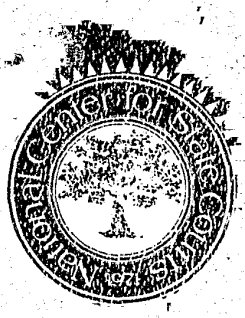

THE CALIFORNIA COURTS OF APPEAL

(Executive Summary)

A Publication of

National Center for State Courts
1660 Lincoln Street - Suite 200
Denver, Colorado 80203

Prepared for the Judicial Council
of California by:

National Center for State Courts
Western Regional Office
305 Golden Gate Avenue
San Francisco, California

Regional Director: Larry L. Sipes
Project Director: John E. Mueller

Publication No. R0013a

August 1974

The preparation of these materials was financially aided through a federal grant from the Law Enforcement Assistance Administration and the California Council on Criminal Justice under the Omnibus Crime Control and Safe Streets Act of 1968 as amended. The opinions, findings and conclusions in this publication are those of the author and are not necessarily those of CCCJ or LEAA. CCCJ reserves a royalty-free, non-exclusive, and irrevocable license to reproduce, publish and use these materials, and to authorize others to do so.

TABLE OF CONTENTS

INTRODUCTION

The National Center for State Courts completed a study of the jurisdiction, organization, staffing and operations of California's Courts of Appeal, and submitted a detailed analysis together with recommendations to the California Judicial Council in July of 1974. The work was undertaken at the request of the Council, commenced in August of 1973, and was funded by grant funds from the California Council on Criminal Justice.

California's intermediate appellate courts long have been regarded as among the most progressive and innovative in the nation. Evolutionary improvements constantly have increased their efficiency in the face of volume that has more than doubled during the past ten years. In recognition of the imperative need for further modification, the Judicial Council specifically requested the Center to evaluate and determine; (a) the most effective system of intermediate appellate courts (b) the optimum number of courts and court locations (c) alternatives to present divisional arrangements, and (d) Justice and research attorney personnel requirements.

METHODOLOGY

The Center set about the task with the guidance of a distinguished Advisory Committee, appointed by the Chief Justice of California. Interviews were conducted with all Justices, many court employed research attorneys, personnel from court clerks' offices and attorneys specializing in appellate practice. Statistics were gathered through cooperation of the Administrative Office of the Courts, Justices and clerks in each district. Research was conducted on other appellate systems. The opinions of prominent analysts and educators in the field of appellate practice as well as those of the State Bar of California were taken into consideration.

CONTENTS OF THE REPORT

An overview of the appellate process in California follows an introductory presentation of the history, growth and unique features of the state's Courts of Appeal. Subsequent chapters detail the appellate system, including structure, framework, jurisdiction and composition of each Court, procedures from trial court judgment to conclusion of the appeal, and present deployment of personnel. A general analysis and district profiles are presented.

Specific divisional arrangements and case assignment procedures are analyzed, as is the need for administrative assistants. The report suggests the optimum number of appellate districts, court locations and alternative methods of providing representation for indigent criminal defendants. It contains a statistical analysis of the appellate caseload and a review

of court library research facilities. The report recommends topics which warrant further study and experimentation to further improve the efficiency of operations in the Courts of Appeal.

THE JUDICIARY IN CALIFORNIA

Judicial power of the State of California is vested in the Supreme Court, Courts of Appeal, and Superior, municipal and justice courts. Review by the California Supreme Court, which consists of the Chief Justice and six Associate Justices, is discretionary except for capital cases. The Supreme Court may transfer to itself a cause in a Court of Appeal, but the usual procedure is by petition for hearing from a lower appellate court decision.

Under Constitutional authorization, the Legislature has divided California into five appellate districts, at present consisting of a total of 50 Justices. Three of the five districts, the most populous, are subdivided into divisions, each consisting of a Presiding Justice and two or more Justices. Divisions have the power of a Court of Appeal, and each is required to operate as a three-judge court.

Except for death penalty cases, Courts of Appeal have appellate jurisdiction when superior courts have original jurisdiction and in other causes prescribed by statute. The Courts of Appeal share with the Supreme Court and superior courts original jurisdiction in habeas corpus proceedings and proceedings for extraordinary relief in the nature of mandamus, certiorari and prohibition.

Appellate procedure in California is governed by the State Constitution, by statutes, and by rules of court adopted by the Judicial Council. Civil and criminal appeals follow similar though not exactly the same procedures, and the report makes clear those differences.

SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS

Recommendations in this summary are presented in sequence by chapter and are clarified by a preliminary statement describing principal study findings. All recommendations submitted by the National Center for State Courts and the rational for each are set forth in the complete study but not included in this summary.

A. Monitoring the Appellate Process.

Appellate courts have a direct interest in expediting the processing of appeals. Until recently, the timely preparation of records and briefs has been considered the responsibility of the adversary parties. Available statutes and court rules enabling the trial courts to apply sanctions or to enforce time allocations for preparation of transcripts are often not applied. Court congestion in many instances has reached intolerable levels and appellate courts are no longer able to avoid direct criticism for neglecting to control appellate delay. Data compiled in the study indicate that records and briefs are rarely completed within time limits presently allotted by the California Rules of Court.* Appellate courts

*See Tables in Appendix I.

therefore must recognize their responsibility and, wherever needed, be given authority and the staff capability to monitor all processes to insure a fair and effective administration of justice.

RECOMMENDATIONS:

1. Initiating the Appeal.

   a. Notice of Appeal.

      The Court of Appeal should be notified when civil appeals are initiated. This should be achieved by requiring that a copy of the notice of appeal be forwarded by the superior court to the Court of Appeal.

   b. Filing Fees.

      Payment of the filing fee should be made by appellant concurrently with filing of the notice of appeal with the superior court, which should forward the fee with a copy of notice of appeal to the Court of Appeal.

   c) Failure to complete Acts Necessary to Initiate An Appeal.

      Failure to timely pay the filing fee should be treated as failure to give timely notice of appeal. The Court of Appeal should not grant relief from default occasioned by failure to timely complete these acts.

2. Preparation of the Record.

a. Extensions.

Authority to grant extensions for preparation of the record in civil appeals should be removed from the superior court and be vested exclusively in the Courts of Appeal.

Government Code Section 69944 should be amended to prohibit a reporter from reporting any additional hearings if he has an overdue transcript.*

Government Code Section 69944 should be amended so as to apply to civil matters.

A reporter's compensation for transcription of civil and criminal trials should be reduced by a percentage of his total fee if the transcript is not completed within the time allotted by the Court of Appeal.

3. Briefs.

a. Extension by Stipulation.

Consistent application of existing court rules requires that Courts automatically grant stipulated extensions as permitted by rule, but as case backlogs diminish the time periods should be re-examined. Extensions by stipulation should

*This statute permits trial and appellate courts to prohibit a reporter from reporting new cases until he has completed preparation of overdue transcripts in criminal appeals.

be permitted only for a total of 30 days per briefing period rather than 60 days.

b. Extensions.

In the absence of a stipulation, the Courts of Appeal should adopt a firm policy regarding extensions. All requests should be accompanied by affidavits explaining the reasons; none should be granted without a showing of good cause. Express authority to grant initial extensions should be conferred by modification of court rule upon a delegated representative of the Presiding Justice. The total number of extensions that will be granted should be limited. The Attorney General should not be granted routine extensions.* Rule 17(b) which permits the Court to submit a case for decision on appellant's opening brief and the record should be uniformly enforced.

B. Case Assignment.

Ready appeals are assigned to divisions in a manner designed to equalize distribution. Most districts now assign them randomly but non-random assignment procedures also are employed. As the volume of filings and the number of Justices multiply, such procedures will become more time consuming and complex than warranted. Random rotational assignment will save time and eliminate the possibility, as well as appearance of, pre-arrangment.

*Delay in the filing of briefs by the Attorney General is apparently caused by lack of funding to secure additional staff to process criminal appeals.

RECOMMENDATIONS:

There should be random rotational case assignments to three-judge panels who can reallocate their own workload as needed. Generally, the workload will even out over the long term, but flexible practices should be employed to allow a Justice to add to or reduce his monthly assignments.

C. Research Attorneys.

In recent years, research attorneys have become indispensable to the efficient operation of an appellate court. Their roles vary from that of a temporary personal "clerk" for a single judge to a career appellate specialist who may be organized into a central research staff which works for the entire court. Such central staff organization, where it has been achieved, has resulted in greater court productivity than has the addition of an equal number of attorneys individually assigned to Justices. This improved productivity has been attributed in part to greater concentration of staff time on routine cases and in part to sparing Justices the time consuming tasks of recruiting, training, utilizing and administering individual law clerks. In addition to a central staff, organized primarily to process routine appeals, a research attorney should be assigned to each Justice. Career and temporary research attorneys should be employed both on central staffs and by individual Justices.

RECOMMENDATIONS:

The following are recommendations for the recruitment, establishment, organization, training and general employment of a research staff.

1. Staff Composition.

a. Principal Attorney.

There should be a principal attorney in charge of a central legal staff in each district. His responsibilities should include the following:

(1) Staff supervision;

(2) Staff selection, recruitment and training, including, if requested, advice for new research attorneys employed personally by the Justices;

(3) Development of uniform screening criteria in consultation with and under the guidance of the Justices;

(4) Assignment of responsibilities to staff members in a manner which achieves flexibility;

(5) Maintenance of a research materials and memoranda file;

(6) Communication within and among appellate districts regarding pending and recently decided cases.

b. Central Staff.

Central staff attorneys on the district legal staff should be responsible to the principal attorney. In addition to the overall job assignments listed above, they should perform the following functions:

(1) Review writs and appeals;

(2) For appeals amenable to summary disposition, prepare legal memoranda and draft "By the Court" opinions;

(3) Flexible assignment practices should permit staff attorneys to assist the Court with additional matters upon request.

c. Personal Research Attorney.

At least one personal research attorney should be assigned to each Justice and be responsible to him alone. His duties should be determined by the Justice.

2. Duties.

a. Research File.

Staff attorneys in each district, under supervision of the principal attorney and with the assistance of a professional librarian, should establish an indexed file of research memoranda and related materials.

b. Digest of Pending Issues.

The principal attorney or a staff attorney acting under his supervision should prepare a monthly digest of pending cases. It should briefly outline noteworthy issues asserted on appeal.

c. Inter-District Communication.

The principal attorneys should establish a means of regular exchange among the districts of information relating to appellate procedures, techniques and legal issues.

3. Recruitment.

Law students should assist research attorneys in the preparation of pre-hearing memoranda. Funds should be appropriated for their summer employment.

4. Training.

a. Orientation Program.

A brief but formal orientation program should be established for research attorneys. It should be conducted by experienced research attorneys. Budgetary provision should allow for employment of new research attorneys prior to departure of the Justices' former research assistants.

b. Research Manuals.

A research manual should be prepared in each district and circulated to all Justices and research attorneys. Senior attorneys should update it and receive credit for time spent working on it.

c. Continuing Education.

A conference of research attorneys should be held periodically. Funds should be provided for research attorneys to attend relevant conferences and seminars. Specified times and places for the informal exchange of ideas should be established within each district.

5. Status and Tenure.

a. Status.

The Courts should formally recognize the professional status of research attorneys. Salary levels should be maintained to attract qualified personnel. Professional research attorneys should be free to participate in the work of Bar organizations and encouraged to contribute to annual judicial workshops and to speak at public and Bar functions.

b. Tenure.

There should be a formal policy of preferential employment on central staffs of qualified, experienced personal research attorneys.

6. Facilities and Equipment.

Dictating machines and adequate secretarial assistance should be provided for all research attorneys. The use of Mag Card or MTST typewriters should be encouraged where cost effective.

D. Classification of Appeals.

Categorization of appeals into those with comparatively familiar, routine issues and those which are more complex, and development of alternative methods of disposition have become essential in nearly all high volume appellate courts. This "screening," as it is commonly termed, in California's Courts of Appeal, is essentially a combined judicial-staff review designed to identify "routine" appeals, that is, those presenting simple issues which are neither new nor controversial and which may be adequately disposed of by recitation of well settled legal principles in a short memorandum opinion. Without in any way delegating the decision making function of the Justices, this process has demonstrably saved appellate court time, increased judicial production and permitted Justices to concentrate their maximum attention on appeals with substantive issues:

RECOMMENDATIONS:

The following are recommendations related to standardization of screening criteria, policies and administration.

1. Screening Criteria.

Justices should establish general criteria to use in screening cases to distinguish between those to be routed to the Justices for preparation of a full length opinion and those to be disposed of by a memorandum opinion by the Court which shall initially be drafted by central staff attorneys.

Appeals presenting questions of first impression or unsettled legal issues should not receive memorandum opinion treatment. Recommended for consideration as possible additional criteria are the following factors:

(a) The complexity, controversial nature and novelty of the issues;

(b) The likelihood of judicial accord;

(c) The expertise of the staff;

(d) The number of contentions;

(e) Whether the appeal may be easily and adequately disposed of by a memorandum opinion.

2. Review by Principal Attorney.

All appeals should be examined by the principal attorney when they become "ready." Those reserved as potentially resolvable by memorandum opinion should be assigned to central staff attorneys for further research.

3. Review by Central Staff Attorney.

Central staff attorneys should then conduct an in-depth evaluation, carefully reviewing the briefs and records and performing supplemental research as may be necessary.

4. Preparation of Memorandum.

A central staff research attorney should prepare a memorandum for each appeal retained for disposition by a "By the Court" opinion.

5. Draft "By the Court" Opinion.

The central staff attorney should also prepare a draft "By the Court" opinion.

6. Review by the Principal Attorney.

The memorandum and draft of the "By the Court" opinion should be reviewed for accuracy and completeness by the principal attorney.

7. Review by Justices.

The briefs, staff memorandum and draft opinions should then be reviewed by all Justices, and the legal reasoning or recommended disposition modified if necessary. If there is not unanimous agreement with the proposed treatment of the appeal it should be reassigned for disposition in a full scale opinion.

8. Conference.

Once approved by all the Justices the appeal should be scheduled for the next conference without regard to whether oral argument has been waived.

E. Court Conferences and Oral Argument.

In order that Justices be fully prepared and to permit advance notice to attorneys of issues the Court considers critical, court conferences should be held prior to oral argument to discuss all calendared cases. Separate weekly conferences for cases which will not be argued permit expeditious disposition with a guaranteed opportunity for the Justices to discuss each appeal.

RECOMMENDATIONS:

1. Conferences.

   All panels should hold regularly scheduled conferences. Separate conferences should be scheduled for appeals which will be argued and for those which will not. Whenever possible, preliminary discussions should be held far enough in advance of oral argument to permit early attorney notification of issues of concern to the Court.

2. Oral Argument.

   Courts should inform attorneys when they are of the opinion that oral argument is unnecessary to decide the appeal. Counsel should be afforded the opportunity to orally argue every case, but should be required to state the thrust of his argument when he requests a hearing. The Court should inform attorneys prior to the hearing of critical issues.

F. "By the Court" Opinions.

Inevitably, cases that deserve disposition by a full opinion are occasionally researched initially by a staff attorney. In rare instances appeals which deserve recognition as containing substantial issues have been signed "By the Court" solely because the original research was performed by central staff. Application of consistent screening criteria and this report's recommendation regarding uniform employment of central staff, however, should insure that this rare but undesirable phenomenon is eliminated.

RECOMMENDATION:

Short, "By the Court" opinions should be used whenever possible but confined to cases which do not present novel or important legal issues.

G. Writs.

Writs are usually randomly and rotationally assigned in a manner to equalize the workload. Most Courts are assisted by experienced "writ" attorneys who screen and research petitions. Concentration of all assignments in one panel or division for too long a period is undesirable. It affords an opportunity for forum shopping and creates an unconscious pressure to delay writs if there is a large volume.

RECOMMENDATIONS:

Writ assignments should continuously rotate among all panels and should be random. Three Justices should participate on every writ. Primary evaluation responsibility should rotate among them.

Writ petitions should initially be reviewed by a Justice or an experienced writ attorney to determine if they can be decided without extensive research or a written memorandum. A writ attorney should bear primary responsibility for researching petitions following the initial review.

H. Personnel.

The rising volume of filings mandates greater appellate productivity. Unless procedures are radically altered it will not be possible for the Courts of Appeal, as now constituted,

to cope with the expanding caseload. There must be more Justices and research attorneys.

Recent Court opinion volume and projected future filings were evaluated. Flexible interim "productivity" standards for Justice and central staff were developed. It is estimated that each Justice should be responsible annually for between 90 and 100 opinions and that approximately one half of those will be memorandum opinions initially processed by staff. Based upon those factors, the percentage of appeals and writs which will require written opinions and the percentage of memorandum and full scale opinions, the following workload equations were developed to estimate future court personnel needs.

$$\text{Number of Justices} = \frac{\text{(Original Proceedings) } 7.5\%^{*} + \text{(Civil Filings) } 60\%^{*} + \text{(Criminal Filings) } 30\%^{*}}{50 \text{ or } 55}$$

$$\text{Number of Central Staff Attorneys} = \frac{\text{(Civil Filings) } 20\%^{**} + \text{(Criminal Filings) } 45\%^{**}}{88 \text{ or } 96}$$

*The percentage of filings estimated to required full scale opinions.

**The percentage of filings that will be initially processed by Central staff.

Applying the workload equations, the following additional personnel will be necessary to process 1975 filings:

District	Justices	Attorneys
I	4	6
II	1	7
III	0	1
IV	0	4
V	0	1

These figures are based upon an expected 55 written opinions per Justice per year.

TOTAL PERSONNEL RECOMMENDED FOR THE CALENDAR YEAR 1975

District	I	II	III	IV	V	Total
Justices	16	21	6	9	3	55
Central Staff*	6	10	2	4	1	23
Writ Attorneys	5	7	2	3	1	18
Principal Attorneys**	1	1	1	1	0	4
Personal Attorneys	16	21	6	9	3	55

At the standard of 50 opinions per Justice per year, additional personnel are recommended as follows:

District	I	II	III	IV	V	Total
Justices	1	2	0	1	0	4
Personal Attorneys	1	2	0	1	0	4

* Calculated at an annual rate of 96 memoranda per attorney. If the rate were 88 memoranda per year an additional staff attorney would be needed in District Two.

** Consolidation of Districts Three and Five would be definition result in only four principal attorneys.

The recommended personnel augmentations are estimated to be adequate to dispose of 1975 filings. Some appellate districts are also beset with a large backlog of pending cases which is not accounted for in the workload equations. If production levels and filings are as projected, the backlogs should not diminish, but should increase after 1975.

Personnel necessary to eliminate the backlog by 1979 was calculated. However, immediate employment of more Justices and attorneys beyond those necessary to dispose of 1975 filings was not recommended. Some Justices were of the opinion that an even greater percentage of memorandum opinions could be written and it was concluded that no precise standards should be determined until all courts have developed operative central research staffs and further refined procedures for expeditious disposition of "routine appeals."

I. Divisions.

The three largest appellate districts are currently divided into divisions, each of which operates autonomously. Absence of centralized administrative authority precludes development of uniform policies where needed and impedes rapid, consistent resolution of administrative problems. Abolition of divisions is further recommended as a guarantee against "one man opinions" and forum shopping. Furthermore, it is an incentive to encourage communication between Justices and a measure to reduce intra-district decisional conflicts.

RECOMMENDATIONS:

The Courts of Appeal should:

(a) Abolish "permanent divisions";

(b) Establish three-judge panels with annual membership rotation;

(c) Assign Justices to the panels at random;

(d) Vest the Administrative Presiding Justice with authority to assign Justices within the district to keep each panel at full membership;

(e) Vest the Administrative Presiding Justice with authority to transfer matters from one panel to another in such extraordinary circumstances as disqualification or illness and in order to equalize the workload.

J. Court Administrator.

The expanding volume of appeals has brought a proportionate rise in the time all Presiding Justices must devote to administration. Some major administrative decisions require judicial resolution, but most can be delegated to trained administrators working under the supervision of a single Justice. Currently, administrative responsibility is shared among the Administrative Presiding Justice, the Presiding Justices, the principal attorney, and the clerks of the court. At present no courts are assisted by personnel specially trained in court administration.

RECOMMENDATION:

Administrators, specially qualified in court management, should be employed to assist the Administrative Presiding Justices of the Courts of Appeal in administering the non-judicial functions of the Court. The number, qualifications, salary and duties of these administrators, and their relationship to the clerks of the Courts of Appeal, should be provided for by the Judicial Council. Appointment should only be upon unanimous approval of Justices of each Court to be served by the administrator.

K. Court Size and Location.

California's population distribution and enormous geographic expanse favors maintenance of regional Courts of Appeal rather than a statewide Court of Appeal with all Justices located in one city. Superior courts of each county are the source of appellate filings, the great bulk of which originate in several distinct and widely separated areas. This regional division permits contact with the superior courts and alleviates attorney travel burdens. It also avoids the logistical problems related to scheduling appearances, supervising a huge central research staff, and managing other administrative matters which might be caused by complete unification into one Court of Appeal.

Centralization of some operations however would promote administrative efficiency, collegality of the Court, stability of the law, and equal judicial workloads. The Courts of Appeal

currently sit in six permanent sites. Reduction to four courts in the recommended cities would help equalize the size of the Courts and reduce administrative problems.

RECOMMENDATION:

There should be four Court of Appeal districts in California. Courts of Appeal should be located in San Francisco, Los Angeles, Sacramento and San Diego. The boundaries and the counties composing the First, Second and Fourth districts should be maintained. The counties which make up the Fifth District should be merged into the Third District. Panels of Justices should sit periodically in cities other than the Courts' permanent headquarters, including Fresno and San Bernardino.

L. Representation of Indigent Criminal Defendants.

Most indigent defendants in California are provided with Court appointed private counsel on appeal. The quality of representation provided by such counsel varies widely and there are insufficient experienced attorneys willing to accept appointment. While many perform in a completely acceptable fashion, it was concluded by most of the Justices interviewed, that representation is unequal, tends to be poor, and occasionally is constitutionally inadequate.

Court delays and additional court work result from representation by inexperienced counsel who produce inadequate briefs. Not only must the Court devote time to research that should have been accomplished by counsel, the Court is further hindered by administrative duties entailed in the appellate defense

program, which include appointment and reappointment of counsel, fixing of fees, and monitoring of briefs prepared by numerous attorneys geographically dispersed throughout the district. Several alternatives to the current system are available. Among these are creation of a state appellate public defender, expansion of county public defender's offices, continued representation required on appeal by all trial counsel, and creation of a regional public defender system. Although this report recommends creation of regional public defenders offices, it also suggests that the Courts experiment with expanded appellate representation by county public defenders.

RECOMMENDATIONS:

1. Regional Public Defenders.

   A regional appellate public defender's office, operating similarly to Appellate Defenders, Inc. should be established at State expense in each of the four recommended appellate districts with offices in San Francisco, Los Angeles, Sacramento and San Diego

2. Appointment of Counsel.

   Counsel should be appointed immediately upon filing of the notice of appeal. Rules of Court should be modified to require the superior court to advise the Court of Appeal, upon filing of the notice of appeal, regarding appellant's conviction, sentence, location and financial status, and whether appellant requests appointed counsel.

M. Libraries.

Each Court of Appeal has its own independently operated central library facility available for use by Justices and research attorneys. In the absence of central state administration, library operations reflect the customs, habits and attitudes of Justices and other court personnel. A full-time professional librarian is employed in only one district, while in others the clerk, often assisted by Justices, research attorneys, secretaries and other untrained in library science supervize library operations. Routine library services are not provided in most courts and there is no established pattern for analyzing library needs nor is there a well planned program for selection of acquisitions.

RECOMMENDATIONS:

The Courts of Appeal should institute a statewide law library system directed by an experienced, trained law librarian. The position of library technical assistant should be created. Library technical assistants should be hired either full-time for part-time in all districts. Routine library services should be provided by these professional assistants.

Library collections should be planned on a continuing basis with selection of acquisitions subject to recommendations of Justices and attorneys and analysis by the librarian. A library committee

of Justices and research attorneys should be created in each Court to determine and to monitor acquisitions and budgetary needs. Accounting and collection holding records should be maintained in each Court.

APPENDIX I

STATISTICAL ANALYSIS.

1. Introduction.

During the course of the study the caseload of each appellate district was examined to determine: present and projected caseload size and composition; the time required to complete the various stages of the appellate process; and trends of intake and disposition. The large volume of appeals mandated that a sampling process be employed. Cases for which written opinions were filed in calendar year 1973 were randomly selected. Only appeals were examined; writs, motions, and other matters were not evaluated. Over 25% of all opinions filed statewide were examined; in the smaller districts 30%-50% of the cases were selected. Only data relative to record and brief preparation times are evaluated in this summary.

Time periods are represented by the median, that is the midway point in the set of figures. The median rather than the mode or arithmetic mean is generally considered to be the most significant and representative measure for evaluating time periods in the appellate process.

2. Preparation of the Record.

California Rules of Court allow 30 days for preparation of transcripts on appeal, but reporters throughout the state are exceeding the permissible time limit by a wide margin. Furthermore, it takes nearly twice as long to prepare the record in a civil appeal as in a criminal appeal. Median times for record preparation in civil cases range from 77 to 169 days, while times for criminal appeals transcripts range from 37 to 80 days. In the latter instance, supervision of record preparation rests exclusively with the appellate courts.

From: Notice of Appeal	To: Record Filed	Civil	Civil "By the Court"	Crim.	Crim. "By the Court"
District One		105*	84	77	71
District Two		132	--	60	80
District Three		101	77	47	37
District Four Division 1		99	169**	49	49
District Four Division 2		132	119	58	48
District Five		110	--	78	72

* Median figures in days.

** Six cases evaluated.

3. Briefs.

a. Civil Appeals.

Both appellants' and respondents' opening briefs are, for the most part, filed within two to three months after the record. This period is very uniform throughout the State, and indicates that although counsel usually exceeds the 30 day period permitted by court rules, his delay in brief preparation is not the major factor in civil appellate delay. Attorneys in civil appeals prepare their briefs more expeditiously than those in criminal appeals, but further improvement would seem possible.

BRIEF PREPARATION

CIVIL APPEALS

	Appellant's Opening Brief		Respondent's Brief	
	Civil	Civil "By the Court"	Civil	Civil "By the Court"
District One	62*	58	70	69
District Two	67	--	69	--
District Three	62	55	61	77
District Four Division 1	83	76	65	61
District Four Division 2	66	56	72	63
District Five	78	--	62	--

* Median figures in days.

b. Criminal Appeals.

Attorneys for appellants in criminal cases have exceeded the allowable 30 day period by an inexcusable margin in the sample year.* Time lapse figures for preparation of appellant's opening brief further support the conclusion that present appointment procedures are inadequate and should be replaced by a permanent, specialized defender system.

The Attorney General usually prepares his briefs slightly faster than counsel for appellant but also fails to complete them within prescribed time limits. Such delay should be reduced by augmentation of staff or different deployment of present personnel.

BRIEF PREPARATION

CRIMINAL APPEALS

	Appellant's Opening Brief		Respondent's Brief	
	Crim.	Crim. "By the Court"	Crim.	Crim. "By the Court"
District One	120 **	101	94	78
District Two	97	54	87	67
District Three	88	59	59	44
District Four Division 1	97	93	89	84
District Four Division 2	149	78	104	88
District Five	131	107	60	32

* It should be emphasized that figures reflect briefs which for the most part were prepared in late 1972 and in 1973. For example, the random sample in District IV, Division One included no appeals in which Appellate Defenders, Inc. was appointed counsel.

** Median figures in days.

NATIONAL CENTER FOR STATE COURTS

Council of State Court Representatives

Alabama
Howell T. Heflin
Chief Justice, Supreme Court

Alaska
Jay A. Rabinowitz
Chief Justice, Supreme Court

Arizona
James Duke Cameron
Vice Chief Justice, Supreme Court

Arkansas
C. R. Huie, Exec. Secy.
Judicial Dept., Supreme Court

California
Donald R. Wright
Chief Justice, Supreme Court

Colorado
Harry O. Lawson
Court Administrator, Jud. Dept.

Connecticut
John P. Cotter
Associate Justice, Supreme Court

Delaware
Daniel L. Herrmann
Chief Justice, Supreme Court

Florida
James B. Ueberhorst
State Courts Administrator

Georgia
Benning M. Grice
Chief Justice, Supreme Court

Hawaii
Tom T. Okuda
Adm. Ser. Dir., District Courts

Idaho
Charles R. Donaldson
Justice, Supreme Court

Illinois
Joseph H. Goldenhersh
Justice, Supreme Court

Indiana
Norman F. Arterburn
Chief Justice, Supreme Court

Iowa
W. W. Reynoldson
Justice, Supreme Court

Kansas
David Prager
Justice, Supreme Court

Kentucky
James S. Chenault
Judge, 25th Judicial District

Louisiana
John A. Dixon, Jr.
Associate Justice, Supreme Court

Maine
Charles B. Rodway, Jr.
Adm. Asst. to the Chief Justice

Maryland
William H. Adkins, II
Dir., Adm. Office of the Courts

Massachusetts
Walter H. McLaughlin
Chief Justice, Superior Court

Michigan
Thomas M. Kavanagh
Chief Justice, Supreme Court

Minnesota
Richard E. Klein
State Court Administrator

Mississippi
R. P. Sugg
Associate Justice, Supreme Court

Missouri
Fred L. Henley
Judge, Supreme Court

Montana
Wesley Castles
Justice, Supreme Court

Nebraska
Paul W. White
Chief Justice, Supreme Court

Nevada
Howard W. Babcock
Judge, District Court

New Hampshire
John W. King
Justice, Superior Court

New Jersey
Frederick W. Hall
Justice, Supreme Court

New Mexico
John B. McManus, Jr.
Chief Justice, Supreme Court

New York
Richard J. Bartlett
State Adm. Judge

North Carolina
Bert M. Montague
Dir., Adm. Office of the Courts

North Dakota
Harvey B. Knudson
Associate Justice, Supreme Court

Ohio
C. William O'Neill
Chief Justice, Supreme Court

Oklahoma
William A. Berry
Justice, Supreme Court

Oregon
Loren D. Hicks
State Court Administrator

Pennsylvania
A. Evans Kephart
State Court Administrator

Rhode Island
Walter J. Kane
Ct. Administrator, Supreme Court

South Carolina
Joseph R. Moss
Chief Justice, Supreme Court

South Dakota
Fred R. Winans
Associate Justice, Supreme Court

Tennessee
T. Mack Blackburn
Exec. Secy., Supreme Court

Texas
Thomas M. Reavley
Associate Justice, Supreme Court

Utah
Allan E. Mecham
Admstr. and Clerk, Supreme Court

Vermont
Lawrence J. Turgeon
Ct. Administrator, Supreme Court

Virginia
Lawrence W. I'Anson
Justice, Supreme Court

Washington
Orris L. Hamilton
Justice, Supreme Court

West Virginia
Charles H. Haden, II
Justice, Supreme Ct. of Appeals

Wisconsin
Horace W. Wilkie
Chief Justice, Supreme Court

Wyoming
Glenn Parker
Chief Justice, Supreme Court

District of Columbia
Gerard D. Reilly
Chief Judge, Court of Appeals

Guam
Joaquin C. Perez
Chief Judge, Island Court

Puerto Rico
Jose Trias Monge
Chief Justice, Supreme Court

Virgin Islands
Cyril Michael
Presiding Judge, Municipal Court

END