

Maintaining the Integrity of Capital Case Appeals –
From Case Initiation through Certification for Accuracy

Institute for Court Management
Court Executive Development Program
2007-2008 Phase III Project
May 2008

Monica Richards, Unit Manager
Superior Court of California
County of Orange
Santa Ana, California

ACKNOWLEDGMENTS

I give special thanks to my husband, Mark Davis, for his love, support, assistance and patience. Mark's message to me was always "just do one thing at a time." I think his message to me was a result of his own experience in preparing capital cases for trial. As an Assistant Public Defender with the Orange County Public Defender's office, he has tried three capital cases, two of which resulted in the penalty phase being retried at least once. I know that preparation for these types of cases is done one step at a time.

I want to thank (I think!) Colleen Galaviz, my best friend forever, the one behind all of this! As a 1999 graduate of the CEDP class, she constantly nagged me to finish the paper as she knew that the end results would be well worth the effort. She was a constant source of guidance and counseling. She heard me whine, moan and tell her, on more than one occasion, that I was not going to finish the project paper!

I thank Lynn Branch, my Executive Director who supported my efforts throughout the preparation of this paper.

What would I have done without Joyce Elia? She worked magic on my rough typed pages and tables and turned them into a work of art.

I thank Maria Haskins, my staff assistant, who reminded me of deadlines, celebrated with me when an Attorney Survey would arrive on my desk and helped me with document formatting challenges!

I give special gratitude to my CEDP classmates from "The O.C."— Virginia Davidow, Thu Nguyen and Michelle Norhausen. We met for lunch on a regular basis and tried our best to inspire and encourage one another!

Special thanks to Ms. Sandy Pickles, the Capital Case Analyst for assisting me in the collection of information on capital cases that have been certified for accuracy to the Supreme Court of California.

I thank the staff in my Felony Appellate Unit, Ms. Lupe Chaidez and Ms. Merry Mahar for taking the time to supply me with needed information regarding capital case appellate issues and statistics.

I thank Ms. Sandy Hilger, the Planning and Research Department manager, for taking the time to assist me with the preparation of my surveys.

I thank Mr. Jeffrey Gale, Supervising Deputy State Public Defender with the State Public Defender's Office in Sacramento, California. He offered great assistance with

the preparation of the pre-survey, completing the survey and allowing me the opportunity to conduct a follow-up interview.

Judge Francisco Briseño was always willing to discuss capital case appellate issues and I thank him for his availability.

I also thank my “girls,” Tundra, Alpine and Glacier. When I was busy working in the office at home, one of the huskies would always come in to keep me company—even at 3:45 AM!

I thank my mother, Ruth Richards for just being “Mom.” I don’t have to do much for her to be proud of me, but she is pretty impressed with this accomplishment! She turned 92 years old on October 29, 2007, and I dedicate this project paper to her.

TABLE OF CONTENTS

ACKNOWLEDGMENTS.....	2
TABLE OF CONTENTS	4
LIST OF ILLUSTRATIONS.....	5
LIST OF TABLES.....	6
LIST OF APPENDICES.....	7
ABSTRACT	8
INTRODUCTION.....	11
LITERATURE REVIEW.....	15
METHODS	26
FINDINGS	35
CONCLUSIONS AND RECOMMENDATIONS	53
APPENDIX A.....	64
APPENDIX B.....	66
APPENDIX C	68
APPENDIX D	73
APPENDIX E.....	74
BIBLIOGRAPHY	75
REFERENCES.....	76

LIST OF ILLUSTRATIONS

1-A	Flow Chart of Capital Case Appeal.....	19
-----	--	----

LIST OF TABLES

1	Calendar Year 2000-2006 Felony Filings.....	23
2	Experience Level of Appellate Attorneys Surveyed.....	38
3	Appellate Attorney Survey Results – Clerk’s Transcript.....	39
4	Appellate Attorney Survey Results – Court Reporter’s Transcript.....	40
5	Listing of Nine Capital Cases Reviewed.....	49
6	Case Comparison of Nine Capital Cases.....	51

LIST OF APPENDICES

A.	Letter from Ronald M. George, Chief Justice of California, April 2006.....	64
B.	Checklist for Preparing the Record on Appeal for a Death Penalty Appeal – Clerk’s Transcript and Reporter’s Transcript.....	66
C.	Appellate Attorney Survey.....	68
D.	Appellate Attorney Letter.....	73
E.	Judicial Officer Letter.....	74

ABSTRACT

The Superior Court of California, County of Orange, is the fifth largest unified trial court in the nation; Orange County is the sixth largest county in the nation as well. The focus of this project is to determine how the Superior Court of California in Orange County can more effectively maintain the integrity of capital case appeals from case initiation through the certification for accuracy process to the Supreme Court of California. As of June 19, 2007, there are 665 inmates on death row in the State of California. Fifty of those inmates are from Orange County, equaling 7.45% of the total number. In April, 2006, Ronald M. George, Chief Justice of California, wrote a letter to all California Superior Court Presiding Judges and Court Executive Officers. The Chief Justice reviewed problems with processing certified records in capital cases, including unacceptable delays.

Capital Case audits carried out in 2002 and 2004 clearly indicated needed improvements in capital case processing by the Superior Court of California, County of Orange. Some of the areas of concern in the 2002 and 2004 audits include: Penal Code 987.9 documents not being appropriately sealed, loose case documents not filed in the file jackets, juror keys missing from the clerk's transcript, confidential envelopes not clearly marked as to the file name and missing court reporter notes. Information would be needed from Supreme Court officials as well as trial court staff, judicial officers and attorneys handling capital cases to find out what types of problems and issues currently exist in the processing of capital case appeals. Some of the questions posed to the individuals listed above included: Do consistent errors and unacceptable delays

still occur? What are areas of concern as they relate to the clerk and court reporter transcripts? How does the performance and the completeness of the clerk and court reporter transcripts that are submitted to the Supreme Court of California by Orange County compare to other California jurisdictions?

Interviews, written surveys and queries were conducted during this study to obtain needed information about more recent performance from staff, judicial officers, attorneys and The Supreme Court of California. Oral interviews were conducted with the felony appellate staff and with the Orange County Capital Case Analyst, asking for their primary concerns regarding capital case processing. Appellate attorneys who had been appointed on a capital case appeal from Orange County completed a written survey focused on clerk and court reporter transcript issues. A telephonic follow up interview was conducted with one of these appellate attorneys. A simple letter was sent to judicial officers who had presided over the guilt and penalty phases of capital cases through certification for accuracy to the Supreme Court of California, requesting their top issues encountered with the clerk and court reporter transcripts. Capital case files that had been certified for accuracy were audited to determine reasons for the delays in the certification process. The Supreme Court of California was contacted via e-mail for input regarding the completeness of capital case appellate files that they receive from the Superior Court of California, County of Orange.

Findings indicated that problems and issues do persist in capital case appeals and their processing from start to finish, beginning with case initiation and continuing through case document processing, court hearings and trials to certifying the case for accuracy to the Supreme Court of California. Issues are related to both the clerk and

court reporter transcripts. Clerk transcript issues include: documents that should be sealed are included in the transcript, minute orders for *in camera* hearings are not sealed, sworn juror information is improperly included in minute orders, juror keys are missing, juror questionnaires are either missing or have not been properly sealed, and required indexes are incomplete. Court reporter transcript issues include: transcript pagination is incorrect, clerk minute orders indicate a hearing held, yet a transcript is missing, inaccurate and incomplete indices and transcripts, *in camera* hearings not sealed, and references to juror names do not match the juror key prepared by the court clerk. Other areas of concern are: missing or inaccurately input charging documents, minute order entry errors and lack of sufficient training. Officials from The Supreme Court of California indicated that Orange County does a good job with the appellate record and normally is able to get errors corrected without having to have the entire record returned.

Clearly, previous improvement recommendations still need to be addressed and closer scrutiny of capital case processing is required. Staff who process capital cases must be properly trained and a work flow audit process must be established by the Orange County Capital Case Analyst to check work throughout the life of a capital case. Capital case processing methods must be reviewed and modified when necessary. Supervisors or key staff members who will review the individual cases at specific times to maintain the integrity of capital case files must be identified. Impressing upon staff the severity and seriousness of capital cases is critical; the life and liberty of an individual is at stake.

INTRODUCTION

The Orange County Superior Court was created in 1889. In January 1952, five Municipal Court Judicial Districts were established. These Municipal Courts served the local communities until 1998. On August 10, 1998, the Municipal and Superior Courts in Orange County unified to become the Superior Court of California, County of Orange.¹

The Superior Court of California in Orange County (OCSC) serves a population of approximately three million people from various social and economic backgrounds². This information was obtained from the United States Census Bureau. The National Association of Counties reports that Orange County is the second largest county in California and the sixth largest county in the United States by population.³ The Superior Court of California in Orange County is the fifth largest unified trial court in the United States comprised of 143 bench officers (109 judges, 34 commissioners, additionally there are many assigned judges, temporary judges and referees).⁴ The Superior Court of California in Orange County currently has six justice centers, five handling criminal and civil hearings and one handling family law, probate and juvenile. Although there are a number of California statutes where capital punishment may be sought, the focus of this project is to report on murder charges that allege special circumstances. In addition to a conviction of California Penal Code 187(a) with a finding of 1st degree murder when

¹ Orange County Superior Court 2000-2005 Strategic Plan, page 2

² Information obtained from the U.S. Census Bureau at www.census.gov

³ Information obtained from the National Association of Counties at www.naco.org

⁴ See Note **supra** 1, page 1

special circumstances pursuant to California Penal Code 190.2(a) are found to be true, the following are additional charges where the sentence of death may be imposed:

- Sabotage resulting in death [Military & Veterans Code 1672(a)]
- Treason [Penal Code 37]
- Perjury resulting in conviction and execution of another [Penal Code 128]
- Train derailing or wrecking resulting in death [Penal Code 219]
- Assault by life prisoner with deadly weapon resulting in victim's death [Penal Code 4500]⁵

The complexities involved in these types of cases require continual maintenance to assure the integrity of the appellate record from case initiation through certification for accuracy. Between calendar years 2000 and 2006, the Orange County District Attorney filed 102,711 felony cases. Included in this total are 182 cases alleging a violation of Penal Code 187(a) (Murder) with an allegation pursuant to Penal Code 190.2 (a) (Special Circumstances).⁶

Capital punishment eligible trials are typically heard by judges who are assigned to the Central Felony Trial Panel and handle long cause cases. Long cause cases are those having a time estimate for trial of ten or more days and are heard by a total of five judges. Once a case is assigned to a long cause judge, the courtroom clerk and court reporter normally remain consistent throughout all phases of the trial. Prior to a trial on a capital punishment eligible case, the preliminary proceedings may be assigned to any number of judicial officers handling felony arraignments and preliminary hearings.

Numerous case processing and courtroom operations staff will handle the case from

⁵ Capital Case Procedural Manual, Superior Court of California, County of Orange, Revised Nov., 2007 page 2.1

⁶ Statistics provided by the Orange County District Attorney

case initiation through the preliminary hearing, filing documents and recording the court's minutes of the proceedings.

On April 21, 2006, Ronald M. George, Chief Justice of California, wrote a letter to all California Superior Court Presiding Judges and Court Executive Officers. The subject of his letter was the processing of certified records in capital cases (Appendix A). Chief Justice George writes:

*"The Supreme Court has for some time experienced a variety of problems that cause delays in the certification of records in capital appeals. The purpose of this letter is to enlist your involvement in a plan to expedite the processing of these matters by your clerk's office and the Supreme Court's Clerk's Office."*⁷

After the Superior Court certifies the record for accuracy to the California Supreme Court, their clerk's office completes a comprehensive review of the record. As indicated in the April, 2006, letter, often their clerk's office discovers problems such as:

*"(1) superior court clerks and court reporters fail properly to redact juror-identifying information; (2) superior court clerks and court reporters use different juror-identifying numbers from each other; (3) the pagination is different between the public record and the material that has been redacted or placed under seal because the superior court clerk has renumbered the redacted pages; (4) the clerk's or reporter's transcript does not include an alphabetical index, and/or the index lacks volume numbers; (5) a juror table (or key) has number different from those used in the editing (redaction) of the actual transcripts; (6) material that should have been redacted appears in the public record, or material that was redacted has not been transmitted to the court; (7) the pagination or titles of supplemental transcripts is confusing; and finally (8), loose corrected pages are sent with the record, apparently with the expectation that the Supreme Court Clerk's office will insert them."*⁸

Many of these problems cause delays in the actual filing of the record with the Supreme Court. In addition to outlining many of the specific problems that relate to the clerk's transcript and the court reporter's transcript, checklists were prepared by the Supreme Court's Clerk's Office. These checklists were designed to assist the clerks

⁷ Chief Justice Ronald George, Letter Re: Processing of certified records in capital cases, April 21, 2006

⁸ **Loc. Cit.**

and the court reporters with the specific problems that were addressed in the letter (Appendix B).

In response to Chief Justice George and further development of the process to track, review and maintain capital cases at regular intervals and to ensure that proper and complete procedures are in place is the goal for this Phase III Project.

To accomplish this goal, the following tasks were completed:

- Obtained felony filing statistics from the Orange County District Attorney including the number of murder charges with special circumstances
- Interviewed felony appellate staff who maintain capital case files
- Interviewed the Capital Case Analyst
- Queried via letter judges who have presided over all phases of a capital case
- Conducted written surveys of appellate attorneys who have been assigned capital case appeals in Orange County
- Conducted a follow up telephonic interview with an appellate attorney who completed the survey
- Reviewed a finite number of cases that have been certified for accuracy to the Supreme Court of California
- Conducted literature review including legislation, committee reports and other published materials
- Contacted the Supreme Court of California via e-mail to determine the accuracy and completeness of OCSC submittals with respect to capital case appellate transcripts.

LITERATURE REVIEW

Many articles have been written that focus on the delay in processing capital case appeals, both in California and across the United States. The literature makes plain that there are reasons why delays exist in the processing of these cases.

For example, Bill Lockyer, former California Attorney General writes:

“In California, persons convicted of a death penalty offense can spend as much as 20 years on Death Row before implementation of their sentence. While we continue to fight to reduce unreasonable delays in the appellate process, these delays are the result of the system we employ to ensure that justice is rendered in all capital murder cases.”⁹

Even though the entire appellate process is lengthy to allow for due process, the literature indicates that there are excessive delays in the appellate process.

Additionally, California continues to have difficulty recruiting qualified lawyers to handle these complex appellate cases.

Dwight Aarons, Associate Professor of Law, The University of Tennessee

College of Law writes:

“For many years California has had difficulty in finding qualified lawyers willing to handle death penalty direct appeals; defendants receive death sentences at a faster pace than the courts can find lawyers to handle the existing cases... There are several reasons for the lack of available attorneys. Eligible attorneys must have practiced four years, attended appellate training and handled at least seven appellate cases, including one homicide.”¹⁰

Funding is also an issue; Roy Ashburn, California State Senator representing the 18th District writes:

⁹ Office of Victims' Services, California Attorney General's Office, Bill Lockyer, Attorney General, **A Victim's Guide to the Capital Case Process**, 2000

¹⁰ Dwight Aarons, **Getting Out of This Mess: Steps Toward Addressing and Avoiding Inordinate Delay in Capital Cases**, *The Journal of Criminal Law & Criminology*, 1999, Vol. 89, No.1, pages 13 & 14

“Under both California and Federal Law there is a specific, detailed and lengthy appeals process that must be followed before an inmate may be scheduled for execution. Adding to the delays is the fact that the kinds of inmates who commit capital offenses tend to be indigent and unable to pay for their own defense. Those with some financial means usually exhaust their resources before the appeal process is completed. As a result most death penalty appeals fall on the shoulders of the Office of the State Public Defender. Those cases must be prioritized, funded, and staffed along with the myriad of other cases the public defender is tasked with, resulting in more delays.”¹¹

In December, 2005, United States Senator Dianne Feinstein wrote a letter to California Governor Arnold Schwarzenegger urging him to address concerns by Ronald M. George, Chief Justice of California, regarding a shortfall in state funding that has led to a shortage of attorneys to accept capital case appeals. As a result, lengthy and frequent delays occur that can hamper the appeals process. In her letter Senator Feinstein urged:

“I strongly recommend that the California legal system be allocated adequate resources to ensure the effective and timely functioning of capital appeals. As the State’s budget is currently being determined, it is imperative that immediate steps be taken to provide attorneys for those on death row.”¹²

In his previously cited article, Dwight Aarons spoke directly to the focus of this project paper:

“An additional source of possible delay is that years may pass before the court reporter, court clerk, trial attorneys, and trial judge review the transcript and certify it for appellate review... Court records, such as transcripts and motions are sometimes missing from court files and time is spent searching for replacement copies or reconstructing the testimony.”¹³

The literature review supplied historical information regarding capital punishment in California, where legal executions date back to 1851. Over the years, there have

¹¹ Information obtained from the California State Senate Republican Caucus at <http://republican.sen.ca.gov/opeds/18/oped3047.asp>, page 1

¹² Information obtained from United States Senator Dianne Feinstein at <http://feinstein.senate.gov/05releases/r-habeas.htm>, page 3

¹³ See Note 10 *supra*, pages 14, 20, 21

been changes in this process ranging from where an execution can take place to the methods for execution. There have been a number of legal challenges and changes over the years as well, such as capital punishment being deemed cruel and unusual punishment by the California Supreme Court in 1972, and then being deemed unconstitutional by the same body in 1976. In 1977, the California State Legislature re-enacted the death penalty. At that time, it was established that the death penalty could be sought if special circumstances were proven. Some of the special circumstances that warrant the death penalty are: lying in wait, multiple murder, torture, murder for financial gain, murder of a police officer and murder to prevent testimony.¹⁴

California is one of 36 states in the nation with the death penalty. In the United States, as of January 1, 2007, a total of 3,350 inmates are on death row. This number is significantly more than the 517 inmates on death row in 1968.¹⁵ The California Department of Corrections and Rehabilitation Division of Adult Operations report that there are 665 inmates on death row in California prisons as of June 19, 2007. Orange County has a total of 50 defendants on death row, or 7.45% of the total 665. Only Los Angeles and Riverside Counties have more defendants on death row, 194 and 61, respectively.¹⁶

The capital case process is lengthy and complex. A capital punishment eligible case begins with either the filing of a Complaint followed by an Information at the conclusion of a preliminary hearing or a Grand Jury Indictment. The charging document will allege a violation of murder with allegations of special circumstances. In the

¹⁴ Information obtained from the California Department of Corrections and Rehabilitation at www.cdcr.ca.gov/ReportsResearch/historyCapital.html, Pages 1-3

¹⁵ Information obtained from the Death Penalty Information Center at www.deathpenaltyinfo.org/state/, California, Page 1

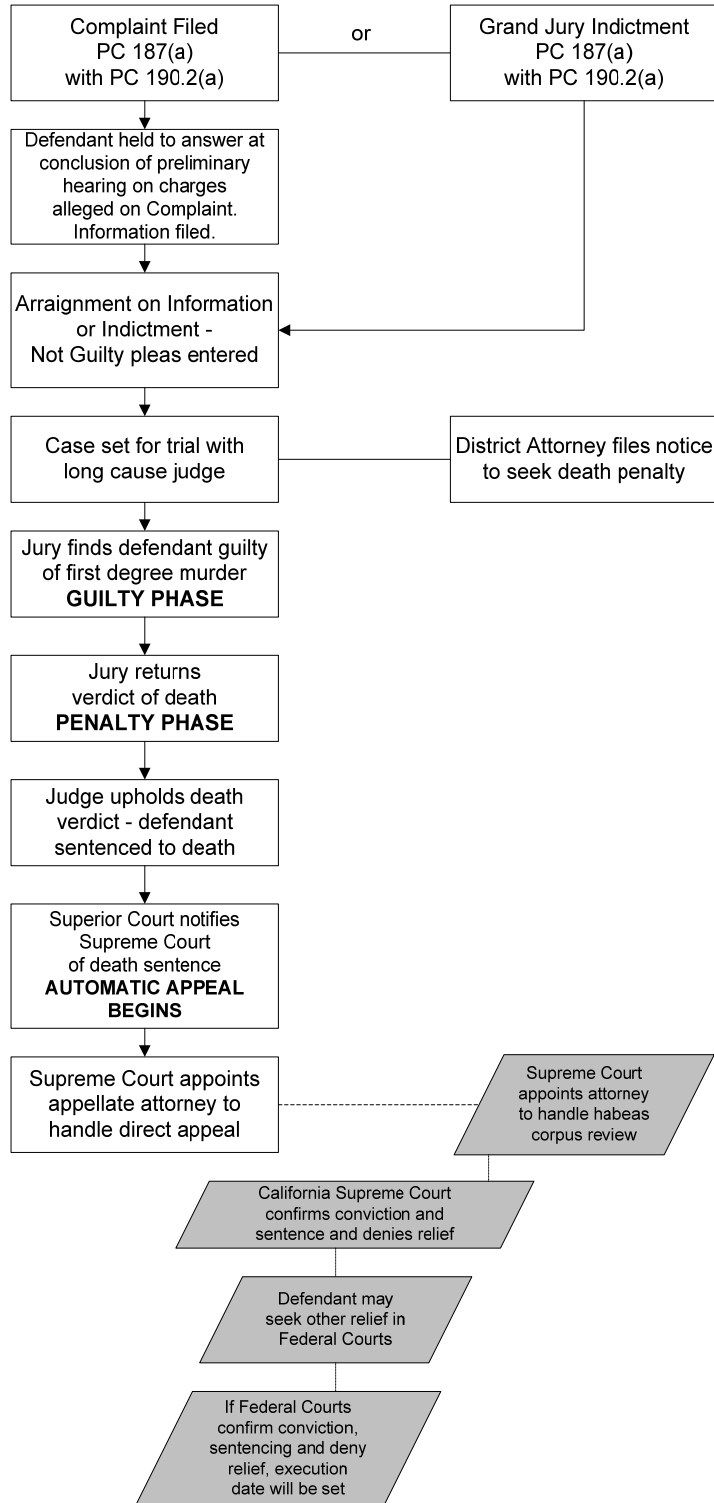
¹⁶ **Ibid** page 3, of the Condemned Inmate Summary List

superior court, there are normally just two phases of trial, a guilt phase followed by a penalty phase. If the jury finds the defendant guilty of first degree murder, the penalty phase will begin. Should the jury return a verdict of death and the trial judge upholds the jury's finding of death, the appellate process is put in motion. The superior court notifies the Supreme Court that a sentence of death has been imposed. The Supreme Court will appoint an appellate attorney to represent the defendant in the direct appeal and an attorney in the state to conduct the *habeas corpus* review. The *habeas* review would focus on issues not related to the trial record. If the California Supreme Court confirms the conviction and sentence and denies relief in both the direct appeal and the state *habeas* proceedings, the defendant may seek other relief in the Federal Courts. The final rulings may take 20-25 years from the sentence of death.¹⁷ A flowchart of this process is included on Illustration 1-A.

¹⁷ See Note 9 *supra*

Illustration 1-A

CAPITAL CASE PROCESS



The Superior Court in Orange County has performed two capital case audits in the past ten years. A review of both audit documents indicates that court staff is completing most tasks correctly; however, the audits indicate that more training of staff is needed as well as a closer scrutiny of work product.

The first audit was conducted and prepared in June, 2002.¹⁸ Security, storage, access, verification of the location of the case file and the number of volumes for each case were included in the audit. Reviewing the contents of the case files was also included. All of the capital case files were located. It was noted that those cases where the sentencing had occurred within the last few years were better organized and contained fewer problems than the older cases. The audit discovered the following irregularities:

- Improperly marked file covers
- Files not containing a 'Notice of Closed Volume' target sheet to indicate conclusion of previous volume
- Filed documents placed in case files out of order
- Loose documents placed in incorrect volumes
- Loose documents not secured in the files
- Misfiled confidential documents. Name on the confidential envelope did not match the name on the case file.
- Contents missing from envelopes marked 'Sealed Document'
- Envelopes containing sealed documents opened without notation and not resealed

¹⁸ Superior Court of California, County of Orange, Capital Case Audit, June, 2002

- Penal Code 987.9 material not secured in sealed envelopes¹⁹
- Folders containing related but unfiled case material with copies and/or working notes of judges and/or supervisors.
- Folders containing preliminary hearing or other transcripts and Federal *Habeas Corpus* Petitions
- Loose court reporter ASCII disks in case file boxes²⁰

Recommendations were made as a result of that audit to address all of the audit findings.

The second audit, performed in December, 2003 and written up in March, 2004, was processed with specific criteria for the case file, court reporter notes and case exhibits.²¹

Verification that a Certificate of Completion was in the court file was part of the criteria as well as an audit of the Penal Code 987.9 procedures and the accurateness of the Capital Case Location Report.

This audit was directed at eight specific capital cases where defendants had been sentenced to death after the June, 2002, audit. These defendants were awaiting appointment of appellate counsel. With the exception of the court reporter notes on one

¹⁹ Penal Code 987.9(a) In the trial of a capital case or a case under subdivision (a) of Section 190.05, the indigent defendant, through the defendant's counsel, may request the court for funds for the specific payment of investigators, experts, and others for the preparation or presentation of the defense. The application for funds shall be by affidavit and shall specify that the funds are reasonably necessary for the preparation or presentation of the defense. The fact that an application has been made shall be confidential and the contents of the application shall be confidential. Upon receipt of an application, a judge of the court, other than the trial judge presiding over the case in question, shall rule on the reasonableness of the request and shall disburse an appropriate amount of money to the defendant's attorney. The ruling on the reasonableness of the request shall be made at an *in camera* hearing. In making the ruling, the court shall be guided by the need to provide a complete and full defense for the defendant.

²⁰ See Note 18 *supra*

²¹ Superior Court of California, County of Orange, Capital Case Audit, March 2004

case, all case files, court reporter transcripts and notes, as well as all court and jury exhibits, were located. The noted discrepancies included:

- In one case, all of the reporter's notes were not stored in the proper area
- Clerk's transcript or case file: some documents were not filed in proper sequence
- Capital case exhibits should be clearly marked as such to aid in records management
- Capital case exhibits that may be needed in other proceedings (co-defendants or subsequent cases) need to be processed with great care so that all exhibits are available for appellate review
- The capital case protocol manual needs to be reviewed for modification as recommended by this year's audit team
- The processing of reporter's notes needs to be reviewed by the Court Reporter/Interpreter Services and Records Management to ensure that there is adequate monitoring of all potential capital case reporter's notes at all stages of the proceeding²²

In addition to this summary of discrepancies, each case was detailed individually, with case specific issues listed. As with the 2002 audit, recommendations were made to address the audit results.

Information obtained from the Orange County District Attorney indicates that there were 102,711 felony cases filed between 2000 and 2006, including 182 cases with charges of murder with special circumstances.

²² **Loc. Cit.**

The following table depicts the total cases filed per year, the total number of defendants in those cases, as well as the total cases with Penal Code 187(a) (murder) charges with special circumstances of Penal Code 190.2(a) (which are capital punishment eligible charges):

Table 1. Calendar Year 2000-2006 Felony Filings

	2000	2001	2002	2003	2004	2005	2006
Total felonies filed	12,423	12,420	13,663	13,870	16,044	17,594	16,697
Total number of defendants	13,911	13,555	14,910	16,092	17,307	19,015	18,297
Total PC 187(a)/190.2(a)	21	9	25	23	33	35	36
Total PC 187(a)/190.2(a) defendants	31	12	48	32	58	54	67 ²³

The total filings of the Penal Code 187(a) charges with allegations of Penal Code 190.2(a) are not an indication that the Orange County District Attorney's office sought the death penalty on each defendant.

The Orange County District Attorney files the charging document with the Superior Court. The District Attorney later files a copy of its notice to defense counsel that the District Attorney will or will not be seeking the death penalty. The Orange County District Attorney sought the death penalty on 31 defendants during calendar years 2000-2006.²⁴

Between calendar years 2000 and 2006, 11 defendants were sentenced to death.²⁵ Out of those 11 defendants, seven have had appellate counsel appointed. None of these cases have been certified for accuracy to the Supreme Court.

²³ See Note 6 *supra*

²⁴ **Loc. Cit.**

²⁵ Statistics provided by the Felony Appellate Department at the Superior Court of California, County of Orange

Between calendar years 2000 and 2006, 16 cases were certified for accuracy. Those 16 cases had sentencing dates between August, 1993, and March 31, 2000.²⁶

When Appellate Counsel is appointed, which is four to six years from the date of sentencing, the Felony Appellate Department at the OCSC, forwards to the attorney copies of the clerk's and court reporter's transcripts. Based upon an average of ten capital case files, it should be noted that the clerk's transcript can be 8,325 pages and the court reporter's transcript 5,477 pages.²⁷

Appellate counsel will perform a comprehensive review of all the transcripts. As a result of this review, Appellate counsel forwards to the Court requests that include clarification of minute orders, requests for missing documents, questions regarding exhibits and jury questionnaires, problems with inconsistencies, etc. The list of problems can be lengthy. The Court sets numerous correction hearings to address the issues. The Trial Judge, felony appellate staff, court reporter staff and others spend countless hours correcting or addressing mistakes that, for the most part, could or should have been addressed years ago. While the California Rules of Court address timelines, numerous extensions are usually granted to allow for all mistakes to be corrected.

California Rules of Court 8.600 through 8.622 that govern Appeals from Judgments of Death, outline specific timelines to be followed at each step of the appellate process.²⁸

²⁶ **Loc. Cit.**

²⁷ **Loc. Cit.**

²⁸ California Rules of Court Title Eight (Appellate Rules), Chapter 9 (Appeals from Judgment of Death) 8.600 through 8.625

The review of the literature indicates that the reasons for delays in capital case appeals go way beyond just the work of the court staff. As reviewed previously, the literature also reveals that finding qualified attorneys to handle these cases is an issue. If the court can alleviate some of the issues the attorneys face as they move through the appellate process, the court will have helped with a small piece of a large problem. Fortunately, the letter and checklists from Chief Justice George provided direction on the area(s) to focus on. The key areas mentioned were being addressed in this paper. Both of the audits conducted by the staff at OCSC indicate areas of concern. Many of these areas of concern were addressed by the recommendation portion of the audit and the number of cited errors has been greatly reduced.

METHODS

After identifying the focus of this project, information was needed from the staff that process capital case appeals. The following methods were utilized:

- Interviewed felony appellate staff and requested the development of a list of their top issues regarding the certification for accuracy phase in processing capital case appeals.
- Interviewed the Capital Case Analyst and requested a list of top issues regarding the processing of capital punishment eligible cases.
- Surveyed appellate attorneys to solicit information regarding problems encountered during the certification for accuracy phase as they relate to the clerk and court reporter transcripts.
- Interviewed an appellate attorney as a follow up to the survey process.
- Queried via letter Superior Court judges who have experience in trying capital cases and certifying them for accuracy what they believe to be issues or problems related to the clerk's transcript and the court reporter's transcript during the accuracy phase.
- Case reviewed nine capital cases that had been certified for accuracy to the Supreme Court of California to gather information regarding the date of judgment, appointment of appellate counsel and the filing of the certificate for accuracy.

- Contacted the Supreme Court of California via e-mail to determine if the problems outlined in the April, 2006, letter from Ronald M. George, Chief Justice of California were found in submittals from OCSC.

Felony Appellate Staff

The Felony Appellate unit at the Central Justice Center in Santa Ana, California, is comprised of three staff members and one supervisor. One of the staff members is the clerk assigned to process capital case appeals. The supervisor of the unit is well versed in capital case appellate processing as well. This unit deals with courtroom clerks, court reporters, appellate attorneys, bench officers and staff from the Supreme Court on a regular basis as they move through the lengthy appellate process. An oral interview was conducted with Ms. Lupe Chaidez, the supervisor, and Ms. Merry Mahar, the staff member assigned to capital case appeals in August, 2007. The interview consisted of the request for a list of their top ten capital case appellate issues. Their list was submitted within two weeks after the interview.

Capital Case Analyst

One of the duties of this newly-created position is to monitor capital punishment eligible cases from case initiation through sentencing. The Orange County Capital Case Analyst's office is located at the Central Justice Center in Santa Ana, California. Ms. Sandy Pickles, the Capital Case Analyst, was promoted to this position in May, 2007. She was asked during an oral interview to develop a list of top problems with capital punishment eligible files in September, 2007. Even though she had only been on the job for a short period of time, she is a 31-year employee of the OCSC and one of her previous assignments was the capital case liaison at one of the regional justice

centers. She developed her initial list in a few weeks time. Even though this report is focused on the appellate issues, the types of issues that are identified in this list represent some of the problems that develop early in a case. Addressing such issues at this stage is often easier to solve than ten years later.

Appellate Attorneys

Ms. Lupe Chaidez in the felony appellate unit was contacted and asked for names and addresses of appellate attorneys who had been appointed to process a capital case appeal from Orange County. It was important that the attorneys had handled a case from Orange County because they needed to be familiar with Orange County cases and the issues and problems that accompany them.

Eighteen names of appellate attorneys were supplied by the appellate section supervisor. I was fortunate to have met one of these appellate attorneys, Mr. Jeff Gale, Supervising Deputy State Public Defender in the Sacramento, California, office of the State Public Defender at a meeting, and I spoke to him briefly about my project. He indicated that he would be happy to review the survey draft and give feedback. He also indicated that he would provide a follow up interview after the survey results had been reviewed. None of these appellate attorneys are based in Orange County, California. The majority of them have an office in either San Francisco or Sacramento, California.

My personal experience with surveys is “no one wants to take them.” Surveys would be sent to attorneys that I had never met and who knew nothing about me. Developing a user-friendly survey that wouldn’t take long to complete was my goal.

Utilizing information from the lists obtained from the felony appellate staff, Capital Case Analyst and personal knowledge that I have attained in my position with the OCSC for 32 years, initial work on the pre-survey began in July, 2007.

The OCSC has a newly developed Planning and Research Unit, located at the Central Justice Center in Santa Ana, California. A meeting was set with Ms. Sandy Hilger, the manager of that unit, to discuss the pre-survey. The pre-survey consisted of 19 questions that required an answer of "Never," "Rarely," "Sometimes" and "Often." Also included were three questions that would allow the attorney to respond in a narrative if they desired.

The meeting with Ms. Hilger was beneficial. Suggestions were made to change the wording of the questions to be consistent so that an answer of "Never" would not be both a positive and negative response. Another suggestion was to split the survey into specific sections so that the attorney could, at a glance, know the subject matter in question.

In the attempt to make the survey more user-friendly, a decision was made to change the answer selections to "Yes" and "No" rather than the "Never," "Rarely," "Sometimes," and "Often" that were used on the pre-survey. Even though Ms. Hilger did not strongly support that change, the changes seemed to make the survey easier to answer. Getting attorneys to complete and return the survey was of concern.

At the conclusion of the meeting with Ms. Hilger, the pre-survey was altered to include the changes in the response options.

Ms. Hilger did offer a couple of software programs that would allow the attorneys to electronically complete and send the survey anonymously. This software program

could also assist with tallying the results. Being that the number of surveys expected was only 18, the decision was made to manage the results via e-mail response or U.S. Mail, if the attorney wished to remain anonymous.

Once the revision to the pre-survey was completed in late July, 2007, it was forwarded it to Mr. Gale who had agreed to review it. The response received from him via e-mail in August, 2007, offered some good suggestions. He strongly suggested that the survey be returned to the original options of answering “Never,” “Rarely,” “Sometimes” and “Often” to the questions. He explained that he would probably answer “yes” to the majority of the questions; however, if given the option, he would select “sometimes” or “often” to give a more accurate response. He suggested that by changing the answer options, a better idea of the areas that really needed improving would be evident.

He also suggested that a question be added that was directed at the experience of the attorney. Gaining information on the attorney’s experience might shed some light on the responses to the questions. Taking into consideration the suggestions made by the appellate attorney, the final Appellate Attorney Survey was developed (Appendix C).

A letter was developed that was sent to each of the 18 appellate attorneys, accompanying the survey. (Appendix D).

On September 5, 2007, the letter, a copy of the survey and a self-addressed stamped envelope was mailed via the U.S. Mail. The letter and survey were also sent electronically to each attorney on September 7, 2007.

The letter indicated that the surveys should be returned to by September 28, 2007 and that regular follow-up e-mails would be sent to remind them to return the surveys.

Getting the surveys back was challenging. A couple of surveys were returned within the first two weeks. As both of these were returned anonymously, it was not possible to identify who was still waiting to respond. When sending the reminder e-mails, apologies were made to those who may have already returned the survey.

A total of two reminder e-mails were sent to the attorneys. A couple of the attorneys indicated in a return e-mail that they would send theirs soon. Phone calls were made to those attorneys to further remind them to return the survey.

A total of 18 surveys were sent to the appellate attorneys. Two were returned as undeliverable, and new addresses were not available. One attorney responded and indicated that she could not complete the survey since she was still working on an Orange County capital case appeal and felt it might in some way jeopardize her client. Eight responses were received—44% of the attorneys surveyed. Seven attorneys chose to not respond. The final response was received in mid-October, 2007.

Query of Judicial Officers

There are five judges sitting on the Central Felony Trial panel at the Central Justice Center in Santa Ana, California who handle the long cause cases, which include capital punishment eligible cases. Two of those judges had presided over the trial of defendants who were sentenced to death; however, those judges had not certified any cases for accuracy. One of the judges had presided over capital punishment trials and is currently in the middle of his first certification for accuracy phase process. These

three judges were excluded from the information gathering pool due to lack of necessary experience. The other two judges had presided over capital punishment trials and had certified several cases for accuracy.

Three retired judges, two of whom sit on assignment at the OCSC on a regular basis, have presided over capital punishment trials and have certified many cases for accuracy. A total of two active judges and three retired judges were included in the information gathering group.

A letter was prepared for the judges, asking them to please list their top five issues with respect to the clerk and court reporter transcripts and the certification for accuracy process (Appendix E). The letter was delivered via courier to four of the judges and via e-mail to the other judge on October 10, 2007. Responses were requested no later than November 2, 2007.

When delivering the letter to one of the retired judges, he wanted to verbally relay his suggestions at that time. Not wanting to pass up this opportunity, his responses were documented with pen and pad.

A reminder e-mail was sent to the remaining judges. Upon receipt of that e-mail, another of the retired judges telephoned and wanted to relay his answers.

One of the active judges prepared a written response to the request which was received on November 7, 2007. Responses were not received from the other two judges, even after the e-mail reminders.

Case Review of Capital Cases that had been Certified for Accuracy

A case review was completed of capital cases that had already been certified for accuracy to the Supreme Court of California. The supervisor of the felony appellate unit

supplied a listing of cases that had been certified for accuracy. Between calendar years 2000 and 2006, 16 cases were certified for accuracy. Due to the size of these cases, only nine cases were selected to review for data. The selection was random; however, those cases selected should not have been presided over by the same judge. The cases selected were presided over by five different judges. Different appellate attorneys handled each case.

The information gathered from these cases included:

- Date of sentencing
- Date the appellate attorney was appointed
- Date the case was certified for accuracy
- Determine if attorney applied for extensions of time to submit requests for corrections or additions to the record.
- Determine what types of errors the appellate attorney identified relating to the clerk's and court reporter's transcripts

Gathering this type of information was helpful in determining if there was consistency in the types of problems and issues on these capital cases.

Ms. Sandy Pickles, the Capital Case Analyst, assisted in the review of these files. All records associated with a capital case are stored in the Capital Case Vault at the Central Justice Center in Santa Ana, California. The case files were pulled from our capital case vault and individual file review began.

Unfortunately, all of these cases originated in the early to mid-1990's prior to the implementation of the current case management system. A review of an automated docket report would have simplified this review process, allowing for an electronic

search for filed motions or requests. This review process was completed by a manual search of each case file. Ms. Pickles reviewed the files, made copies of select motions, minute orders and other filed documents. Ms. Pickles also prepared some notes that documented some of the data that was needed. Ms. Pickles was able to complete her review in two weeks.

Upon receiving the notes from Ms. Pickles and the copies of the filed documents, a further review was completed. Of special interest was determining the specific issues that these attorneys encountered when requesting corrections or additions to the clerk's or court reporter's transcript. Further notes were taken and a table was developed that would document the findings.

Query Via E-mail of The Supreme Court of California

In November, 2007, The Supreme Court of California was contacted via e-mail to follow-up on the letter that was sent by Chief Justice George in April, 2006. Since the letter was sent to all Presiding Judges and Chief Executive Officers in California, it was not specific as to individual courts and counties. In the e-mail, inquiry was made as to how Orange County ranked in relation to the other courts in California. After an initial response, a follow-up e-mail was sent, asking if OCSC was an offender to many of the issues outlined in the April, 2006 letter.

FINDINGS

The review of the data collected as listed in the Methods section of this paper is detailed in this section. Problems and issues were found in the ways that capital cases are initiated and continue through the trial phases. Some of the noted findings include: documents are entered and filed incorrectly, confidential and/or sealed documents are not properly packaged, court reporter transcripts are filed incorrectly and sworn juror names are incorrectly listed in the court reporter transcripts.

Felony Appellate Staff

Ms. Lupe Chaidez and Ms. Merry Mahar developed a list (from a clerical perspective) of their top ten Capital Case Appellate Issues.

- Appellate Record is incomplete. An example of this would be those documents that are missing—charging documents, search warrants, motions, etc.
- Juror information is not properly redacted pursuant to Code of Civil Procedure 237(a)(2) and California Rules of Court 8.332(a) & (b)
- Not all court proceedings are transcribed pursuant to California Rules of Court 8.610(a)(2)(A-O)
- The court reporter transcript pagination is incorrect. For example, volume pages do not flow from one volume to another.
- Computer readable copies of the record are made on ASCII format. Often these disks do not open properly or the information on them is not readable. These disks are required to be an exact copy of the paper record and often

they are not, for example, the page numbers do not flow or the cover pages are missing.

- Motions and Orders pursuant to Penal Code 987 should not be included in the clerks' transcript. All Penal Code 987 material should be sealed, indexed and paginated separately from the balance of the clerk's transcript.
- Court reporter transcript covers are prepared incorrectly. For example, not all of the hearing dates, names of court reporters or judges are included on the cover.
- Court reporter transcripts submitted without an index.
- Appellate counsel receives information from trial counsel on certain motions or documents that were filed with the court. At times, these documents are not in the court file.
- A training program and a procedural manual should be in place to provide the courtroom clerks with the training required to process capital cases. Specific areas of concern are assuring that a court reporter is present for all hearings and ensuring that all documents filed or lodged with the court are kept in the case file.

Capital Case Analyst

Ms. Sandy Pickles, the Capital Case Analyst, developed a list of top problems associated with capital punishment eligible cases. The following information was provided:

- Input errors on charging documents. Staff needs to be properly trained to understand the importance of these types of cases and to be certain of how to input special circumstance allegations.
- Docket entry input errors. Staff needs to closely monitor docket entries, assuring that defense counsel is listed in the proper capacity (retained attorney, public defender, conflict attorney, etc.)
- Lack of communication starting with case initiation through courtroom hearings. Staff needs to be reminded of the importance of notifying key court staff when capital punishment eligible cases are on calendar, assuring that properly trained staff will process the hearing.
- District Attorney is inconsistent when filing the notices that indicate that their office will/will not seek the death penalty on capital punishment eligible cases.
- Staff must follow procedures in place that dictate how the District Attorney notices to seek/not seek the death penalty are processed once received
- Cases that are coming from the regional justice centers following a preliminary hearing need to be reviewed prior to being sent to the Central Justice Center for trial. A review of the file should be made to verify that all filed documents are properly input and that proper docket codes are used to update the case management system.

Appellate Attorney Surveys

As indicated in the Methods section, eight surveys were received from the appellate counsel. The experience level of the attorneys surveyed varied from one attorney having handled 15 capital case appeals to two of the attorneys handling their

first capital case appeal. The other attorneys include one attorney with four appointments, one attorney with three and three attorneys with two appeals. With the exception of one attorney who had two, seven attorneys had only one capital case appeal from Orange County, California. **Table 2** below simplifies the experience level statistics.

Table 2 – Experience Levels of Appellate Attorneys Surveyed

Attorney	Capital Case Appeals Handled	Orange County Capital Case Appeals
1	15	1
2	4	1
3	3	1
4	2	2
5	2	1
6	2	1
7	1	1
8	1	1

The response to the multiple choice questions are listed in Tables 3 and 4.

Table 3 lists the responses as they relate to the Clerk’s Transcript and **Table 4** lists the responses as they relate to the Court Reporter’s Transcript.

Table 3 – Appellate Attorney Survey Results – Clerk’s Transcript

Part 1 – Clerk’s Transcript	Never	Rarely	Sometimes	Often	Other
Court reporter transcripts indicating that a hearing was heard, yet no corresponding minute order	3	3	2		
Minute entries or minute orders in clerk’s transcript indicating a document was filed, yet no corresponding document in the clerk’s transcript	2	3	3		
Hearing occurred but minute order in clerk’s transcript does not indicate that a court reporter was present	6	2			
Received motions and other documents from trial counsel that are not part of the clerk’s transcript	2	4	1	1	
Some copies of charging documents and amendments are missing from clerk’s transcript, yet are referenced in minute order entries in the clerk’s transcript	4	2	2		
Penal Code 987.9 documents are part of clerk’s transcript and are not sealed	4	1	3		
Confidential documents copied as part of clerk’s transcript that should be sealed but are not	3	3	1	1	
Minute orders for Marsden hearings and other <i>in camera</i> hearings in the clerk’s transcript are not sealed	4	1	2		N/A
Juror key missing from clerk’s transcripts	2		1	5	
Sworn juror identification information included in minute order entries in clerk’s transcript	5	1	2		
Sworn juror’s hardship form in clerk’s transcript and not properly sealed	5	2	1		

Part 1 – Clerk’s Transcript	Never	Rarely	Sometimes	Often	Other
All juror questionnaires have not been copied and included as part of clerk’s transcript	4	2	2		
Juror questionnaires for sworn jurors are copied and not sealed in the clerk’s transcript	4	2	1	1	
Separate index for all sealed material missing from clerk’s transcript	2	1	1	3	No response (1)
Inaccurate and incomplete alphabetical and numerical indices	4		2	1	No response (1)

Table 4 – Appellate Attorney Survey Results – Court Reporter’s Transcript

Part 2 – Court Reporter’s Transcript	Never	Rarely	Sometimes	Often	Other
Minute orders in clerk’s transcript indicating a court hearing occurred but no corresponding court reporter transcripts	1	3	3	1	
Court reporter transcript contains name of sworn jurors	5	1		1	
References to sworn jurors made by the court reporter in the court reporter transcripts do not match juror key prepared by court clerk	2	2	2		No key (1) Not sure (1)
Court reporter transcript pagination in error	2	2	4		
Marsden hearings and other <i>in camera</i> hearings not sealed in court reporter transcripts	5	1	2		
Inaccurate and incomplete alphabetical and chronological indices	1	3	4		
Inaccurate and incomplete computerized reporter’s transcript	1	2	3	1	No response (1)

The first question in the Comment Section was: “The Trial Attorneys certify the case for completion after sentencing has occurred. Do you believe that the trial

attorneys do a thorough job when certifying the case for completion? If your answer is no, what do you think that the trial attorneys could do to be more thorough?”

Two attorneys responded with answers of “yes”. One attorney did not respond. Five attorneys responded with answers of “no”. The following are the responses to what the five attorneys believe that the trial attorneys could do to be more thorough:

- The only way to be thorough is to read the entire Clerk’s Transcript and Court Reporter’s Transcript. Trial attorneys do not have the time to do that.
- Very often there is no daily review of the previous day’s transcript.
- I don’t think that they will do any more. Maybe if they were paid extra. But appellate lawyers are starting from scratch and looking for gaps. Trial lawyers who have lost want to forget about the case and put it behind them.
- Generally the trial attorneys do the best they can. While their efforts result in a more complete record, I don’t think there will ever be an alternative to appellate/post conviction counsel reviewing the record and determining what isn’t included.
- The trial attorneys could focus on proceedings involving the appointment of counsel, either pursuant to Penal Code section 987.05 or non-statutory proceedings, and make a particular effort to locate and include supporting materials submitted in conjunction with these representation matters.

The second question asked: “What specific complaints/concerns do you have with the clerk’s transcript?”

Four attorneys did not respond to this question. The following are the responses from the four attorneys who responded to the question:

- The clerk’s transcript should be scanned into pdf format and sent on CD, not copied. You could save thousands of dollars a year, probably tens of thousands.
- N/A - My record has been corrected and augmented.
- This appeal started in 1999. I believe that a new appellate clerk has taken over and done a great job.
- In the one capital case that I have worked on out of Orange County, the clerk’s transcript relating to proceedings that occurred in Orange County was prepared very efficiently and accurately. The clerk’s transcript which related to proceedings that occurred in a different county before being transferred to Orange County required major revisions by the staff of that county to bring it into compliance with the Rules of Court.

The third question asked: “What specific complaints/concerns do you have with the court reporter’s transcript?”

Five attorneys did not respond to the question. The following are the responses from the three attorneys who did respond.

- We should get a properly formatted electronic transcript, again on CD. Let’s get rid of the paper!
- N/A – My record has been corrected and augmented.
- None, I thought the reporter’s transcript was in pretty good shape.

The last question asked was: “What ideas do you have as to how the Superior Court can do a better job of processing and maintaining the case related records on a capital case?”

Four of the attorneys did not respond to this question. The following are the responses from the four attorneys who responded:

- The court did a fine job in the case I had, so I really can't say. But exhibits should be digitally photographed and made part of the clerk's transcript.
- I don't know, frankly. I got excellent help from Merry Mahar and Geoff Christiansen. If I take another capital appeal, I would not mind another Orange County case at all.
- I rarely use the paper copy of the clerk's transcript. Instead, I spend an inordinate amount of time scanning the clerk's transcript and renaming and organizing the documents so I can get them into my computer. I wish the clerk's transcript, like the reporter's transcript, came on a disc containing a scanned image of each document. It seems to me that rather than photocopying the same document several times, one could do a high-quality scan, print all copies from that image, and provide both paper and electronic images.
- Here is a perennial problem in Orange County and many, if not most, superior courts: During jury selection, no one makes an official record of the sex and ethnicity of prospective jurors. Then, at some point later in jury selection, an attorney makes a Batson-Wheeler motion regarding the use of peremptory challenges on race and sex grounds. That is a serious impediment to making a comparative review of the jurors who were excused vs. the jurors who were not. In some courts in Los Angeles, the court clerk keeps a running notation

of the race and sex of all jurors who are passed for cause, which is extremely helpful to the appellate process down the line.

Follow Up Interview with Appellate Attorney

On December, 18, 2007, Mr. Jeff Gale, Supervising Deputy State Public Defender, was interviewed telephonically. His written survey indicated that he had capital case appeals from Riverside, Shasta and Orange Counties, a total of four appeals. He was also the acting State Public Defender for a while. He was asked if he could rank Orange County with the other counties and he indicated that Orange County was ranked first, first being most accurate and complete. He said that Orange County's computerized docket reports were easy to use and enabled him to find needed information quickly. He also indicated that when he needs to request documents, he normally gets what he was expecting rather than having to submit a supplemental request.

He shared a few other issues that were not county specific. He indicated that when he receives the clerk and reporter transcripts he knows to look at problematic areas of concern: missing indexes, juror keys and Penal Code 987.9 documents. He also indicated that the felony appellate staff is an integral part of the entire capital case appellate process. Consistency is a key factor and he believes that too often the felony appellate staff rotates or promotes to other positions. The court should find a way to keep effective, efficient and knowledgeable personnel in the felony appellate unit.

Mr. Gale further commented on the question included on the survey regarding trial counsel doing a more thorough job. He indicated that trial counsel "maxes out" by just trying the case. He also believes that unless you have been a part of the capital

case appellate process, non-participants may not know what should be included in the appellate record.

Query of Judicial Officers

As indicated in the Methods section, feedback was received from three judicial officers. A letter was provided to the judicial officers, asking them for their top five issues as they relate to the clerk's and court reporter's transcript.

Retired Judge Number One responded as follows:

- Court Clerks are not properly trained to ensure that the order for daily transcripts is made for cases where the Prosecuting Attorney has indicated that their office will seek the Death Penalty.
- The file jacket should be tagged to indicate that a case is capital punishment eligible.
- Suggest having official court reporters rather than pro tem court reporters report capital punishment eligible cases. Make sure that all court reporter notes are accounted for early on in the proceedings.
- Suggest that the court reporter and the court clerk meet on a regular basis and compare the transcript to the court minutes. Discrepancies can be identified at an early stage in the proceedings and corrected.
- Only experienced judicial officers should hear the preliminary hearing on capital punishment eligible cases.
- If the Prosecuting Attorney has not yet indicated if their office will or will not seek death, the Trial Judge should make inquiry at the first appearance as to the intention.

- The storage of all capital case related records should be consolidated.
- Establish a staff person who will monitor these cases and ensure that proper procedures are followed.

Retired Judge Number Two responded as follows:

- Suggest having official court reporters rather than pro tem court reporters report capital punishment eligible cases.
- All Penal Code 987 documents should be stored in one location
- Documents missing from the files is a concern
- Some requests or corrections from appellate attorneys can be deemed a delay tactic

The Active Judge responded as follows:

- No one in Court Administration or Judicial Management ever anticipated that the time between the point the capital case is filed until all appellate procedures are exhausted would be as long as it takes (25+ years)
- An outgrowth of this is the constant turnover in administrative management which creates difficulties in the establishment of a consistent written protocol and the close coordination and training necessary between all affected sections: limited and general jurisdiction courts, court clerks, court reporters, Alternate Defense, felony appellate staff and records management staff.
- Due to court consolidation and court unification, we lack supervision in application of those records management practices identified as best practices. We have court clerks assigned in the long cause courtrooms who have learned what day to day procedures are needed to identify, keep and

maintain all legal documents, papers and transcripts during the trial. This expertise, however, is very confined. We do not have line supervisors who have long cause experience and we do not have the custom and practice wherein supervisors spend time in the courtroom when capital cases are tried to acquaint themselves with the trial level difficulties of keeping adequate records.

- We need greater effort by the trial attorneys in reviewing the clerk's minutes and court reporter's transcripts during the trial and certainly prior to certifying the record for completeness
 - Most attorneys' time, energy and effort during the trial are directed into the presentation of the evidence.
 - Most appointed counsel have other criminal case responsibilities that take priority
 - Appointed counsel should be adequately compensated for the extended time needed to review, correct and supplement the trial record at the time the record is certified for completeness.
 - Need to review and supplement capital case records with search warrants, arrest warrants, *in camera* proceedings, sealed material includes:
 - *In camera* hearings conducted by judges other than the trial judge are not always identified until the certification for accuracy phase.

- Penal Code 987.2 and 987.9 material is often not identified until the record is reviewed for accuracy.
 - Sealed material is not sent to appellate counsel by the felony appellate staff
- The California Rules of Court that define the documents to be lodged with the trial court are unclear.²⁹ He would recommend that the Rules be amended to address the following:
 - Are the documents of co-defendants charged in the same Information/Indictment but tried separately considered as being part of the capital defendant's case?
 - Are other ancillary records required, such as writs, that the capital defendant may file?
 - Are search warrants, arrest warrants, probation violations on other cases required if referred to during the trial?

Case Review of Nine Capital Cases

As indicated in the Methods section, a review was completed of Nine Capital Cases that had been certified for accuracy. The information supplied on **Table 5** provides historical background of the nine cases including; the filing date, the date the defendant was sentenced to death, the date appellate counsel was appointed, the date the case was certified for accuracy to the Supreme Court of California, and the type of defense counsel, either a conflict attorney appointed by the court or a public defender.

²⁹ **Loc. Cit.**

Table 5.**Listing of Nine Capital Cases Reviewed**

Case/ Number	Year Filed	Date Sentenced	Appellate Counsel Appointed	Certified for Accuracy to Supreme Court	Trial Counsel
Bennett 95ZF0007	1995*	1-9-97	7-30-01	3-25-04	Public Defender
Clark 94CF0821	1994	12-29-07	12-5-02	12-10-03	Conflict Attorney
Frederickson 96CF1713	1996	1-9-98	11-24-03	8-2-06	Conflict Attorney
Lindberg 96CF0685	1996	12-12-97	5-29-02	6-2-04	Conflict Attorney
Morgan 94ZF0036	1994*	7-19-96	3-29-00	7-10-02	Conflict Attorney
Nguyen 95WF0682	1995	1-28-99	6-29-05	9-21-06	Conflict Attorney
Parker 96ZF0039	1996	1-21-99	8-25-04	11-22-05	Conflict Attorney
Redd 94CF1766	1994*	2-28-97	6-22-01	4-28-03	Public Defender
Valencia 93CF3650	1993*	1-23-96	9-22-00	4-28-03	Public Defender

*Trial Pre-1997, Certified for Completeness and Accuracy

California Rules of Court 8.600 through 8.625 govern appeals from judgments of death.³⁰ To put some perspective on the information included on the table, the California Rules of Court 8.622(b) (3) indicates that the judge must certify the record as accurate within 120 days after it is delivered to appellate counsel. The table does not, however, indicate the date that the transcript was delivered to appellate counsel. It is the practice of the OCSC to deliver the transcript within five business days of appointment of counsel. None of these cases were certified for accuracy within the 120 day period.

Each of the nine cases was reviewed to determine if problems with the clerk's or court reporter's transcripts caused a delay in the certification process. Once a review of the cases was underway, a list of issues and problems was established that were identified in appellate counsels' motions for extensions to certify the record. Only the issues that focused on the clerk and reporter transcripts were tracked. Appellate counsel did specify other reasons for asking for extensions in their moving papers; however, they were not specific as to the focus of this project paper and are not listed.

Table 6 that is inserted on the following page lists the cases along with specific issues that relate to the clerk and court reporter transcripts.

³⁰ **Loc. Cit.**

Table 6. Case Comparison of Nine Capital Cases

Material	Bennett	Clark	Frederickson	Lindberg	Morgan	Nguyen	Parker	Redd	Valencia
PC 987 Material Missing			√	√	√		√		
Sealed info missing	√		√	√	√	√	√	√	√
Sealed info included in error		√	√						√
No juror key or incomplete						√	√		
No juror questionnaire ASCII	√	√	√	√	√		√	√	
No ASCII disks or some missing			√				√	√	
ASCII disk not readable or complete								√	
Missing Municipal Court documents			√	√			√		
Missing clerk transcript pages	√	√		√		√	√		√
Missing court reporter pages	√				√	√	√		
Illegible court reporter transcripts	√	√						√	
Court reporter transcript errors	√			√	√	√		√	√
Court reporter pagination wrong	√	√			√				
Sworn juror names listed by court reporter		√							
Missing notes from jurors		√	√			√			
Search warrants not included						√			
Sworn juror names in clerk transcript		√							
Non-sworn juror names not listed by court reporter						√			

Query of The Supreme Court of California

The clerks' office at the Supreme Court of California responded to the question as to how the OCSC ranked with other courts in California. The Supreme Court of California only has 13 cases where appellate counsel was appointed between 2001 and 2006. The OCSC only has one of these cases. The OCSC has three cases where appellate counsel was appointed in 2006, which are pending certification for accuracy (as well as another case where appellate counsel was appointed in 2005 as per the Felony Appellate Unit at OCSC). The response also indicated that the OCSC does a good job and if there are problems and issues with clerk and court reporter transcripts submitted to them, they usually get them corrected informally, without having to return the entire record. The Supreme Court of California did not indicate how Orange County actually ranked against other trial courts in California.

CONCLUSIONS AND RECOMMENDATIONS

Findings confirm that there are current processes at the Superior Court of California in Orange County that require reviewing, possibly changing and close monitoring. Many of the problems that exist are those that begin at an early stage in the life of a capital case and are not addressed until the appellate attorney requests corrections or additions during the certification for accuracy phase, which is always years later. A review of the findings also indicates that many of the issues can be solved with a solid training program, a procedural manual that is updated at regular intervals, proper and regular use of the manual and an internal and regular review of all capital case records. After reviewing the April 21, 2006 letter from Ronald M. George, Chief Justice of California and from the appellate attorney survey results, it is apparent that trial courts across the state of California may have significant work to do to improve the quality of their capital case processing.

As discussed in the Literature Review section, two previous capital case audits were conducted by the OCSC. Many of the current issues identified in this project were addressed in the two audits, yet the problems continue to occur. It is apparent that the audits were performed and prepared but were not used to the extent that they should have been to address existing issues. Even though staff is completing many tasks correctly, closer scrutiny is required on all aspects of capital case processing to assure completeness and accurateness.

Since the findings are a result of input from Superior Court staff members and judges, Appellate Attorneys, Supreme Court of California Staff and case review, all aspects of capital case processing were included. The process starts with case initiation and finishes with Certification for Accuracy to the Supreme Court. There are multiple years of processing between those two events. Many departments and staff members are involved in the processing of these complex capital cases. The most efficient way for me to discuss practical implications and action steps is to break down the departments within the court and focus on specific issues to be addressed.

One area that is directed at all departments (Case Processing, Courtroom Operations, Court Reporter Services, the Capital Case Analyst, Alternate Defense Unit and the Appellate Unit) is proper training, refresher training and continued updates. The OCSC developed a Capital Case Procedural Manual that was recently updated in November, 2007. The manual includes sections that were written by the various departments within the OCSC that process different events on capital cases. The manual needs to be updated annually as well as when legislative changes occur or processes change. Staff also needs to understand that extreme care must be used when processing these types of cases. Developing a simple philosophy of "STOP" would be sensible. If a staff member is not sure how to proceed at any time, stopping to either refer to the procedural manual or ask their supervisor, local Justice Center Capital Case Liaison or Capital Case Analyst for help is the proper way to proceed. Doing

something to “just get the job done” is not appropriate and should not be acceptable.

All staff that process capital cases should be familiar with the rules that govern Appeals from Judgments of Death, California Rules of Court 8.600 through 8.625.³¹ Requirements, guidelines, timelines and specific information regarding the processing of these cases are included in these rules. It is recommended that these rules be included in the current OCSC Capital Case Procedural Manual for easy reference. Staff should be made aware that these rules are also available on the Administrative Office of the Courts website and can be easily accessed on the OCSC intranet page. The specific rules are included in Title Eight (Appellate Rules), Chapter 9 (Appeals from Judgment of Death) of the California Rules of Court.³²

In addition to those listed above, specific recommendations are broken down into individual departments processing capital cases:

Case Processing Unit

- Verify that charging documents are filed and input accurately in case management system (violations, enhancements, dates, names)
- Notify established staff members of existence of case to assure that staff processing case are properly trained
- Designated staff member to review file and its contents for accuracy prior to delivery to courtroom

³¹ **Loc. Cit.**

³² **Loc. Cit.**

Courtroom Operations Unit

- Develop a 'cheat sheet' of key hearing events to aid clerk in completion of court minutes
- Notify established staff members of existence of case to assure that staff processing case are properly trained
- Take extreme care in entering court minutes—assuring that a court reporter is present, making sure that the type of attorney is accurately reflected and recording the proper hearing type are some noteworthy examples of items requiring close scrutiny
- Filing of Documents – making sure that all documents that are file stamped are input in court minutes and placed in the case file. Some documents are filed under seal or confidentially and require special handling
- Courtroom Clerk and Court Reporter should compare the court minutes with the court reporter transcript at regular intervals. Errors to be promptly remedied.
- Names of sworn jurors cannot appear in the court minutes or on documents in the court file. Documents with the name of a juror need to be filed in a confidential envelope and a copy of the document WITHOUT the name of the juror placed in the court file. A juror key must be prepared and included with the confidential juror information in a confidential envelope and placed in the court file.

- Contents of case file and minute orders to be reviewed at regular intervals to ensure that procedures are properly followed.

Court Reporter Staff

- Court Reporter Transcripts should be reviewed by designated staff before filing with the Appellate Department, assuring the transcripts are prepared and all proceedings are transcribed as indicated in the California Rules of Court. Key areas of concern are the proper transcript cover, preparation of proper indexes, correct pagination and the sealing of Marsden³³ or other closed hearings
- Verify that names of sworn jurors do not appear in the court reporter transcripts
- Court Reporter and Courtroom Clerk should compare the court minutes and the court reporter transcripts at regular intervals. Errors to be remedied promptly.
- Computer readable copies of the court reporter transcript are required during the appellate process. Court Reporter staff needs to ensure that these disks are formatted correctly and include an exact copy of the paper record
- Verify that court reporters are utilizing the checklist which was developed by the Supreme Court of California (Appendix B)

³³ *People v. Marsden* (1970) 2 C3d 118, 1970 California Supreme Court case where defendants were allowed to request new counsel if they could show that their views significantly differed from those of their counsel. In California, judicial officers conduct closed or *Marsden* hearings to determine their findings

Capital Case Analyst

- Develop a comprehensive work flow audit process, dictating specific guidelines, timelines and criteria that will be mandatory for all staff to follow. Work closely with the managers in the various departments to establish the specific criteria needed to make the audits effective and complete. The 2002 and 2004 Capital Case Audits, as well as this project paper, should be used when targeting key events and processing that is problematic.³⁴³⁵
- Review file contents and minute orders when cases are transferred at the conclusion of a preliminary hearing to the felony arraignment department
- Contact managers, supervisors or other staff who receive the e-mail notification that a capital punishment eligible case has been filed or is on the court's calendar for a hearing. Verify that those receiving the e-mail are utilizing the information to make sure that qualified staff is processing that case.
- Contact Orange County District Attorney to establish a consistent method for accepting and filing the notices for seeking the death penalty.

Alternate Defense Unit (responsible for filing and processing Penal Code 987.2 and 987.9 motions and orders)

³⁴ See Note 18 **supra**

³⁵ See Note 21 **supra**

- Verify that current procedures are in place to process the Penal Code 987.2 and 987.9 motions and orders, ensuring that confidentiality is maintained
- At a time interval to be determined, audit the case files to make sure that Penal Code 987.2 and 987.9 documents are not placed in the case files in error

Felony Appellate Unit

The Felony Appellate Unit is responsible for a large bulk of the clerical work involved in a capital case appeal. It is their responsibility to receive the actual court file and the court reporter transcripts and prepare the appellate record to be sent to the appellate attorney and the Supreme Court.

- Prior to sending appellate counsel his/her copy of the clerk's transcript and court reporter's transcript, review the documentation and verify its completeness. Using the checklist provided by the Supreme Court of California would be a good tool (Appendix B). Since the felony appellate unit staff has changed over the years, the current staff did not process some of the cases that are waiting for appellate counsel appointment. Reviewing the file and familiarizing themselves with its contents would be beneficial.
- Procedures for this unit are extremely critical. Verify the current procedures are being used by staff and that they are accurate and user-friendly

The most important aspect of processing capital cases is to understand the complexity that these cases present. The list of capital cases that was reviewed (Table 5) reveals that the timeline from filing a capital punishment eligible case to certification for accuracy can take ten or more years. If errors or problems can be identified early in the life of a capital case, fixing the error or solving the problem will most likely be easier and more efficient.

The proposed recommendations require dedication, training and intense follow-up. Once the Capital Case Analyst completes the work flow audit process, a better determination can be made if any additional staff is needed. Capital case processing must be given a high priority.

It should also be noted that a few of the problems that were presented by the retired judicial officers have already been addressed as listed below:

- A procedure is in place to tag all file jackets of capital punishment eligible files
- All storage of capital case records are consolidated, including the clerk and court reporter transcripts, court reporter notes and exhibits.
- Current policy is for official court reporters to report these types of cases rather than pro tem court reporters
- Capital Case Analyst position has been established and duties do include monitoring of capital punishment eligible cases

Judicial officers also expressed concerns regarding areas that are not the focus of this project. Those items, however, will be reviewed by the appropriate managers and addressed accordingly.

The results of the appellate attorney survey were of concern at first review. After reviewing the nine capital case files and reading the top issue list supplied by the felony appellate staff, it was apparent that there were a number of problem areas. Due to the number of problem areas, there was a belief that the total number of negative responses would have been higher. However, after reviewing all of the surveys and taking into consideration that 63% of the attorneys responding had only been assigned one or two capital case appeals, the results made more sense. Hopefully, not every capital case appeal is going to contain all of the types of errors referenced in the attorney survey.

The appellate attorney survey contained a few questions that would not pertain to every case. One example of this would be those questions referring to Penal Code 987.9 documents that are submitted by a Court Appointed Attorney requesting funds for investigators, experts or others to prepare their defense. If the defense counsel at the trial was a Public Defender, there would not be documents of that type contained in the file. Another example of a question not pertaining to every case, would be with respect to clerk or court reporter transcripts of *Marsden* or other hearings not being sealed. If those types of hearings did not occur, there would be no record in the file. In reviewing the answers to those questions relating to Penal Code 987.9 and *Marsden* hearings, a high majority of the answers were negative. An answer selection of "Not Applicable" and a comment that the questions may not be applicable to every case should have been included.

The recommendations that have been suggested would need to be reviewed by executive management and judicial leaders as well as managers of the Case Processing Units], Courtroom Operation Units, Court Reporter Staff, Alternate Defense Unit, Felony Appellate Unit and the Capital Case Analyst. Determining if additional staff is needed would determine if a cost would be involved in the implementation of the recommendations. If a determination is made that additional staff is needed, staff could be reallocated or reassigned. If new positions are required, managers would need to submit proper requests during the budget cycle. In reviewing the recommendations, many suggestions are tasks that require staff to just be more careful or to double check their work.

In retrospect, if I were to undertake this project again, I would keep the momentum going after my return from the three week seminar. Time goes by much quicker than we all envision and deadlines are upon us before we know it. After the August 15, 2007, submission deadline of the Literature Review, I sat back for awhile, knowing that I had months left to go. I also found that returning to the project after neglecting it for a period of time, required a thorough review of my information, squandering valuable time -- time that I didn't have to spare.

Written surveys should be prepared for the judicial officers rather than asking open-ended questions. One of the CEDP advisors suggested this, but I felt that my method would be more appealing to the judicial officers. A written survey would have allowed me the ability to compare answers and find common issues. The information that was received from the judicial officers was valuable, just not what was envisioned.

After the Capital Case Analyst develops a comprehensive work flow audit process and the process is put in place, follow-up will be critical. As has been observed in the past, audits have been conducted and recommendations were made to remedy problems. Even though changes were made, it appears that similar problems continue to exist. The work flow process must be implemented and the results evaluated before consideration of any future studies of this type in the OCSC. The OCSC should conduct another formal audit of capital cases, similar to those performed in 2002 and 2004. A comparison of all the audits should then be made to determine if the results will show improvement or if more work is needed.

If this project paper is distributed to other California counties, it might increase awareness and inspire others to carry out audits and review capital punishment case work flow processes. Capital Cases are not a huge percentage of the types of cases that are handled, but they are the most important, serious and complex. It is critical that procedures and processes be implemented so that the Rules of Court can be followed, court staff can do an exceptional job and the record that is provided to the Supreme Court of California is accurate and complete.

After all is said and done, a person's LIFE is on the line!

Appendix A



Supreme Court of California

350 MCALLISTER STREET
SAN FRANCISCO, CA 94102

(415) 865-7060

RECEIVED
APR 24 2006
SUPERIOR COURT
EXECUTIVE OFFICE

RONALD M. GEORGE
CHIEF JUSTICE OF CALIFORNIA

To: All Superior Court Presiding Judges
All Superior Court Executive Officers

Date: April 21, 2006

Re: *Processing of certified records in capital cases*

The Supreme Court has for some time experienced a variety of problems that cause delays in the certification of records in capital appeals. The purpose of this letter is to enlist your involvement in a plan to expedite the processing of these matters by your clerk's office and the Supreme Court Clerk's Office.

After your court certifies a death penalty appeal record for accuracy and transmits the record to our court for filing, our clerk's office undertakes an extensive pre-filing review and conducts a complete inventory of each submitted and certified capital record. Our clerk's office *files* such records only after its review and inventory is completed and the necessary adjustments have been made.

Frequently our clerk's office discovers problems that require our staff to seek corrections from the superior court's clerk's office. This can delay substantially the actual filing of the record.

In reviewing the records, our clerk's office often encounters the following problems: (1) superior court clerks and court reporters fail properly to redact juror-identifying information; (2) superior court clerks and court reporters use different juror-identifying numbers from each other; (3) the pagination is different between the public record and the material that has been redacted or placed under seal because the superior court clerk has renumbered the redacted pages; (4) the clerk's or reporter's transcript does not include an alphabetical index, and/or the index lacks volume numbers; (5) a juror table (or key) has numbers different from those used in the editing (redaction) of the actual transcripts; (6) material that should have been redacted appears in the public record, or material that *was* redacted has not been transmitted to the court; (7) the pagination or titles of supplemental transcripts is confusing; and finally (8), loose corrected pages are sent with the record, apparently with the expectation that our clerk's office will insert them.

April 21, 2006
Page 2

After our clerk's office reviews the record and discovers problems such as those described above, portions (or all) of the record informally may be sent back to the superior court for correction. At times, those records are returned to our court without all corrections having been made. This, in turn, causes additional delays.

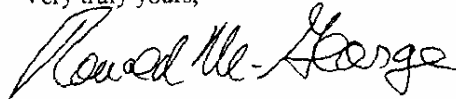
In order to avoid these problems and the resulting burden placed upon both this court's clerk's office and your court's clerk's office, I enclose a checklist developed by our clerk's office that should be used in every death penalty case. The checklist provides a handy list of "dos and don'ts" relating to the superior court's submission of certified records for filing in the Supreme Court, and is designed to avoid the problems described above.

In addition, this court's clerk's office currently is preparing an updated reference manual concerning the statutes and rules governing record preparation and certification for capital appeals. In the near future, we will send electronic and hard copies of this manual to you for dissemination to the judges and staff handling these records to assist them in ensuring that the record is properly prepared in each case.

(Note: A related problem concerns delay in the preparation of certified records. In several counties there are cases in which the certification process remains incomplete many years after the appointment of counsel. I shall, by a separate future letter to each responsible court, address those long delayed matters.)

It is my sincere hope that with the help of the enclosed checklist and the revised manual, the Supreme Court will see a marked improvement in the quality and timeliness of submissions of certified records in death penalty matters, and our respective courts will need to spend less time on these complex cases. Thank you for your attention to this matter.

Very truly yours,



RONALD M. GEORGE

Attachment: Checklist

cc: Justices of California Supreme Court
Fritz Ohlrich

Appendix B

CHECKLIST FOR PREPARING THE RECORD ON APPEAL FOR A DEATH PENALTY CASE

CLERK'S TRANSCRIPT

- The cover for each volume has "In the Supreme Court of the State of California" (not Court of Appeal) as the heading at the top of the page.
- There is a comprehensive alphabetical and chronological index (with references to both volume and page numbers) at the beginning of the first volume. (Rule 9(b)(1))
- The probation officer's report is in a sealed envelope, properly marked. (Rules 31(b)(13)(D) and 32(g))
- All juror questionnaires have been copied and are part of the transcript. (Rule 34.1(a)(1)(C))
- The juror-identifying information for the *sworn* jurors has been redacted, and a table has been prepared correlating the juror names with their numbers. The juror-identifying numbers match those numbers used in the reporter's transcript. The table has been bound together with the unedited copies of the edited pages for transmittal to the Supreme Court. (Rules 31.3 and 34.1(c))
- All Penal Code section 987.2 documents have been bound separately from Penal Code section 987.9 documents, and are in separate, sealed transcripts. (Rule 34.1(b)(1))
- For co-appellant cases, confidential material pertaining to each co-appellant is separately sealed.
- An index has been prepared for the sealed material. (Rule 31.2(b)(5))
- All corrected pages have been inserted into the original volumes. (No loose pages should be transmitted to the Supreme Court.)
- The judge has signed a certification of the record for accuracy. The original of this document should be sent to the Supreme Court along with the record. (Rule 35.2(e)(1))

REPORTER'S TRANSCRIPT

- The lead court reporter has prepared a comprehensive alphabetical and chronological index (with references to both volume and page numbers), and a separate table for the exhibits. (Rule 9(b)(2) & (3))
- The cover for each volume has "In the Supreme Court of the State of California" (not Court of Appeal) as the heading at the top of the page.
- All of the court reporters have signed their certificates at the end of the volumes.
- The juror-identifying information has been redacted. The juror-identifying numbers match those used in the clerk's transcript and in the prepared juror table. (Rules 31.3 and 34.1(c))
- All *Marsden*, Penal Code section 987.9, and other in camera proceedings are in sealed envelopes. (Rule 31.2)
- If applicable, there are court reporter affidavits regarding any inability to produce reporter's transcript due to missing or destroyed notes.
- All corrected pages have been inserted into the original volumes. (No loose pages should be transmitted to the Supreme Court.)

Appendix C

MONICA RICHARDS
mrichards@occourts.org

COURT EXECUTIVE DEVELOPMENT PROGRAM

Appellate Attorney Survey

Each of the questions in Parts 1 and 2 are specifically related to problems that you may have encountered as you complete the certification for accuracy process on capital cases. Part 1 is specific to the clerk's transcript and Part 2 is specific to the court reporter's transcript.

****Double click on the box of your choice. Click CHECKED. Click OK.**
If you find it necessary to change your answer, double-click on your previous choice. Click UNCHECKED. Click OK **

Part 1– Clerk's Transcript

1. Do you find that there are court reporter transcripts indicating that a hearing was heard, yet there is no corresponding minute order?

Never Rarely Sometimes Often

2. Do you find that there are minute entries on minute orders in the clerk's transcript indicating that a document was filed, yet there is no corresponding document in the clerk's transcript?

Never Rarely Sometimes Often

3. Do you find that a hearing occurred and the minute order in the clerk's transcript does not indicate that a court reporter was present?

Never Rarely Sometimes Often

4. Do you receive motions and other documents from trial counsel that are not part of the clerk's transcript?

Never Rarely Sometimes Often

5. Do you find that some copies of the charging documents and amendments are missing from the clerk's transcript, yet they are referenced in minute order entries in the clerk's transcript?

Never Rarely Sometimes Often

6. Do you find that Penal Code 987.9 documents are part of the clerk's transcript and are not sealed?

Never Rarely Sometimes Often

7. Do you find confidential documents copied as part of the clerk's transcript that should be sealed but are not?

Never Rarely Sometimes Often

8. Do you find the minute orders for Marsden Hearings and other in camera hearings in the clerk's transcript and not sealed?

Never Rarely Sometimes Often

9. Do you find a juror key missing from the clerk's transcripts?

Never Rarely Sometimes Often

10. Do you find that sworn juror identification information is included in minute order entries in the clerk's transcript?

Never Rarely Sometimes Often

11. Do you find that a sworn juror's hardship form is in the clerk's transcript and not properly sealed?

Never Rarely Sometimes Often

12. Do you find that all juror questionnaires have not been copied and included as part of the clerk's transcript?

Never Rarely Sometimes Often

13. Do you find that juror questionnaires for sworn jurors are copied and not sealed in the clerk's transcript?

Never Rarely Sometimes Often

14. Do you find a separate index for all sealed material missing from the clerk's transcript?

Never Rarely Sometimes Often

15. Do you find inaccurate and incomplete alphabetical and numerical indices?

- Never Rarely Sometimes Often

Part II – Court Reporter Transcript

16. Do you find minute orders in the clerk’s transcript indicating that a court hearing occurred but there are no corresponding court reporter transcripts?

- Never Rarely Sometimes Often

17. Do you find that the court reporter transcript contains the name of sworn jurors?

- Never Rarely Sometimes Often

18. Do you find that the references to the sworn jurors made by the court reporter in the court reporter transcripts do not match the juror key prepared by the court clerk?

- Never Rarely Sometimes Often

19. Do you find that the court reporter pagination on the court reporter transcripts is wrong?

- Never Rarely Sometimes Often

20. Do you find that Marsden hearings and other in camera hearings are not sealed in the court reporter transcripts?

- Never Rarely Sometimes Often

21. Do you find inaccurate and incomplete alphabetical and chronological indices?

- Never Rarely Sometimes Often

22. Do you find an inaccurate and incomplete computerized reporter’s transcript?

- Never Rarely Sometimes Often

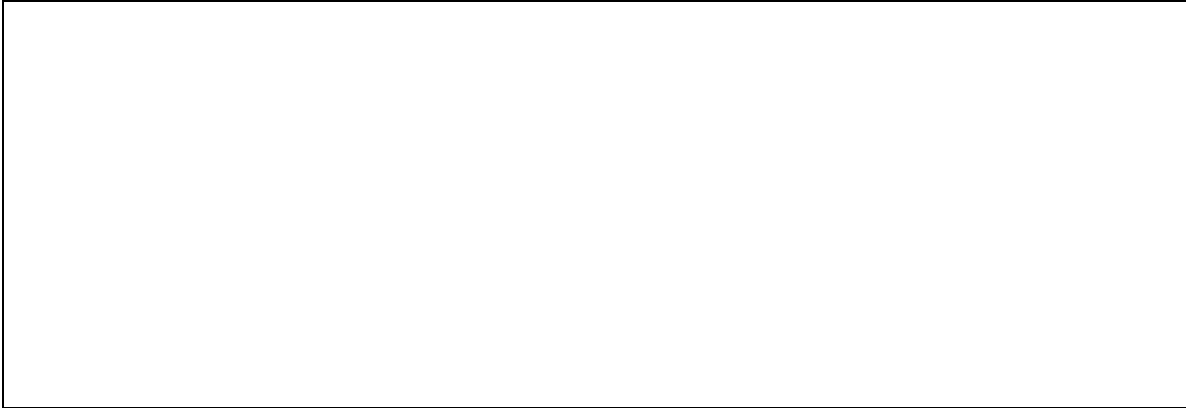
Part III - Comment Section

The Trial Attorneys certify the case for completion after sentencing has occurred. Do you believe that the trial attorneys do a thorough job when certifying the case for completion? If your answer is no, what do you think that the trial attorneys could do to be more thorough? Yes

What specific complaints/concerns do you have with the clerk's transcript?

What specific complaints/concerns do you have with the court reporter's transcript?

What ideas do you have as to how the Superior Court can do a better job of processing and maintaining the case related records on a capital case?

A large, empty rectangular box with a thin black border, intended for the respondent to write their ideas for improving the Superior Court's processing and record-keeping for capital cases.

On how many capital cases have you been the appointed lead appellate attorney?

How many of these cases are from Orange County, California?

Thank you very much for taking the time to complete this survey. Your feedback is essential to the success of my project.

Appendix D



**Superior Court of California
County of Orange**

MONICA RICHARDS

UNIT MANAGER
CRIMINAL AND TRAFFIC OPERATIONS

700 CIVIC CENTER DRIVE WEST
SANTA ANA, CA 92702-2024
(714) 834-4524
mrichards@occourts.org

September 5, 2007

I am a Superior Court Manager currently enrolled in the National Center for State Court's Court Executive Development Program. As part of this program, I am in the process of completing my project report entitled "*Capital Case Record Management: From Case Initiation through Certification for Accuracy.*" More information regarding this development program can be found at www.ncsconline.org.

I am seeking your assistance and expertise as I move towards completion of the project. I know that you have been the appellate attorney on at least one of the capital cases from Orange County. I also know that my appellate staff deals with a number of issues that relate to the clerk's transcript and the court reporter's transcript. I have developed a survey that I am requesting that you complete and forward back to me using the self-addressed stamped envelope. If you would like to complete the form electronically, I will be sending you an email with the attached survey in a few days allowing you to email it back to me. *Please also know that I only intend to list survey results in my project, not the names of anyone taking the survey.*

As you complete this survey, it would be appreciated if you could focus on Orange County specific issues if possible. This will allow me to compare the survey results and really know where to focus recommendations for improvement. I am hoping to get all survey results no later than Friday, September 28, 2007.

If anyone would be available for a post survey interview, please let me know. Depending upon the results that I receive, I may find follow up information helpful. Should anyone have any questions regarding the survey or my project report, please contact me. Thank you very much.

Sincerely,

Monica Richards
*Enclosures: Survey
Self-Addressed Stamped Envelope*

Appendix E



**Superior Court of California
County of Orange**

MONICA RICHARDS
UNIT MANAGER
CRIMINAL AND TRAFFIC OPERATIONS

700 CIVIC CENTER DRIVE WEST
SANTA ANA, CA 92702-2024
(714) 834-4524
mrichards@occourts.org

October 10, 2007

As part of my assignment as a Superior Court Manager, I am currently enrolled in the National Center for State Court's Court Executive Development Program. As part of this program, I am in the process of completing my project report entitled "*Capital Case Record Management: From Case Initiation through Certification for Accuracy.*" More information regarding this development program can be found at www.ncsconline.org.

I am seeking your assistance and expertise as I move towards completion of the project. I know that you have, as a judicial officer, presided over several capital cases that have proceeded to the certification for accuracy phase. I know that my appellate staff deals with a number of issues that relate to the clerk's and the court reporter's transcripts. What I am hoping to obtain from you is your top five problems that you encounter during the certification for accuracy process that involve both the clerk's and reporter's transcripts.

For your convenience, there are three options to reply to this request:

- I will be happy to meet with you to discuss your responses
- You may reply via email
- If you wish to record your responses in writing, I will gladly pick up the responses from your chambers

As I am trying to meet several deadlines for my project, I am hoping to get the replies from you no later than Friday, November 2nd. I would also be very interested if anybody would like to take the time to offer some suggestions that you think might make this process better. I will follow up with an email reminder after a week of receipt of this letter. Should anyone have any questions regarding the survey or my project report, please contact me. Thank you very much.

Sincerely,

Monica Richards

BIBLIOGRAPHY

Aarons, Dwight: Getting Out of This Mess: Steps Toward Addressing and Avoiding Inordinate Delay in Capital Cases. *The Journal of Criminal Law & Criminology*, 1999, Vol. 89, No. 1

Ashburn, Roy. Death Penalty Delays, 13 December, 2005.
<http://republican.sen.ca.gov/opeds/18/oped3047.asp>

Capital Case Procedural Manual, Superior Court of California, County of Orange, Santa Ana, California, revised 2007

George, Ronald M., Chief Justice of California, Letter to All Superior Court Presiding Judges and Executive Officers, 21 April, 2006

Feinstein, Dianne. Senator Feinstein Urges Governor Schwarzenegger to Boost Funding to Address Serious Shortage of Death Penalty Appeal Attorneys, 8 December, 2005. <http://feinstein.senate.gov/05releases/r-habeas.htm>

Lockyer, Bill: A Victim's Guide to the Capital Case Process, California Attorney General's Office, December, 2000

Orange County District Attorney, Santa Ana, California

Orange County Superior Court – 2000-2005 Long Range Strategic Plan – December 14, 1999

Superior Court of California, County of Orange, Capital Case Audit, June, 2002.

Superior Court of California, County of Orange, Capital Case Audit Report, March, 2004

Superior Court of California, County of Orange, Felony Appellate Unit

United States. California Department of Corrections and Rehabilitation. History of Capital Punishment in California 16 July, 2007.
<http://www.cdcr.ca.gov/ReportsResearch/history.html>

United States. Death Penalty Information Center. Washington D.C. 2 July, 2007.
<http://www.deathpenaltyinfo.org>

United States. National Association of Counties. <http://www.naco.org/Template>

United States. U.S. Census Bureau, 2006 Population Estimates, Census 2000, 1990 Census. <http://factfinder.census.gov>

REFERENCES

California Penal Code 187(a) Murder Defined

California Penal Code 190.2(a) Death Penalty or Life Imprisonment without parole; special circumstances

California Penal Code 987.2(a) Assigned Counsel; Compensation; Public Defenders; Multiple County Representation; Recovery of Costs

California Penal Code 987.9 Indigent Defendants; Funds for Preparation of Defense

California Rules of Court Title Eight (Appellate Rules), Chapter 9 (Appeals from Judgment of Death) 8.600 through 8.625

Civil Code of Procedure 237. Public Access to Names of Qualified Jurors; Procedure for Limiting Access

People v. Marsden (1970) 2 C3d 118

Defendant, charged with forgery, voiced objections to the handling of his case by his court-appointed counsel. His motion for substitution, made after the prosecution had presented its evidence, was denied and the trial judge refused to permit defendant to state specific reasons for his request. A jury found the defendant guilty and he was sentenced to prison. The Supreme Court reversed the judgment of conviction, holding that the trial court erred in refusing to listen to defendant's reasons for his request.