 1971 and 1973 the number of opinions written per year increased 105%.

Another significant figure is the number of opinions written per judge per year. For the three years under study this number was; 1971-19, 1972-25, and 1973-35. There is reason to believe that the number will be even higher in 1974. It should also be pointed out that this figure does not contain several writs, and, concurring and dissenting opinions that were written. In 1973 for instance there were 20 writ opinions, 8 concuring opinions and 12 dissent opinions. This would add an additional 5.5 opinions per year judge. It is clear from this data that the court has met its objective of increasing its productivity.

IV. The Processing Time of Cases in the Appellate Court

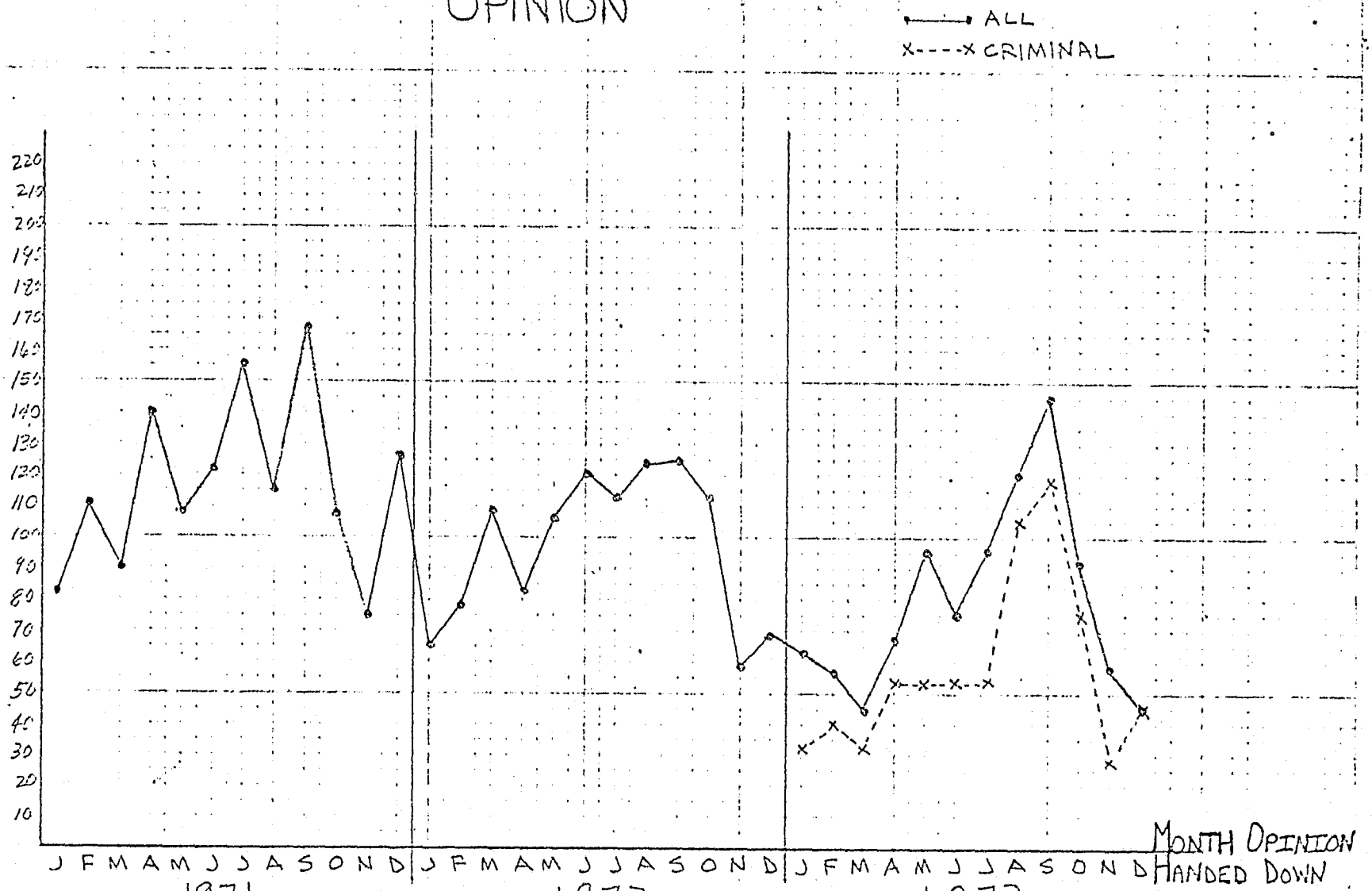
Another objective of the research department was to cut delay in the time to process appellate cases. It was expected that the Research Department would be particularly effective in reducing the time from submission of a case to the date when an opinion is handed down.

Figures 2 and 3 graphically display the average time to process cases in the appellate court. Each element of this graph is analyzed individually in this and subsequent sections of the evaluation. This section examines the effect of the Research Department on the average time between submission of the case and the handing down of the opinion. The section on Appellate Court backlog considers the time between the filing of the transcript and the submission of the case. And finally, the section on Court transcription backlog examines the time between notice of appeal and the filing of the transcription.

Figure 6 displays the average time between the submission of the case and the handing down of the opinion, indicated by the month the opinion was handed down. In other words, if ten opinions were handed down in June, 1972, the sum of the lengths of time between hearing and opinion was calculated, then divided by ten, and plotted on the graph at the point for June, 1972. Average time span between submission and opinion was recorded for all opinions handed down for 1971,1972, and 1973, and separately for criminal opinions handed down beginning in 1973. It should be pointed out that there is a large range of variation in this time sequence. This is because the Judges are assigned to write opinions for up to six cases a month. Since they normally work on only one or two of the cases at a time, the opinions for some cases are handed down quickly, while for others the delay is much greater.

Figure 6 shows that the average time between submission and opinion has decreased for the past three years: in 1971, 114 days; in 1972, 97.5 days, and in 1973, 80.7 days to prepare a finished opinion. This is an average decrease of seventeen days per anum.

Average Time From Submission Of Case To Written Opinion



	1971	1972	1973
ALL CASES	114.4	97.5	80.7
CRIMINAL	—	—	61.9

FIGURE 6

Excluding the months of August and September, the time between submission and opinion was lower in 1973 then it was in 1971 or 1972. The peaks in August and September arise because cases are not submitted in the summer months and any opinions written in August are at least 60 days old, and those written in September would be at least 90 days old. The large increase in opinions handed down during these months helps explain why the graph for these months is higher in 1973 than it was in 1971 or 1972.

The time between submission and opinion for criminal cases in 1973 averaged 62 days. This was 19 days less than the figure for all cases. Also, month for month, it took less time to write opinions for criminal cases. The reason for this is that the judges give priority to writing opinions for criminal cases, especially when the defendant is confined. The priority system used by most of the judges to decide which opinions to work on first are: 1) cases submitted in previous months for which opinions have not been written, 2) criminal cases or cases involving issues of significant human or social interest, and 3) the remainder of the cases submitted.

Whether or not a case has a pre-hearing report or a research opinion is not a factor in determining the order in which the opinions are to be written. Thus, although a research report and opinion may save the judges two-thirds of the time normally required to write the opinion, it does not mean that such cases will show the shortest times between submission and opinion. This is shown graphically on Figure 7. Comparing those cases with a pre-hearing report, those with a pre-hearing opinion, and those without either, for all cases for which opinions were written in 1973, we see that cases without any pre-hearing material may be decided a little sooner than the others. For criminal cases, it seems that those with a pre-hearing report or opinion are decided slightly faster. In either case, however, it does not seem to make much difference.

Since the Research Department is funded under an Impact grant, there has been a question raised to whether the Department should research all criminal cases. As indicated earlier, this was not done. The question comes down to whether or not

TIME BETWEEN SUBMISSION OF CASE & WRITTEN OPINION

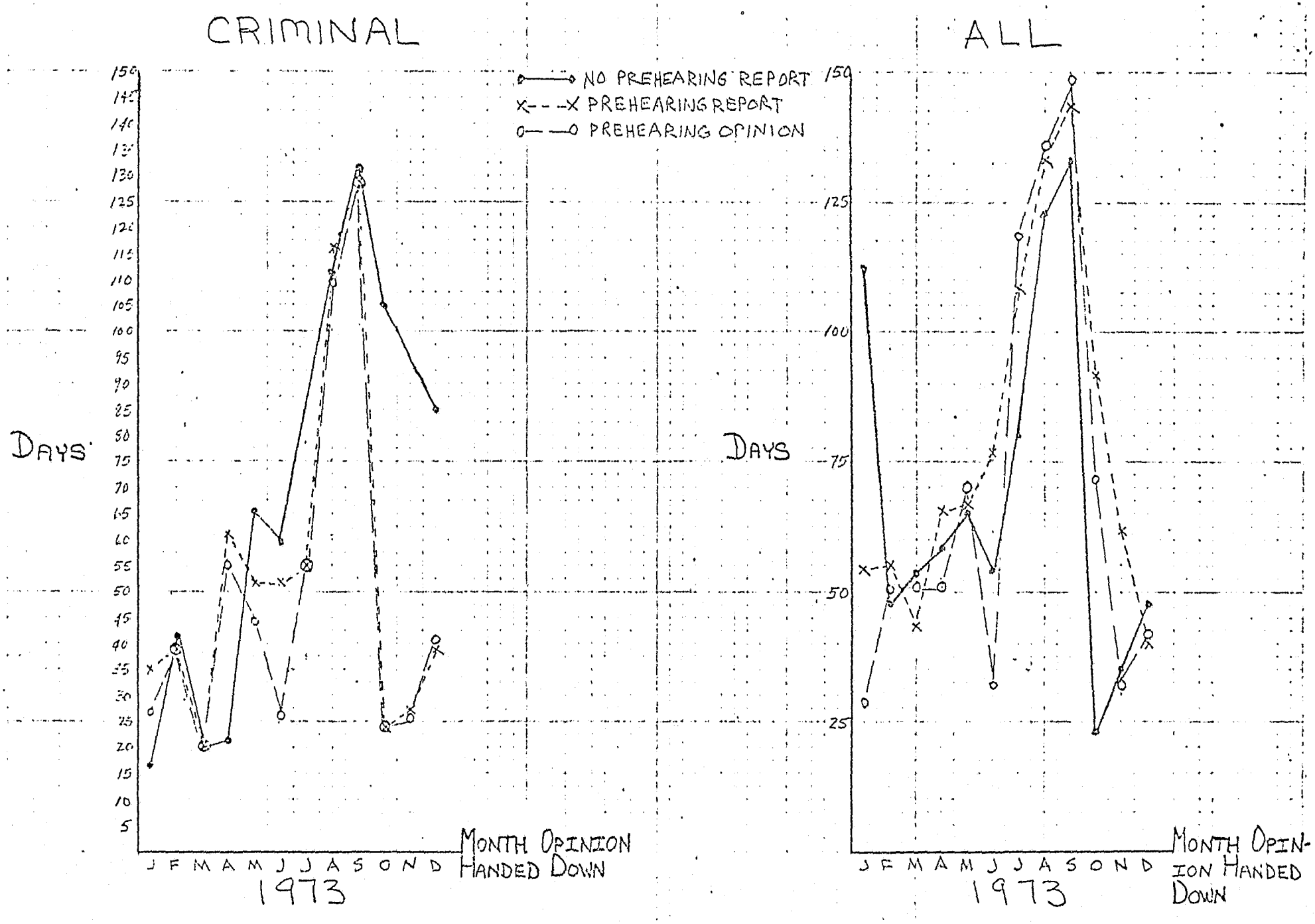


FIGURE 7

a pre-hearing report or suggested opinion on criminal cases will materially speed up their processing time. The processing time for opinions would probably be affected in two ways if the system for determining which cases have pre-hearing research was switched from simpler cases only, as is the practice at present, to criminal cases plus the simpler cases which time allowed.

First, since criminal cases are given priority over civil cases in the order in which opinions are written and since the use of pre-hearings research saves time in writing opinions, than the time it takes to hand down criminal opinions will be reduced. The graph for criminal cases presented in Figure 6 shows Criminal Cases are already decided faster than other cases.

The other possibility assumes that writing research material on only the simpler cases is the most efficient mechanism of handling the entire appellate court case load. By experimentation, the court has come to this conclusion. If this is accepted as true, then giving criminal cases priority in preparing prehearing reports and opinions will slow down the entire caseload. If this happens, criminal cases will be delayed because of the increased time required to finish the previous month's backlog. The court must finish its backlog before new criminal cases can be started.

Since it is not certain that writing reports for all criminal cases will have a positive effect, and may even have a negative effect, the evaluators do not suggest switching to this system. The present system has achieved a substantial drop in the time between submission and opinion for all cases for which opinions were written in 1973. This occurred despite a large increase in the number of cases submitted. In addition, the time from submission to opinion is already significantly lower for criminal cases than for other cases.

The evaluators suggest as an alternative that a pre-hearing report be prepared for all felony appeals cases, other than post conviction remedies, arising in the 22nd Judicial Circuit. Since this is an Impact project, Impact crimes should be of special concern. This includes having the judges be as knowledgeable as possible at the oral arguments and having the cases disposed

of as quickly as possible. Few felony appeals from the 22nd Circuit are not now having pre-hearing reports written, so this policy would not significantly change the present mode of operation.

V. Appellate Court Backlog

Another objective of the Research Department was to decrease the Appellate Court backlog. Court backlog is defined to be those cases for which a notice of appeal has been filed and which have not yet had an opinion written.

Figure 8 shows the increase in backlog from 1971 through 1973. The graph was compiled by subtracting the Court's output (opinions written, shown earlier in Figure 5) from its input (notices of appeal filed requiring written opinions, shown in Figure 1) for every month for 1971 through 1973. The difference between these two figures for each month was added to the sum of the differences for the preceeding months to give a cumulative measure of the backlog. Because 1973 cases are not yet completed, the 1973 data on notices of appeal was estimated.[3] Figure 8 assumes, for analysis purposes, that the backlog started at zero in January 1971. The graph is completely accurate for increases in backlog between January 1971 and December 1973.

Figure 8 clearly shows that the court is fighting a losing battle in trying to keep up with its backlog. In the three years shown the backlog increased by 213 cases. The court has clearly not met its objective to decrease its backlog. This does not necessarily mean that the project failed in this regard.

The rate of increase in the backlog has slowed; in 1971 the backlog increased by 23 cases, in 1972 it increased by 127 cases, and in 1973 it increased by 86 cases. The rate of increase between 1972 and 1973 decreased by 41 cases.

Another way to look at the backlog problem is to estimate the backlog which would have occurred if the court had maintained in 1973 the levels of output of 1971 and 1972. To do this the total number of opinions written in 1971 and 1972 was computed and divided by 24 to get a monthly average (about 13 cases per

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3 See explanation of estimation procedure in section 1.

INCREASE IN APPELLATE COURT BACKLOG SINCE 1971

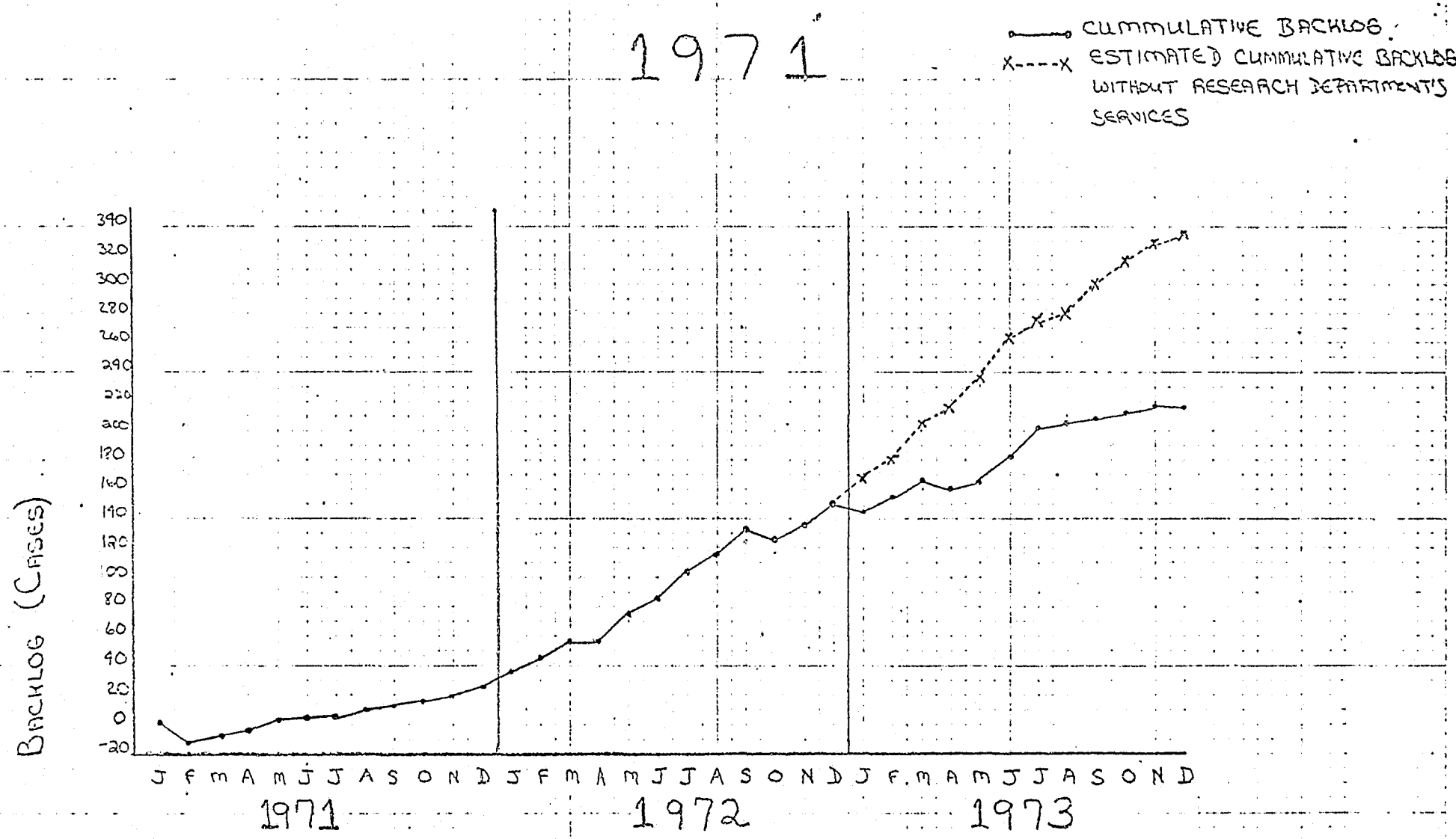


FIGURE 8

month). This rate was used to recalculate the output curve for 1973, as shown by upper curve of Figure 8. This shows that the project can be considered at least partially successful in terms of reduced backlog in that the backlog did not increase any more than it did. Without the Research Department, the backlog on December 31, 1973, would have been about 342 cases as opposed to 213.

The submission backlog was also measured. This is defined as the number of submitted cases which have not had an opinion written. This is shown graphically in Figure 9. It is clear that the submission backlog has remained relatively constant over the past three years. The Court has made an effort to keep these figures low. The reason is that excessive delays between the oral arguments and the written opinions makes it difficult for the judges to remember all the important elements of the case. A similar problem will occur if the judges have too many cases under submission at one time. The judges prefer to work while the case is fresh in their minds.

As a result, the backlog is developing mostly in the prehearing stage of the appellate process. Figure 10 shows the average time between the filing of the transcript and the submission of the case, based on the month the opinion was handed down. The filing of the transcript is the point at which the Appellate Court obtains jurisdiction over the case, and the case is not docketed until that time.

It is clear from Figure 10 that the time between filing of the transcript and submission of the case for all cases, and for criminal cases, has increased steadily throughout 1973. The average for each year was:

	Days from Transcript to Submission
For Total Cases	
1971	167
1972	156
1973	201
For Ciminal Cases	
1973	209

SUBMISSION BACKLOG

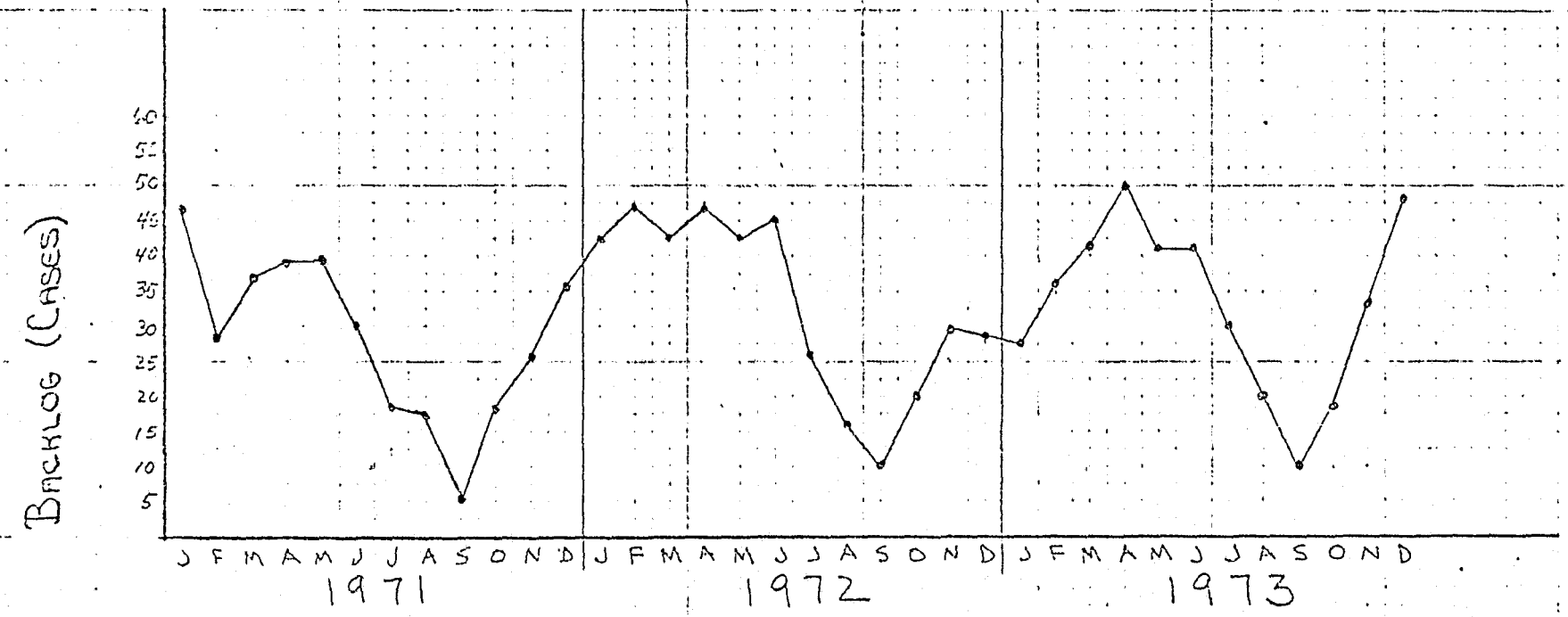
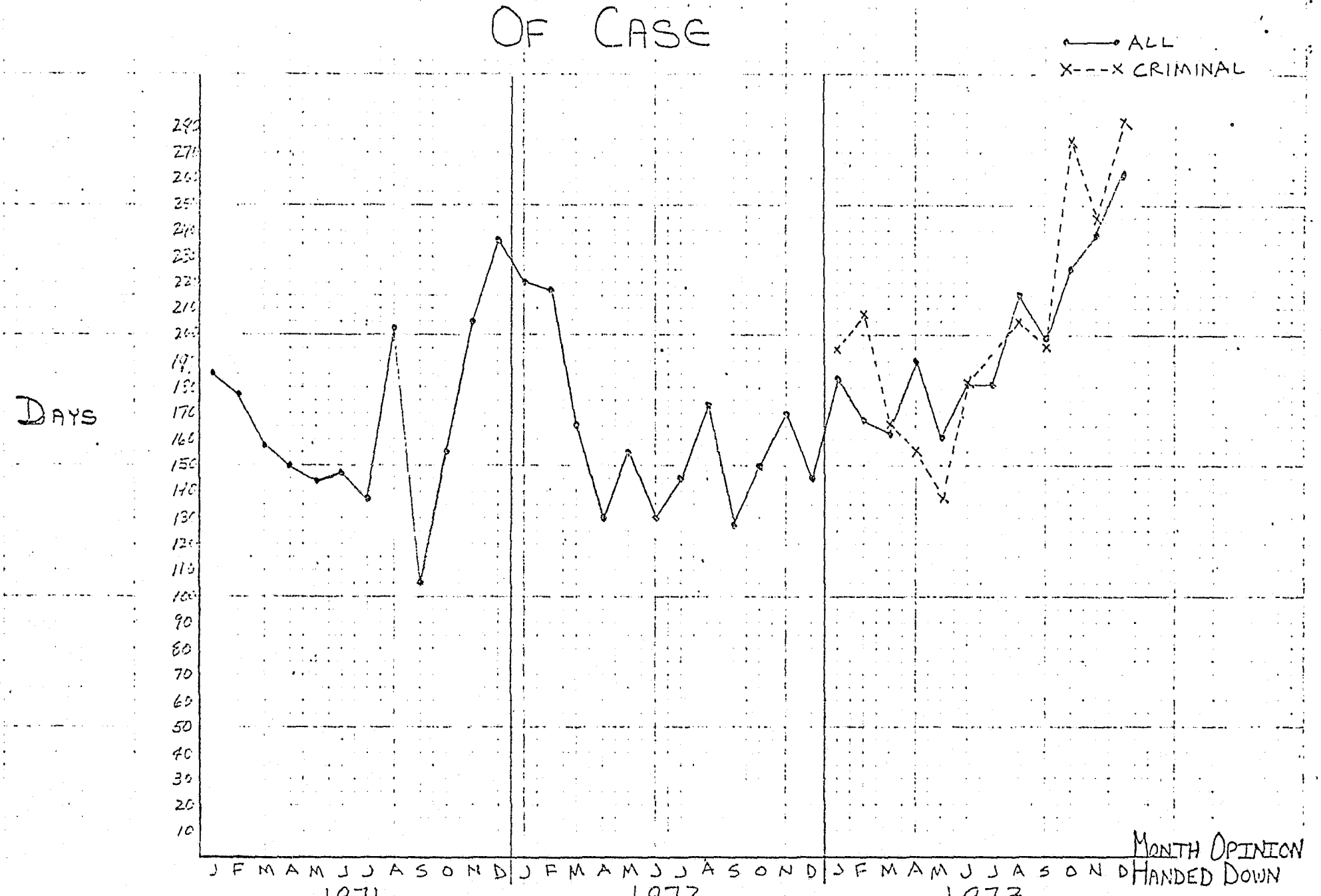


FIGURE 9

Time Between Filing Of Transcript & Submission Of Case



	1971	1972	1973
ALL	167.2	156.1	200.8
CRIMINAL	—	—	209.2

FIGURE 10

This large increase in processing time is due to the backlog. Although the court has increased its work product significantly, it has not been able to keep up with the increasing caseload. The situation seems to be deteriorating. Court personnel now say that cases for which transcripts were filed in March, 1974, are not docketed for hearing until February, 1975. Or, in other words, by 1975 the prehearing delay will be more than 330 days.

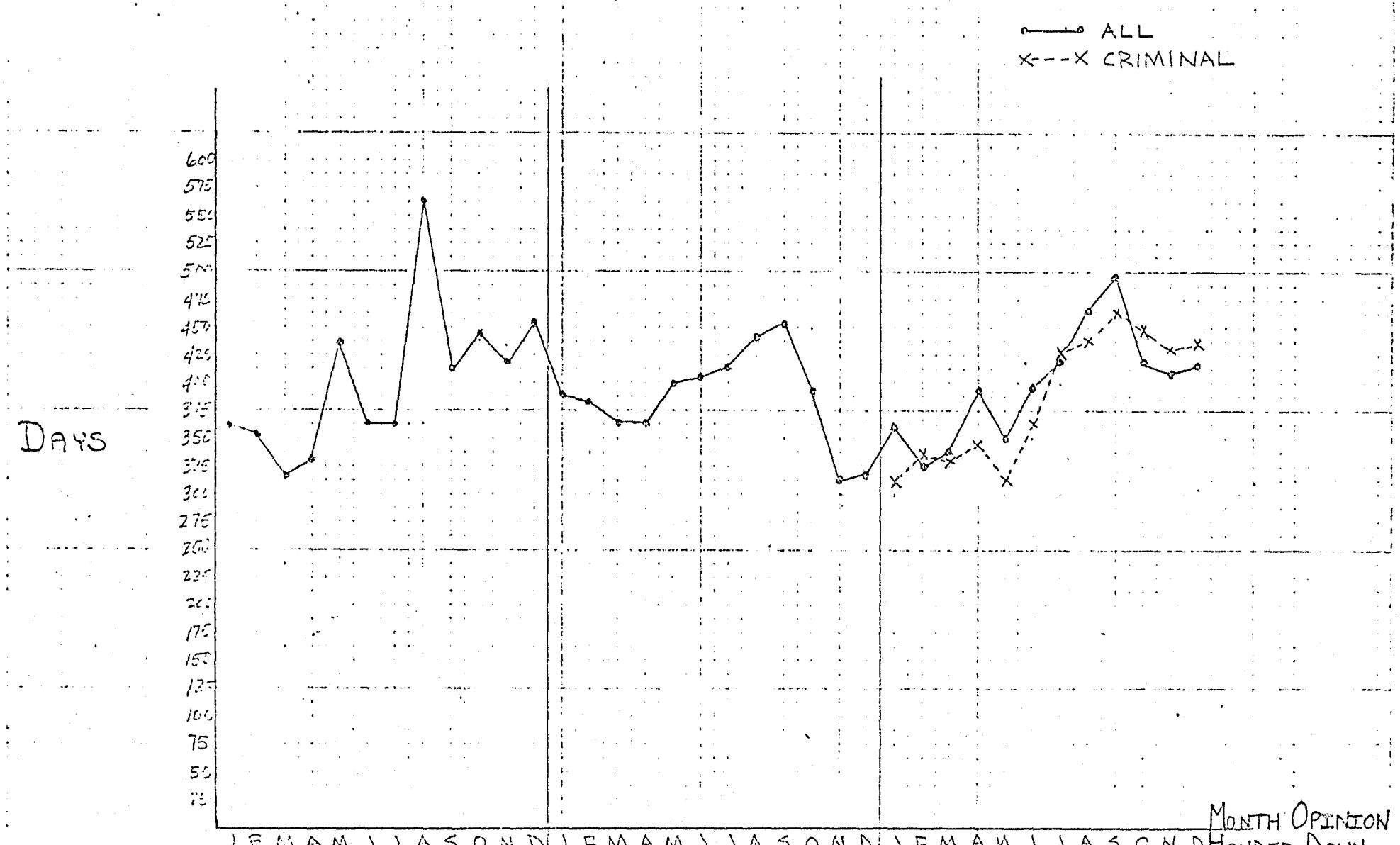
Figure 11 shows that although the time between submission and handing down of the opinion has decreased, the overall time between notice of appeal and the opinion has increased. As the prehearing delay increases sharply, so will the time from notice of appeal to handing down the opinion.

Although the Research Department may continue to cut processing time, the backlog will continue to rise. In order to keep up with their case load, the court will need help outside of the Research Department. The judges have increased their workload significantly over the past few years. There is, however, a limit to the number of opinions a judge can write without affecting the quality of the opinions.

One way to alleviate this problem would be to drop the requirement that the judges write full opinions on all cases submitted. This could be accomplished by allowing decisions without opinions for cases not involving novel issues of law, or by using short memo opinions on these non-novel cases. At the moment, Missouri Law requires full opinions on all Appellate cases. Thus a change in the court procedure in this regard would have to be preceded by change in the law.

Another alternative is to add more judges to the court to handle the increased case load. A bill is currently before the Missouri legislature that would add two judges to the court. If there is no change in the law regarding the cases for which an opinion must be written, then this increase appears promising as a way to control the backlog. There is some question, however, whether two additional judges will be enough.

Time Between Notice Of Appeal & Written Opinion



	1971	1972	1973
ALL	382.1	380.6	397.3
CRIMINAL	—	—	381.8

FIGURE 11

VI. Court Transcription Backlog

The Third major area of Court delay involves the time from the date when the notice of appeal is filed and the date when the transcript is filed. According to Missouri Rules of Court transcripts are to be filed within ninety days of the notice of appeal. The trial court, which has control over transcripts, can grant extensions for filing of up to an additional ninety days. The appellate Court can do little to speed this process since they do not obtain control over the case until either the transcript is filed or 180 days have elapsed since the notice of appeal.

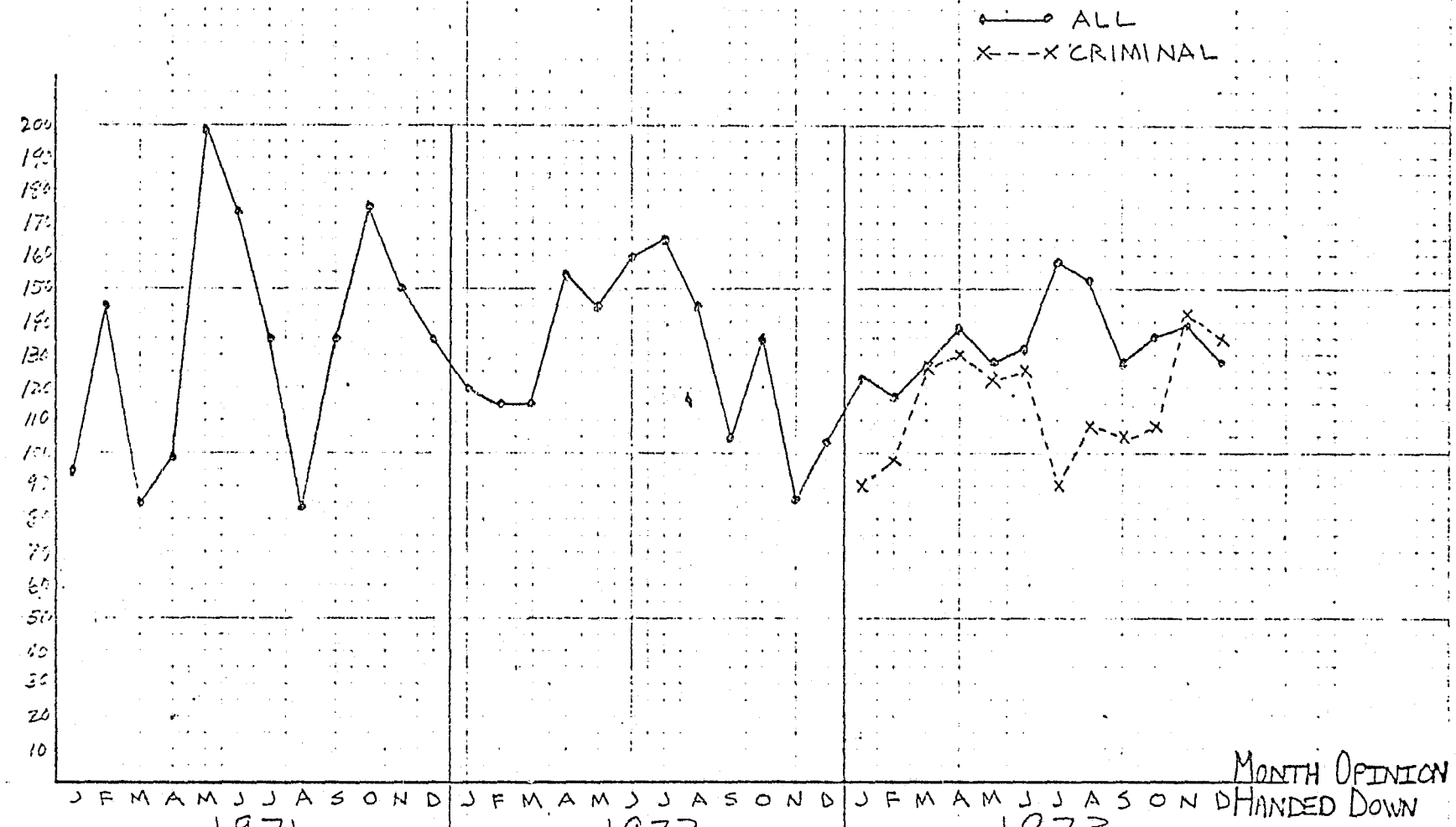
Figure 12 shows the average time between notice of appeal and filing of transcript by the month in which the opinion was later filed. The average delays between notice of appeal and filing of the transcript for the years of interest, are as follows:

Year Opinion Handed Down For All Cases	Time Between Notice of Appeal and Transcript Filed
1971	133
1972	132
1973	120
For Ciminal Cases	
1973	119.5

Figure 12 and the above data indicate that the time for filing the transcript has decreased slightly.

In June of 1972, Region 5 of the Missouri Law Enforcement Assistance Council approved the Court Transcription Backlog project (S-MP30-72). This project's objective was to drastically reduce the time between the notices of appeal and the filing of the transcript for criminal cases in the 22nd Judicial Circuit (St. Louis City felony cases). This was to be accomplished by automating the Court reporting process. It was envisioned that at the

TIME BETWEEN NOTICE OF APPEAL & FILING OF TRANSCRIPT



	1971	1972	1973
ALL	132.9	131.9	119.8
CRIMINAL			119.5

FIGURE 12

same time the Court reporter was mechanically recording the proceedings on paper they would also be automatically recorded on magnetic tape. The magnetic tape would then be fed into a computer and a complete transcript would be printed within a day. The time required to produce a transcript could be reduced in this manner from an average of 120-130 days to less than seven days.

This project has since been cancelled, since it was discovered that the technology was not yet available.

The question still remains, however, that if this service is available sometime in the near future, by how much would it shorten the processing time of cases in the Appellate Court? The answer is conditional on several factors. If this service is provided to all appellate cases, and if the present case load and number of judges on the Court remains constant, then the answer would unfortunately be that no shortening would result.

Since the prehearing backlog is increasing, and the judges feel they have reached their maximum on the cases they can take under submission in a year, any time saved in filing the transcript would simply be added to the time between the filing of the transcript and submission on the cases. The result would be no net change in the processing time.

If, however, more judges are added to the Court, and as a result the Court overcomes its backlog problem, then most of the time saved in filing the transcript would be net time saved in processing the case. This would require attorneys to prepare their briefs within a shorter period of time after the notice of appeal was made. However, some of the time saved may thus be lost by attorneys seeking extentions on filing times.

Having the transcript shortly after the trial would also be beneficial to the attorney in preparing his case for appeal. It would be extremely helpful to a lawyer deciding on which grounds he is going to file his appeal. Currently this is done without the aid of transcript. It would also enable him to finish writing his brief while the case was still fresh in his mind.

If the use of the automated transcription equipment was limited to use by the criminal divisions of the 22nd Circuit Court these cases may well experience time savings even though the situation in the Appellate Court does not change. The reason being that these cases would move ahead of all those cases that are waiting 120 days for the transcript to be filed before they can be placed on the submission docket. Thus, while the prehearing delay is still lengthy they will have saved the time from notice of appeal to the filing of the transcript.

If the automated transcripts are limited to 22nd Circuit Criminal cases or if the Court is able to overcome its backlog problem then the Court Transcription Backlog Project would be able to reach its objective of cutting case processing time. The question is moot, however, until the technology is improved, enabling this service to be provided at a reasonable cost.

VII. Docket Attorney and Research Director

In addition to the research services provided by the research attorneys, other services are provided by the docket attorney and the research director.

The docket attorney serves basically as an aid to the Chief Judge and the Clerk of the Court. His function is to review all motions, notices of appeal, briefs, and transcripts, to check for compliance with form and content requirements. He then makes a recommendation to the Chief Judge who makes the final decision. Much of this work is of a routine nature. Before the employment of the Docket Attorney, the Chief Judge did this work himself. With the increasing caseload this function has become a full time job. Because the docket attorney now performs these functions, more of the judges' time can be devoted to cases, and the Chief Judge gains valuable time for his other responsibilities.

The docket attorney also has charge of overseeing the flow of all cases through the court. He deals with appellant attorneys regarding procedural questions for their cases. Prior to his employment, these questions were directed to the Clerk of the Court who, not being a lawyer, was unable to be of assistance in many cases. Unanswered questions were forwarded to the Chief Judge. Because the docket attorney now provides these services the Clerk, Chief Judge, and practicing attorneys all save time and effort. The volume of documents reviewed by the Docket Attorney was examined for a sample period from October 19,1973 to December 18,1973. The results were:

	Jurisdiction	Transcripts	Briefs	Motions	Miscellaneous
Number of Documents	41	43	87	157	44

The docket attorney also serves as an administrative assistant to the Chief Judge, by compiling of statistics, processing grant applications, and representing the court on various occasions.

It is difficult to quantify and measure the work of the docket attorney. His workload varies with the caseload, which is increasing. Since most of his services are provided to the Chief Judge, and the Clerk of the Court, they were

asked to evaluate the benefits of these services. Both the Chief Judge and Clerk of the Court indicate that because of the large increases in the workload, the role of the docket attorney is indispensible. They report being extremely satisfied with the quality of work thus far. The Chief Judge also stated that because of the assistance provided he has been able to perform his duties as Chief Judge and Court administrator, and in addition, write 25 opinions in 1973. The average number of opinions written annually by the preceding Chief Judge was eight.

The research director is in charge of administration of the research department. He is the one who makes the decision as to which cases will have a research report and a suggested opinion. In addition he researches all writs. In 1973 there were 119 writs filed. Most of these writs are dismissed summarily as being without merit. The law does not require an opinion on all writs, and in 1973 there were only 21 full opinions written on writs. The research director summarizes each writ and suggests whether or not it should be considered meritorious. For some of the writs that are considered meritorious he will research the law. The members of the Court feel that this is a valuable service and are well satisfied with the work being done.

VIII. Quality of Opinions

It is important that the increased workload of the judges does not have an adverse effect on the quality of the opinions handed down, in order to give the litigants full and fair consideration, and because appellate decisions have precedential value.

The quality of a judge's work is a difficult thing to measure, and cannot be easily quantified. The Appeals Court Judges feel that the quality of the opinions handed down has remained constant despite the increased workload. They think that the Research Department has had a positive effect on quality. The judges estimate that cases on which they are assisted by the Research Department the opinion is completed in one-third the time previously required.

The time saved allows them to give more consideration to the more difficult cases. Since the civil jurisdiction dollar limitation has recently been removed, the Court is hearing a larger number of more difficult cases. At the same time, most of the judges feel that if their workload is increased much more than they will reach the point where quality will have to be sacrificed.

The Court has not had any adverse feedback from the local Bar Association about the quality of their opinions. Some members of the Bar and State legislative committees have expressed reservations about the use of the Research Department. This fear is that the Judges on the Court are delegating their research and the writing of their opinions to recent law school graduates. This does not appear to be happening in the Court at the present time. There is a very real danger that some time in the future, however, the use of suggested research opinions may be abused by one or more judges on the Court. The only way that this can be controlled is by internal policing by the Court itself, and a monitoring of the quality of the opinions by the local Bar. Since a judge must sign his name to an opinion, and accept it as his own, it is not likely that he will hand down an opinion with which he is unsatisfied.

IX. Impact on Stranger-to-Stranger Crime in the City of Lt. Louis

The purpose of projects funded under the Impact Program is to help cut stranger-to-stranger crime and burglary in the City of St. Louis by five percent in two years and by twenty percent in five years from the beginning of the Impact program. There are five major crime types that are considered Impact offenses: homicide, rape, robbery, aggravated assault and burglary.

Table IX-1 breaks down the appeals relating to the 22nd Circuit Court's criminal cases, heard in 1973, by type of crime.

TABLE IX-1
22nd Circuit Criminal Cases
Handled by the St. Louis
Court of Appeals by
Quarter Case was Submitted

	Homicide	Rape	Robbery	Aggravated Assault	Burglary	Im-Pact	Non-Impact	Total
1st Quarter 1973	5	2	8	4	0	19	2	21
2nd Quarter	1	4	5	3	1	14	8	22
3rd Quarter	-	-	-	-	-	--	--	--
4th Quarter	4	1	3	3	4	15	4	19
TOTALS	10	7	15	10	7	48	14	62

The Criminal Cases in the 22nd Judicial Circuit can be further subdivided into normal appeals and post-conviction remedy appeals. A normal appeal is an appeal from an adverse decision at the lower court. In a post-conviction remedy the time for filing normal appeals has past, but the defendant claims his constitutional rights have been violated or the issue of incompatent representation by legal counsel is raised.

The normal appeals are more significant in connection with cutting crime. If a case is on appeal, then guilt or innocence has not yet been decided. The defendant on a normal appeal may be free on an appeals bond. A defendant's guilt is not decided until an appeal is decided. A person who is confined will want the decesion as quickly as possible; while someone put on bond may wish to delay. In post-conviction remedy cases the defendant is confined in a penal institution and has already lost his case at the trial court level, and possibly has also lost at the Appellate Court level once before. Many members of the Bar feel that a large percentage of post-conviction remedy appeals are spurious in nature.

Tables IX-2 and IX-3 below break down the 22nd Circuit Court's Criminal Appeals into post-conviction remedies and normal appeals.

TABLE IX-2

Post-Conviction Remedies Arising From the 22nd Judicial Circuit Submitted in the St. Louis Appellate Court

	Homicide	Rape	Robbery	Aggravated Assault	Burglary	Impact	Non-Impact	Total
1st Quarter 1973	3	2	3	2	-	10	-	10
2nd Quarter	1	-	1	1	-	3	-	3
3rd Quarter	-	-	-	-	-	-	-	-
4th Quarter	4	1	1	2	-	8	-	8
	8	3	5	5	-	21	-	21

TABLE IX-3

Normal Criminal Appeals Arising from the 22nd Judicial Circuit Submitted in the St. Louis Appellate Court

	Homicide	Rape	Robbery	Aggravated Assault	Burglary	Impact	Non-Impact	Total
1st Quarter 1973	2	-	5	2	-	9	2	11
2nd Quarter	-	4	4	2	1	11	8	19
3rd Quarter	-	-	-	-	-	-	-	-
4th Quarter	-	-	2	1	4	7	4	11
	2	4	11	5	5	27	14	41

There are several ways in which the appeals process impacts on the criminal justice system. The court and the prosecution may be convinced of a defendant's guilt, but if it is determined that his rights were violated during the trial court's proceedings, the case must be reversed. In such instances the defendant is entitled to a new trial. If the time between the first and second trial is long the chances are increased that witnesses will become unavailable, will forget important facts about the case, or will lose interest in testifying. Thus, the sooner a second trial can be held the better will be the case for the prosecution,

and the higher will be the conviction rate in subsequent trials.

A second way the appellate process can affect crime in the streets is by cutting delay time between arrest and final ajudication. The theory is that the quicker criminals are brought to justice, the greater will be the deterrent value of the criminal justice system. If the criminals find a weak link in the system which they can use to postpone any punishment for several years, then they are least likely to be deterred. Unfortunately, the time between notice of appeal and the handing down of the Appellate Court's opinion is already in excess of a year. Consequently, a radical reduction in the average delay between submission and opinion, even by thirty to sixty days, would add hardly any deterrent effect whatsoever.

The final argument that the Appellate Court can cut down crime in the street is defendants who are being treated fairly by the system, are less likely to be embittered. It is felt that the less embittered a defendant is against the system, the less likely he is to commit a crime. Thus, it is argued that the Appellate Court should attempt to give the criminal appellants the quickest appeal possible consistent with a fair hearing and a quality opinion. Twenty days saved, for instance, may be a small percentage of criminal appellate processing time, but it is still a long twenty days to the person awaiting the court's decision about his case. Most of those whose cases are being appealed from the 22nd Circuit are in the state penitentiary, very few are out on appeals bonds.

The criminals with whom the court is dealing are such a small part of the entire criminal population that almost no matter what the court does there is not much chance it will affect the city's crime rates or the criminal justice system except by setting precedents. The number of criminal cases from 22nd Circuit that are being appealed, however, is rising. In another year or two it may reach a more significant number.

The fact that the Research Department will have little direct effect on crime rates does not mean that it should not be refunded. Without the Research Department the judges feel that operations at the present level would be impossible. Also considering the long backlog of both civil and criminal cases, without the Research Department the situation would be much worse. Delays of up to several years could be experienced, and the Appellate Court could truly become the weak link in the Criminal Justice System.

There is little doubt that this project is providing a useful and needed service in the Appellate Court. Both criminal and civil litigants are benefiting and the project has met its objectives. Criminal appeals are decided much faster then they probably otherwise would be. These are the positive factors relating to this project. These must be weighed against the fact that there is little evidence at this point that the project helps cut crime.

END