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A Survey: Would the Allowance of Non-Printed Briefs on Appeal Result in an Increase in Meritorious Appeals

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NOTES AND COMMENTS

A SURVEY: WOULD THE ALLOWANCE OF NON-PRINTED BRIEFS ON APPEAL RESULT IN AN INCREASE IN MERITORIOUS APPEALS?

INTRODUCTION

The present rules of the Illinois Supreme and Appellate Courts require that briefs on appeal from lower court decisions be reproduced only by printing.¹ In July and August of 1962, the CHICAGO-KENT LAW REVIEW conducted a survey of Chicago area attorneys in an effort to determine their views on the high costs of conducting an appeal and whether,

¹ Ill. Sup. Ct. R. 40; Ill. App. Ct. R. 8.

more specifically, the requirement of the printed brief, vis-a-vis less costly methods of reproduction such as mimeographing, multilithing, etc., constitute a major deterrent to meritorious appeals. Judges of the Illinois Appellate Court for the First District were approached for their opinions on this matter, as were judges of several of the states whose rules presently allow the reproduction of briefs on appeal by methods other than printing. The purpose of this article is to report the results of the survey, together with some of the comments expressed by the judges and attorneys contacted.

The costs of conducting an appeal today are very high. The result of this in many instances is the failure to prosecute a meritorious appeal because the party involved is financially unable to bear the burden.² This problem, if it is to be overcome in the interest of justice, must be resolved by the efforts of the members of the courts and the bar.³

² See Committee on Simplification and Improvement of Appellate Procedure, *Report*, 63 A.B.A. Rep. 605 (1938) in Nims, *Shortening Records on Appeal*, 23 J. Am. Jud. Soc'y 73 (1944), wherein the Committee states: "Excessive costs of appeals not only diminish the net value of the services rendered by appellate courts and deter parties from recourse to them, but they discourage resort to the trial courts, because every trial involves the possibility of an appeal. In a social system like ours, where free access to the courts is indispensable to the preservation of individual liberty and security, no unnecessary burdens should be placed upon the use of judicial remedies." And in Desmond, *Where Have the Litigants Gone?*, 20 Fordham L. Rev. 229, 230 (1951), the author, after stating that there was an unprecedented decrease in the number of civil appeals in New York State from 1900 through 1950, takes the position that "[n]o one will deny that the one principal cause of all this is the modern cost of printing. . . . It has now reached the point where the ordinary civil case simply does not warrant the expense involved in printing."

See also *Arnold Productions, Inc. v. Favorite Films Corp.*, 291 F.2d 94, 96 (2d Cir. 1961); Marx, *Justice Is Expensive*, 36 J. Am. Jud. Soc'y 75 (1952).

Compare the figures reported in Brand, *The Impact of the Increased Cost of Litigation*, 35 J. Am. Jud. Soc'y 102, 104 (1951) which represents some reported costs of printing in Illinois in 1929 and 1949, with the following figures received by the CHICAGO-KENT LAW REVIEW in August of 1962, for the period from January, 1960 to the present: \$4.00 per page for an 11 page brief; \$5.01 per page for a 26 page brief; \$5.75 per page for an 18 page brief; \$4.53 per page for an 18 page brief; \$4.89 per page for a 12 page brief; \$4.72 per page for a 43 page brief; \$4.53 per page for a 16 page brief; \$23.50 for a 3 page Petition for Re-hearing.

³ See Nims, *The Cost of Justice: A New Approach*, 39 A.B.A.J. 522, 524 (1953): "Reduction of the cost of justice is no easy problem. The average person takes no interest in the courts until he has occasion to use them, and as soon as that use ends, his interest also ends. Hence, the costs of justice is not likely to be reduced by efforts of laymen."

See also Address by Judge John J. Parker, American Political Science Association in New York, December 28, 1948, in Parker, *Improving Appellate Methods*, 25 N.Y.U.L. Rev. 1,2 (1950). Judge Parker declared "that the reason for [the greater difficulty of reforming the adjective law than of reforming the substantive law] is that the substantive law very largely reforms itself, whereas the adjective law, being the creation of arbitrary rules, is held back by the inertia, the fear of change and the worship of the past which are the curse of all professions. In no realm of the adjective law has this been more pronounced than in the practice and procedure of the appellate courts, for it is here that the professional point of view has unrestricted sway and the leavening influence of public opinion is least felt."

I. RESULTS OF THE SURVEY

The entire program consisted of (1) a general questionnaire⁴ mailed to 1,000 Chicago area attorneys requesting answers primarily from memory; (2) of these 1,000 attorneys, 126 received one or more additional forms⁵ relating to specific appeals which they conducted within the several months prior to July 1, 1962; (3) of the thirty states⁶ which presently allow the reproduction of briefs on appeal by methods other than printing, judges of the Supreme Courts of ten⁷ of those states were asked for their opinions of their respective systems; and (4) local Appellate Court judges were asked their opinions on the issue.

Replies were received from 106 of the 1,000 persons contacted by the general questionnaire.⁸ Sixteen of the total replies stated they either had

⁴ The following is a reproduction of the general questionnaire:

Would you please record your answers, to your best recollection, below:			
A. Total number of appeals taken in this state from July 1, 1960 to July 1, 1962	B. Number desired, but not taken	C. Not taken for reason of:	
		Total Costs	Printing Costs
Criminal Cases:			
Civil Cases:			
D. Would the filing of <i>briefs</i> in mimeograph, lithograph, etc., as a matter of right, in your opinion, promote an increase in meritorious appeals? _____			
E. Have you ever considered asking permission to appeal on a non-printed brief? _____			
a. If so, what were the results of the requests? _____			
b. If not requested, what was the reason? _____			
F. Should the present \$2.00/page limit on costs be increased? _____			
Please place comments, if any, on reverse side. Thank you.			

⁵ The following is a reproduction of the specific questionnaire:

In re: (name of recent case on appeal)	
A. Cost of record and brief	_____
B. Cost of printing brief alone	_____
C. Was the cost of printing brief a major factor in determining whether to take the appeal in this case?	_____

⁶ For a classification of these states see Wilcox, Karlan and Roemer, *Justice Lost—By What Appellate Papers Cost*, 33 N.Y.U.L. Rev. 934, 961-974 (1958). In April of 1962 the State of New York allowed the reproduction of briefs on appeal by methods other than printing; the new rule, however, will not take effect until September 1, 1963. N.Y.C.P.L.R. 5529(a).

⁷ These ten states were: Arizona, California, Delaware, Indiana, Kentucky, Maine, Michigan, New Jersey, Ohio, and Wisconsin. Replies were received from five of the ten.

⁸ The 1000 parties contacted consisted of 627 individual attorneys and 373 firms, with efforts being made to avoid the inclusion of any attorney into the "individual class" who was connected with a firm. Of the 106 that replied, 68 were firms and 31 were individuals,

no appellate practice whatsoever, had conducted appeals solely in the federal courts, or had taken no appeals in the Illinois State Courts during the two year period indicated.

The following chart represents the results of topics "A" through "E" on the general questionnaire:⁹

- A. Total number of appeals taken in Illinois State Courts from July 1, 1960 to July 1, 1962:¹⁰
- | | | | |
|-----------|----|--------|-----|
| Criminal: | 74 | Civil: | 351 |
|-----------|----|--------|-----|
- B. Number of appeals desired but not taken (during the same period):
- | | | | |
|-----------|----|--------|-----|
| Criminal: | 33 | Civil: | 136 |
|-----------|----|--------|-----|
- C. Number reported under topic "B" not taken for reason of:
- | | Total Costs | Printing Costs |
|-----------|-------------|----------------|
| Criminal: | 4 | 12 |
| Civil: | 67 | 61 |
- D. Would the filing of *briefs* in mimeograph, lithograph etc., as a matter of right, promote an increase in meritorious appeals:
- | | | | | | |
|------|----|-----|----|---------------|---|
| Yes: | 74 | No: | 24 | Questionable: | 8 |
|------|----|-----|----|---------------|---|
- E. Have you ever considered asking permission to appeal on a non-printed brief:
- | | | | |
|------|----|-----|----|
| Yes. | 32 | No: | 69 |
|------|----|-----|----|
- E-a. If requested, what was the result:
- | | |
|----------|---|
| Allowed: | 15 (primarily indigent criminal defendants) |
| Denied: | 4 |
- E-b. If not requested, what was the reason:
- | | |
|---------------------------------------|----|
| No need or no occasion | 15 |
| Waste of time: | 13 |
| Not justified: | 6 |
| Habit of printing: | 3 |
| Other costs too high: | 3 |
| Bad appearance: | 3 |
| Reluctant to impose on court: | 2 |
| Time consuming: | 2 |
| Case worthy of appeal justifies cost: | 2 |

with 7 being unascertainable as to category. One firm circulated the questionnaire among 12 of its attorneys.

⁹ As is seen from the general questionnaire, *supra* note 4, the parties contacted were requested to record their answers from memory. Consequently, the following results are an approximation of the matters indicated under topics "A" through "C", rather than a precise report thereof.

¹⁰ One of the attorneys who replied estimated that "the total number of appeals taken in this State, from July 1, 1960 to July 1, 1962, is approximately 2400. By 'appeals' I mean petitions for leave to appeal, petitions for writ of error under the Workman Compensation Act, writs of error in criminal cases and all matters reviewed in our Appellate Court. . . . At least five times more appeals were desired and not taken than were actually processed in our courts of review. I surmise that the principal reason for not taking an appeal is the total cost including attorneys' fees. These costs are prohibitive in most instances."

F. Should the present \$2.50 per page limit on costs¹¹ be increased:

Yes: 34 No: 48

The following chart represents the results of the specific questionnaires:¹²

C. Was the cost of printing the brief a major factor in determining whether to take the appeal in this case:

Yes: 9 No: 9

Answer given under topic "C"	Average cost of record and brief combined	Average cost of brief alone	Brief cost percentage of combined cost
YES:	\$290.43	\$142.27	48.98%
NO:	\$277.82	\$136.11	48.99%

II. COMMENTS BY JUDGES

In 1952 the rules¹³ of the Illinois Supreme and Appellate Courts were amended to allow reproduction of *abstracts* on appeal by methods other than printing in an effort to reduce the cost of justice to a litigant. Such non-printed methods of appellate paper reproduction have been subjected to the criticism that it renders the material neither readable nor easily manageable and consequently tends to result in a decrease in the efficient disposition of an appeal.¹⁴ It has also been suggested that such less costly methods of reproduction have a tendency to increase the number of spurious and capricious appeals.¹⁵

¹¹ Topic "F" on the general questionnaire, *supra* note 4, refers to \$2.00 per page allowed for reproduction costs to the victor on appeal. Supreme Court Rule 53 and Appellate Court Rule 17 allow \$2.50 per page for printing costs of abstracts and \$2.00 per page for the costs of other methods of reproduction of abstracts. At present nothing is allowed for the cost of reproducing the brief.

¹² The specific questionnaire covered 133 cases recently taken on appeal to the Illinois Appellate Court for the First District. Of the 133 specific questionnaires mailed, 19 were returned by the recipients.

¹³ Ill. Sup. Ct. R. 40; Ill. App. Ct. R. 8.

¹⁴ Address by Judge Grover Neimeyer, Chicago Bar Association Annual Banquet, April 1, 1953, in Rall and Neimeyer, *New Appellate Court Rules—An Explanation and Analysis*, 35 Chi. B. Rec. 311, 318 (1954). In his address Judge Neimeyer raised the following criticisms of non-printed methods of reproducing abstracts: "We have had a few abstracts filed in these other forms. If the abstract is at all large, the abstract that is multilithed or mimeographed, on eight and a half by eleven pages, is cumbersome and awkward. It won't open up and lie flat on the table when you are working with it, and I doubt if it saves anything in money except to the 'haves,' and I think nearly all legislation ultimately results in benefit to the 'haves' and forgetfulness of the 'have nots.' The purpose of this rule was to aid the 'have nots,' to help out in the little case. I am told that multilith and mimeographed forms require about five pages for what is three pages in the printed abstract. The larger firms have the means of multilithing or duplicating their abstracts, and they greatly reduce the cost. But I am told that the poor devil who is obliged to go out into the open market and hire a firm in that line of business, saves little, if anything. . . . [I]t may be that we judges, in self-defense, may promulgate a rule of our own, doing away with that method unless greater advantage from it is shown." Judge Neimeyer's concluding observation was that the most money saving could be achieved by either cutting down the abstract or eliminating it altogether.

¹⁵ Note, *The High Cost of Appellate Litigation*, 1953 Wis. L. Rev. 152.

To ascertain the views of the members of the bench of these two criticisms, the CHICAGO-KENT LAW REVIEW contacted, by letter, a Supreme Court justice of ten of the thirty states which presently allow the reproduction of briefs on appeal by methods other than printing, these men having had actual experience with the less costly methods of reproduction for several years. Several judges of the Illinois Appellate Court for the First District of Illinois were also asked for their opinions of these criticisms in an effort to determine their attitudes toward a possible amendment of the present rules.¹⁶

The following are excerpts from the replies of the judges of the several states contacted which presently allow reproduction of appellate papers, including briefs, by methods other than printing:

*Arizona:*¹⁷ First, as to the [argument that] non-printed briefs that they are neither readable nor easily manipulated and consequently tend to result in a decrease in the efficient disposition of an appeal. It is true that sometimes briefs are submitted which are difficult to read. We have a rule of court which permits the striking of such briefs and requires that not less than third impressions be submitted. I personally do not feel that they are less easily manipulated and do not understand why they tend to decrease their efficient disposition. Moreover, many of the firms in this state have acquired low cost reproduction machines which are easily operated and which duplicate the original. . . . May I express myself as saying that I am personally opposed to the idea that the removal of cheaper methods of reproduction would tend to decrease the number of spurious appeals. The danger lies in that the honest litigant with the meritorious appeal may be unable to finance it. Justice should not be the special prerogative of the rich or well to do, rather it should be available to each according to his needs. . . . [I]t is not the spurious appeal which cuts deeply into the court's time, for these are readily recognized and disposed of summarily.

*Wisconsin:*¹⁸ We do not find that briefs reproduced by offset are as satisfactory as printed briefs although we permit such inferior briefs in the interest of reducing the cost of appeals. . . . While we do not regard the offset method as equal to the printed method, we believe that this cheaper form provides the competition to printers which holds down printing costs and has had the effect in reducing the expense necessarily incurred by parties to appeals in our court.

¹⁶ See Brand, *The Impact of the Increased Cost of Litigation*, 35 J. Am. Jud. Soc'y 102 (1951), wherein the author says that "[r]esistance by the judges to such changes has been strong, but there are indications that in many states the opposition is diminishing, due no doubt to a recognition of the seriousness of the problem. It appears that the elimination of the printing requirement, in whole or in part, and the more liberal permission to use originals, photostats or copies of exhibits are purely administrative matters which the courts, aided by members of the bar, should currently consider. The responsibility is theirs."

¹⁷ Letter from a Justice of the Arizona Supreme Court to the CHICAGO-KENT LAW REVIEW, July 19, 1962.

¹⁸ Letter from a Justice of the Wisconsin Supreme Court to the CHICAGO-KENT LAW REVIEW, July 16, 1962.

*Indiana:*¹⁹ Rule 2-19 of our Court with reference to briefs provides: 'All briefs shall be printed in type not smaller than 11-point with at least 4-point spaces between the lines, or typewritten, or reproduced by photographic or other method similar to printing or typing, and as legible. . . ' We have found that this rule works very satisfactorily. It has been a rare occasion when the briefs have not been legible and if we find them such, we insist that counsel replace the briefs with legible copies.

*Delaware:*²⁰ [In 1951] the requirement of printed briefs as well as a printed record, which theretofore had been the rule, was dispensed with. . . . Under the old practice the taking of appeals in Delaware was materially discouraged since everything before the Appellate Court was required to be printed including the entire record. [T]he printing bills involved, even in a simple case, were substantial. . . . I note that you state that one of the criticisms of dispensing with the requirement of printing is that it would tend to increase the number of spurious appeals. It is, of course, true that since putting into effect the present system, we now have a number of appeals which might be described as spurious but which I would rather describe as trifling. In any event, they have not reached the proportion of becoming a burden upon the Court's time. . . . With respect to the criticisms made of nonprinted papers to the effect that they are not readable nor easily manipulated. . . ., I would say that in the experience of our Court this is not a valid criticism. Most of the nonprinted papers filed with us are reproduced either on a duplicating machine or a mimeographing machine. It is a rarity when typewritten briefs are filed. . . . The physical limitations of a typewriter in making carbon copies almost, of necessity, prevent the filing of a typewritten brief. . . . Our rule requires the duplicating of briefs on a uniform size paper. . . . Consequently, the briefs are easily manageable. The only difficulty along this line occurs when one set of briefs might be printed and the other duplicated.²¹ This, however, has not proved to be a great problem. . . . Generally speaking, the members of this Court and, I believe, of the bar of Delaware, regard the change in system as a desirable one. Primarily it gives a losing party a means of review as cheaply as possible. The former requirement of printing . . . often foreclosed an appeal in a case involving other than a large amount of money. This reason, if no other, it seems to us, makes the system now followed in Delaware the more desirable one.

*California:*²² *** Approximately 20 years ago the Rules were amended to permit briefs in civil appeals to be duplicated by processes equally legible to printing. The Rule presently provides: 'The terms "other duplication process" and "other process of duplication" mean ditto, mimeograph or other method of duplication (except typewriting) which will produce clear copies equally legible to printing.' (R.40(1)). . . . Inasmuch as the processes authorized by the Rule are to be 'equally legible to printing,' the Rule has satisfactorily served its purpose. . . . Our Rules have always permitted briefs

¹⁹ Letter from a Justice of the Indiana Supreme Court to the CHICAGO-KENT LAW REVIEW, July 16, 1962.

²⁰ Letter from a Justice of the Delaware Supreme Court to the CHICAGO-KENT LAW REVIEW, July 17, 1962.

²¹ As is true with all of the states which presently allow the reproduction of appellate papers by methods other than printing, Delaware allows printing at the option of the counsel. (Footnote supplied.)

²² Letter from the Clerk of the California Supreme Court to the CHICAGO-KENT LAW REVIEW, August 6, 1962.

in criminal appeals and in original proceedings for various writs to be in typewritten form. All copies of authorized documents must be legible before they are filed.

The following are excerpts from comments given by various judges of the Illinois Appellate Court for the First District concerning non-printed appellate briefs:²³

Generally speaking, the mimeograph and multilith papers are quite hard to read and are a strain on the eyes, particularly when they run to about one hundred pages. The new system of allowing the submission of such briefs on motion by the court is quite adequate to protect litigants who might find it difficult to afford the expense of printing.²⁴

I am definitely not in favor of briefs or abstracts in any form that would be less legible than the original-typewritten form; in my opinion, such briefs which have been allowed by the court on motion are less appealing and *less effective* on the court. Where, in my division, permission is granted to submit briefs in other than printed form, there is insistence that these be the original copies or the equivalent thereof. I find that the number of the requests to submit other than printed briefs has been on the increase. [Emphasis by judge]

I think a rule allowing the submission of briefs in other than printed form as a matter of right would probably be an effective means of permitting appeals where litigants have financial difficulties, but I feel that such briefs are generally hard to read.²⁵

Since multilith, mimeograph or other similar system would require more pages than printing for a given brief, the cost factor would be about the same. The probable effect of such a proposed change would therefore only help large firms which have such duplicating equipment; this would most probably defeat the economy motive of such a measure.²⁶

III. COMMENTS BY ATTORNEYS

A most important part of the general questionnaire was the request for comments. The foregoing section dealt with comments by members of the bench, focusing on the judge's likes and dislikes of non-printed appellate papers. The "comments" section of the general questionnaire, on the other hand, elicited a large number of comments from the attorney's point of view. Of the 106 replies, 40 of them were accompanied by the recipients' comments, some of which are reported below.

²³ These comments were received by the CHICAGO-KENT LAW REVIEW in personal interviews with the judges during August of 1962.

²⁴ This seems to be the prevailing attitude among the Appellate Court personnel, without regard to the following comments.

²⁵ See Memorandum of the Temporary Commission on the Courts Submitted to the Court of Appeals of New York 11, November 15, 1954, cited in Wilcox, Karlan and Roemer, *Justice Lost—By What Appellate Papers Cost*, 33 N.Y.U.L. Rev. 934, 958 (1958). After having made a study of the problem, the Commission stated that ". . . there is no significant difference in reading efficiency and resultant eyestrain between records and briefs printed . . . and mimeographed. . . ." See also Desmond, *supra*, n.2 at 230; Note, *The High Cost of Appellate Litigation*, 1953 Wis. L. Rev. 152, 154-155.

²⁶ Comment by Clerk of the Illinois Appellate Court for the First District of Illinois, August, 1962.

We see no reason why Appellate Court briefs could not be typewritten; new forms of typewriters developed over the years which produce a large number of completely legible carbons make this feasible. We would favor a nominal Appellate Court filing fee (say, \$5.00,) typewritten briefs, and a stiff penalty on an appellant who does not prevail.

Allowing briefs on appeal to be mimeographed would have little merit. Where the record is large, reproduction other than by printing seems to increase costs nearly as much as any savings in the printing costs.

I am for greater enforcement of costs taxable against the losing party; this would result in more settlements and fewer frivolous appeals.²⁷

If a method is sought to inexpensively reverse a trial court's decision, why not an inter-court appeal?²⁸

Where an appeal is an exception to the general run of matters, the appellant looks to the *printer* for both guidance and advice in matters of procedure. We think that a realistic award of costs to the victor, including reasonable attorney fees, would promote the 'meritorious appeal' and discourage the other species; this cost award should be automatic upon affidavit, and not rest in the court's discretion, to be effective (cf. 178 N.E.2d 650.²⁹)³⁰

Appellate rules should be re-drafted for clarity and greater flexibility or mode of appeal, to enable the *average* lawyer to carry on an appeal. Most appeals are referred to an appeals specialist, thereby increasing the total cost to the client.

The rule permitting abstracts to be mimeographed gives adequate cost reduction for all meritorious appeals; to reduce all costs would flood the courts with appeals.

Appeals to the *Appellate* Courts should not be printed. As to those to the *Supreme* Court, printing seems to be more apropos.

It would seem to me that briefs and printed records could be waived wherever the following situations appeared: (1) an agreed statement of facts; (2) where an appeal is based on the pleadings alone; or, (3) where the record, other than the pleadings, is short. It would also seem that in many instances a simple type of an appeal ought to be available, and the reviewing court could have the lower court record sent up in toto. Typewritten briefs with photo copies would adequately cover the legal

²⁷ Eight other parties concurred in this view.

²⁸ In this connection another attorney commented that "Municipal Court Chief Justice Drymalski had a splendid substitute for the present system. Following trial and upon request for review, counsel by agreement would select 3 or 5 Municipal Court Judges, including or omitting the trial judge; that same day the judges so selected would sit *en banc* and listen to the statements of both counsel, the alleged erroneous rulings by the trial judge, the applicable law as each counsel saw it, and would interrogate the counsel about the evidence offered and received or rejected. All this was done at no monetary cost to the parties, but at the expense of the appellant waiving all further rights of appeal."

²⁹ *Ready v. Ready*, 33 Ill. App. 2d 145, 161, 178 N.E. 2d 650 (1961), which deals with the taxing of reasonable attorney's fees at trial as costs on a litigant who pleads frivolous or false matters, or brings a suit without any basis in law, and thereby causes his opponent to defend against an untenable action. The trial court can so tax in a summary manner, pursuant to Ill. Rev. Stats. 1959, c.110, § 41.

³⁰ Three other parties concurred in this view.

points, and the argument could be included in the brief; additional oral argument could still be utilized as at present.³¹

Under the Selective Service Law during the War, the classification given to a registrant was quite frequently very important. The registrant who was dissatisfied with his classification could merely write the Draft Board a postal card, stating that he was appealing from the classification. When that card was received, the clerk had no alternative other than to mail the registrant's file to the Appeal Board which made its own classification from the file that was sent up. Perhaps in small cases such a procedure would be in the interests of justice if allowed by the courts.

If some study could be made of ways and means to reduce the costs incurred in the trial courts, to shorten the time consumed at trial, to eliminate the unnecessary matters which pad the transcript of proceedings, and to eliminate all irrelevant and immaterial matters on the trial, the costs of the trial would be sharply reduced, the costs of an appeal would likewise be far smaller, and the Appellate Courts would not be burdened with a mass of stuff that should never be brought up on appeal.

Your questions are directed at printing costs. I agree that this seriously impairs appeals of meritorious causes, but what about the extreme cost of the transcript of proceedings? Three of my cases are now in the process of appeal and the transcript costs accumulate about \$4000.00.³²

I have come to the reluctant conclusion that there are no savings in costs in mimeographed or lithographed briefs. As a matter of fact, mimeographed briefs cost more than printed briefs. The high cost factor in mimeographed or typewritten briefs is stenographic and secretarial help. The fact is that the mimeographing and typewriting of briefs and records is very uneconomical, and a good deal of waste is experienced. This is not true of printed briefs, because printers undertake proofreading and other functions that serve to save time and present a better record for review. . . . My experience has been that costs in undertaking appeals are prohibitive. It is my opinion that special efforts should be made by the organized bar, the legislature and the courts, together with the institutions of learning, to find expeditious and economical means of prosecuting appeals. It is my belief that the electronics industry should be enlisted in the task of fabricating low cost methods of duplicating records and briefs so as to aid appellate review. My observation has been that we are far from an "enlightened" stage of handling cases on review in what most people will say is an "enlightened age."

IV. CONCLUSION

Several observations may be made concerning the foregoing material. The judges whose rules allow the reproduction of appellate papers, including briefs, by methods other than printing are in the main in favor of such methods, notwithstanding the criticisms to which these methods have been subjected. The judges whose system requires that appellate briefs be printed express the fear that a change in the present rules would serve to hinder the efficient disposition of an appeal. Attorneys in the Chicago area, while they

³¹ In this connection see N.Y.C.P.L.R. 5525 & 5527, effective September 1, 1963, which deal with transcripts and records on appeal.

³² Ten other parties concurred in this view.

express the view that there are other factors which hinder taking appeals besides printing costs, are nevertheless in accord that the allowance of non-printed briefs on appeal would tend to result in an increase in the number of meritorious appeals. The authors recommend that the present rules requiring the printing of briefs on appeal be changed to allow the reproduction of briefs by methods other than printing.³³

PETER C. ROLEWICZ
JEROME T. BURKE

³³ For a comprehensive study of the cost of conducting an appeal, see Institute of Judicial Administration of New York University Law School, *Cost of Appeals Study*, 2-U1, January 15, 1954, especially pp. 19-23 dealing with methods of reproduction and pp. 27-32 dealing with recommendations and anticipated results therefrom.