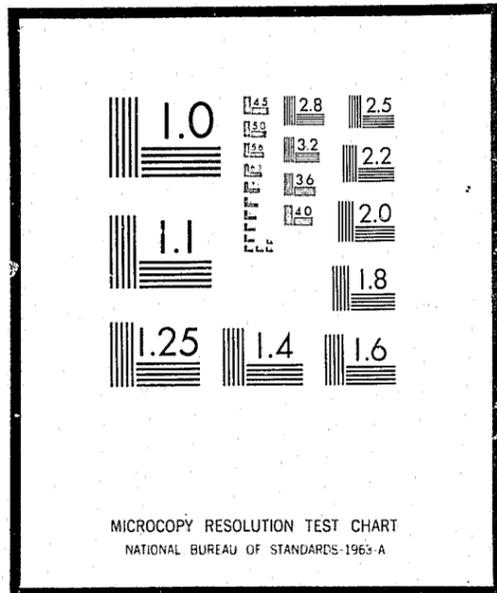


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New Jersey - Appellate Justice Project -

APPENDIX IV
THE QUESTIONNAIRES

ADMINISTRATIVE OFFICE OF THE COURTS



STATE HOUSE ANNEX
TRENTON
NEW JERSEY
08625

WARD B. MCCONNELL
ADMINISTRATIVE DIRECTOR
CYNTHIA M. JACOB
DIRECTOR OF RESEARCH
SUPERIOR COURT, APPELLATE DIVISION

February 5, 1973

MEMORANDUM

TO: ALL APPELLATE JUDGES
FROM: CYNTHIA M. JACOB
RE: QUESTIONNAIRE

The following is the breakdown of answers received to the questionnaire distributed by the Central Appellate Staff. On the basis of 11 questionnaires returned out of 15:

1. Our screening system was not finalized until late September; therefore, excluding the cases you first received from the staff, do you feel we are choosing the correct cases for staff treatment?

Yes -- 8
For most part -- 1
Did not answer -- 2

2. How would you rate the memorandums prepared by the C.A.S. in terms of covering both issues presented and issues present, although not raised?

Excellent -- 3
Good -- 4
Vary between excellent, good, fair -- 1
Did not answer -- 2

3. Do the proposed opinions adequately include: a brief statement of facts, and a brief discussion of the issues, with a citation to dispel those issues?

Contains statement of facts: Yes -- 8
Did not answer -- 3
Contains discussion of issues: Yes -- 8
Did not answer -- 3
Contains citation to dispel: Yes -- 7
Did not answer -- 4

Page Two

4. Are the proposed opinions helpful to you?
Only if adopted?

Yes -- 2 No -- 2 Did not answer -- 7

Even if not adopted?

Yes -- 8 No -- 1 Did not answer -- 2

5. Are the memoranda helpful to you even when the opinions are not adopted?

Yes -- 9
Did not answer -- 2

6. When you have agreed with the C.A.S. result, but have not adopted the opinion, please rate, in descending order of frequency, the reasons why you have not used them (1 is the most frequent reason for not adopting, 5 or 6, as the case may be, is the least frequent reason for not adopting).

- A. too long -- 3 judges rated this first; 2 rated it second; 1 rated it third; 1 checked this only
- B. inappropriate citations -- 1 rated this fifth; others did not rate
- C. unsatisfactorily articulated -- 2 rated this second; 3 rated this third
- D. unsatisfactory legal reasoning -- 1 rated this fourth
- E. stylistic changes -- 2 rated this first; 2 rated this second; 2 rated this third
- F. other -- 1 check mark

Also noted was that we cited too many cases, but that we should leave citation in and let the court decide what to cut out.

7. Is the combination of C.A.S. memoranda and proposed opinions (more helpful, equally helpful, less helpful) than the memoranda prepared by the law clerks?

More helpful -- 1
Equally helpful -- 6
Did not answer -- 4

8. In comparison to those cases prepared by the law clerks, are you reading the transcripts (more often, same as, less frequently)?

more often -- 0
same as -- 4
less frequently -- 4
did not answer -- 3

9. We know we are not able to do all of the cases which are appropriate for C.A.S., in fact, we are presently able to provide an average of only 2 C.A.S. prepared cases per session. Assuming that the C.A.S. had more personnel, on the average how many of your 15 cases per session do you feel would be appropriate for C.A.S. to handle?

2-3 more cases	--	1
4 cases	--	2
5 cases	--	2
5-6 cases	--	1
could not quantitize	--	3
did not answer	--	2

10. The State of Michigan tried adding an additional law clerk for each judge for one year. The court found it more efficient the following year to pool the extra law clerks in a central staff operation. If given this option of having an extra law clerk per judge, would you prefer to:

Have extra law clerk in chambers	--	7
Assigned to C.A.S.	--	1
Neither	--	1
Both	--	1
Extra law clerk would be problem for sec'y	--	1

11. In Michigan, the C.A.S. equivalent prepares a memorandum and opinion in all cases. Do you think this is desirable, assuming that you continue to have at least one law clerk?

Yes	--	2
No	--	9

12. The present complement of the C.A.S. is five attorneys (including the director). If we doubled our complement to ten, thus allowing us to provide at least four C.A.S. prepared cases per session, would an extra law clerk be necessary?

Yes	--	1
Yes, if cases kept at present level	--	1
No	--	8
Did not answer	--	1

13. Would it be desirable or helpful to you to have a single "standing master" type person in Trenton who would not be a judge but would be empowered to decide certain housekeeping motions such as petitions for extensions of time, adjournments, and accelerations?

Yes	--	8
No	--	3

Additional comments regarding concept of a standing master:

"He could also supervise the screening operations so that this was under the wing of the judiciary."

14. Does your law clerk every use memoranda prepared by the C.A.S.?
No -- 8
Did not answer -- 3

15. A copy of a proposed rule change [concerning cases in which excessive sentence is the only ground raised] is enclosed. Is this proposal worth a try?
Yes -- 5
Best accomplished administratively -- 5
No -- 2 *

Additional comments regarding rule change:

"Such a change should not be mandatory. Perhaps there should be a shorter filing period."

"[Such a change] would only be a palliative. The whole area of sentencing is a deep and troublesome problem. It should be treated in depth by a sentence review court. Alleviating a calendar problem for the Appellate Division or counsel will not solve the underlying sentencing problem--in fact it would probably make it worse."

16. Any additional comments you wish to make:

On the idea of a checklist to go to lawyers on filing of the notice of appeal:

"Suggestion. . . is worth trying and should not impose too great a burden on the clerk's office".

"I doubt whether proposed procedure for improving quality of briefs will work but I am willing to try anything. Our experience is that when we direct a new brief or a proper one to be filed, the new brief is little better than its predecessor."

"The suggestion [concerning a checklist] would not be too helpful. It would mean more details for the Clerk's Office to handle--we have court rules governing appellate procedure--and I doubt that lawyers would pay any more attention to a checklist than they do to the rules".

* There are twelve answers to this question because one judge indicated without completing the questionnaire that he thought the rule change could be accomplished administratively.

9 sometimes faulty in the recommendations
1 generally accurate as to both fact and law.

4. The drafts of staff recommended opinions are generally
4 too long 1 somewhat long
0 too brief
8 about the right length

5. Have the staff memoranda or draft opinions enabled you to save significant time in deciding and disposing of cases?
11 Yes
0 No
2 Uncertain

6. Does a staff memorandum generally cause you to invest more time on a case than you normally would without a staff memorandum?
0 Yes
13 No

7. If your answer to 5 was "Yes", mark each of the ways in which you think you have been able to save time as a result of staff work:
2 by not reading the transcript or the record
0 by not reading the briefs of the parties
10 by reading shorter portions of the transcript or the record than it would be necessary to read if it were not for the staff work
4 by reading only portions of the briefs of the parties
10 by being able to grasp the facts more quickly
10 by being able to grasp the issues more quickly
8 by being able to grasp the arguments more quickly
4 by not having to prepare the initial drafts of per curiam opinions
0 other (specify)

8. Do you think that a staff memorandum enables the judges participating in a case to reach a collective decision more quickly than they normally do in cases without a staff memorandum?

8 Yes
5 No

9. My personal law clerk reads the memoranda
0 in every staff processed case
10 in no staff processed case
3 in some staff processed cases

10. If your law clerk reads the staff memoranda in some or all staff processed cases, check each of the reasons why he does so:

0 to verify the accuracy of the memoranda
0 to assist him in preparing his own memoranda on the cases
3 to assist him in discussing the case with me
0 Other (specify)

11. Laying aside the question of time saved, it is my overall feeling that in the cases on which the staff has worked, the staff work

12 has made no significant difference in the quality of the treatment or adjudication received by such cases in this court
1 has made a significant difference in the quality of treatment or adjudication received by such cases in this court

12. If you think the staff work has made a significant difference in this connection, state precisely how:

Helpful in summarizing the pertinent facts, and in submitting proposed opinions.

13. In preparing memoranda for me my personal law clerk:

0 relies exclusively on the statements of fact and law which appear in the briefs

Appellate Justice Project

September 7, 1973
Date Filled Out

To: Judges of the Participating Courts

(11 questionnaires)

From: Daniel J. Meador, Project Director

To assist in compiling a report on this project it is important that we obtain some reliable indication as to how the judges of the four participating courts view the staff work. We have previously asked each judge at all four of the project courts to complete a questionnaire similar to the following. Now, as a year's experience comes to a close, we need to get a fresh response from the judges to assist us in the evaluations. Accordingly, I hereby ask that you take the few minutes necessary to respond to these questions. Your doing so will be an important contribution to the National Center's Appellate Justice Project. You will note that we do not ask for the identification of the responding judge. Please answer here without regard to how you may have answered earlier questionnaires.

Under each item below place a check mark beside the statement which best expresses your view.

1. The staff prepared memoranda (not including the drafts of opinions) generally seem

1 too long

If too long, the parts which should be shortened are 0

0 too brief

10 about the right length

2. The part of the memoranda which is most helpful is

5 the statement of facts

4 the discussion of the issues and the legal analysis

0 the recommendations

6 all of the above are about equally helpful

0 none of the above is especially helpful

3. The memoranda have appeared to me to be (check as many as express your view)

1 almost always

7 always accurate on the facts

0 occasionally checks the accuracy of statements of fact or law by references to the transcript or record and by cite checks

2 always check the accuracy of statements of fact or law by references to the transcript and by cite checks

9 usually check the accuracy of statements of fact or law by references to the transcript and by cite checks

2 usually reads the entire transcript

1 prepares his own statement of facts in all cases from reading of the transcript

14. The memoranda prepared by my personal law clerk:

0 involve little or no independent research of the legal issues presented

3 sometimes involve independent research of the legal issues presented

8 usually involve independent research of the legal issues presented

2 always involve independent research of the legal issues presented

1 almost always

1 always accurate on the law

3 sometimes or occasionally inaccurate or misleading on the facts

8 sometimes or occasionally inaccurate or misleading on the law

5 sometimes faulty in the recommendations

1 rarely faulty in the recommendations

1 not in agreement with my views

4. The drafts of staff recommended opinions are generally

4 too long

0 too brief

7 about the right length

5. Have the staff memoranda or draft opinions enabled you to save significant time in deciding and disposing of cases?

10 Yes

0 No

1 Uncertain

6. Does a staff memorandum generally cause you to invest more time on a case than you normally would without a staff memorandum?

1 Yes

10 No

7. If your answer to 5 was "Yes", mark each of the ways in which you think you have been able to save time as result of staff work:

1 by not reading the transcript or record

0 by not reading the briefs of the parties

5 by reading shorter portions of the transcript or the record than it would be necessary to read if it were not for the staff work

5 by reading only portions of the briefs of the parties

6 by being able to grasp the facts more quickly

5 by being able to grasp the issues more quickly

6 by being able to grasp the arguments more quickly

5 by not having to prepare the initial drafts of per curiam opinions

0 Other (specify)

8. Do you think that a staff memorandum enables the judges participating in a case to reach a collective decision more quickly than they normally do in cases without a staff memorandum?

7 Yes

4 No

9. My personal law clerk reads the memoranda

0 in every staff processed case

7 in no staff processed case

4 in some staff processed cases

10. If your law clerk reads the staff memoranda in some or all staff processed cases, check each of the reasons why he does so:

0 to verify the accuracy of the memoranda

2 to assist him in preparing his own memoranda on the cases

2 to assist him in discussing the case with me

3 Other (specify) 1. If case is assigned for opinion,

2. My personal law clerk rarely examines staff memos, only when directed to do so. 3. Where I think staff memo is inadequate or conclusion arrived at to be questionable. I occasionally assign case to one of clerks to supplement it.

11. Laying aside the question of time saved, it is my overall feeling that in the cases on which the staff has worked, the staff work:

8 has made no significant difference in the quality of the treatment or adjudication received by such cases in this court

3 has made a significant difference in the quality of the treatment or adjudication received by such cases in this court

12. If you think the staff work has made a significant difference in this connection, state precisely how:
1) Factual analysis is thorough and reliable; 2) general uniformity and consistency; 3) Just as I am assisted by the preparation by my law clerk of an in depth memo containing a factual analysis from an independent reading of the entire record and an analysis of the law based on independent research, so am I assisted by the staff memos; 4) Major benefit is saving of judicial time and personal clerk's time which would be required to prepare a memorandum; 5) If screening process has been carried out properly, if case is not a relatively difficult one, the memo and proposed P.C. provide a very rapid insight into fact and legal issues and permit a proper result. I'm enthusiastic for continuing and expanding program. I think it provides the best suited device so far for us to make out goal of disposing fairly and rapidly of a large case load appeals.

13. In preparing memoranda for me my personal law clerk:

0 relies exclusively on the statements of fact and law which appear in the briefs.

0 occasionally checks the accuracy of statements of fact or law by references to the transcript or record and by cite checks.

1 Always

10 usually checks the accuracy of statements of fact or law by references to the transcript and by cite checks

14. The memoranda prepared by my personal law clerk:

0 involve little or no independent research of the legal issues presented

3 sometimes involve independent research of the legal issues presented

1 Always

7 usually involve independent research of the legal issues presented

OTHER COMMENTS

The answer to question 11 is misleading. I like to think that the "quality of the treatment or adjudication" in our court is the highest in all circumstances. I have no doubt that the staff-prepared cases are marked with the Staff's contribution to that high quality. But I am unwilling to state that without that contribution the quality would be less (i.e., a significant difference.)

END