THE SUPREME COURT OF IOWA

A Study of its Procedures and Administration

January, 1971

The Institute of Judicial Administration
40 Washington Square South
New York, N. Y. 10012

TABLE OF CONTENTS

INTRODUCTION

In the past 25 years the world has probably seen more changes in every aspect of human development than in all of prior recorded history. Inevitably, much of this change has had a substantial impact upon our laws and legal institutions, and the courts have become more deeply involved in the social issues of the day than ever before. The result has been a substantial increase in both the number and complexity of the cases submitted to the courts. In many states and in the Federal system, as a response to this situation, changes in court structure, jurisdiction, and appellate procedures have been proposed and adopted. In some states this has meant the establishment of an intermediate appellate court or the creation of additional appellate judgeships. In others the mandatory jurisdiction of the appellate courts has been reduced or procedures have been revised to make the courts more efficient in handling their judicial business. In Iowa over the past several years, the members of the Supreme Court have become acutely conscious of the increasing and changing workload of the Court and of the decreasing ability of its members to give to each case decided by the Court the careful attention it deserves. This problem was brought to public attention earlier this year by one of the members of the Supreme Court, Justice William C. Stuart, in an article published

in the Iowa Law Review. [1] Justice Stuart noted the increasing workload of the Court and suggested that unless remedial steps were taken the Court would not be able to keep its docket current, a backlog of unheard and undecided cases would develop, and justice would be even further delayed for a litigant whose case was appealed to the Supreme Court.

As a result of discussions within the Court, the Institute of Judicial Administration was contacted concerning its availability to make a study of the Court to determine what measures were necessary to avert the crisis predicted by Justice Stuart. After initial discussions between Delmar Karlen, the Director of the Institute of Judicial Administration, and members of the Court, the Institute agreed to make the study.

The Supreme Court, not having funds in its budget for the study, filed an application with the Iowa State Crime Commission for a grant under the Federal Omnibus Crime Control and Safe Streets Act of 1968. This application was approved in May, 1970, and the study was begun in June, 1970. In addition to its regular staff, the Institute obtained the services of Robert J. Martineau, associate professor of law at the University of Iowa, to direct the study. Professor Martineau was exceptionally well qualified to undertake the work. Before joining the

Iowa faculty he had served as law clerk to Chief Judge Brune of the Maryland Court of Appeals, and had practiced law in Maryland for seven years, both as an associate in a large Baltimore firm and as a partner in a three man firm in a small town. He also served as an assistant attorney general of Maryland for one and one half years, was a member of the Maryland Constitutional Convention Commission and Chairman of its Committee on the Judiciary, and in 1967-68 was Secretary of the Maryland Constitutional Convention. Finally, he played an important role in drafting the model judicial article for the American Bar Association. Professor Martineau was assisted in this study by Mr. Gerald Ashdown, a student in the law school at the University of Iowa.

The methodology of the study included: interviews with each of the justices of the Court and with the staff of the Court; inspection of the facilities of the Court and of the individual justices; a step-by-step analysis of the entire process by which a judgment of a lower court is reviewed and an opinion of the Supreme Court is written and adopted; the development of statistical data showing the time lag at each step in the appeal process; an analysis of the function of each person on the Court's staff; an analysis of the manner in which each member of the Court fulfills his judicial function; an analysis of the administrative duties of the Chief Justice and of the Court; and

a review of the published material on improving appellate procedure and on the Supreme Court of Iowa. In addition, while this Report is primarily the work of Professor Martineau, it has been carefully studied, not only by the Director of the Institute, but also by two special consultants: the Honorable Robert B. Williamson, former Chief Justice of the Supreme Judicial Court of Maine and former Chairman of the National Conference of Chief Justices; and Sir George Coldstream, former Permanent Secretary to the Lord Chancellor of England (and in that capacity in effect the Court Administrator of that nation), and presently Chairman of the Council of Legal Education in England. All of these men have contributed their insights and suggestions.

The recommendations contained herein are those which the Institute as an entity believes are necessary and appropriate to meet the needs of the Iowa Supreme Court. Most of them can be put into effect by the Court itself and do not require the passage of enabling legislation or constitutional amendments. When appropriate, however, comments have been made on matters which require legislative or executive action.

Needless to say, the proposals included in this Report may not be the same as would be made for another appellate court. Each state and each court has its own traditions and experience, and what may be suitable for one may be inappropriate for another.

The Institute wishes to express its appreciation to all of those who assisted it in the preparation of this Report, particularly the justices of the Supreme Court and the members of the Court's staff. Each gave freely of his or her time, and without the cooperation of all this Report could not have been prepared.

THE SUPREME COURT OF IOWA

Historical Background

The Iowa Supreme Court's direct antecedent was the Supreme Court of the Territory of Iowa. That court, created in 1838 by the Congressional Act separating Iowa from the Territory of Wisconsin, was composed of three justices who also sat as trial judges in the three judicial districts of the Iowa Territory. Many of the laws passed by the first session of the Iowa legislature were drafted by Charles Mason, the chief justice of the territorial court. The first Constitution of the State of Iowa was adopted in 1846. It provided for a supreme court consisting of a chief justice and two associate justices who were to be chosen by a joint vote of both houses of the legislature for a term of six years. No changes were made in these provisions until a new constitution was adopted in 1857. Under Article 5 of that constitution, which is still Iowa's basic charter, a three member supreme court was created but the legislature was given authority to enlarge the membership of the court,

prescribe the time and place that the court would meet, and regulate practice in the courts. The court was given appellate jurisdiction in all cases and supervisory power over all inferior courts. The power to elect the justices of the court was transferred from the legislature to the people.

In the years since the adoption of the 1857 constitution the legislature has enlarged the Court six times, adding the fourth member in 1864 and the ninth in 1929. The only important constitutional amendment concerning the Court was adopted in 1962 when the voters of Iowa approved a merit selection and tenure plan for all supreme court and district court judges, with supreme court justices having a minimum term of eight years but with power in the legislature to increase the term. The principal legislative enactment governing the internal operating procedures of the Supreme Court is section 684.2 of the Iowa Code which permits the Court to sit in two divisions. This statute was first enacted in 1894 and the Court sat in divisions from 1929 through 1943 during which period the Court's caseload reached substantially higher levels than at present. The procedure relating to appeals is governed by a combination of constitutional provisions, statutes, Rules of Civil Procedure and Supreme Court Rules.

The Members of the Court

At the present time the Court consists of a chief justice and eight associate justices. The chief justice is chosen by the members of the Court from their own number to serve in that capacity for the remainder of his current term. The present chief justice is C. Edwin Moore who was elected to that office in November, 1969, upon the retirement from the Court of Theodore G. Garfield. Chief Justice Moore was appointed to the Court in 1962 after having served since 1936 on the Des Moines Municipal Court and then the Polk County District Court. He is 67 years of age. Justice Robert L. Larson is the senior associate justice, having served on the Court since 1953. Prior to his appointment he had served almost six years as Iowa's attorney general. Justice Larson's age is 72. Justice William C. Stuart also was appointed to the Court in 1962 after having served ten years in the state senate. He is 50 years old. Justice M. L. Mason came on the Court in 1965 from private practice but had served at different times as county attorney and as U.S. Attorney. He is 64. Justice Maurice E. Rawlings, who is the same age as Justice Mason, had been a district court judge for seven years prior to his appointment to the Court in 1965. Justice Francis H. Becker also joined the Court in 1965 after having been in private practice for over 25 years. He is 55 years of age. Justice Clay

LeGrand, who is 59, was on the District Court for 10 years when he was appointed a member of the Court in 1967. Justice Warren J. Rees was appointed to the Court in 1969 after having been a district court judge for six years. He is 62. The newest member of the Court is Justice Harvey Uhlenhopp who was appointed in early 1970 after having served on the District Court since 1953. He is 55 years old. Three members of the Court, Chief Justice Moore and Justices Becker and Uhlenhopp, maintain their offices in Des Moines, while Justice Larson does so in Iowa City, Justice Stuart in Chariton, Justice Mason in Mason City, Justice Rawlings in Sioux City, Justice LeGrand in Davenport, and Justice Rees in Anamosa. Justice Becker moved to Des Moines from Dubuque after his appointment to the Court while Justice Uhlenhopp stays in Des Moines during the week and returns to his home in Hampton on the weekends.

The Jurisdiction of the Court

The jurisdiction of the Supreme Court is, with few exceptions, appellate. Cases are appealed to the Supreme Court from the District Court, which is divided into 18 judicial districts with 76 judges, and from the 13 municipal courts with 23 judges in the state. Appeals from the other minor courts are taken to the District Court. The most notable example of original jurisdiction is in cases involving reapportionment of the Iowa General Assembly, in

which the Court, under a 1968 constitutional amendment, has original jurisdiction. The Court also has original jurisdiction in bar discipline cases and to issue temporary injunctions. The Court has jurisdiction over all appeals from final judgments, from interlocutory orders in the discretion of the Court, and has authority to grant a writ of certiorari in a case in which a district or municipal court is alleged to have exceeded its jurisdiction or otherwise acted illegally. The only limit on the Court's jurisdiction, which is self imposed, is that in a case not involving real estate in which the amount in controversy is less than $1,000, an appeal may be taken only if the trial judge certifies the cause is one in which an appeal should be allowed. [2] The Court also has supervisory and administrative control over lower courts and over the admission and discipline of the bar.

The Appellate Process

Civil Cases

In an ordinary civil case the appeal process is initiated by the losing party filing a notice of appeal with the clerk of the trial court. This must be done within 30 days of the entry of the order from which the appeal is taken unless a new trial or judgment n.o.v. motion is filed, in which case the time for appeal is extended until 30 days after the motion is ruled upon. After the filing of the notice of appeal the clerk of the trial court delivers

copies of it to the attorneys for the other parties in the case. The printed record must be filed with the clerk of the trial court within 90 days of the filing of the notice of appeal. The first step in the preparation of this record is for the appellant to file with the clerk of the trial court a typewritten copy of those portions of the original papers in the trial court which he deems material to the appeal and which are to be included in the printed record. If any portion of the papers is omitted from the abstract, the appellant must file as part of the abstract a statement of the points on which he bases his appeal. The transcript of testimony prepared by the court reporter is filed at the same time as the abstract. The trial court clerk notifies the attorney for the appellee of the filing, and he has 20 days in which to file additions to the appellant's abstract. The abstract and any proposed amendments are then presented to the trial judge who has the responsibility to settle any differences between the parties as to the contents of the abstract. Even if there is no dispute between the parties as to the portion of the record to be printed, the trial judge also has the duty to approve it as correctly showing the evidence and proceedings at the trial. The relevant portions of the transcript of testimony must be abstracted in condensed or narrative form unless one of the parties convinces the trial judge that

there is a good reason for including it in question and answer form. The abstract as approved by the trial court is the record on appeal and is what is included in the "printed" record.Under the rules the record and the briefs may be printed or mimeographed.

The appellant must file one copy of the printed record for the court and one for each party of record. The clerk delivers the copies to the parties and certifies on the court copy the filing and service of the other copies, and mails it to the clerk of the Supreme Court. At the same time that the appellant files the printed record with the trial court he must also file 17 copies and a $3.00 filing fee with the clerk of the Supreme Court who, upon receipt, dockets the case. The appellant may receive from the trial court extensions for the filing of the printed record. Extensions are most often necessitated by the inability of the trial court reporter to prepare the transcript of testimony within the allotted time. If the printed record is not filed within the required time the appellee may file a copy of the judgment or order appealed from with the clerk of the Supreme Court and cause the case to be docketed. Thenupon motion the appeal is either dismissed or the judgment affirmed by the Supreme Court unless the appellant convinces the Court to grant him additional time to file the printed record. After the filing of the printed record

the appellant has 45 days in which to file his brief with the clerk of the trial court. He must also file one copy to be certified by the trial court to the clerk of the Supreme Court and one copy for each party. The appellee has 30 days after the filing of the appellant's brief in the trial court to file his brief in the same manner, and the appellant has 15 days thereafter to file a reply brief.

When the Supreme Court clerk receives the required copies of the printed record and the filing fee, he dockets the appeal assigning it a number and entering it in the clerk's "Original Entry, Calendar and Fee Book." The clerk also makes duplicate entries on a file-card which is kept in a separate box along with the cards for other cases. When the final brief is filed the card is put in the ready file and each month approximately ten days before the next court session an assistant clerk prepares a schedule of arguments for the first 24 cases in the ready file. The Chief Justice reviews this list and when approved by him a copy is sent to each of the justices. The order in which a case is put on the schedule determines the justice to whom the case is assigned because the Court follows a strict rotation system which carries over from session to session. The clerk mails to each justice only the briefs and records in the cases assigned to him. The briefs and records for those cases which are not assigned to that justice are placed in

his office in Des Moines and he does not see them until the day of argument in the particular case. Each justice is mailed, however, a copy of a summary of each of the scheduled cases prepared by the Court Reporter from the briefs and record. The attorneys in the case also receive a copy of the summary and a notice of the day on which the case will be heard.

The rules require that oral argument must be requested, otherwise it is waived. In practice, however, it is almost always requested. Oral arguments are heard only in the Supreme Court's courtroom on the first floor of the State Capitol in Des Moines. The Court hears arguments four days each month except July and August, sitting Tuesday through Friday. The Court hears six cases per day from 9 a.m. to 12 noon, and from 1 p.m. until 4 p.m. Each appellant is entitled to thirty minutes for his main argument and fifteen minutes for rebuttal and the appellee has thirty minutes. During the argument the justice to whom the case has been assigned usually asks the most questions because he is the only one who has read the briefs and thus has sufficient knowledge to do so. At the end of the day's arguments, or earlier if there is sufficient time, the Court has a conference on the cases just argued. This conference is held in the Court's conference room immediately behind the courtroom. The conference on a case begins with the

judge to whom it has been assigned giving his understanding of the case and whether he thinks it should be affirmed or reversed. Each of the other justices does likewise and there is a general discussion of the case. The case remains with the justice to whom it is assigned even if he is in the minority at the initial conference on the theory that four justices may subsequently agree with him after they have seen his draft opinion.

After a justice prepares a draft of an opinion his secretary types an original on paper with the margins set off by red lines, informally designated as the "red line" copy, and a duplicating master. The master is mailed to the executive secretary of the Court in Des Moines who makes additional copies and mails them to the other justices. He also gives a copy to the Court Reporter so he can prepare a summary of the opinion. The justices, to the extent they have time available, review it. If a justice has a question about the draft opinion he telephones or writes a memorandum to the author of the opinion to attempt to resolve the issue. Sometime prior to the next argument session each justice prepares a "concurrence sheet" which is a list of the cases on which opinions have been circulated along with the justice's position on the opinion, e.g. "I concur," "I dissent," and whatever other comments he thinks are appropriate. This is mailed to the executive secretary of the

Court for duplication and mailing. From these circulated concurrence sheets each justice knows the position of each of the other justices on the circulated opinions.

The Court holds a monthly conference on the Monday of argument week. At this conference the Court considers the opinions which have been received by the clerk of the Court by the preceding Wednesday and mailed out by him on that same day to the other justices. At this same conference the Court also rules on petitions for rehearing and miscellaneous administrative matters. The consideration of an opinion is begun by its author explaining the case and his view of it as expressed in the opinion. The other members of the Court then express their views and if a majority favors adopting the opinion it becomes the opinion of the Court. If a majority agrees with the result but is not satisfied with the opinion the justice who wrote it keeps the case and attempts to recast the opinion in a form acceptable to the majority. If five or more of the justices disagree with the result and the justice who wrote the original opinion refuses to change his view, the case is assigned to a member of the majority and the whole process begins again.

During the conference the clerk of the Court is in attendance keeping track of the concurrences and dissents. He has with him the original masters of all

of the opinions and the summaries prepared by the Court Reporter. When an opinion is adopted the justice who wrote the opinion reviews the summary to make sure it is accurate. The executive secretary takes the master of the opinion and the summary to a typist who types on the master and the red line copy the names of the justices who concur, dissent, or do not take part, and the filing date (which is the next day). She also types a red line and duplicating master of the opinion summary. All of these copies are returned to the executive secretary of the Court who that evening mimeographs copies of the opinion and the summary. On Tuesday morning the executive secretary officially files the red line copy with the clerk. At this point the case is officially decided. The executive secretary then mails copies of the opinion to the attorneys in the case and to other persons who have requested it. Sufficient copies of the summaries are delivered to the state bar association for mailing to each of the district court judges in the state and for printing in the state bar newsletter, and copies are also put in the clerk's office for the use of the news media.

The losing party in the Supreme Court has 30 days in which to file a petition for a rehearing with the Court. When a rehearing petition is filed a copy is sent to each of the justices and it is considered at the next conference.

Thirty days after the opinion is filed, if there is no rehearing petition or upon the denial of a petition, the clerk of the Court issues the "Procedendo" which is the official order or mandate of the Supreme Court to the clerk of the trial court notifying him of the action of the Supreme Court and instructing him to take the appropriate action. The Supreme Court clerk also sends a statement of the court costs and other expenses which generally are payable by the losing party. The trial court clerk collects these amounts from the losing party, forwards them to the Supreme Court clerk who disburses them to the winning party. At this point the case, insofar as the Supreme Court is concerned, is closed.

Criminal Cases

Essentially the same procedure is followed in criminal cases. The major differences concern the notice of appeal and indigent appeals. The appellant in a criminal case must within 60 days of judgment serve a copy of the notice of appeal on the county attorney and then file the notice, accompanied by evidence of service of it on the county attorney, with the clerk of the trial court. Within 30 days of serving the county attorney, the appellant must serve a copy of the notice on the attorney general and also file with the clerk of the Supreme Court a notice of intent to appeal. A court-appointed attorney in a criminal case can petition the Supreme Court to withdraw from the case on the ground that

the appeal is frivolous. If such a petition is made and granted, the Court appoints another attorney only if the appellant specifically requests it. If he does not, the Court decides the case on the basis of the record.

Interlocutory Appeals and Writs of Certiorari

An application for an interlocutory appeal is usually decided by a panel of two or three justices after oral argument. These arguments, unlike those on regular appeals, are heard in Iowa City, Sioux City, and Mason City as well as in Des Moines. A decision by a panel to grant an application for an interlocutory appeal is accepted by the Court and the appeal proceeds in the usual manner. A petition for a writ of certiorari is handled in much the same manner as an interlocutory appeal, i.e. the question of whether the writ should issue to bring the case before the Court for review is argued before a panel of two or three justices; if the panel decides the writ should issue, the case is treated as a normal appeal with briefs and oral arguments. It should be noted that a writ of certiorari does not serve the same purpose in Iowa as it does in the United States Supreme Court and in some other state supreme courts, i.e. as a means of giving a court discretion to determine which cases to review. In Iowa the writ is sought only in those few situations in which a party attempts to challenge the exercise of jurisdiction by the lower court.

Miscellaneous

The Court also considers a number of miscellaneous other matters such as bar discipline, applications for stays of orders pending appeal, motions to dismiss appeals and applications to be admitted to practice law without taking the bar examination.

WORKLOAD AND DELAY

Statistical Data

It is most unfortunate in this age of data banks, computers and statistics on everything that there are not readily available the statistical data to determine the extent to which the total workload of the Supreme Court is increasing, the types of cases that are increasing, and changes in the time it takes from the date of an appealable judgment to the final conclusion of an appeal and in the time lag between each step in the appeal process. It is true, of course, that even if these statistics were available they would not show whether an increase in the number of cases an appellate court must consider actually lessens the quality of the court's decisions and its opinions and whether the increased burden placed on the appellate judges requires them to work unreasonably long hours to keep up with the Court's case load. Notwithstanding the fact that statistics do not provide answers to all problems raised by an increasing case load, they are necessary to determine

just what the problems are. For this reason it is essential that the Court begin keeping statistics on its work so that at least on a yearly basis an accurate picture of the Court's case load and of the time lags in the appeal process can be obtained and trends noted. An effort should also be made to determine if there can be established a relationship between the activity in the trial courts and the workload of the Supreme Court so that increases in the workload of the Supreme Court can be predicted one or more years in advance on the basis of trial court activity and appropriate steps taken to handle the increase. As is stated later in this Report, these statistics should be maintained by the Supreme Court administrator.

The easiest statistics to obtain are the number of appeals decided each year by the Supreme Court. According to the clerk of the Court [3/] the following are the number of opinions written annually (January 1-December 31) by the Supreme Court from 1930 to date:

1930 - 509
1931 - 468
1932 - 420
1933 - 490
1934 - 395
1935 - 396
1936 - 378
1937 - 343
1938 - 317
1939 - 342
1940 - 404
1941 - 302
1942 - 331

1943 - 209*
1944 - 175
1945 - 157
1946 - 130
1947 - 144
1948 - 152
1949 - 131
1950 - 163
1951 - 167
1952 - 182
1953 - 166
1954 - 169
1955 - 163
1956 - 156
1957 - 201
1958 - 170
1959 - 167
1960 - 215
1961 - 198
1962 - 222
1963 - 251
1964 - 237
1965 - 225
1966 - 255
1967 - 244
1968 - 251
1969 - 242

*It should be remembered that from 1930 through 1943 the Court sat in two divisions.

From these statistics, it appears that the number of cases decided each year by the Court was much greater in the 1930's than at present, reached a low point in 1946, remained constant during the 1950's, and has been on a plateau since 1963. The cases decided each year by each division of the Court in the 1930-34 period is roughly comparable to the number decided by the entire Court in the 1965-69 period, approximately 240 per year.

It is important to note, however, that the number of cases decided each year does not indicate the rate at which cases are coming into the Court. A backlog develops when more cases are filed than are decided over a substantial period of time. Justice Stuart

at page 596 of his Iowa Law Review article states that the average number of appeals filed with the Supreme Court increased from 27.2 cases per month in the 1960-62 period to 42.5 per month in the 1968-69 period and to 48 per month from April to November, 1969. Subsequent figures show that in the first half of 1970 the monthly filing rate was 49 and in the second half 50. Even taking into consideration the fact that some appeals filed are never submitted to the Court, these figures show a substantial increase in the number of cases which the Court will be called upon to decide. An increase in the backlog is reflected in the number of cases ready for submission. In November, 1969, one week after the normal monthly quota of 24 cases had been submitted to the Court, there were 39 more cases ready for submission; in December, 1970 there were 56 more cases waiting. In view of the fact that the Court has from November, 1969 to December, 1970 continued to hear cases at its regular rate of 24 a month, the reasonable inference is that in that 13 month period, its caseload was at least 17 more than its capacity, perhaps 32 more than its capacity (56 - 24 = 32), based on existing procedures. If this trend continues, there will be a continual increase in the Court's backlog.

Justice Stuart in his Iowa Law Review article broke down his figures between civil and criminal cases. His figures show the following:

Average Number of Elapsed Days Between Steps in Appellate Process

	Judgment to New Trial Motion	New Trial Motion to Ruling	Ruling to Notice of Appeal *	Notice of Appeal to Tr. of Testimony	No. of Extensions for Tr. of Testimony	Filing of Tr. to Printed Record	Printed Record to Appellant's Brief	Appellant's Brief to Appellee's Brief	Appellee's Brief to Submission	Submission to Decision	Decision to Procedendo
9/59-9/60	23.5	55.7	19.4	143.3	92	22.8	49.7	42.2	35.7	43.9	41.8
9/68-9/69	15.6	39.1	19.3	137.7	183	54.9	76.5	49.7	43.9	61.1	40.0
9/69-9/70	13.7	44.0	21.0	141.3	163	39.9	72.4	60.7	57.7	62.3	36.0

* If there was no new trial motion, this figure represents the time lapse from the date of judgment to the filing of the notice of appeal.

Total Average Days from Judgment to Procedendo

Year	Judgment to Filing Record	Filing Record to Procedendo	Total
1959-60	269.7	213.3	483.0
1968-69	266.6	271.2	537.8
1969-70	259.9	289.1	549.0

Year	Criminal	Percentage of Total	Civil	Percentage of Total	Total
1953	23	15.1	129	84.9	152
1958	19	12.3	135	87.7	154
1963	27	12.6	187	87.4	214
1967	55	23.3	182	76.7	237
1968	72	28.6	179	71.4	251
1969 (1/2)	38	28.7	94	71.3	132

Perhaps most important, yet the most difficult to obtain, were statistics on the time lag in the various steps of the appeal process. The following statistics had to be calculated from the docket entries in the Supreme Court and from information provided by the trial courts clerks' offices.

Professor Jerome Beatty [4/] has calculated two other important statistics, the length of opinions and the frequency of dissents. His figures on length of opinions are as follows:

Year	Average Page Length of Opinion
1839-1846	3.0
1862	1.9
1877-1878	1.8
1890-1891	2.3
1903	3.0
1911	3.3
1931	3.4
1941	3.3
1951	4.5
1960-1961	4.3
1965-1966	4.4
1966	9.8
1966-1967	9.5
1967-1968	9.2

The frequency of dissent has also increased. Again according to Professor Beatty, the number of written dissents increased from 13 in 1962 to 43 in 1968, and on a percentage basis from 5.9% in 1962 to 17.2% in 1968.

The increase in the work of the Court is similar to that of other courts on a national basis. In 1962 and 1968 the Conference of Chief Justices made surveys on the workloads of the Supreme Court of each of the 50 states and both studies showed that in the years covered by the studies almost every court had increases in the number of oral arguments and written opinions. Perhaps the most significant statistics, however, are the two which show for each reporting state the number of written opinions and the number of

per curiam opinions. These two statistics show the combined total output of each court in its most important function and show the extent to which a state court relies on per curiam opinions. The totals for each state for the year 1967 (the most recent year reported) are: [5]

State	No. of Judges	Full Written Opinions	Memo or Per Curiam
Alabama	7	104	26
Alaska	3	61	2
Arkansas	7	350	8
California	7	190	8
Colorado	7	378	0
Connecticut	6	127	14
Delaware	3	80	3
Florida	7	139	297
Hawaii	5	42	17
Idaho	5	96	0
Illinois	7	246	38
Indiana	5	176	0
Iowa	9	230	14
Kansas	7	234	44
Kentucky	7	637	2
Louisiana	7	114	0
Maine	6	72	1
Maryland	7	270	28
Massachusetts	7	232	88
Michigan	7	-----	
Minnesota	7	245	35
Mississippi	9	267	100
Missouri	7	343	0
Montana	5	105	13
Nebraska	7	257	0
Nevada	3	93	0
New Hampshire	5	95	0
New Jersey	7	84	39
New Mexico	5	249	36
New York	7	148	21
North Carolina	7	340	125
North Dakota	5	96	2
Ohio	7	89	59
Oklahoma	9	-----	
Oregon	7	305	0
Rhode Island	5	182	27

State	No. Judges	Full Written Opinion	Memo or Per Curiam
South Carolina	5	143	0
South Dakota	5	45	0
Tennessee	5	483	0
Texas	9	-----	
Utah	5	170	2
Vermont	5	70	12
Virginia	7	133	1
Washington	9	350	45
West Virginia	5	57	0
Wisconsin	7	275	79
Wyoming	4	71	8

In considering whether the workload of the Court is likely to increase substantially in future years it may also be significant to examine the relationship between the cases filed and tried each year in the district courts and the number of appeals decided by the Supreme Court in the following year (on the assumption that a case decided one year by the district court, if appealed, will be decided by the Supreme Court the next year). 6/

Year	Filings in District Court	Trials in District Court	Year	Cases Decided by Supreme Court	% of Cases Filed Decided by Supreme Court	% of Cases Tried Decided by Supreme Court
1957	30,065	2,220	1958	170	.57%	7.7%
1958	30,385	2,149	1959	167	.55%	7.8%
1959	32,222	2,434	1960	215	.67%	8.8%
1960	34,027	2,483	1961	198	.58%	8.0%
1961	35,497	2,951	1962	222	.63%	7.2%
1962	35,641	2,814	1963	251	.70%	8.9%
1963	34,779	3,093	1964	237	.68%	7.6%
1964	35,409	3,149	1965	225	.64%	7.1%
1965	36,639	3,187	1966	255	.70%	8.0%
1966	37,469	3,386	1967	244	.65%	7.2%
1967	39,142	3,661	1968	251	.64%	6.9%
1968	41,984	3,630	1969	242	.58%	6.7%

Analysis of Data

Several conclusions can be drawn from the foregoing statistics. First, the caseload that the court can handle under its present procedures is approximately 240 per year. Second, the Court's caseload now exceeds 240 per year and this excess is likely to continue and increase. Third, the caseload of the Court is, in relation to other state supreme courts, heavy but not inordinately so. In 1967 there were 16 state supreme courts with heavier caseloads. Fourth, and perhaps most important, the time lag between each step of the appellate process once the case reaches the Supreme Court has been increasing and this trend is almost certain to continue in the future. It now takes substantially longer for a case to proceed from the award of a judgment in the trial court to the issuance of the procedendo by the Supreme Court than it did ten years ago and this increase is also likely to continue. It is noteworthy that the increase in delay is attributable in large part to the period between the time a case is ready for argument and the time it is actually decided.

There are several aspects of the Court's workload which cannot be shown by simple statistics. The attitude of the justices of the Court toward the workload of the Court and of the individual justices can be gained only from personal interviews with each of the justices. These interviews indicate that they believe the Court has too many cases for it to give to each the care and attention it deserves. The consensus is that each justice by working more than a normal workweek can write the 25-30 opinions per year that he is assigned. This burden of approximately one opinion for each week that the Court is not hearing arguments beginsto wear after a time, but it can be borne. The great difficulty arises, however, in finding enough time to review adequately the opinions written by the other members of the Court. The justices were unanimous in stating this as the principal difficulty caused by the present system.

LOCATION OF JUSTICES AND FACILITIES OF COURT

Location of Justices

Two problems which are closely related are the physical facilities available for the use of the Court and its members and the location of the offices of the individual justices. As stated above, the Court hears arguments only in Des Moines. Located in the state capitol are the Court's courtroom, conference room and the offices of the Court's staff. Only three members of the Court, however, maintain

their private offices in the capitol, the other six officing near their residences in other parts of the state. In considering the adequacy of the Court's facilities in Des Moines and elsewhere, it is necessary first to decide on the advisability of all of the justices maintaining their offices in Des Moines. This question has been a matter of concern in Iowa for some time and in 1963 the Iowa Legislature enacted a bill [7] which purported to require the justices of the Supreme Court "to be in attendance and maintain their offices" in Des Moines after January 1, 1968. This deadline was extended in 1965 to January 1, 1970, [8] but in 1969 the statute was repealed, [9] ostensibly because the State was unable to provide adequate office space for the justices in the capitol.

The Iowa practice of having members of the Supreme Court maintain offices away from the place where the Court hears argument is common in other states. The Institute of Judicial Administration's 1957 study of the internal operating procedures of appellate courts shows [10] that of the 90 courts responding to a questionnaire, 35 had judges who followed the Iowa custom while the judges of the remaining 55 all officed in one place. Of the 38 state supreme courts which are listed as responding, 24 maintained their offices in one place while 14 did not. [11]

The advantages of a single site for the offices of all justices of the Supreme Court are: increased opportunity for justices to confer on cases; better library and physical facilities; no loss of time for travel; immediate availability of the full court for emergency hearings and conferences; and ease of administration. The advantages of dispersed offices, on the other hand, are: availability of a member of the Court to lawyers in different parts of the state for presentation of petitions and motions; closer contact between members of the Court and judges, the bar and the public throughout the state; availability for appointment to the Court of qualified attorneys who would not want to move to Des Moines in order to serve on the Court; and the symbolic presence of the Supreme Court throughout the state.

It is difficult, if not impossible, to weigh the cumulative effect of these opposing advantages and to decide which is the most appropriate for the Iowa Supreme Court or for any other appellate court. There certainly is no conclusive argument in favor of all the justices officing in one place. Of the present members of the Iowa Supreme Court, only two have considered it necessary to move their offices to Des Moines; and in both cases this was because of the inadequacy of the law libraries in their home communities. There does not appear to be,

consequently, sufficient basis at this time to recommend that the justices of the Court be required to office in Des Moines.

Physical Facilities

In considering the adequacy of the physical facilities provided for the Court by the State, they must be subdivided into those used by (1) the Court in hearing and deciding cases, (2) the administrative personnel of the Court, (3) the justices in Des Moines, and (4) the justices outside of Des Moines. In the first category are the courtroom and conference room; in the second the offices of the clerk, the reporter, the code editor, the executive secretary, and the statistician; in the third the justices' offices and the law library in the state capitol; and in the fourth the offices of the justices in Iowa City, Davenport, Anamosa, Mason City, Chariton and Sioux City. Unfortunately, the quality of these facilities never rises above fair, and often sinks to shockingly inadequate or even non-existent.

Facilities in Des Moines

The courtroom is located on the main floor of the state capitol. Adjacent to it are the Court's conference room and five offices for the justices. Across the hall are the clerk's office and a small room for counsel waiting to argue cases. On the floor below are located three additional offices for the justices, the offices of the reporter,

statistician and code editor, a storage room for briefs and records, and a large room used by the executive secretary of the Court. The courtroom itself is a large, handsome room equipped with the normal accoutrements of an appellate courtroom. Its deficiencies are in acoustics and lighting. Several of the justices mentioned difficulty in hearing the arguments of some attorneys and this was confirmed by attendance at several arguments. Compounding the problem is the air conditioner which serves the courtroom and the conference room. It is quite noisy and renders hearing even more difficult. The lighting is also very weak, but of course this is not as serious an interference with oral argument as are the poor acoustics. The location of the courtroom on the main floor of the capitol also causes some problems. The capitol is, as might be expected, a major tourist attraction and while cases are being heard by the Court there is constant movement of persons in and out of the courtroom and the consequent entry of noise from the corridor into the courtroom. While these problems are not major, they are distracting to both the Court and to counsel.

The conference room is also very large and contains not only the tables and chairs used in the conferences but also the major portion of the Court's working library. In addition to being used for conferences and as a library,

arguments on motions and petitions heard only by several justices are conducted here. Its location immediately behind the courtroom is excellent, but it is the only passageway to the five judicial offices located on the same floor. There is also a glass and wood door leading directly from the conference room to the outside corridor. This door does not seem an adequate guarantee of the privacy of the Court's conferences nor an effective barrier to noise from the corridor.

The five offices off the conference room are assigned to the Chief Justice, Justices Becker, Stuart and Mason with Justices Larson and Rawlings sharing the fifth office. The only entrance to the justices' offices is via a reception room, the conference room and a narrow corridor leading to all of the offices. The Chief Justice's office is at the end of this corridor so the many visitors to his office must go through the conference room and by all of the other justices' offices to reach his. These offices are of moderate size and furnished in a rather spartan manner. In addition to the expected desks and chairs each office contains some portion of the National Reporter system which is part of the Court's library, and four of the five have sets of the Iowa Reports. Three of the offices also have day beds which are used when the justices stay overnight. The Chief Justice's office is not a special office

for the Chief Justice but is so designated only because the person who uses it occupies that position.

There are also additional offices for three justices on the floor below. These are assigned to Justices Uhlenhopp, LeGrand and Rees and are part of space on the ground floor of the capitol turned over to the Supreme Court within the past year. The new offices on the ground floor are fairly small and have a standard remodeled office decor, with imitation wood paneling, carpeting, and undistinguished furniture. Their most serious deficiency is that the new partitions put in to create the offices do not go all the way to the old ceiling but only to a new dropped ceiling that is not solid. The result is that any sound, no matter how slight, in one office or in the secretary's area is heard throughout all of the offices. There is, consequently, no privacy at all and whatever noise is made in one office disturbs those in the other offices. All of the offices are also deficient in that even though each justice has a law clerk there is no designated space, either adjacent to each justice's office or elsewhere, for these persons to work. While this is not particularly important for the law clerks of those justices who do not maintain their offices in Des Moines, this is a serious deficiency for the law clerks of the three justices who do office there. The secretaries of the Chief Justice and Justice Becker are

stationed in the reception area next to the conference room, a substantial distance from the justices' offices. In the new area on the ground floor, however, Justice Uhlenhopp's secretary is convenient to his office.

The office of the Chief Justice is clearly inappropriate for the head of the Judicial Department of the State Government. There was a time, perhaps, when the title of chief justice rotated every six months among the members of the Court and the position did not entail extensive administrative duties, that any office was suitable for the person who was the chief justice. The situation now, however, is entirely different. The position of chief justice is now held by the justice elected to it by his fellow justices at least for the remainder of his current term and probably for as long as he remains on the Court. More and more the Chief Justice is involved in the administration of the entire judicial system and to this he must devote much of his time. In a subsequent part of this Report the creation of a new position of administrator of the Supreme Court will be suggested. It is essential that the administrator be immediately and constantly available to the Chief Justice and be aware at all times of what the Chief Justice is doing. These objectives can best, if not only, be achieved by having his office next to the Chief Justice's. The same can be said of the Chief Justice's law clerk and his secretary.

The Chief Justice's and the administrator's secretaries should share a joint reception area. The Chief Justice, as the head of the Judicial Department, is called upon to receive many persons including attorneys, public officials, visiting dignitaries, and the general public. This should be done in surroundings befitting his position. The present office of the Chief Justice obviously does not meet these needs. In view of the fact that there are presently only eight offices for nine justices, the logical solution is for the State to create a new suite of offices for the Chief Justice, his law clerk, and the administrator of the Supreme Court, with an adequate reception area by assigning the entire north wing of the capitol to the Supreme Court. This arrangement would also lend itself to reducing the amount of traffic in the central corridor outside of the courtroom and conference room.

Facilities Outside of Des Moines

Whatever criticisms may be made of the justices' offices provided in Des Moines by the State, it can at least be said that the State does provide eight offices. Although it almost defies comprehension, the State of Iowa does not provide the six Supreme Court justices who maintain their offices in other parts of the state with office space or even an allowance with which to rent office space. If a justice of the Iowa Supreme Court desires to perform

the individual part of his judicial function elsewhere than in Des Moines, he must provide the office space for himself, his secretary, and his law clerk out of his own pocket or convince some friendly public official to provide him with office space in a building under the official's care. It is highly unlikely that a similar situation exists anywhere else in this country.

At the present time Justices Stuart and Mason pay, out of their own rather low judicial salaries, the rent for offices they maintain in private buildings. Justice Larson is provided with free office space in Iowa City by the University of Iowa College of Law, while Justices LeGrand, Rees and Rawlings are given office space in their local courthouses through the generosity of their county boards of supervisors. The suitability of the offices of these six justices varies widely. Justice Rawlings has the best arrangement, a suite of three offices immediately adjacent to the county law library. Justice Rees has a similar arrangement except that his law clerk and secretary share a single office while Justice LeGrand does not have any office space for his secretary. Justice Larson must share his office with his secretary, and the office of his law clerk is subject to being preempted from time to time by the College of Law. The offices rented by Justices Stuart and Mason meet their own requirements, as might be expected, since they pay for them out of their own pockets.

This situation is inexcusable. The State should, at a minimum, provide each justice of the Court with adjoining offices for himself, his law clerk and his secretary in the city designated by the justice. Wherever possible the space should be in the county courthouse so as to be convenient to the law library located there. If for some reason the courthouse is not available, then suitable offices must be procured elsewhere, in privately owned buildings if necessary. For the State to do less than this is a failure on the part of the legislature and executive branches of the State Government of their responsibility to the highest judicial tribunal of the State and to the people who must depend upon it for justice.

Research Facilities

The State Law Library is located on the second floor of the state capitol and is available for use by the justices whenever they are in Des Moines. The law library is governed by a board of trustees composed of the Governor, the state superintendent of public instruction, and a member of the Supreme Court (presently Justice Uhlenhopp). Even though no attempt was made to analyze the quality of the library on the basis of its book collection, it has approximately 150,000 volumes and presumably has or can obtain any item required by a justice in doing research. The physical layout of the library leaves much to be desired

in that much of its collection is spread over many different levels with access only by means of handsome but awkward spiral staircases. The library also has no air conditioned working area.

The library facilities available to the six justices who office outside of Des Moines vary widely. Justice Larson has, in the library of the University of Iowa College of Law, equal or superior research tools to those of the justices in Des Moines. The libraries available to Justices LeGrand and Rees in the courthouses of Scott and Jones counties are fair at best but both are less than an hour's drive from Iowa City and Justice Stuart is a similar distance from Des Moines. Justice Rawlings in Sioux City has immediate access to the library in the Woodbury County courthouse and Justice Mason in Mason City has a substantial personal library and can also use the library in the local courthouse. These libraries other than the College of Law library are, unfortunately, not adequate for the justices to do all of the research that is sometimes necessary. The justices do not have better libraries nearby. The inadequacies of the libraries in their home towns are what caused Justice Becker to move to Des Moines permanently and Justice Uhlenhopp to maintain his office there. Several of the justices mentioned the desirability of a book allowance for each justice who offices outside of Des Moines to enable him to purchase

those books which he finds most useful to keep in his office for constant reference. This seems a reasonable way to meet the research needs of the Court.

Miscellaneous Facilities

The justices are allowed only $15.00 per day plus mileage for expenses while traveling on judicial business, [12/] and this applies to the one week per month spent in Des Moines for conferences and arguments. It is significant that this same limitation does not apply to the members of the legislature, the principal officers of the executive department, or the high ranking employees of each. The inadequacy of this amount prompts several of the justices to sleep on the day beds in their offices while others must stay in a third class hotel in Des Moines. The State of Iowa is not well served by requiring the justices of its Supreme Court to pay out of their own pockets part of the expenses they incur while traveling on the judicial businss of the State. It would, for example, be most advantageous for those justices who find it necessary to do additional research in the state law library to go to Des Moines whenever necessary. Obviously, the justices are not disposed to come to Des Moines to do research, even though it may be desirable from the standpoint of the quality of the Court's opinions, if they must bear part of the cost of doing so.

The remainder of the court facilities, including the offices of the clerk, reporter, statistician, and executive secretary are, with one exception, adequate. The most glaring deficiency is in duplicating equipment. The Court does have for the use of its executive secretary a mimeograph machine for duplicating items that are typed on masters. To photocopy anything else in the capitol involves the time wasting procedure of using the photocopier belonging to the executive council. The Court should have its own copier in Des Moines to avoid the time wasted under the present system. The justices not in Des Moines are not provided with any copying facilities. It is suggested in a later part of this Report that a substantial amount of time could be saved if drafts of opinions and other papers prepared by one justice and distributed to the others be sent directly by the former to the latter rather than routing them through the executive secretary. If this is to be done each justice must have easy access to photocopying equipment.

The foregoing comments are based on the assumption that the offices of the Supreme Court will remain in the capitol. It would be preferable, however, if the Court and the law library could be relocated in a new state office building, one floor of which would be specially designed for this purpose. A new judicial building is part of a

long range master plan for the development of the state capitol grounds adopted by the legislature in 1965. There does not appear to be, however, much likelihood of the building being constructed in the near future.

SIZE OF PANEL

Reducing Size of Panel

The Supreme Court at the present time sits as a panel of all nine justices on each regular appeal. The principal recommendation of this section of the Report is that the Court sit in two panels of five members with each panel to sit two days per month and have its membership revolve among all nine justices.

The procedure of sitting in panels of less than the full membership of the Court is not new in Iowa. The Court is presently authorized by statute [13/] to sit in divisions in the manner provided by rule and has had this authority since 1894. It cannot, however, sit in panels of less than five because another section of the Code calls for a quorum of five members. [14/] The Court did, in fact, from 1929 through 1943 sit in two five man divisions with the Chief Justice sitting in each case. Under this procedure cases were argued before only one of the divisions but the opinion was voted upon by all members of the Court. The Court is free, however, to adopt whatever procedure for sitting in panels that it deems appropriate.

The division of an appellate court into panels of less than its full membership is one of the most often proposed remedies for reducing the workload of an individual appellate court judge. The Federal Courts of Appeals have traditionally sat in panels of three and according to the most recently available statistics [15] there are approximately 16 state supreme courts that hear or decide some or all of the cases presented to them in panels of less than their full membership.

The virtues and disadvantages of the panel or division system have been considered by some of the outstanding figures in judicial administration. Judge John J. Parker argued that a panel system permitted a court to hear and decide more cases in the same period of time. Dean Roscoe Pound took the position that the larger the panel the greater the difficulty in having an opinion approved because it must satisfy more people as to its precise language. Justice Laurance Hyde of the Missouri Supreme Court has pointed to the experience of his court in sitting in divisions in stating that it permits that court to hear more cases but has not resulted in conflicting opinions. [16]

The objections to the panel system, in addition to that of conflicting opinions, include the argument that it results in more petitions for rehearing, that it creates two supreme courts in the state, and that the

people are entitled to the composite judgment of all of the members of the court. None of these arguments appears to be sufficient to outweigh the advantages of a court sitting in panels, particularly when a court sitting with its full membership cannot keep up with its cases and each member of the court complains that he cannot devote sufficient time to study the cases assigned to the other justices. In any event, the successful use of the system by the Federal Courts of Appeals and many state supreme courts does not support the objections.

Size and Number of Panels

With a nine member court, assuming the necessity of a panel composed of an odd number, a panel could consist of seven, five or three members. The three member panel is probably not possible in view of the five man quorum requirement. As between seven and five man panels, there are advantages and disadvantages to each. In considering which is best suited to the needs of the Iowa Supreme Court the mechanics of each should be examined. Assuming the Court continues to hear arguments on the same schedule it now follows (sitting four days and hearing 24 cases per month), five and seven man panels could rotate in the following manner,(the justices of the Court being designated by number):

Five Member Panel

Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	June
1	6	2	7	3	8	4	9	5	1
2	7	3	8	4	9	5	1	6	2
3	8	4	9	5	1	6	2	7	3
4	9	5	1	6	2	7	3	8	4
5	1	6	2	7	3	8	4	9	5

Justice	Months Not Sitting	Number of Months Sitting
1	Nov, Jan, Mar, May	6
2	Oct, Jan, Mar, May	6
3	Oct, Dec, Mar, May	6
4	Oct, Dec, Feb, May	6
5	Oct, Dec, Feb, Apr.	6
6	Sept, Dec, Feb, Apr, June	5
7	Sept, Nov, Feb, Apr, June	5
8	Sept, Nov, Jan, Apr, June	5
9	Sept, Nov, Jan, Mar, June	5

Seven Member Panel

Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	June
1	8	6	4	2	9	7	5	3	1
2	9	7	5	3	1	8	6	4	2
3	1	8	6	4	2	9	7	5	3
4	2	9	7	5	3	1	8	6	4
5	3	1	8	6	4	2	9	7	5
6	4	2	9	7	5	3	1	8	6
7	5	3	1	8	6	4	2	9	7

Justice	Months Not Sitting	Number of Months Sitting
1	Jan, May	8
2	Dec, May	8
3	Dec, Apr.	8
4	Nov, Apr.	8
5	Nov, Mar.	8
6	Oct, Mar.	8
7	Oct, Feb.	8
8	Sept, Feb, June	7
9	Sept, Jan, June	7

As can be seen the seven member panel would reduce the number of times a judge would have to sit to hear arguments from ten to eight or seven. Assuming a four day session at each sitting, it would give him eight or twelve additional working days per year while at the same time reducing by 48 or 72 the number of cases which he would have to consider. It would not, of course, reduce the number of opinions he himself would have to write because over the entire year 240 cases would still have to be divided up among nine justice. With a five man panel, the advantages would be doubled, with the number of sittings required of each justice being reduced from ten to five or six. Each justice would have 16 or 20 additional working days per year and would have to consider only 120 or 144 cases for which he would write the opinions in 28 or 29.

The reduction of the size of the panel which sits at each session as set forth above would mean that each justice on the panel would be assigned more cases at each sitting. With a nine judge panel hearing 24 cases, six justices are presently assigned three cases each and three justices two cases each, while a seven man panel would have three justices with four cases each and four justices with three cases each, and a five member panel would have four justices with five cases each and one justice with four cases. The increase in the number of cases heard at a session for which each justice is responsible is the major disadvantage of

the smaller panel. The more cases a justice takes home from a session, the longer it takes him to complete his opinions and the longer the interval between the time of oral argument and his working on the opinion. This problem is compounded if a justice has to sit two sessions in a row. For example, under the five man panel arrangement, Justice No. 1 would sit in September and October. During these two months he would be assigned nine cases, five in September and four in October. Assuming he wrote one opinion per week, in the three week interval between the two sessions he would finish only three cases and would go to the October session with a backlog of two cases. After the October session he would have six cases for which he was responsible. When he began working on the two cases carried over from September it would have been over a month since the cases were argued and he would have had to devote his attention to the 24 cases argued at the October session and in particular to the four assigned to him. The September cases would not, consequently, be fresh in his mind and he could waste a substantial amount of time in beginning to work on them.

The difficulty can be avoided, however, if instead of one panel sitting each month and hearing all 24 cases, each month two panels would sit for two days, each hearing 12 cases. Under this arrangement the justices would sit as follows:

Sept Panel		Oct Panel		Nov Panel		Dec Panel		Jan Panel		Feb Panel		Mar Panel		Apr Panel		May Panel		June Panel	
A	B	A	B	A	B	A	B	A	B	A	B	A	B	A	B	A	B	A	B
1	6	2	7	3	8	4	9	5	1	6	2	7	3	8	4	9	5	1	6
2	7	3	8	4	9	5	1	6	2	7	3	8	4	9	5	1	6	2	7
3	8	4	9	5	1	6	2	7	3	8	4	9	5	1	6	2	7	3	8
4	9	5	1	6	2	7	3	8	4	9	5	1	6	2	7	3	8	4	9
5	1	6	2	7	3	8	4	9	5	1	6	2	7	3	8	4	9	5	1

The saving in time under this sytem would be the same as under the five member panel system set forth above. The difference between the two is that under the two panel procedure an individual justice would usually not have assigned to him more cases than he could write opinions on before the next sitting of the Court. This would make it easier for each justice to write his opinions and would also substantially reduce the number of cases which could not disposed of by the Court within one month after submission.

Another advantage of having each panel sit two days each month is that by transferring conference day from Monday to Wednesday no justice would have to make a special trip to Des Moines just for a conference in a month that he was not scheduled to hear cases. If Panel 1 heard cases on Monday and Tuesday, Panel 2 on Thursday and Friday, and conference day was on Wednesday, each justice (except for the one justice each month who would sit on both panels) would spend three straight days sitting and could use the remainder of the week to work on opinions. The Wednesday

of argument week would also be available for those cases which would be heard by the entire court. Thus no justice would have to spend any additional time in traveling to Des Moines for either a court conference or for a hearing before the entire court.

In summary four possible procedures for panels and the variables of each are as follows:

Panel Size	Number of Panels Per Month	Number of Days Per Year Each Justice Must Spend Hearing Arguments	Number of Cases Each Justice Must Vote on	Number of Opinions Each Justice Must Write	Number of Cases Per Judge Per Sitting
9	1	40	240	26.6	2.66
7	1	28 or 32	168 or 192	26.6	3.43
5	1	20 or 24	120 or 144	26.6	4.80
5	2	20 or 24	120 or 144	26.6	2.40

As will be noted, all of the calculations with respect to the various types of panels were calculated on the basis of the Court hearing 240 cases per year. It has previously been noted that the Court presently has a caseload in excess of 240 cases and that the caseload will likely increase even more in the future. This fact, however, makes the benefits of the recommended panel system even more clear.

On the basis of the above, it is recommended that the fourth alternative, two five man panels each sitting two days per month with conference days scheduled between the sittings of panels, be adopted. It will provide the most substantial benefits and involve the least disadvantages.

Procedure of Panels

In the foregoing discussion of panels and their size, certain assumptions have been made as to the procedures that would be followed in the panels. Alternative procedures are possible with respect to: fixed or rotating membership of each panel; hearing of arguments by panels or by entire court; decisions by panels or by entire court; the circumstances, if any, under which a case will be argued before the full court, either initially or after argument before one panel; consideration of rehearing petitions by the whole court or only a panel. It is appropriate at this point to discuss the alternatives explicitly.

The choice between rotating or fixed panels is particularly important. It would seem more desirable to have rotating rather than fixed panels for several reasons. First, rotation insures that each member of the Court will work with each other member with consequential sharing of views and opinions.[17/] The rotation system also minimizes fixed differences between the panels which might occur if a majority on each panel had different philosophies. Rotation also eliminates the necessity, in the case of five man panels, of having the Chief Justice sit on every case. Even though he might contribute additional consistency to the decisions of the Court,he is the person who, because of his administrative duties, has less time than the other justices to devote to hearing cases.

If a court is to decide cases by panels, it would not

seem advantageous for oral argument to be before the entire court rather than just before the panel which is to decide the case. The full membership of the Supreme Court of New Mexico sits for each argument but does not participate in each decision unless there is a disagreement within the three judge panel,[18] but it appears that this is the only court which follows this procedure. When the Iowa Supreme Court sat in panels in 1929 through 1943 it reversed the procedure, the oral argument being before a five man panel but the decision of the Court being by all nine members.[19] Again, this procedure does not appear advantageous, primarily because it results in justices who have not participated in an essential part of the appeal process - oral argument - deciding the case. The parties are thus denied a full opportunity to persuade all of the decision makers. This seems unfair.

Most courts which sit in panels have a procedure whereby certain types of cases, usually those involving major constitutional issues or the death penalty, are heard by the full court in the first instance rather than by a panel.[20] This procedure seems wise because public acceptance of the decisions of the Court on such controversial issues would be increased. The types of cases to be so heard could be designated by rule with authority in the chief justice to order en banc hearings in other cases when he thinks it appropriate.

If a panel is not unanimous and thus the majority of the panel is not a majority of the Court, it would be advisable to permit either the losing party or any member of the Court to request that the case be heard by the full bench. In either case reconsideration would be at the discretion of the Court. (This procedure assumes, of course, that the opinions rendered by each panel will be distributed to all members of the Court.) In the ordinary rehearing situation when the decision of a panel is unanimous, however, there does not seem to be any necessity for the other four members of the Court to consider the petition. The five members of the panel are still a majority of the Court and even if all four of the justices who were not members of the panel vote for rehearing it would not be granted.

THE APPEAL PROCESS

Presubmission

Revision and Consolidation of Regulations Governing Appeals

In this section certain aspects of the presubmission process will be considered to determine if there are some specific changes which could be made to eliminate unnecessary actions by the Supreme Court and shorten the time

lapse involved at this stage of the appeal. Before dealing with specifics, however, it should be noted that the regulations governing appeals are now found in three separate places - the Code, the Rules of Civil Procedure, and the Rules of the Supreme Court. In order to determine what is required at any one point in the appeal process all three must be searched, and often the matter will be touched upon in all three places. The Court has, in fact, found it necessary to direct the code editor to print together in a separate section of the Iowa Code the related provisions of the laws and rules in some semblance of order to assist attorneys in handling appeals.[21/] This type of confusion is not necessary and can and should be avoided. All of the regulations governing the procedural steps in the appeal process in both civil and criminal matters should be combined in rules of appellate procedure. These rules would include, of course, only those regulations which directly affect the parties to the appeals. The Supreme Court could still have less formal rules governing its internal procedures such as the numbering of cases, the record books the clerk must maintain, the rotation of panels, when the Court will hear arguments, and the procedure for considering interlocutory appeals. It is recommended that as soon as possible a complete revision be made of the statutes and rules affecting the appeal process,

using the Federal Rules of Appellate Procedure as a starting point. The Supreme Court's Advisory Committee on Rules is probably the appropriate body to make the study. If it is to perform its task without delay and in a professional and scholarly manner, it should be provided with paid staff for this major undertaking.

Interlocutory Appeals and Writs of Certiorari

The first aspect of the appeal process in Iowa which is noteworthy is the substantial amount of time the Court spends on applications for interlocutory appeals and the surprisingly large number which are granted. Under Rule 332 of the Rules of Civil Procedure a party aggrieved by an interlocutory ruling "may apply to the supreme court or any justice thereof to grant an appeal in advance of final judgment. Such appeal may be granted, after notice and hearing as provided in R.C.P. 347 and 353, on finding that such ruling or decision involves substantial rights and will materially affect the final decision, and that a determination of its correction before trial on the merits will better serve the interests of justice." Under R.C.P. 347 oral argument is within the discretion of the Court. The practice is now that when an application for leave to file an interlocutory appeal is submitted to the Court, the application is referred to a panel of two or three justices designated on a geographical basis. The panels, which sit

in several cities in addition to Des Moines, hear oral argument, accept typewritten briefs, and after whatever deliberation the members think necessary grant or deny the application . The decision of a panel is, by custom, binding on the entire Court. If an application is granted the appeal is then processed in the normal manner.

According to the statistics kept by the judicial statistician for the years 1957-63 the number of applications filed and granted each year was as follows:

Year	Filed	Granted
1956	39	10
1957	37	13
1958	35	22
1959	30	12
1960	24	10
1961	38	11
1962	46	14
1963	39	12

In a check of the records of the Court for the period September, 1968, to June, 1970, it was found that in this period 54 applications were filed and 18 were granted.

The necessity or desirability of permitting interlocutory appeals and under what circumstances is beyond the scope of this Report. It is apparent, however, that a substantial number of times each year two or three justices of the Court must set aside what they are working on, travel to another city if the argument is not scheduled locally, listen to an oral argument, read memoranda, and

make a decision on whether an appeal should be heard. The greatest waste of time in this procedure is the oral argument which requires several justices to be in a particular place at a particular time. There is no reason why applications can not be handled without oral arguments and decided merely on the basis of written memoranda. The decision is not, after all, determinative of the substantive issue involved in the case but only relates to the time when the matter should be heard. A preferable procedure would be for each application to be assigned in rotation to a panel of three justices, one of whom would be given the responsibility for studying the application and the memoranda and applicable authorities, and writing a short memorandum on his suggested disposition of the application. The other two justices could then study the papers and concur or disagree with the first justice, denying or granting the application accordingly.

Applications for writs of certiorari are handled by the Supreme Court under a procedure similar to interlocutory appeal applications. In the 1956-63 period for which there are statistics prepared by the judicial statistician there were 90 applications for writs filed and 30 granted, an average of 11 applications filed and 4 granted per year. Whatever new procedure is adopted for interlocutory appeals should also be used for writs of certiorari.

Built-In Time Lapses

The time lapse between the entry of a judgment in the trial court and the final action of the Supreme Court on that judgment stems both from the time allowances in the rules and statutes governing appeals and from extensions of these time limits granted by a court(Supreme or trial).It is obvious from the statistics on the time lapse set forth above that the length of time it takes for an appeal to run through the entire process has increased substantially in the past ten years. An attempt to reduce the increase or actually shorten the period must be concerned with both the time lapses allowed by the rules and statutes and delays resulting from judicially approved extensions.

Under the present regulations, the total allowable time lapse for an appeal to move from the entry of judgment in the trial court to the issuance of the procedendo by the Supreme Court, assuming no extensions and court action within the shortest possible time, is 316 days in civil cases, 346 days in criminal cases. This accumulation occurs in the following manner:

Step	Days Allowed	Cumulative
Notice of Appeal	30* (60 in criminal cases)	30
Printed Record	90	120
Appellant's Brief	45	165
Appellee's Brief	30	195
Reply Brief	15	210
Submission	15	225
Decision	30	255
Rehearing Petition	30	285

Step	Days Allowed	Cumulative
Resistance	15	300
Consideration	15**	315
Procedendo	1***	316 (346 in criminal cases)

*If new trial motion is filed, the time for filing the notice of appeal is extended until 30 days after the motion is ruled on.

**Considered at next conference.

***30 days from decision if no rehearing petition is filed.

Although these time periods are not extraordinarily long, according to a survey by the Council of State Governments, in almost each instance there are some states with shorter time limits.[22/] For example, Connecticut, Maine (in equity cases), Massachusetts, Missouri, North Carolina, Ohio, Texas, and Wyoming require an appeal to be filed in from 10 to 20 days. Under the Federal appellate rules a party in a criminal case has 10 days in which to appeal but in a civil case he has 30 days. It is suggested that a ten day period in both civil and criminal cases is sufficient. It is the common practice of attorneys not to make a decision on an appeal until the allowable time has almost expired. It is seldom, however, that the attorney has any information bearing on the decision to appeal on the 29th day that he did not have on the 9th day, and thus a ten day period would work no hardship. Bypassing temporarily the filing of the printed record, the time allowed

for the preparation of the appellant's brief, 45 days, is longer than in all but a few states, the most common periods being 30 or 20 days. The 30 day period should be adequate. The 30 day period permitted by Iowa for the appellee's brief is also longer than in most other states, the usual figure being 20 days. This shorter period also seems appropriate for Iowa. Those states that permit reply briefs seldom allow as long as Iowa does, 15 days, for their filing. Ten days should suffice. It is also questionable whether 30 days is necessary for the filing of a rehearing petition, assuming that it is necessary to permit this type of petition. The Federal appellate rules require the petition to be filed within 14 days of the decision of the appellate court. This period seems adequate, but to keep all dates in multiples of five, a 15 day limit is recommended. The delay in the issuance of the procedendo, which is based on the present 30 day period for filing rehearing petitions, should likewise be reduced to 15 days. A resistance to a rehearing petition can now be filed up to 15 days after the filing of the petition. This should be reduced to ten days or eliminated entirely.

With regard to a separate printed record, the modern practice in other courts has shown that this document is not necessary, but rather the relevant parts of the full record should be printed as an appendix to the appellant's

brief. This eliminates the time necessarily involved in the printing and filing of a separate document and it is easier for the Court to handle only two documents instead of three. In addition to the appendix, however, the complete original record in the trial court should also be filed in the Supreme Court in every case. The practice now is to have the original record sent to the Supreme Court only when requested by a justice of the Court. This occurs quite often because it is often useful to the Supreme Court to have the full record before it. It would not, consequently, be a substantial change to require it to be filed in every case. The trial court clerk must, of course, be required to file the original record with the Supreme Court clerk within a limited period of time. Under the Federal appellate rules this must be done within 40 days of the filing of the notice of appeal while the Maryland rules of procedure permit only 30 days. The shorter period would appear to be adequate unless there is a problem with the transcript of testimony. This aspect of the delay in the appeal process will be discussed below.

If all of these recommendations are put into effect the total time lapse as permitted by the rules, without extensions, is 186 days, broken down as follows:

Step	Days Allowed	Cumulative
Notice of Appeal	10	10
Original Record	30	40
Appellant's Brief	30	70
Appellee's Brief	20	90
Reply Brief	10	100
Submission	15	115
Decision	30	145
Rehearing Petition	15	160
Resistance	10	170
Consideration	15	185
Procedendo	1	186

The difference between the present and the recommended time table, 186 rather than 316 days/ in civil cases or 346 in criminal cases, a saving of at least 130 days or 41%, should assist in substantially reducing the time it takes for an appeal to be taken to and decided by the Supreme Court.

Extensions

The time limits in the rules are meaningless, however, if the parties can have them extended almost at will. The justices of the Court are convinced that extensions are granted too easily both by themselves and by the trial court judges. The Court should adopt the rule that an extension, other than for the preparation of the transcript of testimony, will not be granted if it will postpone the time when a case will be heard by the Supreme Court.

Notice of Appeal

There are several other aspects of the appeal procedure which should be revised. The first is to eliminate the differences in the procedure relating to the notice of

appeal between civil and criminal cases. The procedure in civil cases is reasonable, and the only additional step in criminal cases should be a requirement that the trial court clerk notify the county attorney and the attorney general of the filing of an appeal.

Preparation of the Record

It is a common belief, which is supported by the statistics developed in this study, that one of the major causes of delay in the appeal process is the preparation by the trial court reporter of the transcript of testimony. It was not practical during this study to investigate means to alleviate this situation. It is a matter, however, that should be examined thoroughly. A committee of the Iowa State Bar Association is presently looking into this problem and it is hoped that its study will produce recommendations that will reduce this delay. It may be helpful to limit the length of the extensions which can be granted by the trial judge and require that any extension beyond that limit could be granted only by the Supreme Court. This would give the Court additional control over its cases and should prevent any abuses of the extension procedure.

The portion of the original record to be printed in the appendix to the appellant's brief can be designated in much the same manner as is now used to select the items to be included in the printed record. There is no reason,

however, to require that the material selected be approved by the trial judge as is now the case under R.C.P. 340. If the appellant refuses to print items of the record that the appellee believes should be in the appellant's appendix, the appellee can include them in an appendix to his brief and the Supreme Court can decide who is to be responsible for the cost of the printing.

There are several items which the rules should require be in each appendix - the docket entries, the judgment appealed from, and the opinion, if any, of the trial judge. In addition to being helpful in the consideration of the appeal, the docket entries are particularly valuable in developing statistics on the time lapses which occur at the various steps in a case. The testimony that is included should be in its original question and answer form and not put in narrative form as required by R.C.P. 340(d). The narrative requirement increases the time spent in preparing the printed record and the expense to litigants. Equally important, some matters which the Court might find important may be unwittingly ignored in the narrative.

Style of Briefs

Other than eliminating the printed abstract of record, the principal recommendation as to the papers to be filed with the Supreme Court relates to the style of the briefs. Several of the justices of the Court have stated that their

task is made more difficult by the poor quality of the briefs and of the oral arguments. While this is almost a universal complaint of appellate judges, the style of briefs as required by the Iowa Rules does not add to their quality or their ability to sharpen the issues being presented to the Court. R.C.P. 344 requires the following form:

1. A statement of the case, including a statement of the issues in the trial court, how they were decided, and the questions presented by the appeal.

2. A statement of the facts in narrative form with references to pages of printed record, but references need not be made if they are supplied in the argument portion of the brief.

3. A statement of errors (in a law case) or propositions (in an equity case) relied on, which are to be stated separately.

4. In separately numbered divisions for each error or proposition:

   (a) a statement of the error or proposition relied on in the division, with references to pages and lines of printed record to show how error arose and ruling of trial court.

   (b) separately numbered brief points, conforming to statement of errors or propositions, and stating without argument the grounds of complaint and citing authorities supporting each point.

   (c) the argument on the particular issue.

It is suggested that the necessary result of these requirements is a brief that is both confusing as to the issues presented to the Supreme Court and repetitious as to the statements of errors and the legal principles which

supposedly support the position of the party on whose behalf the brief is filed. This style of brief, which was common at one time, has been replaced in most jurisdictions, including the Supreme Court of the United States and the Federal Courts of Appeal, with the following style:

1. A table of contents.
2. A statement of the issues presented for review.
3. A statement of the case, including a statement of facts.
4. An argument, usually divided and numbered to correspond to the statement of issues.
5. A short conclusion stating the precise relief sought.

An examination of examples of both types of briefs indicates that the latter style makes it substantially easier to understand the issues involved in a case and the arguments on both sides on the issues. For this reason it should be adopted for Iowa.

It would also improve the appearance and the ease of handling of the briefs if they were physically the same as in other states, i.e. printed on 6 x 9 inch paper with one inch margins and covers of heavier stock in designated colors (e.g. white for the appellant's brief, blue for the appellee's).

Consideration by the Court

Dismissal Prior to Argument

The consideration of a case by the Court begins when all of the briefs have been filed and the case is scheduled for argument. If, however, the appellant fails to file the printed record or his brief within the required time, whether because he has decided not to prosecute the appeal or just has been negligent, the appeal is not dismissed until the appellee makes a motion for its dismissal. The Supreme Court must then consider the motion and if the appellant does not oppose it the Court enters an order of dismissal. This occurs in the Supreme Court even when the printed record has never been filed in the Supreme Court and thus the case has never been docketed in that Court. The clerk of the Supreme Court is forced to docket the case for the sole purpose of an entry of an order of dismissal. This cumbersome procedure is not necessary. If the appellant fails to file a necessary document the burden should be on him to request that the appeal not be dismissed. A procedure should be adopted in which the clerk of the Supreme Court (if the appeal has been docketed in that court), or the clerk of the trial court (if it has not been docketed), upon a default by the appellant notifies the appellant that unless cause to the contrary be shown within 10 days of the date of the notice, the

appeal will be dismissed. If cause is not shown, the clerk should be authorized to enter an order of dismissal without further action by the court.

Reading of Briefs and Assignment of Cases

Under the present Iowa procedure the assignment of a case to a particular justice occurs approximately ten days before it is scheduled for argument and only the justice to whom the case is assigned receives copies of the briefs and printed record. It has long been observed by students of the appellate process that this practice encourages one man decisions and should not be followed. The preferable procedure is for the briefs in a case to be distributed to each of the justices as soon as possible but no less than two weeks prior to argument, and that each justice be responsible for reading the briefs and becoming at least somewhat familiar with all of the cases. The assignment of the case to a justice should not occur until the conference held immediately after the argument when the majority tentatively in favor of a particular result is known. The assignment should be to a member of that majority. The present system of giving a case to a justice who at the initial conference is in the minority seems wasteful because in most cases the opinion he writes will not be acceptable to a majority of the Court and eventually the majority opinion will have to be written by another

justice. With these changes the assignment of cases by rotation should be continued.

If the briefs are given to all of the justices to read prior to argument, the summaries prepared by the court reporter of the briefs in each case can be eliminated. At best these summaries are of limited value to the justices, not being prepared in such a way as to identify the principal issues in each case or the main arguments on each side. If the summaries are continued they should not be sent to counsel, but treated as private, intramural memoranda. In no other court in the United States, to our knowledge, are similar memoranda distributed to counsel.

Oral Argument

The time permitted for oral argument - 30 minutes direct and 15 minutes rebuttal for the appellant and 30 minutes for the appellee - is not overly long when compared to the maximum limits allowed in other states.[23/] Several of the justices feel, however, that in many cases this amount of time is not necessary, and that arguments beyond 10 or 15 minutes tend to be sheer repetition. There are several techniques that can be used to reduce the time wasted by counsel. The most direct is for the presiding justice to tell the counsel that the court does not wish to hear further argument. Another is

for the court to require counsel to designate in advance what portion of the allowable time will be used, with strong encouragement to counsel by a court official not to use the full time unless absolutely necessary. A third is for the court to place those cases which, on the basis of the briefs, do not appear to require substantial argument on a summary calendar and to permit only 15 minutes per side for argument. If 25% of the cases each year were treated in this way it would save 45 minutes per case in 60 cases, a total of 45 hours of oral argument per year for each judge hearing all the arguments, less the time it would take for a member of the court to screen the cases to determine which should be placed on the summary calendar.

Per Curiam Opinions

One means of enabling appellate judges to devote additional time to the more important cases is for them to devote less time to writing opinions in cases in which the result is obvious and thus do not call for the development of new legal principles or the application of old principles to completely new fact situations. This can be achieved through the use of the per curiam opinion. (As used in this Report the phrase "per curiam opinion" means an unsigned opinion of one or two paragraphs which briefly states the issue in the case and the controlling case or cases. A signed opinion, of course, can be very short or

an unsigned opinion can be very long). This technique has become common in those appellate courts which have very heavy caseloads such as the Federal Courts of Appeals in the Second and Fifth circuits and the New York Court of Appeals. Notwithstanding the successful use of this technique in some courts and the unanimity with which it is proposed for other courts, many state appellate courts have been unwilling or reluctant to adopt the procedure. One important reason, apart from tradition, is the fact that appellate judges do not like to embarrass counsel by dismissing their arguments so briefly. This rationale is not acceptable when a court no longer has unlimited time to devote to each case. As Chief Judge J. Edward Lumbard of the Second Circuit said "[a]lthough every appellant is entitled to have his appeal considered by the court, he is entitled to no more time than it takes for the judges to be convinced of the correct decision."[24/]

If the Iowa Supreme Court decides to make greater use of per curiam opinions, it will be necessary for the Court to adopt the suggestion put forth supra that all members of each panel read all briefs in advance. Unless this is done, it is unlikely that the justices will feel they know enough about a case to dispose of it so quickly.

Writing and Circulating Opinions

In addition to per curiam opinions, the individual justices in writing signed opinions should also attempt to make them shorter. One of the factors of opinion writing in Iowa which may make this difficult to achieve is the objective of a member of the Court in writing an opinion. Several justices expressed the notion that their objective in writing an opinion was not primarily to tell the litigants and the public the reasons why the case was decided the way it was, but to convince the other justices of the correctness of the writer's view. If this is the case it in part explains why the average length of Iowa opinions has increased substantially in recent years. It can be hoped that if the recommendations of this Report are accepted, in particular the reduction in the size of the panel which considers a case and the reading of briefs by all of the members of the panel, the opinions need not be so lengthy.

Another procedural change which could speed up the filing of an opinion is for the Court to file an opinion immediately when the requisite number of justices indicate that they concur in it. Under the present system opinions that are circulated among the members of the Court are not finally voted on until the conference day held on the Monday of argument week. This may mean that the filing of

an opinion is delayed for two or three weeks just for the formality of considering it in conference. It would also save time if each justice could send his draft opinions and other memoranda directly to the other justices rather than sending them first to the executive secretary of the Court for him to duplicate and to forward to the justices. The sooner each justice receives the opinions of the others, the more time he has to study them. This system will require, of course, that each justice have easy access to photocopying equipment but that should be provided in any event. It would also assist the consideration given to each opinion if the justices would increase the use of the telephone to discuss cases with the other justices. This might also aid in speeding the disposition of the cases.

Rehearing petitions are also considered by the Court at its monthly conference. It would save time at the conference and speed up the issuance of the procedendo if these petitions could be distributed to the justices when filed and, in the case of most of them which are without merit, disposed of by each justice notifying the Supreme Court administrator of his vote on its disposition. A rehearing petition that does have some merit can, of course, be held until the next conference.

If these suggestions are adopted, the monthly conference can play a more substantial role in the decision

making process. It is at this conference that the issues which have not been resolved by telephone discussions, conferences, memoranda and research since the last conference should be debated in full by the Court. The Court's conference time need not be taken up with opinions over which there is no disagreement such as most rehearing petitions, per curiam opinions and signed opinions which have been accepted by all of the members of the panel. Nor should conference time be taken up, as it is today, with minor administrative matters such as checking the bills for long distance telephone calls to make sure no personal calls are included.

The opinion summaries which are now prepared by the court reporter and distributed to the trial judges and published in the state bar association's newsletter are probably a worthwhile public relations effort by the Court and helpful to the trial judges, but when priorities are considered there are other more important duties which the staff of the Court could be performing. If the summaries are to be continued it would be more appropriate to have them prepared by the trial court administrator who is more concerned with the operation of the trial courts.

In some appellate courts the writing of dissenting or concurring opinions has caused delay in the deciding of a case. This is not a problem in Iowa at the present time,

but if it ever becomes one, limitations may have to be imposed on the time allowed for writing them.

ADMINISTRATION

Supreme Court Administrator

Whatever has been the increase in the workload of the Court, it is far less substantial than the increase in the workload of the Chief Justice. The Chief Justice is now called upon to perform many administrative duties as well as being responsible for his full share of opinions. Unfortunately, the Chief Justice has not been given additional assistance, either staff, office space or equipment, with which to perform these duties.

On the administrative side, the most pressing need is for one staff person to be given general administrative authority, subject to the Chief Justice, over all of the staff personnel of the Court. At present the clerk of the Court, the court reporter, the executive secretary of the Court, the code editor and the judicial statistician, to the extent that he performs duties relating directly to the Supreme Court, are independent of each other and subject only to the directions of the Court as a whole or of individual justices. With the exception of the executive secretary, these offices are so independent that each submits a separate budget to the Comptroller. On a day to day

basis there is no coordination between these various offices and their staffs. This situation necessarily results in a less efficient operation. To fill this need a new position of supreme court administrator should be created. He should be responsible for preparing a single budget for the Court and all of its staff and for the expenditure of the funds appropriated for these purposes. He should also be responsible for the acqusition and care of the offices, supplies and equipment of the Court and of the justices. He should also be directly involved in seeing that appeals are heard and disposed of by the Court as soon as possible, including scheduling cases for argument and making sure that records and briefs are filed with the Court on time, and should be responsible for the preparation of statistical data on the work of the Court. To the extent that he can assume these burdens, the Chief Justice is relieved of them so that he can devote more time to deciding cases. He can also assist in the recruitment and supervision of law clerks and perform other services for the Court and the individual justices such as preparing memoranda on cases he thinks should be disposed of by a per curiam opinion. With these responsibilities the administrator must, of course, be an attorney and a person in whom the Chief Justice and the Court are willing to place their confidence. The position should be one of substantial

prestige and the salary for it should be in the range of that for a district judge with similar qualifications.

This recommendation for the appointment of an administrator separate from the trial court administrator is at variance with the accepted belief that a state court system should have only a single court administrator. It is believed, however, that in view of the many changes in the procedures and administration of the Court which are made in this Report, that a separate administrator for the Supreme Court is required. It may be that at some time in the future the two positions could be combined.

The Court Staff

Clerk and Executive Secretary

At the present time the clerk's office consists of the clerk and three assistants, one of whom serves as bailiff when the Court is in session. The executive secretary has had one assistant in the past but that position is presently not filled. The origin of the position of the executive secretary of the Court seems to be obscured by the passage of time but there is no reason for its continuation. The duties of the position include operating the duplication equipment, maintaining the financial records of the Court, keeping the Court's chambers and offices clean, and keeping track of the status of opinions which are being circulated among the members of the Court. Of

these duties the financial aspects should be handled by the administrator of the Supreme Court and the janitorial duties by the agency which is responsible for the capitol. The remainder of his functions are those which, if performed by anyone connected with an appellate court, are performed by the clerk's office. After the clerk's office absorbs the duties of the executive secretary, it does not appear that it requires a staff larger than the clerk and three assistants rather than the present combined authorized staff of five plus the clerk.

Court Reporter

The position of court reporter should also be abolished now that Iowa no longer publishes the Iowa Reports. To the extent that the office of court reporter must be filled to comply with existing statutory requirements, the administrator of the Supreme Court could be given the title.

Code Editor

The code editor, although for historical reasons appointed by the Supreme Court, does not perform any function relating to the Supreme Court and thus he should not be appointed by or subject to the supervision of the Court. The Legislative Service Bureau would appear to be the appropriate location, both functionally and physically, for this position.

Judicial Statistician

Although the judicial statistician has little to do with the internal operating procedures of the Supreme

Court, the office is closely related to the Court's supervisory power over the lower courts and thus is mentioned here. The position has never developed into the powerful one that was originally contemplated when it was created in 1955, in part because it was never given an appropriate title. In establishing the office Iowa adopted the model court administrator act.[25/] Because of the fear of the title "court administrator," however, it was not used but "judicial statistician" was selected. This has proved to be a mistake because most people have accepted the office as involving statistics only and it has been limited in effectiveness because of this. The title should be changed to "Trial Court Administrator" or something similar and the administrator should be given a more important role in the operation of the trial courts. He should, for example, be intimately involved in seeking a solution to the delays in appeals caused by the inability of court reporters to complete trial transcripts within the time permitted by the Rules. He should also be a member of or reporter for the advisory committee on rules so that the committee has a permanent secretariat and, if the summaries of opinions are to be continued, given the responsibility for their preparation. His salary, as with the Supreme Court administrator's,should be comparable to that of a district court judge.

Law Clerks and Secretaries

The staff of each justice includes his law clerk and secretary. The authority for the Court to employ law clerks was not granted by the legislature until July 1, 1967, and unfortunately, the position of law clerk to an Iowa Supreme Court justice has not been sought after by the higher ranking law school graduates in Iowa, both because the position is not thought of as having much prestige and because the salary, $7000, is not competitive. Some of the justices, on the other hand, have not adjusted to having law clerks and are frank to admit they do not use their clerks to best advantage. The combination of these factors has substantially lessened the contribution that the law clerks have made to the work of the Court. This can be overcome only by the justices themselves in obtaining the authority to set the annual salary at a competitive level ($10,000 at present but higher in the future), direct recruiting early in the hiring season for senior law students, making a commitment to aid the clerks in finding permanent positions, and giving the clerks responsible duties. It might also be advantageous for the Court to employ an additional law clerk in Des Moines who would not be assigned to a particular justice but who would be available to do special research projects for justices not in Des Moines. This would enable a justice to make use of the state law library without having to be in Des Moines himself.

The problem of low pay has also made it difficult for the justices to employ suitable secretarial assistance on a full time basis. Again the Court must obtain authority to pay what is necessary for competent, full time secretarial assistance.

Court Records

In the office of the clerk of the Court there should be a major revision of the form of the records that it keeps. At the present time it is impossible to obtain a clear picture of what the Court does on a day to day basis or to determine from the docket entries the complete history of a case, and there is no single file for each case in which all of the original papers of a case are kept. To rectify this situation the following changes should be made in the clerk's office. The clerk should keep three separate record books: an appeal docket, a miscellaneous docket, and a court journal, and the entries in them should be typed. These record books are essentially self explanatory. The appeal docket should be a record of all appeals filed with the Court while the miscellaneous docket should be a record of other matters such as bar admission and discipline, supervision of lower courts, regulations of practice, and cases in which an appeal has not been filed. Thus an application for an interlocutory appeal when filed will be docketed in the miscellaneous docket and, if denied,

will remain there. If granted, however, when the full original record is filed as in an ordinary appeal the case will be transferred to the appeal docket, and the miscellaneous docket matter closed. The court journal should be a record of the day to day activity of the Court in which any official court action is recorded. This will permit the workload of the Court to be ascertained easily at anytime. Ideally the court journal should be a complete cross reference to all of the court actions recorded in the two dockets.

When a case or miscellaneous matter is entered in one of the two dockets it should receive a separate appeal number or miscellaneous number and all papers subsequently filed in the case or matter should be so identified. It would also be helpful if the records of the Court were kept on an annual basis from September 1 to August 31, which coincides with the actual working year of the Court. There need only be one term of court per year, the September term which would last the entire year. The present system of four terms per year is ignored in practice and thus there is no need to continue it. The numbering system for cases and miscellaneous matters should also begin anew each September 1. This will enable the numbering system not only to be a means of identification but also to serve as an instant indicator of the workload of the Court. It

would also be helpful if cases in the Supreme Court were listed with the name of the appellant first rather than as the parties are listed in the trial court. Most appellate courts in the United States use the former system and it does save the time of those concerned with an appeal from having to check the briefs and record or the opinion to make sure which party is the appellant. The result of these recommendations is that, e.g., in an appeal by the defendant Brown from a judgment in favor of the plaintiff Jones, the title of the case in the Supreme Court will be "Brown v. Jones, No. 63, Sept. Term 1971" or "Brown v. Jones, 63/71" rather than the present form of "Jones v. Brown, No. 56130."

The clerk should also keep a file of all of the original or file copies of the papers in a case as a permanent record, including the briefs, motions and petitions, the opinion and the procedendo. The clerk should continue to bind a copy of each brief filed with the Court but it should be an extra copy rather than the file copy. There does not seem to be any need to bind the red line copy of the opinion in view of the publication of the opinions of the Court in the national reporter system. The red line copy should, rather, be kept in the file of original papers.

SUMMARY AND CONCLUSION

In the course of this Report many recommendations, both major and minor,have been made. These recommendations

in summary form are as follows:

Facilities

1. The State should provide appropriate and adjoining offices for the Chief Justice, the Supreme Court administrator, and their staffs. (pp. 35-36)

2. The State should provide each justice officing in Des Moines with an adequate office and provide adjacent space for his law clerk and his secretary. (p. 34)

3. The Court's facilities in Des Moines should be remodeled to solve problems of light, noise, and access to justices' offices. (pp. 32-33)

4. The entire north wing of the first floor of the State House should be assigned to the Supreme Court. (p. 36)

5. The State should provide each justice not officing in Des Moines with a suite of offices for the justice, his law clerk and his secretary, located near a law library. (p. 38)

6. The justices should be reimbursed by the State for actual expenses when away from home in connection with their work. (p.40)

7. The State should provide each justice with easy access to duplicating equipment. (p. 41)

Supreme Court Internal Procedure

1. The Supreme Court should sit in two panels with five members each, the membership of a panel to revolve among the members of the Court, and each panel to hear

arguments two days per month. (pp.49-50)

2. There should be no oral arguments on applications for interlocutory appeals or writs of certiorari. (p.56)

3. Briefs should be distributed to and read by all justices prior to argument. (p.67)

4. A case should not be assigned to a particular justice until it has been argued and the preliminary vote taken. (p.67)

5. The summary of the briefs prepared for each case by the court reporter prior to argument should be discontinued. (p.68)

6. The time devoted to oral argument in simpler cases should be shortened and counsel in each case should be required to designate the amount of the allowable time he intends to use. (pp.68-69)

7. Simpler cases should be disposed of by per curiam opinions. (pp.69-70)

8. An opinion should be filed immediately when a majority concurs in it. (p.71)

9. Each justice should send his draft opinions and other matters circulated to the entire Court directly to the other justices. (p.72)

10. Rehearing petitions should be sent to each justice when filed and if without merit should be disposed of immediately. (p.72)

11. The summary of each opinion prepared by the court reporter should be eliminated or prepared by the trial court administrator. (p.73)

Rules of Appellate Procedure

1. All provisions concerning appellate procedure in civil and criminal cases now located in the Code, the Rules of Civil Procedure and Supreme Court Rules should be revised and combined in Rules of Appellate Procedure. (p.53)

2. The time limits for each step in the appellate process should be shortened. (pp.60-61)

3. The granting of extensions should be severely limited, and an extension should never delay the time at which the Court will hear the case except in extraordinary circumstances. (p.61)

4. Differences in appeal procedure between civil and criminal cases should, to the maximum extent possible, be eliminated. (pp.61-62)

5. The content of the printed record should be changed and enlarged and in each case the full original record in the trial court should be filed in the Supreme Court.(pp.60-62)

6. The style of briefs and records used in the Federal courts should be adopted. (p.65)

7. The dismissal of an appeal for failure to perform an act within the required time should be made automatically unless cause to the contrary is shown. (pp.66-67)

Staff

1. A Supreme Court administrator should be appointed. (p.75)

2. The judicial statistician should be designated trial court administrator and assigned additional duties. (p.78)

3. The law clerks of the justices should be given additional responsibilities and should receive at least $10,000 per year. (p.79)

4. An additional law clerk should be employed to do research in the State Law Library for those justices who do not office in Des Moines. (p.79)

5. The salaries of the secretaries of the justices should be increased to a competitive level. (p.80)

6. The functions of the executive secretary of the Court should be taken over by the clerk of the Court. (pp.76-77)

7. The position of court reporter should be eliminated. (p.77)

8. The code editor should be separated from the Supreme Court. (p.77)

Miscellaneous

1. Complete records of all court activities should be kept and statistics developed from them on at least an annual basis. (pp.19,80)

2. The clerk should completely change the present method of record keeping. (p.80)

3. The clerk should keep the original papers in each case in a separate place.(p.82)

4. The Court should have only one term per year running from September 1 to August 31.(p.81)

5. The cases should be numbered on an annual basis. (p.81)

6. The name of each case should list the appellant first.(p.82)

These recommendations affect virtually all aspects of the appellate process and affect all parties to the appellate process including litigants and their lawyers as well as the Court and its staff. All of these recommendations are designed to improve the decision-making process of the Supreme Court of Iowa to the end that each litigant before the Court will receive both full and speedy consideration of his cause.

The major burden for the implementation of the recommendations falls on the Supreme Court itself. Many of the recommendations can be put into effect by the Court without outside assistance, but many others, particularly those involving additional funds and physical facilities, will need the cooperation of the executive and legislative branches. By tradition the Court has not been active in

convincing those in control of the State's purse strings of its needs. Whatever the reasons for this tradition, it must change. The Court must be as forceful as necessary, consistent with its function and position, in obtaining the personnel and facilities it needs to fulfill properly its judicial function. It is hoped that this Report will serve as a guide in achieving this objective.

A final note on what is not covered by this Report. The limitation of this study to the internal procedures and administration of the Supreme Court was a decision made by the Supreme Court on the basis of what it considered was its most pressing need. There are, however, many other matters which should be reviewed including the jurisdiction of the Supreme Court, the creation of an intermediate appellate court, the role of the Court in the administration of the judicial system and of the practice of law, the non-judicial duties of the Court and of its members, particularly the Chief Justice, the role of the Court in regulating procedure in the courts, the financing of the Court and the judicial system, and the compensation of the judges. All of these are issues which should be studied so that the judicial system of Iowa can meet the demands which will be placed upon it in the next several decades.

Footnotes

1/ W. Stuart, Iowa Supreme Court Congestion: Can We Avert a Crisis?, 55 Iowa L. Rev. 594 (1970).

2/ R.C.P. 333. The propriety of conditioning the right to appeal upon the approval of the person whose decision is being challenged may be questioned.

3/ Several other persons have also calculated the number of opinions filed for selected years in the period since 1951. These persons include the Judicial Statistician (1956-62), Justice Stuart in his article in the Iowa Law Review (1953, 1958, 1963, 1967, 1968) and Professor Jerome Beatty for the years 1962-68 in a Ph.D. thesis, An Institutional and Behavioral Analysis of the Iowa Supreme Court, February, 1970, ch. IV, p. 4 (unpublished thesis in University of Iowa College of Law Library). A portion of this thesis was published in J. Beatty, Decision-Making on the Iowa Supreme Court - 1965-1969, 19 Drake L. Rev. 342 (1970). All of the figures agree substantially with those given by the clerk except for Justice Stuart showing lower totals for 1953 (166-152), 1958 (170-154), 1963 (251-214) and 1967 (244-237). In each instance in which another person has a total for one of these same years, his agrees with the clerk. For this reason it is believed

(4 cont'd.)
that the clerk's numbers are accurate.

4/ See footnote 3.

5/ Council of State Governments, Workload of State Courts of Last Resort - 1965-67, Table 5 (1968).

6/ The statistics on the number of filings and trials in the district courts for each year are taken from the annual reports relating to the trial courts of Iowa by Clarence Kading, Judicial Department Statistician.

7/ Ch. 80 of Acts of 1963.

8/ Ch. 434, Sec. 1 of Acts of 1965.

9/ Ch. 298, Sec. 1 of Acts of 1969.

10/ Institute of Judicial Administration, Appellate Courts - Internal Operating Procedures, Summary and Supplement 43 (1959).

11/ Institute of Judicial Administration, Appellate Courts - Internal Operating Procedures, Preliminary Report Appendix B 34-39 (1957).

12/ Iowa Code Sec. 605.2 (1966).

13/ Iowa Code Sec. 684.2 (1966).

14/ Iowa Code Sec. 684.1 (1966).

15/ B. Canon and D. Jaros, State Supreme Courts - Some Comparative Data, 42 State Gov't. 260, 264 (1969).

16/ American Judicature Society, Solutions for Appellate Court Congestion and Delay: Analysis and Bibliography 4-6 (1963).

17/ Note, The Second Circuit: Federal Judicial Administration in Microcosm, 63 Col. L. Rev. 874, 878 (1963).

18/ Institute of Judicial Administration, Expediting Appeals, A Study of the Supreme Court of New Mexico 7 (1963).

19/ Miller, Mechanics of Appellate Decision - Iowa, 28 A.B.A.J. 478 (1942).

20/ Maris, Hearing and Rehearing Cases En Banc, 14 F.R.D. 91 (1953).

21/ II Iowa Code 2997-3010 (1966).

22/ Council of State Governments, Improving Appellate Practices and Simplifying the Rules of Procedure, Table I (1951).

23/ Id.

24/ J. E. Lumbard, Current Problems of the Federal Courts of Appeals, 54 Cornell L. Rev. 29, 36 (1968).

25/ Ch. 270 of Acts of 1955, Iowa Code Secs. 185.6-.10 (1966).

Bibliography

The American Assembly, Columbia University, The Courts, the Public, and the Law Explosion (1965).

C. Breital, et. al., Counsel on Appeal (1968).

F. Klein, Judicial Administration and the Legal Profession, A Bibliography (1963).

A. Frantz, How Courts Decide (1968).

R. Frye, The Alabama Supreme Court: An Institutional View (1969).

D. Karlen, Appellate Courts in the United States and England (1963).

Llewellyn, The Common Law Tradition, Deciding Appeals (1960).

A. Vanderbilt, Minimum Standards of Judicial Administration (Judicial Administration Series, 1949).

American Bar Association Section of Judicial Administration, The Improvement of the Administration of Justice (4th Ed., 1961).

American Bar Association Section of Judicial Administration, Internal Operating Procedures of Appellate Courts (1961).

American Bar Foundation, Accommodating the Workload of the United States Court of Appeals - Report of Recommendations (1968).

American Judicature Society, Congestion and Delay in the State Appellate Courts (1969).

American Judicature Society, Court Administrators, Their Functions, Qualifications and Salaries (No. 17, 1966).

American Judicature Society, Intermediate Appellate Courts (1968).

American Judicature Society, Law Clerks in State Appellate Courts (No. 16, 1968).

American Judicature Society, The Quality of State Judicial Statistics (No. 27, 1969).

American Judicature Society, Solutions for Appellate Court Congestion and Delay: Analysis and Bibliography (1963).

Beatty, "An Institutional and Behavioral Analysis of the Iowa Supreme Court," February, 1970 (unpublished thesis in University of Iowa College of Law Library).

Council of State Governments, Appellate Practices and Rules of Procedure (1961).

Council of State Governments, Hearing of Oral Arguments by State Courts of Last Resort (1967).

Council of State Governments, Improving Appellate Practices and Simplifying the Rules of Procedure (1951).

Council of State Governments, Operational Problems of the Courts of Last Resort (1951).

Council of State Governments, Workload of State Courts of Last Resort, 1965-1967 (1968).

Institute of Judicial Administration, Appellate Courts - Internal Operating Procedures
Preliminary Report (1957)
Summary and Supplement (1959)

Institute of Judicial Administration, Expediting Appeals - A Study of the Supreme Court of New Mexico (1963).

Judicial Department Statistician, Annual Report Relating to the Trial Courts of the State of Iowa (1957, 1958, 1959, 1960, 1961, 1962, 1963, 1964, 1965, 1966, 1967, 1968).

Judicial Department Statistician, Report of Activity in the Supreme Court of Iowa (1956, 1957, 1958, 1959, 1960, 1961, 1962, 1963).

J. Beatty, "Decision-Making on the Iowa Supreme Court - 1965-1969," 19 Drake L. Rev. 342 (1970).

F. Breen, "Solutions For Appellate Court Congestion," 47 J. Amer. Jud. Soc. 228 (1964).

B. Canon and D. Jaros, "State Supreme Courts - Some Comparative Data," 42 State Gov't 260 (1969).

P. Carrington, "Crowded Dockets and the Courts of Appeals: The Threat to the Function of Review and the National Law," 82 Harv. L. Rev. 542 (1969).

W. Cook, "The Rehearing Evil," 14 Iowa L. Rev. 36 (1928).

Iowa's Supreme Court, 26 Annals of Iowa 3 (1944).

J. Johnson, "The Supreme Court in Session," 20 Palimpsest 191 (1939).

J. E. Lumbard, "Current Problems of the Federal Courts of Appeals," 54 Cornell L. Rev. 29 (1968).

A. Maris, "Hearing and Rehearing Cases En Banc," 14 F.R.D. 91 (1953).

F. Miller, "Mechanics of Appellate Decision - Iowa," 28 A.B.A.J. 478 (1942).

D. Rendleman and P. Pfeffner, "Appellate Procedure and Practice," 19 Drake L. Rev. 74 (1969).

W. Shafroth, "Survey of the United States Courts of Appeals," 42 F.R.D. 243 (1967).

Stuart, "Iowa Supreme Court Congestion: Can We Avert a Crisis?," 55 Iowa L. Rev. 594 (1970).

E. Sunderland, "Improvement of Appellate Procedure," 26 Iowa L. Rev. 3 (1940).

G. Thompson, "Oral Arguments in the Supreme Court of Iowa," 38 Iowa L. Rev. 392 (1953).

R. Traynor, "Some Open Questions on the work of State Appellate Courts," 24 U. Chi. L. Rev. 211 (1957).

W. Whittaker and J. McDermott, "Computer Technology in an Appellate Court," 54 Judicature 73 (1970).

G. Winters, "New Approaches to Appellate Court Problems," 28 Louisiana Bar Journal 29 (1970).

Comment, "Alabama Appellate Court Congestion: Observations and Suggestions from an Empirical Study," 21 Ala. L. Rev. 150 (1968).

Note, "Form of Appellate Record in Iowa," 48 Iowa L. Rev. 77 (1962).

Note, "The Second Circuit: Federal Judicial Administration in Microcosm," 63 Col. L. Rev. 874 (1963).

Note, "The Work of the Courts," 14 Iowa L. Rev. 125 (1930).