ADVOCACY AT ITS BEST: THE VIEWS OF APPELLATE STAFF ATTORNEYS

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I. INTRODUCTION TO THE SURVEY

The American Bar Association's Council of Appellate Staff Attorneys challenges its members to provide the appellate judges of the United States with the very best legal analysis and writing possible. As part of that endeavor, the organization seeks to provide all appellate practitioners with the views of staff attorneys on the practices best able to earn the respect of the judges and to maximize the chance of success on appeal.

Knowing that two California attorneys had published a groundbreaking article in 2002 addressing advocacy preferences in a California appellate court,[1] CASA's leadership decided in 2003 to distribute the survey behind that article to a reasonably representative sample of its membership. This was accomplished at CASA's annual seminar in 2003, which was attended by staff attorneys from across the nation who represented federal and state appellate and supreme courts. What follows is a

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1. Charles A. Bird & Webster Burke Kinnaird, *Objective Analysis of Advocacy Preferences and Prevalent Mythologies in One California Appellate Court*, 4 J. App. Prac. & Process 141 (2002). The authors are respectively an appellate advocate in private practice and the lead staff attorney for the California Court of Appeals, Fourth Appellate District, Division One. Their article was based on a survey given to that court's entire staff.

comparison of the responses given by the staff attorneys surveyed in 2003 with the responses gleaned by the original Bird and Kinnaird survey.

II. INTERPRETING THE RESULTS

The survey consisted of eighty-six statements, each followed by an agree-disagree scale ranging from one to five. The survey participants were instructed that three indicated a neutral response to the statement; one indicated strong agreement; and five indicated strong disagreement. Forty-two CASA respondents answered the survey.

This article reports the results of individual statements as simple mean scores, stated in parentheses after the statement to which the score applies. If all forty-two participants responded to a statement, the sum of the value of their responses was divided by forty-two. If fewer responded, the divisor was reduced appropriately. The resulting score seems to provide a reasonable measure of the overall intensity of the participants' views on each topic addressed by the statements in the survey.

Values at or near three indicate neutrality. Values below two indicate a strong positive preference, and values above four indicate a strong negative preference. The values can mask subtleties in the data, however, and where such subtleties occur, they are discussed in the text.[2]

Mean scores are reported parenthetically in the text, each accompanied by an "SS" number indicating the statement to which it relates.[3] And a series of five charts tabulating all of the survey data appears in the appendix to this article.[4]

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2. A value of three could, for example, indicate that most survey participants were neutral about a subject, but it could also indicate that the results showed a nearly equal number of survey participants choosing responses on the extreme ends of the scale. Thus, a value of three might indicate either that most survey participants chose the response indicating their neutrality on the survey's statement about a particular topic (a three) or that most of them chose either the response indicating that they agreed strongly with the survey's statement about that topic (a one) or the response indicating that they disagreed strongly with it (a five).

3. The full text of each survey statement appears in the appendix to the article reporting the results of the original survey. *See* Bird & Kinnaird, *supra* n. 1, at 162-65.

4. In charts 1, 2, 3, and 5, the first number in each data box indicates the numerical score, and the number in parentheses indicates the number of participants who chose that particular answer. In the totals column, the total score comes first, followed in parentheses

III. THE SURVEY RESULTS

A. Writing a Brief

1. Structural Elements

a. The Introduction

The CASA respondents surveyed were neutral on whether the table of contents should tell the story of the case rather than just being a guide to finding subjects (3.02, SS1). The answers to this question were fairly evenly distributed across the range of possible responses. The implication from these responses is that a standard table of contents with topic headings in short phrases is acceptable. Full sentence topic headings that tell a story are not necessary.

The CASA respondents do expect that the statement of the case will provide the procedural posture of the case (1.40, SS2). They also expect that the statement of the case and the statement of the facts will identify all the parties in the appeal (1.43, SS3). They strongly believe that the statement of facts should include the case's critical facts (1.17, SS4), but were less concerned that the statement of the case identify the case's dispositive issues (2.23, SS5). They were strongly opposed to a statement of the case that argues the merits of the appeal (4.12, SS6).[5]

b. Standard of Review

The CASA respondents strongly expect the appellant's opening brief to state a standard of review (1.34, SS7). They differ on whether they will assume that the appellant has stated

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by the total number of participants who responded. In chart 4, the first number shows the number of respondents selecting that category, and the number in parentheses gives the percentage of the total responses that the first number represents.

5. The responses to this last point as reported in the CASA survey markedly differed from that reported in the results of the original survey. The original results were evenly split, resulting in an overall neutral response. *See* Bird & Kinnaird, *supra* n. 1, at 150.

the standard of review correctly when the appellee's brief omits a standard of review (3.59, SS8). These responses are roughly similar to those produced by the original survey.[6] It should be noted that the largest number of responses from the CASA survey fell into the strongly disagree category, with the rest of the responses evenly distributed across the other ranges. While many staff attorneys will verify the standard of review with their own research, these responses raise the question of whether appellees should state the standard of review if they disagree at all with how appellants have framed the standard.

c. Conclusion

The CASA respondents strongly prefer that the conclusion to the appellant's brief state precisely the remedy the appellant seeks (1.22, SS9). With only slightly less fervor, they agree that the respondent's brief should conclude with a precise statement of the outcome that the respondent seeks (1.36, SS10). The CASA respondents were closer to neutral, however, on whether the conclusion should forcefully sum up the merits in addition to stating the result requested (2.48, SS11). This result differed slightly from that of the California court, where the respondents indicated a "weak preference" for a conclusion that sums up the merits.[7]

d. Summary of the Argument

The CASA respondents believe that a summary of the argument section should be included in a long brief (1.88, SS12). They were less vigorous when asked if the summary of argument should be viewed as providing an opportunity to persuade the judge that differs from the opportunity available in the table of contents and the statements of the case and of the facts (2.07, SS13). They did strongly agree that a summary of argument should not simply repeat the issue headings (1.67, SS14). But they were more neutral than were the respondents to the original survey on whether a brief should include a summary

6. *See* Bird & Kinnaird, *supra* n. 1, at 151.

7. *Id.*

of argument if the rules do not require it (2.33, SS15). As Baird and Kinnaird note, however, introductions are prevalent in briefs filed in the California courts, so the respondents to the original survey had a somewhat stronger preference against a summary, except in the case of an unusually long brief.[8]

2. Writing Style

a. Organization of Arguments

The CASA respondents answering the survey strongly agree that a brief should be organized with its most persuasive arguments first (1.61, SS16). They are neutral when asked if a brief should be organized with its arguments placed chronologically (3.33, SS17). It should be noted, however, that seventeen staff attorneys disagreed mildly or strongly with this statement, while only eight agreed mildly or strongly with it. So as far as most staff attorneys are concerned, appellate counsel should place their most persuasive arguments first. The respondents in the original survey were not as vigorous in their approval of placing the strongest arguments first, but their responses were just as neutral as those of the CASA respondents in their responses to statements concerning chronological organization.[9]

b. Quotations

The CASA respondents mildly agree that they tend to skim blocked quotations longer than six or seven lines (2.44, SS18). While they are fairly neutral on this point, they strongly agree that long blocked quotations tend to lose the reader, so they prefer short quotations or paraphrased text (1.76, SS19). The results from those participating in the original survey were similar to those of the CASA survey's participants on both of these points.[10]

8. *Id.*
9. *Id.*
10. *Id.* at 152.

c. Writing Points

Respondents to the CASA survey strongly believe that a brief should not use legalese and old-fashioned pleading language (1.63, SS20). They are more neutral about a brief that uses the passive voice frequently (2.21, SS21). They are also fairly neutral about what Baird and Kinnaird characterize as "throat-clearing phrases" (2.24, SS22) and the use of the first person (2.38, SS23).[11] They are only mildly negative about the use of adverbs such as "clearly" and "obviously" (2.24, SS24). They strongly agree that long sentences are distracting and confusing even when they are grammatically correct (1.60, SS25). They are more neutral on whether appellate practitioners should use shortened names rather than acronyms (2.36, SS26). They are even more neutral on whether arguments of six or seven pages should have subheadings (2.57, SS27). They do strongly agree, however, that they are bothered when the statement of facts or of the case gives immaterial information, like notations of dates of filings that do not matter (1.64, SS28).

The CASA respondents and the respondents to the original survey are in agreement concerning their strong dislike for long sentences and the inclusion of extraneous information.[12] The one major area of disagreement concerns the use of legalese and old pleading language, which the CASA respondents dislike much more strongly than do the respondents to the original survey.[13] The remaining topics in this general area of the two surveys show general agreement between the groups.[14]

d. Footnotes

The CASA respondents very strongly agree that substantive arguments should not be made in footnotes (1.19, SS29). They also strongly agree that footnotes should be used sparingly (1.62, SS30). They strongly disagree with the statement that all case citations should be in footnotes (4.14, SS31). The CASA

11. *Id.* at 153 (referring, respectively, to phrases like "it is important to note that" and sentences like "First, we note that the Supreme Court reserved this issue").

12. *Id.*

13. *Id.*

14. *Id.*

respondents are generally neutral on whether the full text of a statute should be placed in a footnote when that statute is at issue (2.81, SS32).

Those responding to the original survey and the CASA respondents agree on all the topics in this area,[15] except on whether the full text of a statute should be placed in a footnote. The CASA respondents were generally neutral on this issue, while the respondents to the original survey expressed a preference in favor of quoting a statute in a footnote.[16]

3. Use of Authority and the Record

a. Use of Authority

The CASA respondents were relatively neutral when asked if string citations with short bracketed quotations or summaries are a useful way to deal with multiple authorities that all support the author's point (2.57, SS33). They agreed more strongly with the statement that citations of more than three cases without intervening bracketed explanatory text are unhelpful (2.02, SS34). Their strongest support came for the statement that case citations should almost always include a specific page reference (1.33, SS35). The CASA respondents also strongly agreed that they are suspicious about whether the authority stands for the proposition asserted when a case lacks a specific page reference (1.74, SS36). The respondents to the original survey were in accord with the CASA respondents on the first three topics addressed in this section of the survey, but those responding to the original survey were much more neutral when asked if they were suspicious of case citations without a specific page reference.[17]

b. The Record

The CASA respondents moderately prefer that record references follow each sentence rather than come at the end of a

15. *Id.* at 152-53.
16. *Id.* at 152.
17. *Id.*

paragraph (2.12, SS37). They are more neutral about the possibility of using record references at the end of a paragraph when the paragraph reports facts from only a page or two of the record (2.71, SS38). They strongly agree that when any transcript, appendix, or exhibit includes multiple volumes, the record references must include volume numbers as well as page numbers (1.40, SS39). The respondents to the original survey were more strongly in favor of a record reference after every sentence and were not as strongly in favor of volume and page numbers in record references.[18]

4. Typography of Briefs

The CASA respondents slightly disfavored ragged right margins (3.12, SS40). In contrast, the original-survey respondents expressed a weak preference for such justification.[19] The CASA respondents slightly agree that it affects the credibility of a brief when a lawyer has failed to apply any recognized style manual (2.62, SS41). They more strongly agree that they do not have a preference for a style manual as long as the usage is consistent and accurate (2.24, SS42). They also slightly disagree with a preference of italics over underlining in case citations (3.10, SS43), but they do favor italics to underlining for emphasis and Latin words (2.43, SS44). In contrast, those responding to the original survey preferred italics to underlining for citations.[20] The CASA respondents mildly prefer that, other than what a style manual or citation guide requires, no words be emphasized by italics, underlining, boldface, or capitalization (2.62, SS45).

The CASA respondents expressed a mild preference for placing the titles to major parts of the brief in capital letters (2.53, SS46). They expressed mild disapproval of putting main headings of the legal argument all in capital letters (3.17, SS47). They agreed that main headings of more than one line in all capitals are difficult to read (1.95, SS48). And, like their counterparts who answered the original survey, they strongly disagreed with the statement that the names of parties should

18. *Id.* at 153.
19. *Id.* at 154.
20. *Id.*

appear in all capitals throughout the brief (4.43, SS49).[21]

The CASA respondents prefer flush-left headings in the traditional outline structure of a brief (2.69, SS50). In contrast, those responding to the original survey preferred the traditional step-indented outline structure.[22] The CASA respondents agreed that headings are easier to read when in boldface (2.48, SS51). They strongly agreed that text should be at least double-spaced (2.00, SS52) and that main headings should be single-spaced (2.10, SS53). They firmly supported bullet points or other creative typography to set off lists (2.21, SS54) and the use of charts and diagrams to substitute for long textual explanations (2.13, SS55).[23] The CASA respondents also opposed indenting paragraphs more than five spaces (2.48, SS56).

5. Physical Characteristics of Appellate Work Product

The survey presented four formats for binding a brief: comb-binding, velo binding, staples and tape, and spiral binding. The CASA respondents strongly preferred spiral binding (1.90, SS60), and rated the other three methods all somewhat below that, and within a fractional point of one another: comb (2.74, SS57), velo (2.72, SS58), and staples and tape (2.73, SS59). The original-survey respondents disapproved of staples and tape, rated spiral and velo similarly, and mildly preferred comb binding.[24]

The CASA respondents strongly agree with the statement that attorneys do not sufficiently proofread briefs before filing them with the court (1.63, SS61). They are more neutral on whether attorneys often provide illegible copies of the appendix (2.56, SS62). They agree that a failure to make a good faith effort to include all appropriate documents in the appellant's appendix negatively affects the credibility of the appeal (1.98, SS63). They are almost neutral on whether the appendix must include all the exhibits in a case (2.63, SS64), but they more strongly agree with the statement indicating that they appreciate

21. *Id.*

22. *Id.*

23. This separates them from the respondents to the original survey, who expressed only weak support for these devices. *Id.*

24. *Id.* at 155.

having important documents—i.e., a key statute, the relevant portions of a contract—attached to the brief (2.10, SS65).

6. Frequency of Certain Errors

The next section of both the original and the CASA surveys asked respondents to estimate the frequency of certain errors in the briefs filed in civil, criminal, and family law cases. While Bird and Kinnaird reported in chart form the results for civil and criminal cases,[25] the following is instead a discursive report of the CASA survey's results in this area.[26]

When asked if the briefs are unusually long in relation to the complexity of the issues, twenty-six percent of the CASA respondents said that civil briefs were too long over fifty percent of the time, and eighteen percent of these respondents said that civil briefs were too long forty-one to fifty percent of the time (SS66). Only eleven percent said that criminal briefs were too long forty-one to fifty percent of the time, and nineteen percent said that criminal briefs were too long thirty-one to forty percent of the time. Thus it appears that criminal appellate attorneys do a better job of matching the length of their argument to the complexity of the issue.

On whether case authority stands for the proposition asserted, eleven percent of the CASA respondents said that this occurred thirty-one to forty percent of the time in civil cases, and forty percent of them said that it occurred twenty-one to thirty percent of the time (SS67). For criminal cases, seventeen percent of those responding to the CASA survey said that this occurred between thirty-one and forty percent of the time, and thirty-one percent said that it occurred twenty-one to thirty percent of the time. On this key issue of a lawyer's credibility, it appears that both civil and criminal appellate practitioners could substantially improve the accuracy of their citation of authority.

On whether the brief misstates the record, fourteen percent of the CASA respondents said that this occurred thirty-one to forty percent of the time, and eleven percent said that

25. *Id.* at 156.

26. Note that the results are given for the highest two categories of frequency where the first response is above ten percent.

misstatements occur twenty-one to thirty percent of the time (SS68). In criminal cases, sixteen percent of the CASA respondents said that this occurred thirty-one to forty percent of the time, and twenty percent said that it occurred twenty-one to thirty percent of the time. Again, it appears that both civil and criminal practitioners must pay more careful attention when they cite to the record.

Fifteen percent of the CASA respondents indicated that civil appellate practitioners gave facts that conflicted the standard of review thirty-one to forty percent of the time, and twenty-one percent indicated this failure occurred twenty-one to thirty percent of the time (SS69). For criminal appeals, twelve percent of the CASA respondents indicated that this occurred over half the time, and twelve percent indicated that it occurred forty-one to fifty percent of the time. Criminal appellate practitioners violate this rule with greater frequency (perhaps because they often argue credibility issues when addressing a sufficiency-of-the-evidence issue).

On whether the briefs make personal attacks on opposing counsel, eleven percent of those responding to the CASA survey said that such attacks occur twenty-one to thirty percent of the time, and fourteen percent said such attacks occur eleven to twenty percent of the time (SS70). In criminal cases, eleven percent of the CASA respondents said that such attacks occur eleven to twenty percent of the time, and eighty-three percent said that they occur, at most, only ten percent of the time. It is interesting to note that the criminal appellate practitioners appear to be more professional in this regard than their civil counterparts.

Concerning whether the briefs make personal attacks on the trial court, eleven percent of those responding to the CASA survey said that such attacks occur eleven to twenty percent of the time, and seventy-four percent said that such attacks occur ten percent of the time or even less often (SS71). For criminal cases, fourteen percent of the CASA respondents said that such attacks occur eleven to twenty percent of the time, and eighty-one percent said that they occur, at most, ten percent of the time. These results are roughly similar and reveal a more professional treatment of trial judges than of adversaries.

Regarding whether briefs are sufficiently edited or proofread, twenty percent of the CASA respondents said that the briefs were deficient in this regard more than half the time, and eleven percent said that they were deficient forty-one to fifty percent of the time (SS72). For criminal appeals, twenty-four percent of the CASA respondents said that briefs were deficient over fifty percent of the time, and eight percent of them said that briefs were deficient forty-one to fifty percent of the time. On whether briefs contain improper grammar and punctuation, twenty-two percent of those responding to the CASA survey found such mistakes in briefs over fifty percent of the time, and fourteen percent of the CASA respondents found them from forty-one to fifty percent of the time (SS73). In criminal cases, twenty-seven percent of the CASA respondents found such mistakes over half the time, and fourteen percent found such mistakes forty-one to fifty percent of the time. These results are consistently high in both civil and criminal cases, and of course they suggest an unacceptable rate of writing mistakes that every appellate practitioner must strive to eliminate.

The final question in this section concerned whether the volumes of the record became unbound. Seventeen percent of those responding to the CASA survey said this happened in civil cases eleven to twenty percent of the time, and sixty-seven percent said that it almost never happened, checking the zero to ten percent category (SS74). For criminal appeals, twenty-four percent of the CASA respondents said that this happened eleven to twenty percent of the time, and fifty-nine percent said that it happened ten percent of the time or less. These results show acceptable levels of errors. (In some courts, the binding of the record may be the clerk's responsibility; perhaps this question would have been better if it had referred to the volumes of the appendix.)

B. Oral Argument

The final section of the survey concerned oral argument. Because some staff attorneys do not attend oral argument, responders were told to fill in this section only if appropriate. Twenty-six of the CASA respondents answered all of the questions in this section.

The CASA respondents mildly disagreed with the statement that they often make up their mind on important points during oral argument (3.55, SS75). They mildly agree that oral argument is often helpful in shaping a good decision, even if the argument does not affect the disposition (2.84, SS76). They agree that they expect counsel to strictly abide by their time estimates unless the court indicates counsel may exceed that time (2.10, SS77). They strongly agree that counsel should cease argument upon making all planned and responsive points even if time hasn't expired (1.45, SS78). The CASA respondents' strongest agreement in this section was with the statement that they appreciate a candid response (e.g., "I don't know") when counsel does not know the answer to a question (1.26, SS79). Those responding to the CASA survey strongly agree that argument is most effective when it is narrowly focused on a few issues (1.55, SS80). They agree with moderate strength that it bothers them when counsel uses oral argument to reiterate points in the briefs (1.97, SS81).

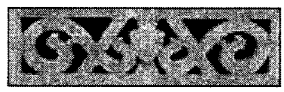
The CASA respondents agree in general that a traditional opening such as "May it please the court" is a good way to start the argument (1.96, SS82). They disagree somewhat with the statement that an informal opening (e.g., "Good Morning") is a good way to start (3.50, SS83). They also disagree to some extent with the statement that a direct launch with no introduction is a good way to start (3.36, SS84). They express moderate agreement with the statement that the phrase "your honors" grates on their ears (3.56, SS85). They are perfectly neutral on whether a judge should be referred to by name (e.g., "Justice Doe") (3.00, SS86).

In the original Bird and Kinnaird survey, only judges were asked these questions about oral arguments, and yet the two sets of survey responses are very similar. In particular, the judges surveyed by Bird and Kinnaird, like the CASA respondents, agreed strongly that argument should focus on the critical issues and that counsel should be candid when they don't know the answer to a question.[27]

27. Bird & Kinnaird, *supra* n. 1, at 156-57.

IV. CONCLUSION

The overall conclusion to be drawn from these survey results is that staff attorneys strongly expect appellate counsel to stress the fundamentals of appellate practice. All practitioners, but especially those who appear infrequently in appellate courts, must take the time to proofread and edit their briefs as carefully as possible. Practitioners must grab the judge's attention by putting their strongest arguments first in their briefs. They must pay attention to details such as providing pinpoint citations that create confidence in their work. At oral argument, they must be candid and admit their areas of ignorance, while focusing on their strongest arguments. Employing these fundamentals will give the appellate practitioner the best chance to persuade the staff attorney, and ultimately the judge.



APPENDIX

CHART 1—STRUCTURAL ELEMENTS OF BRIEFS

	1	2	3	4	5	TOTALS	MEAN
SS1	5(5)	16(8)	39(13)	52(13)	15(3)	127(42)	3.02
SS2	26(26)	30(15)	3(1)	0(0)	0(0)	59(42)	1.40
SS3	27(27)	26(13)	3(1)	4(1)	0(0)	60(42)	1.43
SS4	35(35)	10(5)	3(1)	0(0)	0(0)	48(41)	1.17
SS5	13(13)	26(13)	27(9)	8(2)	15(3)	89(40)	2.23
SS6	0(0)	4(2)	24(8)	56(14)	85(17)	169(41)	4.12
SS7	31(31)	14(7)	6(2)	4(1)	0(0)	55(41)	1.34
SS8	5(5)	10(5)	27(9)	20(5)	85(17)	147(41)	3.59
SS9	34(34)	12(6)	0(0)	4(1)	0(0)	50(41)	1.22
SS10	33(33)	12(6)	3(1)	4(1)	5(1)	57(42)	1.36
SS11	8(8)	28(14)	39(13)	24(6)	5(1)	104(42)	2.48
SS12	18(18)	36(18)	12(4)	8(2)	0(0)	79(42)	1.88
SS13	11(11)	30(15)	18(9)	28(7)	0(0)	87(42)	2.07
SS14	19(19)	36(18)	15(5)	0(0)	0(0)	70(42)	1.67
SS15	8(8)	36(18)	33(11)	16(4)	5(1)	98(42)	2.33
SS16	26(26)	20(10)	15(5)	0(0)	5(1)	66(41)	1.61

CHART 1—STRUCTURAL ELEMENTS OF BRIEFS
(continued)

	1	2	3	4	5	TOTALS	MEAN
SS17	1(1)	14(7)	45(15)	48(12)	25(5)	133(40)	3.33
SS18	9(9)	34(17)	18(6)	24(6)	15(3)	100(41)	2.44
SS19	20(20)	28(14)	12(4)	12(3)	0(0)	72(41)	1.76
SS20	25(25)	20(10)	9(3)	8(2)	5(1)	67(41)	1.63
SS21	8(8)	38(19)	39(13)	8(2)	0(0)	93(42)	2.21
SS22	13(13)	24(12)	39(13)	8(2)	10(2)	94(42)	2.24
SS23	10(10)	24(12)	45(15)	16(4)	5(1)	100(42)	2.38
SS24	10(10)	32(16)	39(13)	8(2)	5(1)	94(42)	2.24
SS25	24(24)	26(13)	9(3)	8(2)	0(0)	67(42)	1.60
SS26	13(13)	12(6)	57(19)	12(3)	5(1)	99(42)	2.36
SS27	7(7)	28(14)	36(12)	32(8)	5(1)	108(42)	2.57
SS28	21(21)	30(15)	18(6)	0(0)	0(0)	69(42)	1.64
SS29	35(35)	12(6)	3(1)	0(0)	0(0)	50(42)	1.19
SS30	25(25)	20(10)	18(6)	0(0)	5(1)	68(42)	1.62
SS31	3(3)	0(0)	21(7)	40(10)	110(22)	174(42)	4.14
SS32	7(7)	20(10)	36(12)	28(7)	30(6)	118(42)	2.81

CHART 2—USE OF AUTHORITY

	1	2	3	4	5	TOTALS	MEAN
SS33	6(6)	34(17)	33(11)	20(5)	15(3)	108(42)	2.57
SS34	13(13)	38(19)	18(6)	16(4)	0(0)	85(42)	2.02
SS35	30(30)	20(10)	6(2)	0(0)	0(0)	56(42)	1.33
SS36	17(17)	26(13)	30(10)	8(2)	0(0)	73(42)	1.74
SS37	16(16)	20(10)	36(12)	12(3)	5(1)	89(42)	2.12
SS38	12(12)	18(9)	15(5)	44(11)	25(5)	114(42)	2.71
SS39	31(31)	12(6)	12(4)	4(1)	0(0)	59(42)	1.40

CHART 3—TYPOGRAPHY OF BRIEFS

	1	2	3	4	5	TOTALS	MEAN
SS40	2(2)	12(6)	72(24)	20(5)	25(5)	131(42)	3.12
SS41	6(6)	30(15)	33(11)	36(9)	5(1)	110(42)	2.62
SS42	11(11)	38(19)	18(6)	12(3)	15(3)	94(42)	2.24
SS43	4(4)	16(8)	51(17)	24(6)	35(7)	130(42)	3.10
SS44	10(10)	22(11)	45(15)	20(5)	5(1)	102(42)	2.43
SS45	10(10)	20(10)	36(12)	24(6)	20(4)	110(42)	2.62
SS46	6(6)	26(13)	48(16)	16(4)	5(1)	130(41)	2.53
SS47	3(3)	10(5)	63(21)	24(6)	30(6)	82(42)	3.17
SS48	14(14)	32(16)	36(12)	0(0)	0(0)	186(42)	1.95
SS49	0(0)	2(1)	12(4)	52(13)	120(24)	110(42)	4.43
SS50	4(4)	26(13)	57(19)	16(4)	10(2)	113(42)	2.69
SS51	6(6)	28(14)	57(19)	8(2)	5(1)	104(42)	2.48
SS52	11(11)	44(22)	15(5)	12(3)	0(0)	82(41)	2.00
SS53	12(12)	34(17)	21(7)	12(3)	5(1)	84(40)	2.10
SS54	10(10)	32(16)	42(14)	4(1)	5(1)	93(42)	2.21
SS55	8(8)	40(20)	33(11)	4(1)	0(0)	85(40)	2.13
SS56	5(5)	30(15)	60(20)	4(1)	5(1)	104(42)	2.48
SS57	3(3)	30(15)	30(10)	44(11)	—	107(39)	2.74
SS58	6(6)	16(8)	36(13)	48(12)	—	109(40)	2.72
SS59	7(7)	18(9)	36(12)	48(12)	—	106(39)	2.73
SS60	22(22)	8(4)	30(10)	16(4)	—	76(40)	1.90
SS61	22(22)	28(14)	9(3)	8(2)	0(0)	67(41)	1.63
SS62	8(8)	18(9)	51(17)	28(7)	0(0)	105(41)	2.56
SS63	13(13)	36(18)	24(8)	8(2)	0(0)	81(41)	1.98
SS64	0(0)	20(10)	33(11)	36(9)	55(11)	108(41)	2.63
SS65	13(13)	35(18)	15(5)	12(3)	10(2)	86(41)	2.10

CHART 4—FREQUENCY OF CERTAIN ERRORS

		1	2	3	4	5	6	TOTAL
SS66	Civ	5(15%)	5(15%)	4(12%)	5(15%)	6(18%)	9(26%)	34
	Crim	9(25%)	9(25%)	6(17%)	7(19%)	4(11%)	1(3%)	36
	Fam	5(17%)	7(24%)	3(10%)	5(17%)	8(28%)	1(3%)	29
SS67	Civ	6(17%)	10(29%)	14(40%)	4(11%)	1(3%)	0(0%)	35
	Crim	7(19%)	9(25%)	11(31%)	6(17%)	3(8%)	0(0%)	36
	Fam	6(20%)	8(28%)	12(41%)	3(10%)	0(0%)	0(0%)	29
SS68	Civ	9(26%)	14(40%)	4(11%)	5(14%)	3(9%)	0(0%)	35
	Crim	7(28%)	5(20%)	5(20%)	4(16%)	3(12%)	1(4%)	25
	Fam	9(31%)	10(34%)	3(10%)	3(10%)	2(7%)	2(7%)	29
SS69	Civ	8(24%)	9(26%)	7(21%)	5(15%)	2(6%)	3(9%)	34
	Crim	9(26%)	9(26%)	6(18%)	3(9%)	4(12%)	4(12%)	35
	Fam	5(18%)	7(25%)	6(21%)	6(21%)	1(4%)	3(11%)	28
SS70	Civ	23(66%)	5(14%)	4(11%)	0(0%)	2(6%)	1(3%)	35
	Crim	3 0(83%)	4(11%)	2(6%)	0(0%)	0(0%)	0(0%)	36
	Fam	15(52%)	6(21%)	4(14%)	2(7%)	1(3%)	1(3%)	29
SS71	Civ	26(74%)	4(11%)	2(6%)	2(6%)	1(3%)	0(0%)	35
	Crim	29(81%)	5(14%)	1(3%)	0(0%)	0(0%)	1(3%)	36
	Fam	5(18%)	7(25%)	6(21%)	6(21%)	1(4%)	3(11%)	28
SS72	Civ	3(9%)	8(23%)	7(20%)	6(17%)	4(11%)	7(20%)	35
	Crim	4(11%)	9(24%)	7(19%)	5(14%)	3(8%)	9(24%)	37
	Fam	2(7%)	6(21%)	6(21%)	6(21%)	3(10%)	6(21%)	29
SS73	Civ	6(17%)	10(28%)	4(11%)	3(8%)	5(14%)	8(22%)	36
	Crim	8(22%)	8(22%)	6(16%)	0(0%)	5(14%)	10(27%)	37
	Fam	5(17%)	9(30%)	5(17%)	1(3%)	3(10%)	7(23%)	30
SS74	Civ	24(67%)	6(17%)	2(6%)	2(6%)	2(6%)	0(0%)	36
	Crim	22(59%)	9(24%)	2(5%)	1(3%)	2(5%)	1(3%)	37
	Fam	20(74%)	3(11%)	2(8%)	1(4%)	0(0%)	1(4%)	27

CHART 5—ORAL ARGUMENT

	1	2	3	4	5	TOTALS	MEAN
SS75	0(0)	2(1)	36(13)	52(13)	20(4)	110(31)	3.55
SS76	2(2)	20(10)	30(10)	36(9)	0(0)	88(31)	2.84
SS77	13(13)	10(5)	30(10)	12(3)	0(0)	65(31)	2.10
SS78	20(20)	16(8)	9(3)	0(0)	0(0)	45(31)	1.45
SS79	25(25)	8(4)	6(2)	0(0)	0(0)	39(31)	1.26
SS80	17(17)	24(12)	3(1)	4(1)	0(0)	48(31)	1.55
SS81	12(12)	22(11)	15(5)	12(3)	0(0)	61(31)	1.97
SS82	11(11)	12(6)	30(10)	0(0)	0(0)	53(27)	1.96
SS83	1(1)	2(1)	45(15)	20(5)	30(6)	98(28)	3.50
SS84	3(3)	6(3)	24(8)	36(9)	25(5)	94(28)	3.36
SS8	0(0)	8(4)	39(13)	4(1)	45(9)	96(27)	3.56
SS86	2(2)	10(5)	39(13)	12(3)	15(3)	78(26)	3.00