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EXPEDITED PROCEDURES FOR APPELLATE COURTS:
EVIDENCE FROM CALIFORNIA'S THIRD DISTRICT COURT OF APPEAL

JOY A. CHAPPER*
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I. INTRODUCTION

The traditional appellate process in America involves the presentation of an appeal by counsel through extensive briefs followed by formal oral argument. This method is both expensive and time consuming for counsel and the court. Faced with increasing caseloads, courts have sought ways to eliminate or to compress steps in the appellate process in order to achieve greater efficiency.1 One stage of the appeal that has come under scrutiny is the case presentation stage—the period commencing from receipt by the appellate court of the lower court record that encompasses briefing, the court’s consideration of the briefs, and oral argument.

One approach to streamline this stage of the process is to reduce both the maximum permissible length of the briefs and the time allowed for briefing. In return for these limitations, the court schedules the case for accelerated handling. Often, however, accelerated processing involves a decreased emphasis on oral argument: the court either encourages waiver of argument or eliminates oral presentations entirely. Although most “fast-track” appeal procedures employ this ap-

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1. For a discussion of the various approaches and programs being undertaken, see S. WASBY, T. MARVELL & A. AIKMAN, VOLUME AND DELAY IN STATE APPELLATE COURTS: PROBLEMS AND RESPONSES 41-113 (1979).
proach, it has limited returns. Eliminating argument sessions will reduce travel time and disruption if the judges do not sit in a single location and therefore must travel to a single location to hear arguments. Even where travel time is not extensive, eliminating oral argument frees some time, although most of the time judges spend preparing for argument presumably would be spent on the case in any event. All told, the impact of eliminating oral argument has been minor and its potential for reducing delay limited.\footnote{2. The curtailment of oral argument has been most visible in the federal courts. At present, only the Second Circuit continues to provide oral argument as a matter of course. \textit{See} J. Howard, Jr., \textit{Courts of Appeals in the Federal Judicial System} (1981). State appellate courts vary widely in their use of oral argument. In some courts, argument is a matter of right and is held in every case. In others, although all cases are entitled to argument, the court solicits waiver of argument in a significant number of cases. In still others, argument is held only when one of the judges requests it.}

In addition to having limited time-savings benefits, elimination of oral argument is disquieting in a number of respects.\footnote{3. \textit{ABA Commission on Standards of Judicial Administration, Standards Relating to Appellate Courts}, Standard 3 commentary at 34 (1977) [hereinafter cited as \textit{ABA Standards}]; M. Osthus \& R. Shapiro, \textit{Congestion and Delay in State Appellate Courts} 21 (1974).} It reduces the visibility of the appellate process and lessens public confidence that cases actually receive the direct attention of the judges themselves. In addition, it can affect review of a case by depriving counsel and the court of the focus on central issues that oral argument can provide.

A concern for the preservation of these values and a realization that significant reductions in delay were unlikely to flow solely from the elimination of oral argument have led some to consider other methods for reducing appellate delay. If it is redundant to present an appeal through both written briefs and oral argument, it seems possible, at least in some cases, to curtail briefs more sharply and to place increased reliance on oral argument.\footnote{4. For a discussion of these concerns, see P. Carrington, D. Meador \& M. Rosenberg, \textit{Justice on Appeal} 16-18 (1976); Schroeder, \textit{Judicial Administration and Invisible Justice}, 11 U. Mich. J.L. Ref. 322, 327-29 (1978).} Unlike the reduction or elimination of argument, the reduction of briefing has the potential to effect considerable savings in time and effort for attorneys as well as judges.

Under this approach, counsel's written submissions would be reduced to very short documents and the time allowed for filing would be

greatly compressed. In return for the limitations on briefing, the case would be set for oral argument promptly. The argument session itself would have no fixed time limits; its objective would be to provide a sufficient examination of the issues by the court so that by the time the session is concluded the case could be promptly decided.

The advantages of this approach are threefold. First, because brief preparation commences promptly after the appeal is docketed, the issues should be fresh in the attorney's mind. Second, the argument can be scheduled promptly because the judges would not need substantial time to read and to analyze lengthy briefs. This not only speeds up the process, but it avoids the tendency for duplicative preparation by counsel. Third, by decreasing the emphasis on the brief and allowing unlimited time for oral argument, counsel and the court are forced to focus extensively on the oral presentation. Thus, the tone of the argument changes—counsel present their arguments and the judges actively explore the case with them.

This alternative method of achieving greater efficiency has not moved from the drawing board to extensive application. A simulation conducted in Arizona in the mid-1970's emphasized oral argument and oral decisions.6 This experience led to two other projects, one a short-lived "appeal-without-briefs" program in the U.S. Court of Appeals for the Ninth Circuit,7 the other a continuing accelerated docket program in the Colorado Court of Appeals in which briefing is limited and compressed but in which oral argument is not emphasized.8 Finally, the California First District Court of Appeal in San Francisco conducted an experimental program with increased oral argument that was not tied to a limitation on briefing.9

From the perspective of the American Bar Association Action Commission to Reduce Court Costs and Delay, which is examining alternative procedures that can reduce high litigation expenses and lengthy court processes, an appellate procedure with increased emphasis on oral argument appeared to be theoretically sound, warranting testing in actual court settings. The Commission thus sought to locate courts interested in developing and introducing these procedures.

7. For a description of this program, see Chapper, Fast, Faster, Fastest; Appellate Courts Develop Special Tracks to Fight Delay, Judges' J., Spring 1981, at 50, 56.
9. See Chapper, supra note 7, at 55.
In February 1981, the California Court of Appeal, Third Appellate District, located in Sacramento, placed in operation an expedited civil appeal procedure that was based on the model outlined above. The experience in this one site is far from definitive, but it does provide the first systematic evidence on key issues concerning the feasibility and acceptability of this type of procedure. This paper reports on the Action Commission's evaluation of the Sacramento program's first twelve months of operation. The evaluation addressed a number of key issues: First, which cases can be handled appropriately under this expedited framework? Second, what are the benefits and costs to the court, counsel, and litigants? Third, even if the procedure achieves greater efficiency, does it do so at the expense of other values?

The objectives of this report are threefold: First, it is intended to describe the Sacramento program. Because other courts are considering similar procedures, the multiple adjustments in both program design and existing procedure required to implement it are documented in some detail. Second, this report explores the program's effects in several key areas, such as the length of time taken to dispose of cases, the effort required by the judge and court to maintain the program, the views of the court and counsel on its advantages and disadvantages, and the time savings to attorneys and corresponding cost savings to litigants. Third, the paper concludes by discussing issues of the appellate process and proposed reforms that were uncovered in our examination of the structure and process of the Sacramento program.

II. SACRAMENTO EXPEDITED APPEALS PROGRAM

A. The Court Setting

The California Court of Appeal, Third Appellate District, is one of five districts of the state's intermediate appellate court. Its seven judges sit in three-member panels. The Third District's annual filings include approximately 600 civil appeals. At the time the expedited procedure was adopted, the median time from notice of appeal to the filing of the court's opinion in a civil appeal was fourteen months. Although this overall disposition time compared well to those of many other courts, the judges believed that it could be reduced at a number of points.

An expedited appeal program was not the court's first effort to reduce delay or to counter the impact of its increasing caseload. One current procedure seeks to reduce the time prior to receipt of the record. It permits counsel to stipulate to the use of the original lower court file in lieu of designating and preparing a clerk's transcript. This
procedure reduces by several months the time typically required to prepare the record on appeal.

A second procedure is designed to reduce the number of cases that must be resolved on the merits. This is the court’s settlement conference procedure for appeals in civil cases, a standard feature of Third District practice since 1977.\textsuperscript{10} Under the procedure in operation during the observation period, when the lower court record was filed, and before briefing, counsel were routinely invited to participate in a conference presided over by a member of the court. This invitation was being accepted in approximately eighty percent of the eligible\textsuperscript{11} civil appeals, and was credited with significant reductions in the number of appeals handled by the court on the merits: over the past several years, settlements had occurred in up to one-half of the cases in which a conference was held.

By contrast, the expedited appeal program focused on case presentation—briefing, the court’s consideration of the briefs, and oral argument. The starting point was briefing itself. Although the Rules of Court provided for the completion of briefing within a reasonably expeditious time frame—the appellant’s brief is due thirty days after receipt of the record\textsuperscript{12} and the respondent’s thirty days thereafter—in practice this was rarely accomplished. By stipulation, the parties could, and frequently did, extend the filing deadlines for an additional thirty to sixty days each. It was not uncommon, therefore, for briefing to consume up to seven months.

Unlike many other courts, the Third District had maintained oral argument for a large majority of civil appeals, although the time permitted for argument in each case had been reduced from thirty to fifteen minutes for each side. Only in a comparatively small number of cases (fifteen to twenty percent) was waiver of argument sought by the court. This occurred in what the court identified as a “routine disposition appeal,” a case in which the court, upon review of the record and briefs, believed that oral argument from counsel would not aid its deliberation. In these cases the court solicited waiver of argument by letter. Unless counsel requested argument, which occurred in

\textsuperscript{10} The program was instituted in 1975 on a voluntary basis. For a discussion of the development of the procedure and a report on its impact, see JANES, PARAS, & SHAPIRO, The Appellate Settlement Conference Program in Sacramento, 56 CAL. ST. B.J. 110 (1981).

\textsuperscript{11} The settlement conference procedure does not apply to one category of civil appeals: juvenile cases.

\textsuperscript{12} Participation in the settlement conference procedure stayed the time for brief filing: appellant’s brief would be due 30 days after a case not settled was returned to the active calendar.
approximately two of every five such cases, the appeal was treated as submitted on the briefs.

Under existing procedures, appeals were set for argument three months after the close of briefing. For example, at the conclusion of July 1981, all cases in which briefing was completed during that month were assigned dates in November or any open dates in October. The court sits throughout the year in panels of three as many times as necessary to hear all the appeals. This has averaged four hearing days a month (eight to twelve cases a day) for each judge. If additional days would be required, a pro tem judge from a trial court would be assigned to the court. Because of such scheduling practices and the use of pro tem judges, the court had no backlog of briefed cases awaiting the assignment of a hearing date.\footnote{A recent study has found that “artificial limitations on the number of arguments heard per court session” is the single factor most directly affecting the length of time from close of briefing to oral argument. J. MARTIN & E. PRESCOTT, APPELLATE COURT DELAY: STRUCTURAL RESPONSES TO THE PROBLEMS OF VOLUME AND DELAY 61 (1981).}

Not every court that has considered this kind of expedited appeal procedure has chosen to adopt it. It is significant to note, therefore, what the Sacramento court hoped to achieve through such a program change. First, the court was looking for ways to enhance its ability to keep abreast of its increasing caseload—but without cutting back on its practice of hearing oral argument in a large majority of civil appeals. On the other hand, the court was not interested in extending oral argument to the “routine disposition appeals.”

Second, the court was interested in reducing the overall processing time for civil appeals. The court believed that its fourteen-month median disposition time could be reduced, particularly with respect to briefing, which consumed the largest single block of time from notice of appeal to disposition. A procedure compressing the briefing schedule offered the opportunity to reduce overall elapsed time by several months.

Third, the court was willing to undertake an expedited appeal program even if it did not reduce the amount of time that the judges would be required to devote to an individual case. The key was that the new procedure achieve elapsed time reductions without increasing the amount of time required to be spent on a case by the judges.

B. The Expedited Procedure

The expedited features that the court decided to adopt were as follows: Each party’s opening brief was limited to ten pages, double-
spaced, exclusive of the statement of facts. No reply brief was permitted. Appellant's brief was due twenty days from the date of the scheduling order placing the appeal within the expedited procedure. Respondent's brief was due within twenty days of the filing deadline for appellant's brief. Oral argument was set for approximately thirty days after the close of briefing. The time each side was permitted for argument was not limited in advance; the expectation was that the session would continue as long as necessary to permit a full exploration of the issues by the court. The court's goal was to file its opinion within ten days after oral argument.

The introduction of the planned policy changes involved more than substituting a new procedure for the old one. Existing constraints and concerns needed to be accommodated. Adjustments also had to be made beyond the immediate scope of the new procedure because of the interrelated nature of institutional decisionmaking. As a result, how the specific features of the expedited program were integrated into the appellate process was part of the critically important process of policy implementation.14

1. Program Operations—To minimize the possibility that the availability of expedited handling would encourage appeals or would be a disincentive to settling appeals, the expedited procedure came into play relatively late in the process—after the receipt of the lower court record and after use of the settlement conference procedure. The settlement conference also became the mechanism for identifying appropriate cases. After an unsuccessful settlement conference or at the conclusion of unsuccessful negotiations, the judge would indicate the availability of the expedited appeal procedure, explain its operation, and explore further the case's suitability.

The court believed that judicial screening was essential for two reasons. First, only screening would prevent lawyers from attempting to use the new procedure for inappropriate cases. The judges believed that counsel, in an effort to obtain more speedy disposition for their

14. The importance of studying policy implementation is argued elsewhere. See J. PRESSMAN & A. WILDAVSKY, IMPLEMENTATION xi-xvii (1973). Successful introduction of a new idea requires decisionmakers thoroughly to analyse how general precepts will work at the operational level. The attention to detail by the Third District Court and court staff helped to minimize delays in implementation and costly readjustments in the program after it was initially introduced. The program also offers guidelines to other courts that are considering similar changes. Although features of the Sacramento program are not necessarily universal, the procedure adopted in Sacramento provides a concrete point of discussion. For these reasons, the ways in which the expedited program was translated into working procedures are described in some detail.
clients, might attempt to brief in ten pages cases requiring much longer written presentations. This might require the court to reschedule a case for full briefing after it had been initially prepared and presented on limited briefs, a possibility the judges wanted to minimize. Second, judicial involvement was thought to be essential to acceptance of the procedure by counsel. From the court’s experience with its settlement conference procedure, over which a judge rather than a staff attorney presided, the court concluded that judicial involvement would be equally essential to the successful operation of an expedited appeals program.  

The court set no specific criteria for determining which cases would be eligible for expedited handling. Instead, screening was done on a case-by-case basis by the judge presiding at the settlement conference. Because the court did not have rulemaking authority to require cases to follow the expedited procedure, the program had to be voluntary, with counsel stipulating acceptance of the limits on briefing. On receipt of the required stipulations, the court entered a scheduling order setting forth the filing dates for the briefs and the date for oral argument. Expedited appeals were set on special, twice-a-month calendars of not more than six expedited appeals each. The separate calendar facilitated scheduling of the expedited appeals and emphasized the expedited procedure as a separate and distinct alternative track.

2. Role of the Attorney Staff—The structure and organization of the court’s attorney staff differ from those of many appellate courts. Rather than having both short-tenured personal law clerks for the individual judges and a more permanent central staff, the court has only a centrally-hired, indefinitely tenured attorney staff, numbering thirteen at the time the expedited procedure was adopted. One attorney was assigned to each of the court’s seven judges; each worked on cases assigned to his or her judge for opinion. These attorneys worked on writs, argument-waiver cases, and the like. Because of the short period between briefing and argument, the court assigned preparation of the expedited cases to a single experienced attorney who was to handle

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15. In May, 1982, the court amended its settlement conference procedure to require the appellant in every case to file a pre-argument statement. The decision to schedule a settlement conference thereafter rested with the court, to be based upon the information contained in the statement. In August, 1982, the court began to offer expedited handling to nonconferenced cases based on the information in the statement. This change apparently has not affected either counsel’s acceptance rate or the suitability of the cases entering the program. The judges have been satisfied that they can screen cases on the basis of the statement as accurately as they could at a settlement conference.
The attorney thus assigned to the program on a full-time basis received the record in each expedited appeal when the scheduling order was entered. When each brief was filed, it was forwarded from the Clerk's Office. The attorney's assignment in each case was to review the record, read and analyze the briefs, and conduct any necessary additional research. The attorney's work product was a draft memorandum opinion which, along with the record and briefs, was then circulated to the panel assigned to the case, generally one week before the argument.

III. JUDICIAL AND ADMINISTRATIVE IMPACT

A. Expedited Cases

One of the threshold questions about an expedited program concerns its scope—which cases are considered appropriate for expedited handling and their frequency in a given court. As proposed, the expedited procedure was directed at a specific category of case: relatively straightforward cases presenting a limited number of issues largely governed by existing law. These cases, it was thought, could be fully presented, considered, and decided with short briefs and informal arguments within a compressed time frame, without use of a more elaborate decisional process.

The court did not feel prepared to use a categorical basis for offering the expedited option, but preferred instead a case-by-case selection process. The relevant criteria included case type, the nature of the issues, the method of disposition below; but no case characteristic, singly or in combination, necessarily would qualify or disqualify any given case.

The court's experience under this case-by-case approach indicated that the expedited procedure can appropriately be used for a much broader range of cases than originally anticipated. In the first year, the expedited cases included many with characteristics that would have been disqualifying under a selection system with more fixed criteria.

16. Because the program was initiated in addition to the previously set court calendar, and because of a steadily increasing volume of civil appeals, the court determined that staff assistance in handling the expedited appeals was needed to avoid an adverse effect on the remaining caseload. During the first year of the program, an additional attorney was available to the court; funding was provided by a grant from the Weingart Foundation. Having demonstrated the cost-effectiveness of the expenditure, the court obtained state funding for the position in 1982. Because a single staff attorney can prepare more expedited cases than regular calendar cases within a given period, where a court's caseload is relatively stable, the program should be able to operate without increased levels of staff support.
The first-year cases involved a wide range of subject matter—contract, tort, real property, administrative review, marriage dissolution, conservatorship, tax, and corporate law—and an equally broad range of issues. Methods of disposition below also varied considerably. Although a majority of the cases had been resolved before trial, for example, on demurrer or summary judgment, twenty-eight percent had been disposed of by trial. The records also varied: forty-five percent of the cases included testimonial or evidentiary transcripts of lower court proceedings. (The median length of these transcripts was fifty-one pages.)

Despite this diversity, the cases following the expedited procedure appeared to share one basic characteristic—most were neither legally nor factually complex, but were typically one- or two-issue cases. Even in appeals of a full trial, the issue on appeal generally did not require a review of the full record. But the expedited cases were not the easiest cases coming to the court. At the time the expedited program began, approximately fifteen percent of civil appeals were being resolved without oral argument. The court was concerned that these routine disposition appeals would be the only ones considered appropriate for the expedited appeal procedure. This situation does not appear to have occurred. Over the first year, the percentage of civil appeals in which the court requested a waiver of argument showed a slight decline, which suggests that the court offered expedited handling to cases that otherwise would have been processed as routine disposition appeals. Moreover, the total number of cases identified as suitable for the expedited program far exceeded the number in which the court might have invited waiver of argument.

One of the clearest signs that a significant number of the more complex civil cases were entering the expedited program is that the cases considered suitable for the expedited procedure totaled approximately fifty percent of the appeals decided by the court on the merits. Given that the court continued to request waiver in fifteen to twenty percent of the civil appeals, it appears that only about one-third of the civil appeals coming to the Third District were considered too complicated or complex for handling under the expedited procedure.\(^\text{17}\)

17. One of the practical questions relating to the program was whether its voluntary nature would affect the volume of cases ultimately following the new procedure. That concern appears to have been unjustified, at least in this court. Counsel in virtually all of the cases identified as suitable for expedited handling chose the expedited option. Although there may be concern regarding the voluntary nature of invitations from the court, interviews with the attorneys handling expedited appeals do not indicate any real or perceived coercion.
Another indication of the complexity of expedited cases is the high number of opinions certified for publication. Under California Rules of Court, a decision of the Court of Appeal is not published unless the court certifies that it establishes a new rule or alters an existing rule, discusses a legal issue of continuing public interest, or criticizes existing law. The Third District has generally published less than twenty percent of its opinions in civil cases. The publication rate for expedited appeals was twenty-nine percent.

B. Case Processing

The specific limitations in the expedited program—i.e., ten-page briefs, twenty-day filing periods, thirty days to argument, ten days to decision—were based upon a judgment that they were feasible parameters for presenting and deciding appeals. The experience over the first year supports that initial judgment.

Both in selection and in processing, the participating cases proved compatible with the program's parameters. The 107 cases handled under the new procedure during the first twelve months represented almost all of the cases selected, because offers to join the program seldom were rejected by counsel. Participating counsel met the twenty-day deadlines for the filing of briefs, and the briefs themselves fell within the required page limits. The time limits set for the court's consideration of a case also were largely met as seen in Table I. For the portion of the process that the program could be expected to affect directly—date of briefing to date of decision—the expedited appeals cases were disposed of in an average (mean) of ninety-nine days; in the year prior to the introduction of the expedited program, the average was 247 days for a comparable group of cases handled under the traditional procedure. This has resulted in a corresponding overall reduc-

18. CAL. R. OF CT. 976(b).
19. The court did not wish to use an experimental design—randomly assigning potentially eligible cases to experimental and control categories. Thus an alternative method was used to choose cases so inferences could be drawn about the consequences of the new procedure. The comparable group of nonexpedited cases was selected from the pool of 126 civil appeals that went to settlement conference and did not settle during the year before the introduction of the expedited program. From this set of cases, the 21 cases in which oral argument was waived were excluded because of their inappropriateness for the comparison. Of the remaining 105 cases, the faster 50% in terms of overall disposition time were selected. Fifty percent was the proportion selected because that equals the proportion of nonsettling appeals that had entered the expedited program. By selecting the faster group, this process avoided biasing the comparison in favor of the expedited procedure.

A percentage figure was used to identify the comparison group because the settlement conference judge used a case-by-case process rather than objective criteria in selecting expedited cases. As a result, we could not “match” the expedited cases with a set of non-
tion in disposition time—an average elapsed time from notice of appeal to decision—of just over eight months (261 days) for the expedited cases as compared to almost fourteen months (406 days) for the nonexpedited cases.

TABLE I

<table>
<thead>
<tr>
<th></th>
<th>Cases Handled Under the Expedited Procedure</th>
<th>Comparable Cases Handled Under the Traditional Procedure</th>
</tr>
</thead>
<tbody>
<tr>
<td>Average Time Between Filing and Final Disposition (days)</td>
<td>261&lt;sup&gt;a&lt;/sup&gt;</td>
<td>406</td>
</tr>
<tr>
<td>Average Time Between Start of Briefing and Final Disposition (days)</td>
<td>99&lt;sup&gt;a&lt;/sup&gt;</td>
<td>247</td>
</tr>
<tr>
<td>Average Time Between Start of Briefing and Date Respondent's Brief Filed (days)</td>
<td>31&lt;sup&gt;a&lt;/sup&gt;</td>
<td>118</td>
</tr>
<tr>
<td>Average Time Between Oral Argument and Final Disposition (days)</td>
<td>24&lt;sup&gt;c&lt;/sup&gt;</td>
<td>41</td>
</tr>
<tr>
<td>Average Length of Appellant's Brief (pages)</td>
<td>10.7&lt;sup&gt;b&lt;/sup&gt;</td>
<td>13.6</td>
</tr>
<tr>
<td>Average Length of Respondent's Brief (pages)</td>
<td>9.9&lt;sup&gt;a&lt;/sup&gt;</td>
<td>14</td>
</tr>
<tr>
<td>Average Length of Opinion (pages)</td>
<td>6.8&lt;sup&gt;d&lt;/sup&gt;</td>
<td>6.5</td>
</tr>
</tbody>
</table>

a. The observed difference between the average figures for the two groups of cases is statistically significant at the .0001 level using a difference-of-means test.
b. The observed difference is statistically significant at the .001 level.
c. The observed difference is statistically significant at the .05 level.
d. No statistically significant difference.

expedited cases on observable dimensions such as case type and transcript length. The choice of the faster 50% of past cases should ensure that despite the lack of a matched sample, the test of the program is a conservative one.

As a further refinement, those cases among the faster 50% that were dismissed by the parties before the briefing were also excluded because of their inappropriateness. Thus, a retrospective comparison group of 49 cases was used to determine what differences, if any, the expedited procedure made in case processing and preparation.
C. Judicial Workload

One of the court's basic objectives in establishing an expedited appeal procedure was to aid it in coping with continued increases in its civil appeal caseload. Increased judicial productivity was a key concern reflected in the program's design and operation. Accordingly, both halfway into and shortly after the first twelve months of the project, structured interviews were held with members of the court, staff attorneys, and the court's administrative personnel. These interviews served to pinpoint the new procedure's advantages and disadvantages as seen by the court in terms of judicial workload.

1. Screening—The pre-existing settlement conference procedure, which provided the mechanism for screening cases for expedited appeal, permitted that function to be performed without an appreciable increase in judge time.

2. Review, Analysis, Preparation—Judges see the program as enabling them to dispose of additional cases and as providing an increased capacity with which to respond to increased caseload filings. The judges' impressions suggest that the total time spent on a case was not reduced although work on expedited cases took place on a compressed schedule and briefs were shorter and perhaps even more concise and focused. The short period between the close of briefing and argument did place certain constraints on the court, but the schedule appeared to be feasible: The judges reported having sufficient opportunity to review the cases and to prepare for oral argument.

3. Oral Argument—Offering oral argument in each case did not appear to increase the time the court spent on a case. The flexible time provided for argument did not result in a significant increase in the length of argument. Argument sessions for expedited cases lasted approximately thirty minutes, the maximum set by standard procedures.

4. Decision—Prompt decision after argument was not expected to cause additional work per case. The higher publication rate for decisions in expedited cases, however, may have resulted in the judges spending additional time on these cases at the decision-making stage.

20. The program was introduced at a time of diminished judicial resources. The Third District has seven judgeships; all were filled when the program began. One of the judges handled the settlement conferences and thus was relieved from much calendar responsibility; that judge did not sit on expedited cases. A second judge, because of ill health, had less than full calendar responsibilities and did not participate in the expedited cases. In addition, during four of the first ten months, the court had a vacancy due to a resignation.
Decisions in published expedited cases took over twice as long to be released after argument as those in nonpublished cases (thirty-eight to seventeen days).

D. Appellate Review

Reduced time from notice of appeal to disposition, an objective which the expedited program appears to have achieved, is a questionable accomplishment if the quality of review is adversely affected. The experience with the Sacramento program suggests that not only was the quality of the process not being sacrificed, but that the procedure may even have enhanced judicial review.

One of the benefits of the procedure, according to members of the court, is that it led to greater clarity in the presentation of issues. For cases in which only one or two issues would be presented in any event, the ten-page brief limit forced counsel to be more focused and concise. More importantly, the judges suggested that the shortened time schedule to disposition operated as an incentive to counsel to reduce the number of issues being presented. Rather than raise all conceivable questions arising out of the lower court proceeding, counsel focused on the one or two matters on which the appeal would turn and thus "qualify" the case for expedited handling. The result is that fewer issues—particularly fewer tangential issues—were coming to the court. This permitted the judges to devote greater time and concentration to each. 21

The way in which the court has placed expedited appeals on its argument calendar has increased the impact of focused and concise briefs. Unlike regular argument calendars, on which ten to twelve cases may be set, expedited calendars contained no more than six cases. With fewer cases on a day's calendar and fewer issues per case, the judges had a greater opportunity to prepare to hear the arguments of counsel and, as a result, were better able to benefit from the opportunity to question counsel. Both judges and staff attorneys observing the argument sessions noted a higher level of exchange between the court and the attorneys in expedited cases, with more questioning and probing by the judges. The limited number of issues also forced counsel more effectively to focus their presentation.

E. Administrative Consequences

1. Staff Attorney—As noted above, responsibility for preparing

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21. Having fewer issues more concisely presented may also have contributed to the higher publication rate in expedited cases.
The expedited cases was assigned to one designated staff attorney who worked exclusively on those cases. Time records were kept during the course of the project to determine the time the attorney spent on each case. These records provide a comparison with attorney time spent on cases under the standard procedure and a gauge of staff resources needed to operate the program.

The average staff attorney time per case, for all expedited cases, was fifteen hours. If a case was published, attorney time was clearly greater: twenty hours per published case, thirteen hours for one with an unpublished opinion. Generally, staff attorney time on cases in the expedited program compared quite favorably to that spent on regular calendar cases, where attorneys are assigned five cases per month for research and preparation of a memorandum or a draft opinion. Based on an average of twenty hours—two and one-half working days—per case, a single attorney is estimated at being able to prepare eight to nine expedited cases a month.

2. Clerk's Office—The expedited procedure had both positive and negative effects on the paper-processing functions of the Clerk's Office. The program led to a marked decrease in the volume of miscellaneous papers filed, particularly requests for extensions of time and continuances, neither of which were expected in expedited cases. Processing these requests had involved locating the court file, making appropriate docket entries, and notifying counsel of the action taken.

Nevertheless, the program resulted in some increase in the clerical time devoted to a case. The Clerk schedules regular calendar cases in batches, with the court issuing a single order setting the ten to twelve cases that will be argued on a specific day; the Clerk makes the docket entries by stamp. In contrast, scheduling of the expedited cases is done by individual order after receipt of the stipulations of counsel. Although word processing and forms reduce the burden of preparing individual orders, docket entries were individually typed.

Perhaps the greatest impact came from the separate additional argument sessions for expedited cases. A member of the Clerk's Office staff attended each oral argument session to maintain the minutes. A bailiff, assigned to the Clerk's Office, was also present during the session. This is time taken from other tasks, and time during which no other work would be done. The Clerk considered dispensing with having both individuals in the courtroom for argument, but rejected the idea for reasons unrelated to the expedited program.

One administrative difficulty arose during the course of the project. When the program began, the court could not predict the number
of cases that would follow the expedited procedure. Consequently, there were times over the first year when the volume of stipulations exceeded the court's capacity to handle the cases in an expedited fashion. The court's response was an ad hoc one: (1) The issuance of the scheduling order was delayed for up to two weeks so that the argument would follow within thirty days of the due date of respondent's brief, or (2) The expedited option was withheld from otherwise appropriate cases. This affected the project experience in two ways. First, delaying the issuance of the scheduling order artificially maintained the expedited timetable but gave an advantage to appellants by extending the period available for preparation of that party's brief. Total time from notice of appeal to disposition, of course, also was increased. Second, withholding the option without documentation understated the full extent of the caseload that might appropriately be handled in an expedited fashion given different program resources.

IV. PROGRAM RESULTS FROM THE ATTORNEYS' PERSPECTIVES

In addition to demonstrating the expedited procedure's feasibility, the first year's set of cases provided the opportunity to explore questions about attorneys' perceptions of the procedure's affect on case preparation, presentation, and time spent. This section examines these issues from the perspective of attorneys who have handled cases under the expedited procedure, supplemented by information gathered from court case files. In assessing the procedure's effects, we conducted structured telephone interviews with 165 attorneys involved in the 107 expedited cases in order to answer four basic questions:

(1) How do attorneys see the project affecting the speed of litigation?
(2) What is their assessment of each of the components of the program (i.e., limited brief and increased reliance on oral argument)?
(3) How does the procedure affect the time required to prepare and present the case?
(4) Are attorney time savings passed on to litigants in the form of lower fees?

22. In fact, some concern arose over whether attorneys would voluntarily agree to the limits set forth in the program. The settlement judge simply began identifying appropriate cases and offering the expedited option.

23. The 165 attorneys constitute 74% of the total number involved in the first year's cases. Interviews were conducted by Action Commission staff in three successive waves from July, 1981 to August, 1982. In most instances, the interviews lasted 15-20 minutes.
TABLE II

FACTORS MENTIONED BY ATTORNEYS AS REASONS FOR ENTERING THE SACRAMENTO EXPEDITED APPELLATE PROGRAM

<table>
<thead>
<tr>
<th>Factor</th>
<th>Number of Attorneys Mentioning Factor</th>
<th>Percentage of Attorneys Mentioning Factor</th>
</tr>
</thead>
<tbody>
<tr>
<td>Speedy Resolution</td>
<td>89</td>
<td>54</td>
</tr>
<tr>
<td>Subject Matter of Case</td>
<td>78</td>
<td>48</td>
</tr>
<tr>
<td>Suggestion by Judge</td>
<td>58</td>
<td>35</td>
</tr>
<tr>
<td>To Reduce Costs</td>
<td>31</td>
<td>19</td>
</tr>
<tr>
<td>Other (e.g., best interest of client, shorter brief gets to issue, curiosity, etc.)</td>
<td>28</td>
<td>17</td>
</tr>
</tbody>
</table>

N = 164a

a. One attorney did not respond to this question.

TABLE III

ADVANTAGES OF SACRAMENTO EXPEDITED APPELLATE PROGRAM ACCORDING TO ATTORNEYS

<table>
<thead>
<tr>
<th>Advantages</th>
<th>Number of Attorneys Citing Advantage</th>
<th>Percentage of Attorneys Mentioning Advantage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Speedy Review and Disposition</td>
<td>130</td>
<td>79</td>
</tr>
<tr>
<td>Monetary Savings to Litigant</td>
<td>60</td>
<td>36</td>
</tr>
<tr>
<td>Benefits Court</td>
<td>55</td>
<td>33</td>
</tr>
<tr>
<td>Benefits Client—Speedier Disposition</td>
<td>52</td>
<td>32</td>
</tr>
<tr>
<td>Savings in Attorney Time</td>
<td>47</td>
<td>28</td>
</tr>
<tr>
<td>Out of Court</td>
<td>23</td>
<td>14</td>
</tr>
<tr>
<td>Less Paperwork</td>
<td>19</td>
<td>12</td>
</tr>
<tr>
<td>More Focus on Important Issues</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Reduced Attorney Time in Court</td>
<td>10</td>
<td>6</td>
</tr>
<tr>
<td>Other (e.g., Makes Sense, More Informal, Focuses on Issue)</td>
<td>19</td>
<td>12</td>
</tr>
</tbody>
</table>

N = 165

The set of attorneys interviewed, which included members of the State Attorney General's Office and private firms, constituted a cross-section of practitioners, both in terms of years in practice and firm size. Despite their differences along those general dimensions, the lawyers shared one important characteristic: few attorneys had extensive appellate experience, with almost all having argued five or fewer appeals in
the last three years. For most of those surveyed, litigation in California state appellate courts constituted less than ten percent of their total practice. This meant that the new procedure was introduced to a bar that does not specialize in appellate cases.

A. *Reduction in Time and Effort to Resolve Cases*

One striking feature of these responses is that they show that attorneys want the benefits of speedy case resolution. A common reason for accepting the court's invitation to consider the new procedure was the possibility of time savings, as shown by Table II.\(^{24}\) In addition to being a motivating factor, the procedure's potential effects on case processing time and the time spent by attorneys were cited as the primary advantages of the program as indicated by Table III.

These observations are important in suggesting the bar's willingness to move cases more expeditiously. Previous research suggested that the most critical determinant of court delay was the attitude of the court, court staff, and attorneys toward the pace of litigation and that a combination of attitudes called "legal culture" accounted for why cases in some courts move quickly and ones in other courts move slowly.\(^{25}\)

To the extent this concept accurately identifies a critical determinant of the pace of litigation, the expedited program in Sacramento suggests that "go slow" attitudes did not exist in this specific situation. Lawyers presented with an opportunity for faster case processing responded appreciatively. Moreover, their reasons for deciding to work under the new procedure reflected a desire for speedier case resolution. It may be the case that local legal culture in many jurisdictions reinforces slow case processing. This program indicated, however, that legal culture may also support procedural changes and faster processing.

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24. Open-ended questions were used to measure attorney attitudes on certain subjects (Tables II, III, VI, X) and close-ended items on others (Tables IV, VII, VIII, IX). Answers to each type of question must be interpreted somewhat differently. The open-ended questions were used to determine the pervasiveness of a given attitude. For example, in Table III the most frequent response (speedy review and disposition) is the most common view among attorneys; it is not, however, necessarily the principal advantage. On the other hand, close-ended questions were used to indicate the extent to which attorneys agree (or disagree) with a given set of options. As an illustration, in Table IV a plurality of attorneys agreed with the proposition that the limited brief provided a framework for argument. In fact, more of them "agreed strongly" than simply "agreed" with the statement.

### TABLE IV

**Attorney Assessments of Limited Brief Under the Sacramento Expedited Appellate Procedure**

<table>
<thead>
<tr>
<th>Own brief met each basic objective</th>
<th>Agree Strongly</th>
<th>Agree</th>
<th>Not Sure</th>
<th>Disagree</th>
<th>Disagree Strongly</th>
<th>Total Number of Attorneys</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Provided notice to opponent</td>
<td>72%</td>
<td>15%</td>
<td>10%</td>
<td>2%</td>
<td>0%</td>
<td>100% N=164</td>
</tr>
<tr>
<td>2. Provided framework for argument</td>
<td>58%</td>
<td>36%</td>
<td>2%</td>
<td>3%</td>
<td>1%</td>
<td>100% N=165</td>
</tr>
<tr>
<td>3. Oriented judges</td>
<td>58%</td>
<td>24%</td>
<td>9%</td>
<td>7%</td>
<td>2%</td>
<td>100% N=165</td>
</tr>
<tr>
<td>Opponent's brief met objectives</td>
<td>35%</td>
<td>34%</td>
<td>12%</td>
<td>11%</td>
<td>8%</td>
<td>100% N=165</td>
</tr>
</tbody>
</table>

### TABLE V

**Brief Preparation Time in Cases Handled Under the Sacramento Expedited Appellate Procedure**

<table>
<thead>
<tr>
<th>Much Less Than Under the Standard Procedure</th>
<th>Somewhat Less</th>
<th>About the Same</th>
<th>Somewhat More</th>
<th>Much More</th>
<th>Total Number of Attorneys</th>
</tr>
</thead>
<tbody>
<tr>
<td>18%</td>
<td>38%</td>
<td>39%</td>
<td>5%</td>
<td>0%</td>
<td>100% N=164</td>
</tr>
</tbody>
</table>

### TABLE VI

**Qualitative Changes in Brief Preparation in Cases Handled Under the Sacramento Expedited Appellate Procedure**

<table>
<thead>
<tr>
<th>Dimension Changed</th>
<th>Number of Attorneys Mentioning Factor&lt;sup&gt;a&lt;/sup&gt;</th>
<th>Percentage of Attorneys Mentioning Factor</th>
</tr>
</thead>
<tbody>
<tr>
<td>Format</td>
<td>52</td>
<td>32%</td>
</tr>
<tr>
<td>Content</td>
<td>47</td>
<td>28%</td>
</tr>
<tr>
<td>No Change</td>
<td>79</td>
<td>48%</td>
</tr>
</tbody>
</table>

<sup>a</sup> Some attorneys mentioned more than one factor.

**B. Role of the Brief**

Despite the restrictions placed on the length of briefs, the attorneys were satisfied with their ability to present their cases to the court. Both appellants and respondents generally felt that their briefs met several key objectives. As indicated in Table IV, the limited briefs were seen as providing notice to the opponent of the issues raised in the case,
establishing a framework for argument, and orienting the judges to the issues to be decided, although a noticeable percentage of attorneys were unsure as to whether the first function was performed. As might be expected, attorneys indicated that their own briefs generally met these objectives better than their opponents’ briefs. Nevertheless, most of the lawyers saw the opposing side’s briefs as meeting basic objectives.

The attorneys viewed the limited briefs as not only achieving basic litigation goals, but also as providing a source of time savings. According to Table V, somewhat more than half of the attorneys spent less time in brief preparation than they would have under the traditional procedures, while only one indicated spending more time. But the quantitative reduction in time and work associated with the new procedure was not associated with a qualitative shift in the nature of the briefs. It was expected that the lawyers might find that the briefs changed in terms of format (e.g., less formal) and content (e.g., less time spent on facts, more to the point, more focused on specific aspects of issues). Yet, as indicated in Table VI, less than one third of the attorneys stated that either the form or the content of the briefs changed as a result of the expedited procedure.

C. Role of Oral Argument

The limitations placed on the length of briefs predictably affect preparation time, but expanded oral argument does not necessarily entail more preparation for argument. In fact, one might expect almost no change associated with the expedited program for at least two reasons.

First and foremost, if the attorney’s preparation was geared toward the case’s issues, then the complexity and range of issues would determine the amount of the work required. To a certain extent, the nature of the preparation would become independent of the time allowed for the argument session. That is, attorneys need to be in a position to respond to questions from the court on all issues whether the hearing is fifteen, thirty, or sixty minutes in duration.

Second, attorney preparation for oral argument may include countervailing tendencies in work time. Expanded oral argument may lead some attorneys to attach greater significance to argument and, in turn, to decide to expend more effort on it. Their rationale is that over-preparation is necessary. On the other hand, the more compressed time frame under the expedited procedure not only prevents excessive preparation, but may mean the case is fresher in the attorney’s mind. As a result, less time may be needed to review the case before oral argument.

Based on these two sets of considerations, we expected that most
attorneys would not allocate time any differently to argument preparation under the expedited procedure. If a difference occurred, the extent of change was likely to be modest. Yet, the direction of any change was difficult to predict unambiguously because of plausible reasons for expecting a change in either direction.

Interviews with the attorneys who handled the initial set of cases under the Sacramento program confirmed these assumptions. Parallel to the limited qualitative changes in brief preparation, most of the attorneys prepared no differently for oral argument under the new procedure. Of 165 attorneys, thirty-three said that they placed greater emphasis on preparing for anticipated questions, and only five said that they placed less emphasis on preparing formal remarks. More than half the attorneys claimed that their preparation time did not change under the new procedure. As indicated in Table VII, moreover, the extent of the change was somewhat limited for those who claimed either a decrease or increase in time.

Despite the slight change associated with attorney preparation time for oral argument, the expedited procedure still produced an overall time savings. As seen in Table VII, approximately two-thirds of the attorneys reported that they spent less overall effort and time with the expedited program and only a small number spent more time.

**TABLE VII**

**TIME SPENT BY ATTORNEY IN PREPARATION FOR ORAL ARGUMENT IN CASES HANDLED UNDER THE SACRAMENTO EXPEDITED APPELLATE PROCEDURE**

<table>
<thead>
<tr>
<th>Much Greater Than If the Standard Procedure Had Been Used</th>
<th>Somewhat Greater</th>
<th>About the Same</th>
<th>Somewhat Less</th>
<th>Much Less</th>
<th>Total Number of Attorneys</th>
</tr>
</thead>
<tbody>
<tr>
<td>3%</td>
<td>18%</td>
<td>56%</td>
<td>16%</td>
<td>7%</td>
<td>100%</td>
</tr>
</tbody>
</table>

\[N=164\]

**OVERALL TIME AND EFFORT SPENT BY ATTORNEYS IN CASES HANDLED UNDER THE SACRAMENTO EXPEDITED APPELLATE PROCEDURE**

<table>
<thead>
<tr>
<th>Much Greater Than If the Standard Procedure Had Been Used</th>
<th>Somewhat Greater</th>
<th>The Same</th>
<th>Somewhat Less</th>
<th>Much Less</th>
<th>Total Number of Attorneys</th>
</tr>
</thead>
<tbody>
<tr>
<td>1%</td>
<td>5%</td>
<td>32%</td>
<td>49%</td>
<td>13%</td>
<td>100%</td>
</tr>
</tbody>
</table>

\[N=165\]

Although the increased reliance on oral argument did not require more preparation time, the attorneys exhibited a range of opinion on how well it served certain objectives. Across a series of possible functions, some attorneys saw oral argument as serving certain positive objectives, while others were unsure, and some saw it as inadequate.
As seen in Table VIII, almost all attorneys saw the argument as complementing the briefs. But a greater division of opinion appeared on two other dimensions. For example, one-fourth of the attorneys did not think the extended argument permitted the court to examine issues, and nearly one-third did not believe that the argument helped the court in reaching its decision.

As with the evaluation of briefs and arguments separately, the attorneys' assessments of the expedited procedure depended partially on what standard was posited; the attorneys saw the procedure as desirable for certain purposes, but not for all. As illustrated in Table IX, the limited brief and open-ended oral argument taken together were viewed positively in terms of case preparation and less so in terms of the court's questioning, with far more not sure about the second than the first.

**TABLE VIII**

**ATTORNEY ASSESSMENTS OF ORAL ARGUMENT IN CASES HANDLED UNDER THE SACRAMENTO EXPEDITED APPELLATE PROCEDURE**

<table>
<thead>
<tr>
<th>Objective</th>
<th>Agree Strongly</th>
<th>Agree</th>
<th>Not Sure</th>
<th>Disagree</th>
<th>Disagree Strongly</th>
<th>Total Number of Attorneys</th>
</tr>
</thead>
<tbody>
<tr>
<td>Complements Briefs</td>
<td>47%</td>
<td>32%</td>
<td>9%</td>
<td>8%</td>
<td>4%</td>
<td>100%</td>
</tr>
<tr>
<td>Permits Court To Examine Issues</td>
<td>40%</td>
<td>22%</td>
<td>14%</td>
<td>19%</td>
<td>5%</td>
<td>100%</td>
</tr>
<tr>
<td>Helpful to Court in Reaching a Decision</td>
<td>19%</td>
<td>33%</td>
<td>19%</td>
<td>22%</td>
<td>7%</td>
<td>100%</td>
</tr>
</tbody>
</table>

**TABLE IX**

**ATTORNEY ASSESSMENTS OF LIMITED BRIEF AND ORAL ARGUMENT IN CASES HANDLED UNDER THE SACRAMENTO EXPEDITED APPELLATE PROCEDURE**

<table>
<thead>
<tr>
<th>Objective</th>
<th>Agree Strongly</th>
<th>Agree</th>
<th>Not Sure</th>
<th>Disagree</th>
<th>Disagree Strongly</th>
<th>Total Number of Attorneys</th>
</tr>
</thead>
<tbody>
<tr>
<td>Promotes Effective Case Presentation</td>
<td>48%</td>
<td>36%</td>
<td>5%</td>
<td>8%</td>
<td>3%</td>
<td>100%</td>
</tr>
<tr>
<td>Conducive to Serious Questioning and Active Participation by Court</td>
<td>20%</td>
<td>24%</td>
<td>29%</td>
<td>24%</td>
<td>3%</td>
<td>100%</td>
</tr>
</tbody>
</table>

N=164

N=165
D. *Time and Cost Savings*

In addition to reductions in case processing time, the expedited program should save attorneys time by limiting brief writing and minimizing multiple preparation because of the tighter deadlines. One objective of the evaluation was to determine if this anticipated result was achieved and, if so, the extent of the savings. If attorney time savings resulted, a second objective was to learn how these time savings are translated into lower costs for litigants. Because the expedited program was designed to affect a major aspect of case preparation and presentation—briefing and oral argument—the ultimate cost savings to litigants were considered to be potentially significant.

Results from the second and third waves of attorney interviews confirmed both expectations about attorney time savings and litigant cost savings. As Tables V and VII indicate, about half of the attorneys believed that brief preparation and overall time spent on the case was less under the expedited procedure. Almost all of the remaining attorneys saw little or no change; very few attributed an increase in work to the new procedure.

Of the private attorneys in the second and third waves, almost fifty percent (50 out of 106) stated that the expedited program resulted in a reduction in the fee charged to the client. The average estimated savings to the litigants was $1053, with a low figure of $100 and a high of $3500.

The size of the cost savings predictably depended on the overall time saved by attorneys. The greater the overall time that was saved, the greater was the cost savings to the litigant. The data also indicated that the ultimate source of the cost savings was the reduced brief writing time. Those attorneys who spent "somewhat less" time on briefing as compared to what they would have spent under normal procedures claimed a cost savings of $900. Those who spent "much less" time on briefing claimed an average cost savings of just over $1900.

The fee arrangement used in the appeal plays a critical role in affecting whether any cost savings is realized by the litigant, so that variable had to be assessed. Although savings resulted from attorneys working on either a contingency or flat fee basis, most of the attorneys who claimed to have charged less billed their clients on an hourly basis. On the other hand, most of those who did not pass on cost savings to

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26. In estimating the cost savings to litigants, we excluded public attorneys from consideration. Although their time savings provided taxpayers with the benefit of greater efficiency, because they did not bill their time they could not easily estimate a dollar cost savings.
clients operated on a contingency fee basis. Thus, although the expedited program was a definite source of cost savings to litigants, the hourly fee arrangement was much more conducive to achieving this end.

E. Overall Assessment

Most of the attorneys saw several advantages, including speedy review, monetary savings to litigants, and savings in attorney time arising from the new procedure. Moreover, the advantages appeared to outweigh disadvantages. As indicated in Table X, over half of the attorneys saw no disadvantages, and the disadvantages tended to be particular rather than sweeping.

### TABLE X

<table>
<thead>
<tr>
<th>Disadvantages</th>
<th>Frequency of Attorneys Mentioning Category</th>
<th>Percentage of Attorneys Mentioning Category</th>
</tr>
</thead>
<tbody>
<tr>
<td>Inflexible deadlines and page limits</td>
<td>17</td>
<td>10%</td>
</tr>
<tr>
<td>Lack of reply brief</td>
<td>13</td>
<td>8%</td>
</tr>
<tr>
<td>Too fast</td>
<td>12</td>
<td>7%</td>
</tr>
<tr>
<td>Favors the orator over the writer</td>
<td>7</td>
<td>4%</td>
</tr>
<tr>
<td>Judge views case as less important</td>
<td>6</td>
<td>4%</td>
</tr>
<tr>
<td>Other (e.g., Supreme Court may be less inclined to hear expedited case on appeal, judges less informed)</td>
<td>18</td>
<td>11%</td>
</tr>
<tr>
<td>No disadvantages</td>
<td>91</td>
<td>55%</td>
</tr>
</tbody>
</table>

The positive reaction by attorneys was reflected in their preference that the program be made a permanent part of the Third District’s procedures. One hundred fifty-nine attorneys said that they preferred a continuation of the project and three attorneys were unsure. Moreover, the factors that were seen as making cases inappropriate for the expedited program were essentially those given consideration by the court. For example, the nature and number of issues as well as subject matter
are variable, controllable factors that were seen as reasons for excluding certain cases.  

V. Conclusion

An expedited appellate program for civil cases was introduced in California's Third District Court of Appeal in February 1981, based on two basic procedural changes: (1) a more limited brief, and (2) open-ended time for oral argument. Cases deemed suitable by the court for the new procedure were invited to enter the expedited program. The program was expected to provide time and cost savings to the court, counsel, and litigants. Because of the program's success, it has been made a permanent feature in the Third District Court of Appeal.

Evidence from the first year of implementation suggested that the procedure had produced four basic consequences:
(1) The new method of presenting cases on appeal is feasible. The requirements imposed by the new procedure had been met without any disruption of the court's normal work flow.
(2) The length of time required to resolve cases is considerably less under the new procedure, with overall disposition time thirty-three percent less for the expedited cases.
(3) The attorneys view the program positively. They saw several advantages—speedy case resolution, less time required by counsel in and out of court, and monetary savings to litigants.
(4) When attorneys operate on an hourly fee schedule, their time savings are very likely to translate into cost savings for the litigants.

In addition to providing information on the feasibility and desirability of a particular fast-track procedure, the Sacramento program raised more general issues about the appellate process. One concerns the enhancement of oral argument. The judges have expressed increased satisfaction with the oral argument sessions. As the program has operated, they were more prepared to hear the arguments of counsel and as a result were better able to benefit from the opportunity to question counsel. To the extent that the judges' positive reaction to oral argument in expedited cases is maintained over time, the program will contribute to a significant qualitative change in the appellate process.

Another issue is the evolutionary nature of the program's scope. Although most observers would agree that "simple" cases might be suitable for expedited treatment, complex cases might prove too difficult to handle under the new procedure. Yet, the fact that half of all

27. The three most frequently mentioned reasons for excluding cases are (1) nature and number of issues—100%, (2) complexity—37%, and (3) subject matter—32%.
unsettled appeals entered the program, and produced a higher percentage of published opinions, suggests that the new procedure was not limited to the most simple cases. As a result, the new procedure may prove to have a much greater impact on the appellate process than initially expected.

Finally, although several other attempts have been made to streamline appellate litigation, and some quite successfully, evaluations have focused almost exclusively on case processing time. In this regard, the Sacramento program is unique because it has been shown to benefit lawyers and litigants. Besides achieving an appreciable reduction in the time taken to resolve cases (the common goal of delay reduction efforts), the expedited procedure brought about time savings for attorneys and cost savings for litigants. Because these two consequences are important ends in themselves and because they contribute to the support for the procedure, future cost and delay reduction efforts should consider them in both program and evaluation design.²⁸

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²⁸ This same point is argued forcefully by Thomas Church in a recent review of the court delay research. See Church, The “Old” and the “New” Conventional Wisdom of Court Delay, 7 JUST. Sys. J. 395, passim (1982).