

MANAGING CASEFLOW IN STATE INTERMEDIATE APPELLATE COURTS: WHAT MECHANISMS, PRACTICES, AND PROCEDURES CAN WORK TO REDUCE DELAY?

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ABSTRACT

American state intermediate appellate courts that succeed in handling their caseloads expeditiously have taken responsibility for the entire appellate process, beginning with the filing of the notice of appeal. They have recognized the public interest in minimizing delays, have committed themselves to deciding cases in a timely manner, and have mobilized themselves to pay sustained attention to effective case processing. While resources are important to an appellate court's effectiveness in handling its caseload, how the resources are actually *used*—i.e., what caseload management strategies and techniques are employed by the court—can make a significant difference in case processing

time. Further, the traditions or culture of the court, as well as the leadership and commitment of the chief judge, play a very important role in the case processing time.

Those are central findings of the Appellate Caseflow Management Improvement Project, conducted by the Justice Management Institute (JMI) under a grant from the State Justice Institute. The project was designed to build on what has been learned through previous studies, focusing particularly on how appeals are processed in six intermediate appellate courts: two in Ohio, two in Washington State, and the statewide courts in Maryland and New Mexico. The report presents basic information about workloads, resources, operating procedures, and case processing time in the six courts and documents a number of difficulties in making cross-jurisdictional comparisons of appellate case processing times. Despite the methodological difficulties, the researchers were able to see major differences among the courts and to identify a number of common problems that impede effective case processing.

Key operational problems identified as common to many appellate courts include delays in the preparation and filing of trial court transcripts, delays in the appointment of appellate counsel for indigent defendants, case overloads facing attorneys responsible for handling appeals in small law offices and in the offices of major institutional litigants, leniency on the part of appellate courts in the granting of extensions of time to file briefs, the sheer complexity of some cases, and (in some courts) the existence of a large backlog of undecided cases. Among mechanisms proven successful in assisting intermediate appellate courts with reducing delays and improving performance, those that involve monitoring and troubleshooting stood out. Often, technological innovations make it possible to conduct some activities far more swiftly and efficiently than in the past, but they rarely reduce the need for ongoing supervision of the process.

Looking to the future, the report recommends three initiatives to help catalyze action—and, ultimately, significant improvements—in state intermediate appellate courts: development of a system for regularly collecting and publishing comparable data on the workloads, resources, structures, operating procedures, productivity, and case processing times of intermediate appellate courts; design, implementation, and evaluation of demonstration projects that incorporate an array of modern procedures and technologies and are aimed at significantly improving the expeditiousness of appellate case processing; and design and presentation of educational programs, focused on appellate caseflow management, for judges and court staff members.

I. OVERVIEW OF THE PROJECT AND THIS REPORT

A. *Objectives of the Project*

Fair and timely resolution of cases is at the heart of the business of the courts and is essential for public confidence in the courts. It is as true in appellate courts as in trial courts that “justice delayed is justice denied.” In some ways, appellate delays are especially pernicious:

- Appellate delays prolong litigation and undermine the public interest in final

resolution of litigants' disputes. Parties on appeal remain enmeshed in the dispute process and are unable to get on with their lives and business.

- Reversal of a trial court decision or remand for further proceedings extends a dispute even longer. The longer the appellate process takes, the more likely it is that witnesses will be unavailable, memories will fade, and evidence will be stale when the case is again before the trial court.
- Appellate delays affect not only the parties to the case that is delayed, but also the actions of others who are involved in cases that have similar facts and issues, thereby contributing to uncertainty in law and in business and social relationships.
- Lengthy appellate delays disregard well-documented public concern about court delay. When appellate courts cannot manage their business well, they contribute to a negative model of court processes and tend to undermine public trust in the legal system.

The relatively little research that has been conducted on case processing times in appellate courts has tended to focus first on the basic task of documenting how extensive the delay is and next on seeking to ascertain which of several factors—resources, court structure, procedures, or management, to name those most frequently mentioned—best explains variations across courts in the pace of appellate litigation. This project has been designed to build on previous work in the field and to produce practical tools to enable appellate court judges and managers to reduce backlog and delay. The aim has been to develop a better understanding of why some appellate courts are able to handle their business (or stages of that business) expeditiously while others are much slower; and learn why and how the expeditious courts have been able to overcome the obstacles that plague the slower courts, with particular attention given to techniques that intermediate appellate courts have used to reduce backlogs as part of an overall delay reduction program. The project has had three main objectives:

- To broaden the base of practical knowledge about how appellate courts function and about variables that affect appellate delays;
- To identify approaches and techniques that work effectively in minimizing delays in appellate decision-making, without compromising the quality of the decisionmaking; and
- To develop work products—including a self-assessment guide and a final report that has recommendations for practical steps that can be taken to reduce appellate backlogs and delays—that can be used by appellate courts interested in reducing backlogs and delays and in generally improving appellate court caseload management.

In conducting the project, we have interviewed more than fifty persons: appellate judges; appellate court clerks and administrators; judicial adjuncts; conference, settlement, and staff attorneys in appellate courts; appellate counsel from state attorneys-general's offices and public defender offices; attorneys in private practice; and academic observers. The six courts studied provided case processing data to the extent that they were able, and we have worked with them to refine the data for use in comparative presentation. The difficulties involved in this process are discussed in the report. We are also appreciative of the

interest shown by thirty-five members of the National Conference of Appellate Court Clerks who attended a focus group we conducted on appellate court case processing improvements at their annual seminar.

By examining policies and procedures in six intermediate appellate courts that vary considerably in the speed at which they handle cases—three relatively fast, three somewhat slower in processing cases; two pairs within states, two other state-wide courts—we seek to move closer to identifying strategies and techniques that can be broadly applicable in reducing appellate delays. If each court is examined more closely, however, it can be seen that the strategies and mechanisms used by these courts to manage their caseloads are closely linked to the long-term attitudes and practices that the court has developed toward its work and its clientele. In Part II we present brief snapshots of these courts by way of framing the analysis of how they operate.

The report has four key themes. First, courts that have succeeded in reducing appellate delay have organized and mobilized themselves toward this goal. These courts, and in particular, their leaders, have recognized the problem of appellate delays as one meriting their sustained attention. They have developed and implemented particular mechanisms deemed appropriate for each court and its environment.

Second, successful courts have communicated their intentions and actions in reducing appellate delay to the bar, especially, and also to the executive branch and to legislative appropriating bodies, litigants, and the public.¹ Appellate courts that have recognized the growing interdependency of courts within the greater communities they serve have been able to increase their abilities to meet the rising expectations of effective performance.

Third, the expeditious courts, along with requiring those litigating before them to observe the time limits set by rules, have in turn committed themselves to deciding cases in a timely manner. These courts have instituted procedures to ensure that cases do not linger in one tardy judge's chambers or get lost in the many cracks between chambers of participating judges. Their judges have reviewed the argued-and-undecided docket frequently and determined how they can best work together to hash out problems delaying a decision.

Lastly, the courts that have dealt effectively with delay have learned that the court must accept responsibility for taking control of the entire appellate process from the filing of the initial notice or petition through issuance of the opinion or other ruling and any en banc procedures. For effective appellate courts, there has been no real division of cases among so-called "lawyer time" and "judge time." Rather, the entire process has been viewed as an integrated one. Expeditious courts have monitored preparation of the trial transcript and the clerk's record, ensured the efficient handling of motions and timely filing of briefs and appendices, and issued opinions promptly.

1. Examples of communication as discussed here are examined in *infra* Part IV.

B. The Project's Approach

This project has examined specific methods used in each of the six participating courts to handle its caseloads. Because the value of any individual technique cannot be definitively evaluated by assessing its impact in only one court, we have not presented any view as to the overall effectiveness of a particular approach or method in itself. Instead, we have sought to gauge how well an approach or method served the court employing it in resolving cases expeditiously.

Examining the processes used in individual courts helps us gain a sense of what general approaches and specific mechanisms contribute to expeditious case processing in appellate courts. As Joy Chapper and Roger Hanson observed some years ago, trial court caseload management principles are clearly applicable to appellate courts.² Even as a trial court's culture influences the pace of litigation,³ it is similarly the case that in the small, somewhat cloistered world of appellate courts, the prevailing culture of the court is likely to help explain how speedily and effectively the appellate court handles its caseload. Although the relationship to resources may become important—especially in how the court deals with augmenting the resources needed to litigate by the major institutional litigants who appear before the judges (the appellate sections of state or county prosecutorial and public defender offices)—even the most useful mechanisms intermediate appellate courts employ to produce speedier case processing often arise directly from the courts' own cultures.

In addressing issues of appellate case processing, it is important to keep in mind the significant difference in magnitude between appellate courts and trial courts. In contrast to trial judges, intermediate appellate judges still work on relatively small case dockets. Individual appellate judges work on hundreds rather than thousands of cases, and they normally write decisions in far fewer than 100 cases a year.

Additionally, appellate courts are collegial bodies. They hear cases in panels (typically consisting of three judges, but sometimes more) and the decision-making processes—both for individual cases and for caseload management policy—tend to be more complex than those of trial courts. The ability of judges even in large-volume intermediate appellate courts to retain a focus on the particular case looms large in any effort to assess the ways in which these courts function. “Every court has its own culture” was the way one intermediate appellate court judge, bent on changing the way her court operated, described to one of the authors how judges in that court tended to spend the same amount of time on each of their cases, regardless of the differences in complexity among them. While recognizing that national-scope judicial education and training programs could shape a new judge's view of how an appellate court should

2. JOY A. CHAPPER & ROGER A. HANSON, NAT'L CTR. FOR STATE COURTS, INTERMEDIATE APPELLATE COURTS: IMPROVING CASE PROCESSING 9-10 (1990).

3. THOMAS W. CHURCH ET AL., JUSTICE DELAYED: THE PACE OF LITIGATION IN URBAN TRIAL COURTS 54 (1978).

function, far more important in the change-oriented judge's view was the immediate and particular court world to which the new judge returned.

C. Rationale for Studying Intermediate Courts

The project focuses on intermediate appellate courts ("IACs") because these are the courts in which the great bulk of appellate cases are resolved. Unlike state courts of last resort, IACs have limited power to control their caseloads. Most receive and dispose of far greater numbers of cases than do state supreme courts. In a few states, the court of last resort exercises great control over the intermediate appellate court or courts by sifting through appeals to select those that should proceed to direct review in the highest court and sending others to the intermediate court.⁴ In addition, the highest courts may decide which intermediate appellate court opinions are approved for publication. Indeed, in some states, the issuance of a highest court opinion even results in the expunging of the intermediate court ruling.

While state courts of last resort often play a leadership role through their exercise of general superintendence authority over the court system, intermediate appellate courts normally have no other assignment than to resolve the cases brought to them for decision. They are the "work horses" of appellate litigation in most states. In total, there were almost 200,000 cases filed in 1998 in state intermediate appellate courts.⁵ Expeditious resolution of these cases is important for the litigants in these cases and for public confidence in the courts.

D. Information Needs

There has been only sporadic attention to determining the extent and sources of delay in state appellate courts, and much remains to be done even to provide reliable information at regular intervals that describes how long these courts take to dispose of their cases. For example, there is no regularly available national report of times between filing and disposition for state appellate courts. An effort to gather such data was made for several years and discontinued almost two decades ago.⁶ The most recent national-scope study made great efforts to assemble this information and contained 1993 statistics from thirty-five intermediate appellate courts.⁷ No one has since continued to provide this information on a national level. As discussed in Part II, this project's comparatively modest effort to collect comparable data from the six participating

4. The Maryland Court of Appeals, the state's highest court, may decide to take cases directly, through its review of all cases when they are first filed in the intermediate court of special appeals. This is also a practice employed in Massachusetts.

5. EXAMINING THE WORK OF STATE COURTS, 1998, at 87 (Brian J. Ostrom & Neal B. Kauder eds., 1979) (reporting the total cases filed in 1998 as 199,558).

6. See, e.g., NAT'L CTR. FOR STATE COURTS, STATE COURT ANNUAL REPORT 1981 and 1985. In 1981, this continuing series reported time-in-stages and on-appeal information for fewer than ten IACs. By 1985, the table had been eliminated from the report.

7. See ROGER A. HANSON, NAT'L CTR. FOR STATE COURTS, TIME ON APPEAL 5 (1996).

courts, using the courts' own reports on case processing times, achieved only limited success.

E. Earlier Studies

There have been three principal comparative studies of appellate case processing time, each conducted by researchers for the National Center for State Courts. This section briefly summarizes approaches and key conclusions from those three projects.

1. *Martin and Prescott's 1981 Report*.—John Martin and Elizabeth Prescott analyzed data collected on appellate cases filed during 1975-76 in seven intermediate appellate courts and three courts of last resort.⁸ They found that the courts varied dramatically in the time required to process cases, with average total time in intermediate appellate courts ranging from 240 to 649 days. Looking at the relationship between volume and case processing times, they found that courts with larger caseloads took no longer (or only slightly longer) to process their cases than did courts with smaller caseloads. They also found—surprisingly—that courts with more filings per judge were appreciably faster than courts with fewer cases per judge. Martin and Prescott noted that the lack of a positive statistical relationship between case volume and delay did not mean that there was no interrelationship, but stressed that the problem was much more complex than too many cases for too few judges. Perhaps their most important conclusion was that the structure and procedures of appellate courts appeared to have a greater impact on case processing time than did the number or type of cases filed. Optimistically, they emphasized that “state appellate courts are not . . . at the mercy of . . . ever-increasing caseloads. When necessary, [they] can modify their structure and organization or adjust their procedures to meet the demands of larger caseloads.”⁹ In their words, “Workable solutions to delay are available. However, each appellate court is in many ways a unique system. No single solution or set of solutions will necessarily solve every court's problems. Solutions must be developed within the context of a particular court's goals, needs, structure, and organization.”¹⁰

2. *Chapper and Hanson's Study of Four Intermediate Appellate Courts*.—A decade after the Martin and Prescott study was completed, Joy Chapper and Roger Hanson conducted a comparative study of four state intermediate appellate courts, drawing on case record data from appeals filed in 1986 and 1987.¹¹ Several of their key findings have been especially relevant for the work of this project:

- Intermediate appellate courts differ in their subject matter jurisdiction. Consequently, there are considerable differences across the courts in the

8. JOHN A. MARTIN & ELIZABETH A. PRESCOTT, *APPELLATE COURT DELAY*, at xii & n.1 (Michael J. Hudson ed., 1981).

9. *Id.* at xxi.

10. *Id.*

11. See CHAPPER & HANSON, *supra* note 2, at xv.

composition of their caseloads.¹²

- “The volume of appeals filed or docketed overstates a court’s actual workload,” because many appeals “are dismissed or abandoned before they reach the court for consideration.”¹³
- None of the courts had what could be described as a comprehensive case management system, with “information on and control over the processing of every appeal from the time a notice of appeal is filed.”¹⁴
- The courts varied in their concern for overall appeal time. All of them “pa[id] particular attention to the time between submission” of briefs and the court’s decision, and three had information on elapsed times during this period. However, “considerably less data [were] available in most of the courts on the time consumed by other stages of the appellate process.”¹⁵
- Principles distilled from the trial court experience with caseload management—including exercising early and continuous control, creating the expectation that scheduled events will take place as planned, and monitoring case processing time—have clear parallels in appellate court case processing. However, “these principles will not be applied fully until information systems are organized to provide decisions upon which appropriate management decisions can be based.”¹⁶
- Not all appellate courts collect case-processing time information, and there is little documentation of key aspects of court operations, including caseload composition, appeal attrition, and procedures for handling appeals with various characteristics. The unavailability of this sort of information makes it difficult for appellate courts to identify problems or opportunities for improvement, precludes them from assessing their own performance in relation to others, and makes it difficult to undertake meaningful cross-court analysis of the limited caseload and case processing time data that do exist.¹⁷

3. *Hanson’s Time on Appeal Study*.—The most recent comparative study of appellate case processing time, conducted by Roger Hanson, used data from appeals resolved during 1993 in thirty-five intermediate appellate courts.¹⁸ The data indicate that although a few IACs handle their cases very expeditiously, the vast majority can fairly be characterized as being somewhat slow to very slow. Only five of the thirty-five intermediate appellate courts studied met one primary “reference model” incorporated in the American Bar Association’s (ABA) standards for timely disposition of appellate cases: completion of at least seventy-five percent of all cases within 290 days. Four of the five were

12. *Id.* at vi, 4-5. Chapper and Hanson noted, however, that there were some similarities across the courts in terms of the areas of underlying civil law and types of criminal offenses that were involved in appellate cases.

13. *Id.*

14. *Id.* at 55.

15. *Id.* at 57.

16. *Id.* at vii.

17. *Id.* at 61-62.

18. HANSON, *supra* note 7, at 5.

specialized intermediate appellate courts—i.e., courts handling only civil appeals or only criminal appeals. Nine courts took at least 580 days, twice the ABA standard, to resolve seventy-five percent of their cases. Hanson concluded that four main factors contributed to slower case processing:

- resources—in particular, having more appeals per law clerk;
- method of selecting the presiding or chief judge—slower courts tended to select their chiefs by an internal procedure such as seniority or election by the bench;
- regional, rather than statewide, jurisdiction; and
- procedural characteristics—for example, “requir[ing] a reasoned opinion in every case” and placing no limitations on oral argument.¹⁹

After conducting a regression analysis of the 1993 data, supplemented with some new information on selected managerial aspects of the courts, Hanson subsequently concluded that resources—in particular, the number of judges and law clerks in relation to filings—are the key determinants of appellate court expeditiousness.²⁰ He took the view that how the resources and mechanisms were utilized—what might be called the management factor—was less influential, although he acknowledged that “[b]asic principles of modern case management did appear to encourage timeliness.”²¹

F. Organization of the Report

The remainder of this report is organized in four Parts. Part II presents snapshot profiles of the six courts, information about their workloads and resources, and data on case processing times in the courts. It also includes a discussion of key problems affecting caseload management that emerge from a review of the quantitative data and from interviews with appellate practitioners. Part III focuses on ways in which new technology can be used to address appellate caseload problems and produce substantially more expeditious resolution of appeals. Part IV draws on information acquired in this project plus insights from earlier research in both trial and appellate courts to develop a framework for future efforts for improving appellate caseload. Part V outlines recommendations for specific appellate caseload management initiatives.

There are three appendices. Appendix A is a note on the impact of technology on appellate caseload management, prepared by Dr. Roger Hanson. It supplements the material in Part III, focusing particularly on management information systems, issue tracking, and electronic filing. Appendix B is a catalog—or simple listing—of appellate caseload management mechanisms and techniques that have been proposed (and in some instances implemented) over the past three decades. Appendix C is an “Appellate Court Caseload Management Self-Assessment Questionnaire” that can be used by practitioners

19. *Id.* at 39-40.

20. See Roger A. Hanson, *Resources: The Key to Determining Time on Appeal*, CT. REV., Fall 1998, at 34, 42-43.

21. *Id.* at 35.

to gauge their own court's effectiveness on key dimensions of appellate caseload management.

In examining the work of the six courts and preparing this report, we have sought to build upon insights from the earlier studies without uncritically accepting their conclusions. For example, the relative importance of resources vis-à-vis caseload management strategies remains for us an open question. However, some of the observations of earlier research—notably the consistent findings that court caseloads and case management practices vary widely, and that information is seldom used well for caseload management and problem solving—have been helpful in framing our own work. It is our sense that both resources and management strategies are important. Resources are essential, but how they are used—what the court's clerk, judges, law clerks, staff attorneys, and other staff members actually *do* after a notice of appeal is filed, what standards and expectations they set for themselves and for the appellate bar, and what combination of caseload management techniques they employ—seems to make a significant difference, as do the traditions and general culture of individual courts. This report does not contain definitive findings, but it should help to advance general understanding of how appellate courts function at the start of the twenty-first century. It should be viewed as primarily an effort to describe appellate processes, to spotlight key issues, and to identify opportunities and strategies for improvement.

II. CASELOADS, RESOURCES, AND CASE PROCESSING IN THE SIX COURTS

Managing cases to produce fair and timely decisions should be a primary goal of every intermediate appellate court. However, studies have shown that most appellate courts do not decide cases as quickly as national standards (and the experience of some courts) suggest is possible.²² Some appellate courts, though, have become more adept than others at moving cases more speedily and effectively from filing to disposition. The six courts studied in this project reflect this diversity: three could be fairly characterized as relatively expeditious and one stands in the middle. The other two courts, although still processing cases at a relatively slower speed, have in recent years recorded progress in reducing the total time that their cases are on appeal. The six courts and their locations are:

- Maryland Court of Special Appeals (Annapolis)
- New Mexico Court of Appeals (Santa Fe)
- Ohio Court of Appeals, Eighth District (Cleveland)
- Ohio Court of Appeals, Tenth District (Columbus)
- Washington Court of Appeals, Division I (Seattle)

22. See JUDICIAL ADMIN. DIV., AM. BAR ASS'N, STANDARDS RELATING TO APPELLATE COURTS §§ 3.50-3.57 and accompanying commentary (1994). Roger A. Hanson's book entitled *Time on Appeal* is the most recent of several studies confirming the overall slowness of appellate caseload processing nationally. HANSON, *supra* note 7; see also CHAPPER & HANSON, *supra* note 2; MARTIN & PRESCOTT, *supra* note 8.

- Washington Court of Appeals, Division II (Tacoma)

This Part provides an overview of case processing in each of the six courts. It begins with a brief description of each court, followed by tables providing an overview of the workloads and human resources (judges, other judicial officers, law clerks, and staff attorneys) available to handle the caseloads in the six courts. Following a discussion of the courts' varying approaches to managing their caseloads, we present data on case processing times, overall and by major stages of the appellate process. The Part concludes with a discussion of key problems affecting appellate caseload management that emerge from analysis of the quantitative data and from interviews with judges and court staff members in the six participating courts.

A. Profiles of the Six Courts

The judicial complements of all six of the courts studied in this project are filled by popular election, although the chief or presiding judges are selected either by the governor or by the judges of the court. All of the courts assign cases to three-judge panels for consideration, with some courts having authority to rehear cases en banc following panel decision. Each of the courts has some kind of screening mechanism that is used to assign cases that meet certain criteria to different calendars featuring full or expedited/summary procedures. Jurisdiction of these courts is almost entirely mandatory: each court must review all of the cases brought to it, with no authority on its part to exercise selectivity in determining which cases it will adjudicate. (By contrast, most appellate courts of last resort exercise considerable discretion in deciding which cases to accept for review.) Only the term of the Maryland court's chief judge is indefinite; in each of the other courts, the chief or presiding judge serves a one- or two-year term, although these may be renewable.

1. *Maryland Court of Special Appeals*.—This thirteen-judge court is Maryland's statewide intermediate appellate court. Six of the judges are elected statewide and seven from the state's judicial circuits, while the chief judge is selected by the governor. Most jurisdiction is nondiscretionary. Each judge has two law clerks and a secretary. The court's central staff attorneys prepare recommendations on applications for allowance of appeal and proposed opinions in substantive summary docket cases and most criminal cases submitted on briefs. The court has been implementing a new information system. Civil cases may be sent for a prehearing conference if one screening judge so determines. Although most court reporters in the state use computer-aided transcription (CAT) to prepare appellate transcripts, the filing of civil records is slow. One major procedural technique helps keep cases on schedule: after the clerk's office reviews the record, a scheduling order is issued setting the month of argument. Cases are assigned to panels at least a month before the argument month.

2. *New Mexico Court of Appeals*.—This ten-judge court is the state's single intermediate appellate court. The chief judge, selected by vote of the full court, has traditionally been the most senior judge actively sitting on the court and serves a two-year term. The court's jurisdiction, which is almost all nondiscretionary, has been enlarged as the Supreme Court of New Mexico has

increased the discretionary sector of its jurisdiction.

In sparsely-populated New Mexico, the majority of the population lives in or around the Albuquerque and Santa Fe areas. The court hears argument primarily in those two locations, but also sits on occasion in Las Cruces, Carlsbad, Las Vegas, and Roswell. The court has a backlog problem, which may arise from the fact that it has had one of the largest increases in filings sustained by any state intermediate appellate court. Significantly, its backlog has not grown out of proportion to the increases in filings. The court is implementing a sorely-needed improved information system.

3. *Ohio Court of Appeals for the Eighth District.*—The Eighth District is Cuyahoga County, which includes the city of Cleveland. This twelve-judge court sits in four panels of three judges each. The court has been able to operate on a four-panel basis for almost ten years since it last acquired more judges. Jurisdiction is primarily mandatory. The presiding judge serves a renewable one-year term and exercises administrative authority through a small staff headed by the court administrator. There is a good working relationship with the appellate section of the elected clerk of court's office, which is responsible for entry of all filed documents into the information system. The information system dates back to 1984 and has been upgraded three times; there is a systems manager on staff. Chambers staff have full access to the system and secretaries in chambers release decisions. Opinion summaries are distributed to the judges to avoid conflicts between panel rulings.

4. *Ohio Court of Appeals for the Tenth District.*—The Tenth District consists of only Franklin County, which includes Columbus, the state capital. Because of its location in the state capital, this eight-judge court has many administrative cases (denominated as "original actions") on the docket. Each presiding judge has previously served as administrative judge. (This is a relatively standard progression in Ohio Courts of Appeals, with a different judge filling each post on an annual basis.) The court's information system, the Ohio Appellate System Information System (OASIS), is maintained through the Franklin County data processing center under the supervision of the County Auditor. All trial courts except probate are on the data processing system and all judges get full quarterly reports.

5. *Washington Court of Appeals, Division I.*—The Washington Court of Appeals comprises three divisions, located in Seattle, Tacoma, and Spokane. All three divisions elect a presiding chief judge for the entire court of appeals. The presiding chief judge serves as the chairperson of the full court executive committee. Division I has ten judges who receive appeals from three districts that include six counties, of which King County, where Seattle is located, is the largest. The judges of the division elect their chief judge and acting chief judge; the latter is usually preparing to become chief judge. Four appellate commissioners and seven staff attorneys assist in processing the Division's workload. As part of the Division's calendar management efforts, the judges of the court have adopted an accelerated sitting schedule whereby oral argument terms are scheduled approximately every six weeks. A term consists of two weeks sitting followed by four weeks in chambers. Cases are now assigned to the three-judge panels two terms in advance.

6. *Washington Court of Appeals, Division II.*—This seven-judge court is located in Tacoma and receives appeals from three districts that include thirteen counties. As with Division I, this division elects its own chief judge to direct its administration, as well as an acting chief judge, who is considered to be preparing to become the next chief judge. Every case, except for motions on the merits and *Anders* petitions,²³ is screened after briefing by an extern or intern. After this screening, a memorandum is prepared for review by a judge, recommending one of four ratings. Rating I means that the case is one that presents a typical sufficiency of evidence claim. It is less complex than a motion on the merits. Rating II is a court-initiated motion on the merits. There is no way for a party to challenge this rating. Rating III is a case that is suitable for the “no-oral argument” calendar. It is resolved by an unpublished opinion. Rating IV is a case that will end up fully briefed and on the oral argument calendar. All judges vote on the rating to be assigned to a case. Deference is given to the highest category chosen by any one of the judges. All divisions of the court participate in the statewide appellate information system, ACORDS, and the appellate clerks have led the effort to standardize data fields and reporting categories among the three divisions.

Table 1 provides an overview of the six courts’ geographic jurisdiction, size, governance structures, and available judicial officer, law clerk and central staff attorney resources.²⁴

B. Filings and Resources

As Chapper and Hanson noted in their 1990 report, the volume of appeals filed in a court “overstates a court’s actual workload,” because a substantial number of appeals are dismissed or abandoned before they are ever considered by the court.²⁵ The attrition rates vary significantly by court, further complicating the problems of cross-court comparisons.²⁶ Nevertheless, given the difficulties of developing accurate data from each court on precisely what cases

23. Under *Anders v. California*, 386 U.S. 738 (1967), a court is required to afford a full internal review to any motion to withdraw from representing the indigent client based on asserted lack of appealable issues by court-appointed counsel in a criminal case. *Id.* at 744. After requiring counsel to submit a brief discussing each potential issue, and affording the client a chance to respond, “the court—not counsel—then proceeds, after a full examination of all the proceedings, to decide whether the case is wholly frivolous.” *Id.* Reviewing these petitions of counsel (and usually the entire trial transcript) has been commonly assigned to central staff counsel by many appellate courts.

24. See *infra* tbl.1. Data regarding number of staff attorneys and law clerks is from ROGER A. HANSON ET AL., *THE WORK OF APPELLATE COURT LEGAL STAFF* (2000), which contains extensive information regarding the varied ways in which these attorneys are used, as well as information obtained from interviews with court personnel. Supplemental information was obtained from the Washington state courts website: <http://www.courts.wa.gov> (last visited Jan. 28, 2002).

25. CHAPPER & HANSON, *supra* note 2, at vi.

26. See *id.* at 10-11.

(and how many) wash out, total filings are an appropriate starting point for assessing the volume of an appellate court's business.

In terms of filings, the six courts included in this study represent the mid-range of American state intermediate appellate courts. The Maryland and Ohio Eighth District (Cleveland) courts receive about 2000 cases annually, while the Ohio Tenth District (Columbus) and Washington Division I (Seattle) record about 1500 filings each year. Filings in the New Mexico and Washington Division II (Tacoma) courts approximate around 1000 annually.²⁷ The size of the benches also reflect the makeup of the great majority of intermediate appellate tribunals. The largest courts in terms of volume measured by filings—Maryland and Ohio Eighth—have the most judges, thirteen and twelve, respectively. The sizes of the others, however, do not correlate to the volume of the cases filed. The middle-range volume courts, Ohio Tenth and Washington I, have eight and ten judges, respectively, and the smaller-volume courts, New Mexico and Washington II, have ten and seven, respectively.

As Roger Hanson has emphasized, judges are not the only resources available to help appellate courts resolve cases. Hanson's research suggests that the most important correlates of expeditious case processing time are relatively fewer appeals filed per judge; and more legal staff assigned to individual judges.²⁸

The courts participating in this study have somewhat different arrangements with respect to both the number of non-judge resources and the ways in which these resources are used. Table 2 provides an overview of the number of filings in relation to the various judicial resources available to each of the courts.²⁹

As Table 2 shows, there is a very wide variation in the number of filings per judge, ranging from ninety-five per judge in New Mexico to 188 per judge in the Tenth District of Ohio and Washington Division I. The variations are much less marked when the number of filings is examined in relation to the number of law clerks (range = 75-95) or to the total judicial resource complement (range = 27-49).

C. Trends in Filings and Dispositions, 1997-99

Tables 3-A and 3-B show that the volume of filings did not change dramatically in any of the courts during the 1998-99 period.³⁰ However, filings in the two Washington courts decreased somewhat from 1998 to 1999. Both courts took advantage of the decrease in filing to increase the number of dispositions and thus reduce the backlog of unresolved cases. By contrast, while filings also declined in the two Ohio courts during this period, these declines did not stimulate any significant increase in dispositions.

27. See *infra* tbls.3-A, 3-B.

28. Hanson, *supra* note 20, at 42.

29. See *infra* tbl.2.

30. See *infra* tbls.3-A, 3-B.

D. Approaches to Court Organization and Caseflow Management

As the data in Table 1 indicate, the six courts in this project have different types of non-judge resources available to them. For example, judges in the New Mexico Court of Appeals have only one law clerk each, while the judges in all of the other courts have two. However, the New Mexico court has the largest complement of central staff attorneys. Three of the courts (Ohio Tenth and the two Washington courts) have judicial officers (three appellate magistrates in the Ohio Tenth; commissioners in the Washington courts) who have authority to handle some types of matters that in other courts would come before the judges.

Comparing the approaches used by the Ohio Tenth and New Mexico courts illustrates how resources can be used in different ways that are tailored to the needs of each court's jurisdiction and caseload composition. The Ohio Tenth, which (along with Washington I) has the largest number of filings per judge (see Table 1), is able to handle 1500 cases annually with only eight judges because it uses both appellate magistrates and pre-hearing counsel to handle the initial stages of a great many appeals. The three appellate magistrates hear worker compensation and prisoner rights cases from all over the state (special statewide jurisdictional responsibilities of this court arise from its location in the state capital) and prepare preliminary decisions. These cases account for about one-third of the court's caseload, and the work of the magistrates enables the judges to review the cases in a more cursory manner. Additionally, in a typical year the court's pre-hearing counsel hold conferences in about 500 cases and manage to dispose of almost 200 of these through settlement, withdrawal, or other disposition.

In contrast, the New Mexico court focuses first on identifying and expediting a large number of relatively uncomplicated cases, assigning about half of the fifteen staff attorneys to prepare calendaring memoranda for the court's use in assigning cases to tracks and expediting decisions. This work, along with the ongoing involvement of a calendaring judge, enables the court to make effective use of a summary calendar. About half of the court's cases are handled on the summary calendar in an average of slightly over five months from initial filing. The remainder of the central staff attorney group conducts legal research on cases on the court's general calendar.

The two markedly different processing routes used by the Ohio Tenth and the New Mexico court for some categories of cases are representative of the kinds of varying approaches that different IACs use for particular jurisdictional areas. Most intermediate appellate courts have some types of jurisdiction for which they use special procedures. In addition to the Ohio Tenth's use of appellate magistrates for some administrative law appeals and New Mexico's use of a summary calendar, the two Washington courts have established abbreviated procedures for review through what is called a "motion on the merits." These motions are decided by commissioners, who are judicial adjuncts. In 1998, approximately eighteen percent of Division I's decisions and thirty-four percent of Division II's decisions came on these motions on the merits.

After separating some special categories of cases (for example, the worker compensation and prisoner rights cases handled by the appellate magistrates in

Ohio Tenth) as well as the cases that have been settled or withdrawn or have been disposed of through summary processes, appellate courts confront what is generally regarded as the core of their caseloads: fully-briefed appeals to be decided on the merits, usually after oral argument. This group is likely to be appreciably smaller than the court's total filings. The New Mexico court for example, disposed of 451 cases on its summary calendar in 1999-2000, compared with a total of 309 cases on its other three calendars (general transcript, tape, and legal). The fact that appellate courts assign certain categories of appeals to special processing routes adds further complications to the task of attempting cross-court comparisons. The categories of cases assigned to special routes vary by court, and so do the routes themselves. Rather than producing a broadly similar core of fully-briefed appeals, the use of these approaches is more likely to leave us with less comparable end groups of cases.

E. Case Processing Times in the Six Courts: Methodological Issues and Rough Comparisons

Comparing case processing time data across appellate courts remains problematic. As noted above, the geographic and subject matter jurisdictions differ in significant respects, the levels of resources and the ways in which available resources are allocated vary considerably, and the procedural approaches for handling particular categories of cases vary as well.

In this project, resource constraints have made it impossible to collect data on the time between events directly from court records. Instead, we have sought to use case processing time reports generated by the courts themselves. There are three main difficulties with this approach: the six courts report data on caseloads and court calendars that are dissimilar in terms of caseload composition; some of the courts changed their statistical procedures during the course of this project; and the courts use different measures to report the information on case processing times.

Three of the courts (Maryland and the two Washington courts) can provide case processing time data in a fashion that enables comparison of their performance with the American Bar Association standards for appellate case processing. (Those standards call for seventy-five percent of all appeals to be completed within 290 days from the filing of the notice of appeal and ninety-five percent within 365 days.) However, the other three courts follow a different approach. The information reported by each court is as follows:

- *Maryland*.—The judicial information system has been able to generate reports showing the time required to complete seventy-five percent and ninety-five percent of the cases, although the judicial branch annual report presents average times, using days and months in different tables.
- *New Mexico*.—The court reports average times from filing to disposition for cases on both the “regular” calendar and the summary calendar.
- *Ohio—Eighth District*.—The court reports average times from filing to disposition for regular and accelerated docket cases. The average times for cases decided on the merits and those disposed of prior to such decision are reported separately. The court also maintains statistics on compliance with

the time standards established by the Ohio Supreme Court.

- *Ohio—Tenth District.*—The court maintains time statistics only in the format used by the Supreme Court of Ohio to measure compliance with its guidelines. Thus, in addition to filing and termination data, the reports present the number of cases pending, and of those, the number pending beyond the periods set by the guidelines for disposition. The Supreme Court's guidelines call for disposition of all cases within 210 days, but for original actions to be disposed of within 180 days.
- *Washington—Divisions I and II.*—Effective with the 1998 statistics, both courts changed their reports to follow the seventy-fifth percentile and ninety-fifth percentile of terminations format. Other definitions were also altered. Consequently, the 1998 and later data are not directly comparable to pre-1998 numbers. These figures only include cases that proceed through the appellate process to merits decision.

It should be noted that, in reporting data on their own case processing times, most of the courts do not include in the statistics those cases that are disposed of by order prior to the record being filed, briefs submitted, or decision rendered. Such exclusions typically involve appeals that are withdrawn, settled, or dismissed on motion. The result of excluding cases with these types of dispositions from statistics on case processing time is that the cases disposed of most quickly are not included in the calculations of case processing time.

Despite the problems that the different reporting formats create for undertaking cross-court comparisons, there are advantages to using them for this report:

- The reports already exist; special data collection efforts are not needed.
- The data are more current than would be possible if special data collection efforts were undertaken.
- Although different courts use different measures of case processing time, it is possible to see major differences among courts. In particular, it is possible to see which courts operate expeditiously and which ones are very slow.
- The lack of common measures in the reports highlights the need for national standards and for a national effort to report regularly meaningful data on appellate courts' caseloads and performance.

The most comparable data in Table 4-A include: for five courts, average times from filing to decision in all cases; for three courts, the number of days required to resolve seventy-five percent and ninety-five percent of civil and criminal appeals; and, for the two Ohio courts, the percentages of cases pending longer than Ohio's 210-day filing-to-disposition standard.³¹

The overall case processing times (notice of appeal to disposition) reported by each court for the years 1998 and 1999 are shown in Tables 4-B and 4-C.³²

Table 4-A shows that, of the five courts that may be compared on the basis of average processing times, the Maryland court appears to be the fastest overall, although New Mexico and the Ohio Eighth District resolve cases on their

31. See *infra* tbl.4-A.

32. See *infra* tbls.4-B, 4-C.

summary calendars even more rapidly. Tables 4-B and 4-C indicate that the Ohio Eighth District processes “non-merits” cases (cases that are disposed of prior to full consideration by the court “on the merits”) very quickly. However, it is not possible to compare these data to data from the other courts.

Of the three courts that report case processing times in comparison to the ABA standards, the Maryland court is consistently the fastest by far in handling appeals in both criminal and civil cases. Even though direct comparison of the Ohio Tenth District with most of the other courts is not possible because of differing report formats, Table 4-A shows that the Ohio Tenth consistently had a smaller percentage of cases pending longer than the 210 days called for by state guidelines than did the Ohio Eighth. While both Ohio courts appear to be relatively fast, the Ohio Tenth District manages to get as many as seventy percent of its cases decided within 210 days. The New Mexico Court of Appeals appears to handle its summary calendar cases quite expeditiously, but takes considerably longer with its regular fully-briefed appeals. The two Washington courts have made progress in reducing their total processing times: from 1998 to 1999, each reduced its total average time by almost five percent. While the times remain lengthy, both courts lowered their total average processing times and Division I brought its average processing time below eighteen months, an interim goal that had been set when these courts began in 1997 to emphasize speedier resolution of cases.³³

The appellate process can be divided into several stages. Table 5 shows the average times reported by five of the courts for four distinct stages of the process:

1. The filing of the notice of appeal to the filing of the record in the appellate court.
2. The filing of the record to the completion of briefing (defined as the filing of the appellee’s brief).
3. Completion of briefing to the submission of the case (if no oral argument is held) or to the oral argument.
4. Submission or oral argument to decision by the court.³⁴

The “time in stages” data shown in Table 5 is helpful in identifying ways in which some of the courts seem to be functioning effectively and areas that clearly need attention. Several points stand out.

First, preparation of the record (including the trial transcript) is clearly a problem for most of the courts. Only the Ohio Eighth District Court has kept the notice-to-record stage at an average of less than two months. For three of the other courts, and for Maryland in civil cases, this stage takes between approximately four and six months. Records on appeal in criminal cases in Maryland, however, are prepared relatively expeditiously, averaging a little more than two months.

Second, the courts vary widely in the time required for briefing. Maryland and New Mexico manage to keep brief preparation to an average of three to four months. While this is longer than court rules contemplate, it appears to be much

33. See discussion *infra* Part IV.

34. See *infra* tbl.5.

shorter than the time consumed by briefing in the other courts.

Third, the period of time that cases are before the court (from completion of briefing until decision [Stages 3 and 4 in Table 5]) varies widely. The Ohio Eighth District judges decide cases very expeditiously, taking only slightly more than a month after the case is argued or submitted to issue a decision. However, in 1999, cases in that court took an average of over seven months between briefing and submission. The Maryland court decides both civil and criminal appeals rapidly. New Mexico handles the cases on its summary calendar very quickly but cases on the regular calendar require an average of about seven months from submission of briefs to decision.³⁵

F. Common Problems and Issues: An Agenda for Change

In addition to obtaining reports on case processing times, project staff also visited each of the six courts and conducted interviews with judges and court staff members. Taking account of both the quantitative data and the information and ideas obtained through interviews, it is possible to identify a set of problems and issues that are common to most of the courts involved in this project and, in all likelihood, to most state intermediate appellate courts. To some extent, the problems can be categorized as falling into one of the several stages of the appellate process. However, there are some issues that cut across all of the stages and involve core issues of appellate court goals, leadership, organization, and interrelationships with other components of the justice system and the larger society. The following is a brief inventory of the key problems that emerged from this study.

1. *Problems in the Initial Stages of the Appellate Process.*—One of the perennial problems in appellate court administration has been the preparation of the record. In order to prepare briefs for the appellate court, appellate lawyers need to be able to review the transcript of previous proceedings in the trial court and have access to other potentially relevant sections of the record, such as pleadings, motions, decisions on motions, and exhibits. Although the technology for very rapid transcription of court proceedings has existed for over two decades, slow production of transcripts remains a major problem for appellate case processing in most jurisdictions. Among the courts participating in this study, only the Ohio Eighth District has succeeded in getting records filed in less than two months.

35. During the period of this study, the Washington courts were in the midst of making major efforts to reduce the time consumed during the stage from briefing to decision. A special study conducted at the end of 1999 in the Division I Court disclosed, for example, that for cases set on the December 1999 oral argument calendar, the time from completion of briefing to argument for the seventy-fifth percentile case had been cut to 139 days (132 days in criminal cases and 143 days in civil cases) from 255 days in 1998. Letter from Judge Faye C. Kennedy, Washington Court of Appeals, Division I, to Richard B. Hoffman (Jan. 13, 2000) (on file with author). Both of these courts recognized that they had serious backlog problems and have been revamping their calendaring process and decisional routines to become current.

In addition to the problems of slow transcript production, other problems in the initial stages of case processing that are common to some or all of these six courts include:

- delays in the appointment of appellate counsel for indigent defendants, sometimes occasioned by the unavailability of public defenders;
- slow disposition by the trial court of motions to waive filing fees and settle the record;
- poor quality of some audio or video tape records when those methods are used for making a record of proceedings in the trial court; and
- delays within the office of institutional litigants (e.g., district attorney, public defender, and attorney general) in transferring responsibility for cases from the attorney who handled the case in the trial court to the attorney who will be responsible for appellate litigation, including designation of portions of the record.

2. *Problems in the Briefing Stage of the Appellate Process.*—The appellant's lawyer can sometimes begin preparing a brief even before the record is formally filed with the appellate court, especially if there is no trial transcript involved. Much more commonly, however, preparation of the brief does not begin until after (sometimes long after) the record is filed.

There are two main problems that impede expeditious preparation and filing of briefs. First, both in the offices of major institutional litigants, such as the prosecutor and public defender, and in many small law offices, the attorneys responsible for the appeals are (or feel) overloaded with work. Lack of resources is a chronic complaint on the part of institutional litigants, and work overload is very often a reason for requesting extensions of time to prepare and file briefs. Second (and closely related to the institutional litigants' shortages of appellate lawyers), many appellate courts—including several of the courts in this project—have relatively lenient policies on granting extensions of time. To some extent, the leniency reflects the courts' recognition of the time and resource problems faced by the litigants. In some instances, it is also a reflection of the courts' own backlog problem—granting an extension for filing the brief means one less case that the court must soon hear and decide.

3. *Problems in the Court's Calendaring and Resolution of Cases.*—As Table 5 indicates, IACs vary widely in the speed with which they calendar and decide cases once the briefs have been filed. While there are a myriad of reasons for delays in these stages of the process, four broad categories of problems can be identified:

- the lack of clear policies providing for expeditious scheduling of dates for oral argument or submission of the case without argument;
- cumbersome decision-making and opinion preparation policies;
- lack of mechanisms for managing the decision-making process and holding individual judges accountable for the prompt preparation of opinions for which they are responsible;
- the reality that some cases are particularly complex, involving trial records that need thorough review and contain difficult legal issues that must be researched; and
- the existence of a large backlog of undecided cases.

4. *Issues of Court Goals, Leadership, Organization, and Interrelationships with Other Justice System Components.*—Although some of the problems in appellate case processing are essentially mechanical or procedural (for example, prompt production of trial transcripts and rapid appointment of appellate counsel for indigent defendants), others involve basic questions about the responsibilities of appellate courts and the relative importance to be accorded to competing values that affect the work of judges and staff. These issues are addressed in more detail in Parts III and IV. At this point, we simply list key topics and questions that emerge from our research.

- *Goals.* What goals or standards, if any, should an appellate court have with respect to the expeditious resolution of cases? To what extent should any such goals (and, by extension, the responsibilities of the court) cover the “pre-court” stages of record preparation and briefing?
- *Leadership.* What are (or should be) the responsibilities with respect to expeditious case processing of appellate court chief judges, presiding judges of panels, court clerks, chief staff attorneys, and others who hold formal leadership positions in intermediate appellate courts? What are or should be the responsibilities of others in key justice system leadership positions?
- *Information.* What types of information relevant to management of the court’s caseload should court leaders routinely receive? How should they use the information? What information should routinely be provided to the bar, the public, legislative bodies, and the media?
- *Policies and Procedures.* What changes in policies and procedures are needed to achieve the level of quality and expeditiousness that the litigants, the bar, and the public deserve? To what extent can such changes be accomplished by the intermediate appellate courts alone, without the necessity of new legislation or action by the state’s supreme court?
- *Technology.* How can modern technological innovations be used to markedly accelerate the generally slow pace of appellate litigation?
- *Education and Training.* What do appellate judges and staff members need to know about effective caseload management? How can they learn?

In the next two Parts—one focusing on uses of technology (Part III) and one on the key elements of effective caseload management (Part IV)—we examine what can be learned from the experiences of the six courts involved in this project and from other sources about practical strategies for improving appellate caseload management.

III. USING TECHNOLOGY TO IMPROVE APPELLATE CASEFLOW MANAGEMENT

All six of the intermediate appellate courts in this study make some use of modern technology to help with the management of caseloads and resolution of cases. For example, all of the courts make use of electronic legal research services, all have computerized management information systems, and all use e-mail for at least some purposes, including circulation of drafts of opinions. To date, however, none of them have been able to use modern technology to make the kind of dramatic improvements in appellate case processing that are at least theoretically possible. Commenting upon the limited use made of technology in

most appellate courts, Philip Talmadge, a former justice of the Washington Supreme Court, recently wrote that:

Many appellate courts are doing their work at the dawn of the twenty-first century in a fashion not entirely dissimilar to the way they were doing their work at the dawn of the twentieth. Appellate courts process paper files physically transmitted to them by the trial courts. Appellate judges and their staffs read paper briefs. Upon the publication of a written opinion, the paper record is placed in physical storage. Too often, because of resistance from attorneys, staff, and the judges themselves, and because resources are unavailable to move to an electronic environment, appellate courts have not utilized new technology that can facilitate the business of those courts.³⁶

This Part focuses on five modern technologies that, if used effectively (and in combination with sound overall caseload management strategies), could markedly expedite the resolution of appellate cases. These technologies include:

- computer-aided transcription (CAT) to rapidly produce transcripts of trial proceedings;
- electronic filing of trial court records and appellate briefs;
- videoconferencing;
- computer-based issue tracking; and
- computer-based management information systems.

A. Computer-Aided Transcription

Delays in the production of trial transcripts have often been cited as a primary cause of slow appellate case processing.³⁷ The development of technology that will enable very rapid production of accurate transcripts holds the potential for markedly accelerating at least the initial stages of appellate case processing. Because there is at least some evidence that rapid completion of the record preparation stage correlates with more expeditious overall case processing,³⁸ it seems likely that rapid transcript production will contribute to a speedier overall appellate process.

The technology exists. As long ago as the mid-1970s, researchers at the National Center for State Courts determined that computer-aided transcription (CAT) was technologically feasible and could dramatically reduce delays in transcript production.³⁹ Since then, the technology has improved, costs of the

36. Philip A. Talmadge, *New Technologies and Appellate Practice*, 2 J. APP. PRAC. & PROCESS 363, 363 (2000).

37. See, e.g., PAUL D. CARRINGTON ET AL., JUSTICE ON APPEAL 62 (1976); MARTIN & PRESCOTT, *supra* note 8, at 28.

38. Cf. MARTIN & PRESCOTT, *supra* note 8, at 53 (discussing time “from ordering the record to the filing of the last brief”).

39. See J. MICHAEL GREENWOOD & JERRY R. TOLLAR, EVALUATION GUIDEBOOK TO COMPUTER-AIDED TRANSCRIPTION 2 (1975); J. MICHAEL GREENWOOD & JERRY R. TOLLAR, USERS’

equipment have become much cheaper, the use of this technology has spread widely through the court reporting field, and the skills of reporters using CAT have improved markedly.⁴⁰

CAT is a form of shorthand reporting that uses a computer to automate the process of reading and translating stenotype notes into English. Court reporters using the CAT technology record the words spoken in court by making keystrokes on a stenotype machine that produces shorthand notes. In addition to the notes appearing on the traditionally-used folded paper tape, the keystrokes are also recorded on an electronic storage medium, such as a computer diskette. The disk is then removed from the stenewriter and inserted into a computer's disk drive. Software then converts the stenographic notes into English text, allowing spellchecking and editing functions to be performed. The software accesses the reporter's "dictionary" to carry out the translation. The transcript initially produced through the computer may not be 100% accurate, but the reporter (or "scopist" who assists the reporter) can quickly make any needed corrections.

Some court reporters have developed the capacity to provide what is called "realtime" reporting—i.e., virtually simultaneous production of a stenographic record, capable of being shown on a screen as it is being recorded by the reporter. While useful in many contexts, realtime reporting is not essential for appellate case processing. However, the ability to produce a usable typed transcript very rapidly through the CAT technology should make it possible to prepare a complete record, including the transcript, very quickly. With the transcript and other portions of the record available in a matter of days (hours if there is urgency), the record can be filed promptly with the appellate court, and appellate lawyers can begin working on the appeal.

Although the potential of the CAT technology has been known for over twenty years, appellate courts have taken little advantage of it. As the data in Part II demonstrate, preparation and filing of the record is a very time-consuming process in the intermediate appellate courts that participated in this project. Part of the problem in most jurisdictions is that the court reporters work in and for the trial court, and the IACs appear to have little control over the speed with which the transcripts are produced. The problem is more one of system management than of technology. Although numerous observers have called for appellate courts to have and to exercise authority over preparation of the record (including the transcript),⁴¹ these recommendations have thus far gone largely unheeded.

In many states, because of their lack of direct authority over the court reporters, it may not be possible for the intermediate appellate courts to do much by themselves to take advantage of the potential that CAT holds for rapid transcript production. Clearly, however, there are strong public and justice system interests in taking advantage of technologies that can greatly speed the appellate process with no diminution in the quality of the work product. The

GUIDEBOOK TO COMPUTER-AIDED TRANSCRIPTION, at x-xi (1977).

40. See, e.g., WILLIAM E. HEWITT & JILL BERMAN LEVY, *COMPUTER-AIDED TRANSCRIPTION: CURRENT TECHNOLOGY AND COURT APPLICATIONS* 21-23 (1994).

41. See, e.g., CARRINGTON ET AL., *supra* note 37, at 63.

development of policies designed to ensure that transcripts needed for appeals are produced rapidly is a process that is likely to involve many different groups and individuals. The process is one in which state judicial leaders (e.g., chief justice, supreme court, and state court administrator), as well as judges in the intermediate appellate courts, bar leaders, trial court judges and administrators, state legislators, and court reporters, can and should play constructive roles.

Additionally, policies will need to be developed to take into account the potential for linking rapid transcript production to the availability of video records of trial court proceedings. As more trial courts use video recording of trial proceedings, appellate courts may expect parties to be able to present videos of important trial segments, including their presentation at “oral” argument accompanied by related CAT-prepared transcript displayed on an adjacent screen.⁴²

B. Electronic Filing of Records and Briefs

The trial transcript is an important component of the record on appeal, but it is by no means the only component. The “clerk’s record” typically also includes at least an index to the record, a chronological listing of all of the events in the trial court, the pleadings of the parties, and any written decisions prepared by the trial judge. It may also include motion papers filed in the trial court, exhibits admitted or offered for admission into evidence, and other documents.

Typically, the preparation of the record is done by staff in the trial court clerk’s office. The clerk’s office bundles either the original papers or a copy of them, plus the transcript, in a file jacket or box and mails the package to the appellate court clerk. The process is time-consuming, labor intensive, and requires substantial mailing and storage costs. As Philip Talmadge has noted, the implications of paper records for the work of appellate judges and their law clerks or staff attorneys are significant:

No two appellate judges can work on the same case file simultaneously unless the court has reproduced the whole record for each judge, an expensive proposition. Moreover, for a voluminous record, the judge and his or her staff do not have the luxury of keyword searches through the record. Judicial personnel must rely on laborious treks through the record, relieved only by the sketchy indices prepared by trial court staffs and court reporters.⁴³

42. This process has been under development at Courtroom 21 at the College of William & Mary Law School in Williamsburg, Virginia, where Project Consultant Prof. Fredric Lederer demonstrated it during a site visit in 1998. It should be noted that developments of this kind present appellate courts with far more searching questions about the entire process. For example, when video recording and transcript of actual trials may be viewed in the appellate courtroom or in chambers, what will be the impact on the traditional appellate deference to finders of fact regarding issues of credibility?

43. Talmadge, *supra* note 36, at 367.

Increasingly, trial courts are using some form of electronic record keeping, and there are strong indications that this trend will continue to accelerate. Some appellate courts have begun accepting electronically filed records and briefs, but none of the appellate courts in this project is systematically using e-filing technology to produce more efficient case processing.

Electronic filing of trial court records in the appellate court is clearly feasible when the trial court record itself is in electronic format. The use of electronic records can contribute to more expeditious case processing and improved appellate decision-making in several ways. These include:

- very rapid transmission of the record from the trial court, and of the transcript from the court reporter, to the appellate court;
- much broader and easier access to the record by appellate judges, law clerks, and staff attorneys—instead of being limited to access to a single paper file, any judge or clerk can have access to the record at any time for purposes of research; and
- enhanced capacity for appellate judges and those who assist them to search the record rapidly for key pieces of testimony or exhibits, using browser and keyword search technology.

Electronic filing of briefs is feasible and is now coming into use in some appellate courts. E-filing of briefs saves time, printing costs, and mailing costs. It provides the court and opposing counsel with briefs that can either be read online or printed out in traditional format. Of particular relevance for the future, when both the record and the briefs are in electronic format it is possible to create hyperlinks between a brief and the portion of the record that is referenced in the brief. Similarly, it should be possible to move easily between an electronic brief and a case cited in the brief that is accessible through one of the widely used electronic research services.⁴⁴

The advantages to an appellate court of having briefs and records in an electronic format are probably greatest in cases where the trial was lengthy and paper records would be bulky and difficult to access. However, even in relatively simple cases there should be gains in the efficiency of opinion preparation from the virtually instantaneous linkages among briefs, records, and prior appellate decisions that may be relevant precedents.

C. Videoconferencing

Videoconferencing—using video transmission to enable persons located in different places to communicate by viewing each other on monitors while they are speaking with each other—is another technology that has existed for some time but is now becoming less expensive and more practical. Several appellate courts have begun to put into place the equipment needed to allow persons to

44. For discussion of how one appellate court used electronic filing technology—in this case, “CD-ROMs containing the briefs, clerk’s papers, trial exhibits, appendices, and transcripts”—for a complex case that involved a paper record stored in approximately fifty banker’s boxes, see Talmadge, *supra* note 36, at 368, 370.

participate in court sessions or meetings through this process. For example, the Supreme Court of Georgia now has video cameras in its courtroom in Atlanta and monitors at each judge's seat on the bench. Using the videoconferencing technology, it is possible for lawyers from a distant part of the state to present oral argument without having to travel to the central courthouse.

The increasing availability and decreasing costs of videoconferencing should make this technology particularly attractive to appellate courts that have jurisdiction over large geographic areas and to many of the lawyers who handle appeals in those courts. Instead of having the lawyers travel to the court (or alternatively transporting the judges and staff to a distant location), the court and the lawyers can conduct oral argument on an appeal or motion via videoconference.

Technologically, it is not even essential for all of the judges to be in the same location. Judges who are not at the central courthouse can participate in the oral argument via video links. Subsequently, they can confer via videoconference with their colleagues on a panel concerning the decision and opinion.

For purposes of appellate caseload management, the principal potential advantage of videoconferencing is increased flexibility in scheduling oral arguments before a panel and in conducting conferences among the judges. There is so far no evidence that videoconferencing will really reduce delays, but there has not yet been any extensive use of this technology. There is at least the prospect that, in addition to reducing travel costs, videoconferencing can save time for judges and staff to use for research and other activities that will help bring cases to resolution expeditiously.

D. Computer-Based Issue Tracking

Computers, programmed with appropriate qualitative analysis software, can be used to help appellate courts identify cases that involve fact patterns and legal issues that are identical or closely similar to ones in cases previously decided by the court; or similar to the fact patterns and legal issues in other cases currently pending in the court.

In cases where the fact patterns and legal issues are closely similar to those in a case or set of cases previously decided by the court, there is ordinarily no reason for an intermediate appellate court to depart from previously existing caselaw. Unless one party presents persuasive reasons for reconsideration of the prior ruling, it should be possible to resolve the issues (and often the entire case) very quickly.

Sometimes multiple cases involving the same or closely similar fact patterns and legal issues reach an appellate court at approximately the same time. In these circumstances, computer-based issue tracking can enable the court to identify the cases and group them together for consideration by a single panel. Such grouping or clustering of cases enables the judges on the panel to gain the benefit of oral presentations and briefs written by several different lawyers and can give them a sense of the range of fact patterns that can be affected by decisions in the cases. Often the cases can be resolved by issuance of an opinion in a lead case. That opinion can then be applied to the remaining cases that have basically

similar fact patterns and legal issues, and these can be decided in a summary fashion. This approach enables appellate courts to make more efficient use of judicial resources and reduces the likelihood of inconsistent decisions by different panels.

E. Computer-Based Management Information Systems

In their 1990 study of case processing in four intermediate appellate courts, Chapper and Hanson noted that the courts they studied had generally done a mediocre or poor job of organizing information systems to provide information upon which appropriate management decisions concerning case processing could be based.⁴⁵ The effective design and use of information systems by appellate courts clearly remains an important issue for these intermediate appellate courts a decade later.

Good information about the details of individual cases and about overall caseloads is essential both for case-level decision-making at every stage of the appellate process and for management of the total business of the appellate court. Information about individual cases—for example, the date of the trial verdict or other lower court decision, the date the notice of appeal was filed, the nature of the case, the parties involved, the lawyers, the issues raised, and the length of the record in the court below—enables the appellate court to make decisions about whether the case is likely to be appropriate for accelerated disposition and whether it should be clustered with other cases for resolution by a single panel. Case-specific information is also needed for scheduling cases for argument, assigning cases to panels, and notifying the attorneys (or pro se litigants) about the dates for completion of briefing and oral argument.

Chief judges, clerks of appellate courts, and chief staff attorneys have responsibility for overall caseloads (or, in some circumstances, for major segments of caseloads), and thus need aggregate data on cases and caseloads, organized in a useful fashion. It is our sense that much of the data needed for effective caseload management is currently stored in the automated information systems of most appellate courts, but the information is not made available to court leaders in a useful and usable form; and/or available but simply not used for monitoring, analysis, problem identification, and planning purposes.

Computer-based management information systems can be enormously valuable in storing data needed for individual case decision-making and for overall caseload management. These information systems cannot, of course, manage caseloads by themselves. They can, however, be designed to produce management information reports that can be used by appellate court leaders to monitor the performance of the court in relation to performance goals and to identify problems that may arise in any stage of the appellate process. Based upon such information, chief judges and other leaders can take steps to address the problems and design effective caseload systems.⁴⁶

45. See CHAPPER & HANSON, *supra* note 2, at vii-viii, 61-62.

46. Computer-based management information systems and several of the other technologies

IV. COMPONENTS OF EFFECTIVE APPELLATE CASEFLOW MANAGEMENT

Researchers studying appellate case processing have argued that concepts and principles of caseload management developed through experience in trial courts have direct relevance to appellate case processing. This Part draws upon information acquired in the course of our study of six intermediate appellate courts, together with insights from earlier research in both trial and appellate courts, in seeking to develop a framework for future work on improving caseload in appellate courts.

A. *The Importance of Adequate Resources*

Researchers who previously studied appellate case processing have come to somewhat differing conclusions about the importance of resources for appellate caseload management. Martin and Prescott, who conducted a study of volume and delay in ten appellate courts, reported in 1981 that as the number of filings per judge increased there was “a moderate to strong tendency for case processing time . . . to *decrease*.”⁴⁷ They did not, however, examine the number of filings in relation to total judicial resources available (i.e., including law clerks, staff attorneys, and judicial officers such as magistrates, in addition to judges) in conducting their study.

Roger Hanson, examining data on 1993 case processing times in thirty-five intermediate appellate courts supplemented by results from a survey of judges and court staff members in those courts, concluded that the principal factor influencing timeliness is resources—specifically, the number of judges and law clerks in relation to the number of filings.⁴⁸ While acknowledging that “[b]asic principles of modern management did appear to encourage timeliness,”⁴⁹ he argued that resources are the key determinant of expeditious appellate case processing.

Due to the lack of comparable measures of case processing times in all of the six courts in this study, it is not possible to draw any firm conclusions about the relative importance of resources vis-à-vis management in influencing the expediency with which the courts resolve cases. Of the six courts in this study, the fastest—the Maryland Court of Appeals—has slightly more resources (i.e., judges and the combination of judges, other judicial officers, law clerks, and staff attorneys) in relation to total filings than do four of the other courts. However, the differences are not great. Other factors are clearly at work. In seeking to develop knowledge about other factors that may be relevant, it is useful to examine what has been learned through the study of trial courts. While appellate courts differ significantly from trial courts, many of the basic caseload problems

discussed in this Part are examined in greater detail in Appendix A, which also includes more specific description of some of the processes involved.

47. MARTIN & PRESCOTT, *supra* note 8, at 37 (emphasis in original).

48. See Hanson, *supra* note 20, at 43.

49. *Id.* at 35.

and issues—and, potentially at least, the components of a general strategy for reducing delays and managing caseloads effectively—are likely to be similar.

B. Key Elements of Sound Appellate Caseflow Management

One of the particularly useful insights in Martin and Prescott's 1981 study of appellate case processing was that different perspectives on the causes of appellate caseflow problems are likely to lead to different responses. Martin and Prescott observed that approaches developed in response to a perspective that emphasizes the importance of *case volume* as the principal determinant of delay typically involve either adding resources; or restructuring existing resources, generally by selecting categories of cases for different types of consideration.⁵⁰

The alternative perspective identified by Martin and Prescott is one that emphasizes *processing and management inefficiencies* as the primary determinants of delay. The programmatic approaches developed in response to this perspective recognize that volume is a factor, but they tend to address processing time directly by seeking to increase productivity—typically by introducing new technologies or by adopting procedural changes aimed at streamlining some stages of the appellate process.⁵¹

The components of caseflow management outlined here encompass both general categories of approaches. This perspective recognizes the need for adequate resources but focuses particularly on how the resources are used. The primary emphasis is on what, specifically, appellate courts and others who are involved in (or have stakes in) effective appellate caseflow can do to improve system operations.

One of the striking findings from empirical research on caseflow management and delay reduction at the trial court level is that there is no one single model of a successful delay reduction program or caseflow management system.⁵² Successful trial courts have had varying levels of available resources, are organized in many different ways, use a variety of different procedures and case assignment systems, and differ considerably in the extent to which they use modern computer technology. Despite these differences, however, successful trial courts share some common characteristics. Perhaps most importantly, successful courts and programs are relatively comprehensive. Rather than seeking a “one-injection miracle cure,” jurisdictions that have succeeded at caseflow management at the trial court level have incorporated a number of different components into their systems and have refined and maintained the systems through hard work.⁵³

50. MARTIN & PRESCOTT, *supra* note 8, at 7-9.

51. *Id.*

52. See, e.g., DAVID C. STEELMAN ET AL., CASEFLOW MANAGEMENT: THE HEART OF COURT MANAGEMENT IN THE NEW MILLENNIUM 87 (2000); Barry Mahoney & Dale Anne Sipes, *Toward Better Management of Criminal Litigation*, 72 JUDICATURE 29, 35 (1988).

53. BARRY MAHONEY ET AL., CHANGING TIMES IN TRIAL COURTS 197 (1988); see also Maurice Rosenberg, *Court Congestion: Status, Causes, and Proposed Remedies*, in THE COURTS,

It is at least a reasonable hypothesis that the same generic elements that have been found to be important for effective case processing in trial courts are also likely to be important for effective case processing at the appellate court level. This section of the report discusses the operations of intermediate appellate courts in light of the same ten key elements of effective caseload management in trial courts that successfully reduce or prevent delays.⁵⁴

1. *Leadership.*—In studies of corporate innovation and excellence, as well as of courts and criminal justice agencies that succeed in attaining significant goals, leadership emerges as a critically important factor. In their classic study of excellence in the corporate world, for example, Peters and Waterman found that “associated with almost every excellent company was a strong leader (or two) who seemed to have had a lot to do with making the company excellent in the first place.”⁵⁵ Similarly, when practitioners in successful trial courts were asked about reasons for the court’s effectiveness, “one of the most frequent responses was a reference to the leadership ability of the chief judge.”⁵⁶ The specific leadership qualities mentioned in this context varied, but generally included reference to the chief judge’s “vision, persistence, personality,” and leadership skills.⁵⁷

In the concluding chapter of their 1990 study of four intermediate appellate courts, Chapper and Hanson noted that the relative merits of having a permanent chief judge as opposed to a rotation system (with chief or presiding judges serving terms of only one or two years) could not be established by their research.⁵⁸ They observed, however, that there is at least one clear advantage to having a permanent chief judge: he or she can provide a focus and continuity for policy development and implementation.⁵⁹

Of the six courts participating in this study, only one—the Maryland Court of Special Appeals—has a permanent chief judge. While not conclusive on the relative merits of permanency (or long tenure), it is worth noting that the Maryland court is relatively speedy, and the chief judges of the court have been consistent in emphasizing expeditiousness.⁶⁰ The principal procedural innovation

THE PUBLIC, AND THE LAW EXPLOSION 29, 55 (Harry W Jones ed., 1965). On the basis of the evidence available in 1965, Rosenberg was emphatic in rejecting the notion of a “one-injection miracle cure” for problems of court backlogs and delays. He noted that only a few of the “delay antidotes” that had been developed during the 1950s and early ‘60s had worked to even a modest extent and that some had been counter-productive. Rosenberg’s observation that “progress in coping with the old problem of court delay will have to come from marshaling relief measures in groups” has proven to be accurate. *Id.* at 55.

54. The analytical framework is adopted principally from the concluding chapter of MAHONEY ET AL., *supra* note 53, at 197-205.

55. THOMAS J. PETERS & ROBERT H. WATERMAN, JR., IN SEARCH OF EXCELLENCE 26 (1982).

56. MAHONEY ET AL., *supra* note 53, at 198.

57. *Id.*

58. CHAPPER & HANSON, *supra* note 2, at 58.

59. *Id.*

60. For a discussion of the role of the chief judge of the Maryland Court of Appeals, see *id.*

that many regard as key to its relative speed is one that was introduced by a former long-serving chief judge and kept in place after his departure: a calendaring rule that sets each newly filed case for argument or submission during a specific month at the time the record is filed.

According to Chapper and Hanson, “[h]aving a permanent chief or presiding judge will not ensure the successful adoption and introduction of procedural changes, but it can ensure the continuity of leadership and commitment that is required where a permanent modification of established practices and behavior is involved.”⁶¹ While there are certainly risks in providing for a permanent chief (or one with a lengthy term), it seems likely that a longer term enables a chief judge to acquire in-depth knowledge about the caseload problems faced by an appellate court, provides time to marshal the needed resources, and makes it possible to persist in initiating and implementing needed innovations.

2. *Goals.*—Meaningful goals are integral to effective caseload management systems.⁶² In the absence of clear goals, practitioners—lawyers, court staff, and judges—have no way of knowing what is an appropriate maximum period of time for the stages of a case and no way of measuring their own (or the court’s) effectiveness in managing their caseloads.

Nationally, the best-known time standards are those incorporated in the American Bar Association’s *Standards Relating to Appellate Courts*. Originally adopted in 1976, the ABA time standards have been modified (most recently in 1994) to make them less stringent than the original standards. The current version of the ABA standards calls for seventy-five percent of all appeals to be resolved within 290 days and ninety-five percent to be resolved within one year.⁶³ Some state appellate courts—including at least four of the courts in this study—have adopted some type of time standards. The standards themselves vary considerably and, importantly, sometimes do not address stages of the appellate process prior to submission or argument.

Of the six courts in this study, the time standards for the two Ohio courts were set by that state’s supreme court: generally, with a few exceptions, cases are to be disposed of within 210 days.⁶⁴ This is a more ambitious goal than those set by the ABA’s standards, but the Ohio Tenth District Court of Appeals

at 93, 98.

61. *Id.* at 58.

62. The ABA Standards cite the lack of clear goals as a significant cause of delay. See JUDICIAL ADMIN. DIV., AM. BAR ASS’N, *supra* note 22, § 3.50 and accompanying commentary; see also RITA M. NOVAK & DOUGLAS K. SOMERLOT, *DELAY ON APPEAL* (1990).

63. JUDICIAL ADMIN. DIV., AM. BAR ASS’N, *supra* note 22, § 3.52(d). It should be noted that the time frames in this section are specifically described as “reference models” to which appellate courts should accord serious consideration when formulating time standards for themselves. For a discussion of the history of these standards, see *id.* § 3.52(d) cmt.; see also Carl West Anderson, *An Appeal for Practical Appellate Reform*, 37 JUDGES’ J. 28, 29-31 (1998).

64. OH. SUP. R. 39(A) (Anderson 2001). “The time limits for disposition of appellate and civil cases shall be as indicated on the Supreme Court report forms.” *Id.* The report forms, copies of which are in the authors’ files, incorporate this 210 day standard.

appears to meet the ABA standards and comes close to satisfying those set by the Ohio Supreme Court. Division I of the Washington Court of Appeals began its current effort to reduce the lengthy time from filing to decision by aiming to decrease that time period to eighteen months over an eighteen-month campaign.⁶⁵

The New Mexico Court of Appeals established time standards in 1999 and recently readopted them. The goals are to dispose of fifty percent of all cases within 180 days (six months) of the filing of the appeal, seventy-five percent within 365 days (one year), ninety-five percent within 540 days (eighteen months), and the remaining five percent as expeditiously as possible in consideration of the length of the record and complexity of issues. For each judge, the goal is to file an opinion in fifty percent of the cases assigned within ninety days (three months) of submission, seventy-five percent within 150 days (five months), ninety-five percent within 300 days (ten months) and the remaining five percent as expeditiously as possible.⁶⁶

3. *Information.*—Appellate court leaders who are seriously interested in improving caseload management in their courts will place a high premium on ensuring that timely and accurate information is available, both for case-level decision-making and for overall caseload management.

Case-level information is needed at every stage of the process. At the initial filing in the appellate court, for example, it can be enormously valuable for the court to gain immediate knowledge about the nature of the case, the issues on appeal, and the length of the trial record, as well as accurate information about the identity of the trial judge, the court reporter, and the parties and lawyers involved. Such information enables the appellate court to make early decisions about putting the case on a particular “track” (such as the type of summary calendar used for accelerated disposition of cases in the New Mexico Court of Appeals) and provides information needed to monitor completion of the record and briefing stages of the process.

Aggregate data on the court’s total caseload and on the court’s effectiveness in handling all of the major segments of its caseload is needed by court leaders to monitor performance, identify problems, and develop plans for addressing the problems. Unfortunately, one of the key conclusions of Chapper and Hanson’s 1990 study of four IACs remains accurate today: “The unavailability of information on caseload composition, attrition rates, and case processing time inhibits clear problem identification and choice of promising solutions.”⁶⁷

Four types of aggregate information are especially important for management of an appellate court’s overall caseload and its caseload process:

a. *Information on pending caseloads.*—Operationally, information on pending cases is of great importance in assessing the effectiveness of an appellate court’s caseload management system. Good information on pending caseloads

65. This initiative was discussed by the then-civil judge at a meeting with one of the authors in 1998.

66. NEW MEXICO COURT OF APPEALS’ POLICIES AND PROCEDURES MANUAL §§ IV(2)&(3) (2001).

67. CHAPPER & HANSON, *supra* note 2, at vii.

provides a picture of the current workload of the court organized by major case type (e.g., civil appeal or criminal appeal) and, within each case type, by age and case status. It also indicates how many cases (and which ones) are exceeding the court's time standards and makes it possible to flag cases that need attention.

If the court has a backlog problem, the pending caseload information should show the dimensions of the problem and enable court leaders to develop plans to address it. Pending caseload data is relevant to each stage of the appellate process and is obviously most useful when the court has standards that address the time appropriate for each stage. With information about the number of cases pending over the time standard and the ability to identify which ones are "too old," court leaders can initiate action to get the judge or attorney responsible for completing this stage of the appellate process to do the needed work.

b. Information on the age of disposed cases.—By definition, information on cases that have reached disposition is historical information. It can, however, be extremely valuable for purposes of appellate caseflow management for two main reasons:

- It enables an assessment of the court's recent performance with its own time standards, with national time standards, with the performance of other courts that have similar caseloads, and with its own prior performance.
- When broken down by case type, the nature of the disposition, and stage of the process at which disposition occurs, it can be very valuable in the diagnosis of caseflow problems and the design of workable solutions. For example, this type of information can be the basis for construction of a "fall-out chart" that shows the time required for different types of cases and the stage of the process at which disposition occurs. It should then be possible to identify patterns with respect to the types of cases that tend to fall out early, that are handled summarily, and that tend to go to full opinion. With such information in hand, appellate courts can develop "differential case management (DCM)" systems that make more effective use of limited resources.⁶⁸

As with pending caseload information, it is important to be able to break information on the age of cases at disposition into relevant categories and sub-categories in order to use it effectively. With such information it is possible, for example, to identify particular categories of cases that take extraordinarily long periods of time in some stages of the process. It is then possible to ask why certain categories of cases take much longer than seems necessary or appropriate. Asking and answering these types of questions is a critical first step in developing strategies to reduce or minimize delays.

c. Information on continuance practices.—One measure of the effectiveness of a court's caseflow management system, at both the trial and appellate levels, is the percentage of events that take place on the date scheduled. In appellate

68. For a discussion of the concept and techniques of differentiated case management, see JUDICIAL ADMIN. DIV., AM. BAR ASS'N, *supra* note 22, § 3.50 and accompanying commentary; see also STEELMAN ET AL., *supra* note 52, at 5-8; Holly Bakke & Maureen Solomon, *Case Differentiation: An Approach to Individualized Case Management*, 73 JUDICATURE 17 (1989).

courts, key dates include those set by statute or rule for the filing of records and briefs, and logically could also include dates set for oral argument or for completion of an assigned opinion by a judge. Information needed to calculate continuance rates (and to ascertain the length of extensions of time when continuances are granted) should be readily obtained from court records.

d. Trend data on filings and dispositions.—Information on annual filings and dispositions is relatively easy to collect and report and is commonly available for all appellate courts. This information provides a rough picture of the court's overall workload and an indication (by comparing dispositions with filings) of whether the court is keeping up with its workload. Data on filings and dispositions can be more useful, however, when it is broken down into major categories and sub-categories of case types and types of dispositions; and it is available over a long period of time. Having such data for an extended period of time enables analysis of trends in the court's workload and productivity. It can be helpful in identifying changes in the workload and in decisional practices, in assessing whether the court is gaining or losing ground, and in serving as a starting point in developing plans for improvements.

4. *Communication.*—One of the clear lessons from research and experimentation on court and justice system operations is that “good communications and broad consultation . . . are essential if a program is to succeed.”⁶⁹ In the case of appellate courts, good communications within the court are especially important because of the collegial nature of an appellate court, the need to develop agreement among at least a majority of the judges on a panel for decisions in cases, the need for support from at least a majority of the full bench for major changes in policy and practice, and the key roles played by staff in the clerk's office and by central staff attorneys and law clerks in the day-to-day work of the court. Good communications with those outside the court—especially the practicing bar (at least those who are engaged in appellate practice, including those who head the appellate sections of major institutional litigants such as an attorney general's office), trial judges, and trial court clerks and court reporters—are also important.

Because the appellate process is not entirely under the control of the appellate court, the cooperation of those outside the court is essential for significant improvements to be made. It is appropriate for leadership to come from within the appellate court. However, in order to identify problems and develop workable solutions, it will be necessary to have the active involvement of those responsible for each of what have sometimes been called the three basic functions of appellate courts: the administrative function (record preparation, including production of the transcript); the lawyer function (briefing and presentation of oral argument); and the judicial function (decisionmaking, including the processes of hearing oral argument and preparing opinions).⁷⁰

69. MAHONEY ET AL., *supra* note 53, at 200-01; see also NOVAK & SOMERLOT, *supra* note 62, at 17-18, 139.

70. See, e.g., Carl West Anderson, *Are the American Bar Association's Time Standards Relevant for California Courts of Appeal?*, 27 U.S.F. L. REV. 301 (1993).

The need for good communication goes beyond those who are directly involved in the appellate process. Good communication with state judicial leaders (particularly the chief justice, state supreme court, and state court administrator's office) is important in addressing issues that are beyond the immediate control of the IAC (such as budgetary issues). Similarly, it is important to cultivate good communication with the legislature, which ultimately holds the purse strings for the courts and can shape the nature of the court's caseload and many of the procedures it follows.

5. *Caseflow Management Policies and Procedures.*—As Chapper and Hanson noted in 1990, “[t]he principles of case management distilled from trial court experience have clear parallels in appellate case processing.”⁷¹ Indeed, the first edition and every subsequent edition of the *ABA Standards Relating to Appellate Courts* has included sections on caseflow management. The primary concept, expressed as a “general principle” in the ABA Standards, is that “[a]n appellate court should supervise and control the preparation and presentation of all appeals coming before it.”⁷² Caseflow management policies and procedures that flow from this principle are listed below.

a. *Appellate court supervision of the record preparation stage.*—

- a requirement that the appellate court receive notice of an appeal being taken at or before the time the notice of appeal is filed in the trial court;
- prompt filing with the appellate court of a docketing statement or other statement providing basic information about the appeal, including: the caption; the file number in the trial court; the name of the trial judge; the names, addresses, and phone numbers of the attorneys (and of the parties if one or more is self-represented); the nature of the case; the result in the trial court; the issues on appeal; the length of the trial (and/or approximate length of the trial transcript); and any reasons why the case should be placed on a track for accelerated consideration or other special handling;
- a requirement that appellate counsel file their designations of record with both the trial court and the appellate court;
- provision for rapid resolution of any issues concerning appellate court filing fees, eligibility for counsel, or proper contents of the record on appeal;
- procedures enabling prompt appointment of appellate counsel for indigent defendants in criminal cases;
- a requirement that counsel order the transcript from the court reporter within a short period following the filing of the notice of appeal;
- provision for the use of a court reporting technology that is capable of producing a trial transcript within no more than seven days after the conclusion of a trial. (Note that this technology could be either a court reporter using computer-aided transcription or another technology that has been shown to be capable of routinely producing a record that is

71. CHAPPER & HANSON, *supra* note 2, at vii.

72. JUDICIAL ADMIN. DIV. AM. BAR ASS'N, *supra* note 22, § 3.50.

accurate and easily usable—by the parties, their lawyers, and the appellate court’s judges, law clerks, and staff attorneys—within a short time frame);

- establishment of a court rule prescribing short periods of time for the production of trial transcripts after the date they are ordered by the counsel for the appellant, with a requirement that the ordering statement be filed with both the trial court and the appellate court;
- provision for prompt payment of court reporters who produce transcripts for indigent appellants in criminal cases;
- use of electronic transmission of all or major portions of the record from the trial court and/or the court reporter to the appellate court whenever possible;
- use of computer-based management information reports to enable monitoring of compliance with time standards, court rules, and policies concerning prompt preparation of the record; and
- designation of an appellate court judge and/or senior staff person to monitor compliance with record preparation procedures and time requirements, identify problems, and develop workable solutions to improve record preparation.

b. Appellate court scheduling of cases and monitoring of the briefing process.—

- use of a docketing statement and/or other information furnished to the court at the initiation of the appeal, to assign the case to an appropriate track for briefing and submission, consistent with the complexity of the case and the nature of the issues presented by the appeal;
- issuance of a briefing schedule not later than the time the record is filed (may be done earlier if the docketing statement shows reason for an accelerated schedule);
- monitoring and enforcement of schedules set for the submission of briefs, with recognition that there may sometimes need to be short extensions of time for good cause shown;
- provision for submission of briefs prepared using up-to-date word processing or publishing software; elimination of requirements for printed briefs;
- use of electronically filed briefs when feasible;⁷³
- calendaring of cases for argument or submission done not later than the date the appellant’s brief is filed (may be done sooner if information in the docketing statement indicates that the case is appropriate for accelerated consideration);
- policy of setting cases for argument or submission after the appellant’s brief is filed and within a short time (e.g., within one month) after the

73. The U.S. Securities and Exchange Commission now requires many documents to be filed electronically on its EDGAR (Electronic Data Gathering, Analysis, and Retrieval) system unless a hardship claim is made. Filing can include submission of a diskette as well as dial-up or Internet filing.

- date the appellee's main brief is due;
 - use of computer-based management information reports to enable monitoring of attorneys' compliance with briefing schedules;
 - use of reminder notices and, if necessary, appropriate sanctions for non-compliance with briefing schedules; and
 - designation of an IAC judge and/or senior staff person to monitor compliance with briefing schedules, identify problems, and work with attorneys to develop effective systemic solutions.
- c. *Appellate court decision-making and opinion preparation.*—
- organization of the appellate court to enable speedy decisions on motions;
 - organization of the appellate court to enable optimum allocation of judicial and non-judicial resources available to conduct legal research and preparation of decision memoranda and opinions;
 - assignment of responsibility to a panel of presiding judges for production of opinions (including any dissents) within an acceptable period of time following argument or submission of cases, consistent with time standards adopted by the court;
 - use of computer-based management information reports to monitor the effectiveness of judges (and others, where appropriate) in meeting the court's time standards for completion of the decision/opinion preparation process;
 - regular meetings of the judges at which reports on the effectiveness of the court and of individual judges in meeting time standards and other performance goals are discussed, problems are identified and plans are developed for appropriate action to address the problems; and
 - leadership by the chief judge in emphasizing the commitment to expeditious resolution of appeals.

Most of the caseload management policies and procedures listed immediately above have been recommended by others;⁷⁴ there is little that is new in the list aside from some of the items relating to use of modern technology (e.g., electronic filing of briefs and records). Some of these mechanisms are in place in some of the courts involved in this project. What is not in place in any of these six courts, however, is a comprehensive set of policies and procedures that ensures effective goal-oriented supervision of all stages of the appellate process by the IAC.

6. *Judicial Responsibility and Commitment.*—"The effort has to come from the court itself, the judges deciding the appeals. They are the ones who have it within their power to effect the necessary changes."⁷⁵ This observation, from a thoughtful lawyer who was the presiding judge of a busy intermediate appellate court for over a decade, gets to the heart of the challenge confronting those who

74. See, e.g., CARRINGTON ET AL., *supra* note 37, 225-31; JUDICIAL ADMIN. DIV. AM. BAR ASS'N, *supra* note 22, §§ 3.50-.51 and accompanying commentary; NOVAK & SOMERLOT, *supra* note 62.

75. Anderson, *supra* note 63, at 64-65.

press for a more expeditious appellate process. If appellate courts are going to introduce significant innovations, the changes must be acceptable to—and have the support of—a critical mass of the court. The history of the Ohio Eighth District, as originally documented by Martin and Prescott, shows how a court can decide to change its culture to one promoting expeditious decision making.⁷⁶ In the same vein, the recent action of the Washington courts in setting goals to reduce what were very lengthy time periods from filing to decision also demonstrates the significance of the judges of a court deciding as a group to confront this challenge.

It is also clear that continued acceptance of judicial responsibility and consequent commitment to speedy processing of appellate cases must become integral to a court's culture. The experience of the Maryland Court of Special Appeals confirms the accuracy of this axiom. A former chief judge urged the court to take on this challenge; the current chief judge expends great effort in performing key functions such as screening cases to make sure that the court keeps pace with its caseload, and the other active judges participate in the process by focusing on resolving cases expeditiously. The emphasis on prompt disposition of appeals has become a part of the culture of the Maryland court. As one judge put it recently in an interview with one of the authors, "this is the way we do it."

7. Staff Involvement.—One of the most significant trends during the past two decades has been the development of professional administrative and staff support in state intermediate appellate courts.⁷⁷ Court administrators, clerks of court, and chief staff attorneys play increasingly vital roles in the leadership and management of appellate courts. Most IACs now have a significant complement of central staff attorneys in addition to the judges' own clerks.⁷⁸ Additionally, some IACs use judicial officers who are not full-fledged judges—for example the commissioners in the two Washington courts and the appellate magistrates in the Ohio Tenth District—to handle some categories of cases or some stages of some appellate proceedings.⁷⁹

Appellate courts have organized the use of non-judge resources in different

76. John A. Martin & Elizabeth A. Prescott, *VOLUME AND DELAY IN THE OHIO COURT OF APPEALS, EIGHTH DISTRICT* (1980).

77. See Joseph R. Weisberger, *A Profile of Appellate Staff: A Survey*, 24 JUDGES' J. 31 (1985).

78. The growth of staff resources has paralleled the growth in volume in appellate courts in the past three decades. One of the strategies recommended by those concerned about appellate justice in the 1970s was the development of a staff of attorneys who serve the court as a whole to assist in tasks such as screening newly filed cases, assigning cases to different "tracks," and preparing memoranda and proposal decisions on cases. See generally CARRINGTON ET AL., *supra* note 37, at 44-55; DANIEL J. MEADOR, *APPELLATE COURTS: STAFF AND PROCESS IN THE CRISIS OF VOLUME* (1974); NOVAK & SOMERLOT, *supra* note 62, at 115-16. ROGER A. HANSON ET AL., *THE WORK OF APPELLATE COURT LEGAL STAFF* (2000), contains extensive information regarding the varied ways in which these attorneys are now being used by their courts.

79. See discussion *supra* Part II.

ways. The New Mexico Court of Appeals, for example, has a larger central staff attorney complement than any of the other five courts in this study, but fewer law clerks per judge than any of the other courts.⁸⁰ The types of assignments given to central staff attorneys and to judges' law clerks vary across the courts. Little is known about the relative merits of different ways of organizing these resources, but it seems clear that they are important to the functioning of all of the courts. How they are used—in particular, how their functions are related to the performance goals of the courts—appears to be an important issue on which further research would be useful.

8. *Education and Training.*—If an appellate court is to manage its caseload successfully, both the judges and the court staff need to know what goals to strive for, why these goals are sought, what is expected of them individually, and how to perform their duties effectively. Educational programs on managing appellate caseloads have been offered sporadically by national organizations, but there has not been a sustained national effort. Three national membership organizations offer annual educational seminars that sometimes include sessions relating to appellate caseload management—the Council of Chief Judges of Courts of Appeals, the National Conference of Appellate Court Clerks, and the Council of Appellate Staff Attorneys (all three receiving principal support for their educational programs from the American Bar Association's Appellate Judges Conference). However, many IACs (including the six in this study) have relied on in-state judicial conferences and other similar programs that rarely have focused on expeditious case processing as a core topic. The new database established by the Judicial Education Reference, Information and Technical Transfer (JERITT) Project, the national clearinghouse for information on continuing judicial branch education,⁸¹ appears to contain no references specifically on appellate caseload management. Much of the progress that has been shown during the past decade dates to participation by several IACs in the ABA's appellate justice project (conducted in 1988-1990) that produced the *Delay on Appeal* volume.⁸²

9. *Mechanisms for Accountability.*—If appellate caseload is to be managed, someone must be responsible for the management, and there must be clarity about what is expected from the person(s) with management responsibility. Accountability requires clear goals or standards by which to assess performance; information that can be used to monitor performance in relation to goals; an expectation that performance will in fact be monitored by someone in authority; and a sense that there will be some recognition of (and reward for) good performance and negative sanctions for poor performance.

The two Ohio courts have been operating in a landscape in which some

80. See discussion *supra* Part II; *infra* tbls.1, 2.

81. The database can be found at <http://jeritt.msu.edu> (last visited Jan. 28, 2002).

82. See Anderson, *supra* note 63 (discussing the key role played by the ABA's appellate justice project in stimulating successful delay reduction efforts). The work of the project is described in NOVAK & SOMERLOT, *supra* note 62.

degree of accountability has been established by the state's supreme court.⁸³ Those courts (and all of the other appellate and trial courts in Ohio) provide monthly reports to the supreme court on the extent to which they are in compliance with applicable case processing time standards. Additionally, the judges of the Ohio Tenth District have developed time guidelines for opinion drafting: thirty days for a simple case, sixty for a complicated one, and ninety for a truly complex appeal. A monthly report to all judges recaps all pending cases and contrasts the actual time to the judge's estimated time. The New Mexico Court of Appeals, as noted earlier, adopted standards for opinion completion.⁸⁴

Another form of accountability is provided by an ancient mechanism that has sometimes been perceived as a restrictive force in court administration—the term system. Perhaps the best known example of an appellate court deciding all pending cases by the end of its current Term is the U.S. Supreme Court. While neither that court's jurisdiction nor its use of terms is directly comparable to that of any other appellate court, the idea of completing work on all pending cases within a defined period retains currency. Many appellate judges, for example, remind law clerks hired for one year that they are expected to complete work on all cases assigned to them before the end of their term of employment. The Georgia Court of Appeals adheres strictly to a state constitutional requirement that every case be disposed of during the term for which it is entered on the court's docket for hearing. Dorothy Beasley, a former chief judge of that court, credits this policy with being “the most important factor,” in the Georgia Court of Appeals' relatively speedy pace of litigation.⁸⁵

10. Backlog Reduction/Inventory Control.—For an appellate court to improve its caseload management, it often must first address the problem of an existing backlog—i.e., a large number of cases that have been pending for more than an acceptable period of time. Elimination of the backlog is just as important for a delay reduction program as is the development of effective means for dealing with newly filed cases.⁸⁶ Until the backlog of old cases is cleared away and substantially all cases are being resolved within the overall time standard adopted by the court, a court committed to effective caseload management must dispose of appreciably more cases than it takes in.

To successfully address a backlog problem, temporary additional resources may be needed, not only in the court but in other organizations and agencies, especially if the backlog consists in significant part of cases that have been taking too long in the record preparation and/or briefing stages. These may include, for example, the trial courts (in connection with production of trial transcripts and

83. OH. SUP. R. 39(A) (Anderson 2001).

84. See *supra* Part I.B.2.

85. See Dorothy Toth Beasley et al., *Time on Appeal in State Intermediate Appellate Courts*, 37 JUDGES' J. 12, 17 (1998). The Georgia Court of Appeals was one of the most expeditious courts in Hanson's *Time on Appeal* study with a seventy-fifth percentile time of 297 days from notice of appeal to resolution. See HANSON, *supra* note 7, at 13-17 (tbl.1).

86. See, e.g., NOVAK & SOMERLOT, *supra* note 62, at 84-93; MAHONEY ET AL., *supra* note 53, at 204-05.

other portions of the records) and the institutional litigants, such as the offices of the attorney general, public defender, and district attorney, that handle a large volume of appeals. Planning a backlog reduction program thus requires a collaborative approach: appellate court leaders must work with the larger court system in the state (particularly if additional resources are likely to be required by the court for a short but sustained backlog reduction program) and with the trial courts, the institutional litigants, and bar leaders.

Where a court is already functioning well and delay is not a problem, control of the inventory of pending cases should still be a matter of concern. The notion of a “manageable caseload”—a pending caseload that can be dealt with by the court within applicable time standards—is operationally important. Management information—in particular, information on the size, age, and composition of the pending caseloads in each of the stages of the appellate process—is obviously a critical element here, but the requisite information should not be difficult to collect. Trend data is also very important because it provides the court with warning signs. If filings begin to exceed dispositions and the age of cases in the pending caseload starts to increase, the court should be prepared to take corrective action.

C. Reviewing Some Mechanisms That Have Produced Promising Results

While the ten key elements discussed in the previous section should provide a basis for any intermediate appellate court to proceed toward improving its ability to process its caseload expeditiously, this project and other efforts have produced valuable information about specific mechanisms that have worked in practice in some jurisdictions. (An extensive list of mechanisms is included in Appendix B.) Information about the mechanisms discussed in this section have been gleaned from interviews with practitioners in the six courts participating in the project and from other intermediate appellate courts through a focus group conducted at an annual educational seminar of the National Conference of Appellate Court Clerks; a roundtable discussion at the annual educational seminar of the Council of Chief Judges of Courts of Appeals; and a review of availability reports and other literature focused on specific courts.

1. Mechanisms for Shortening the Record Preparation Stage.—As noted in Part III, delays in the preparation and filing of the record are more a problem of system management than of technology. For the record preparation process to work quickly and smoothly, it is important for practitioners at both the trial court and the appellate court to know what is expected (and by when) and to have the resources needed to do the work. It is important for the appellate court to actively supervise the process, taking account of relevant time standards and working to solve problems that produce delays. Four mechanisms show particular promise for shortening the overall record preparation process.

a. Transcript coordinator.—In New Mexico, a managing court reporter in Bernalillo County (which includes Albuquerque, the state’s largest city) coordinates the use of court reporters and other mechanisms for making the record. Her duties include making certain that the proper transcript has been ordered and is being prepared expeditiously in each case in which an appeal is

taken.

b. Transcript oversight by court.—In Washington State, the appeals courts have taken responsibility for tracking backlog problems with specific reporters. In Maryland, staff in the Clerk's Office of the Court of Special Appeals will contact the reporter(s) who were supposed to produce the manuscript when transcripts have been ordered but not completed for lengthy periods. In California's First Appellate District, one superior court judge in each county has been designated to serve as the Appeals Supervising Judge and serves as the primary point of contact for the leaders of the courts of appeal with respect to transcript production delays and other problems in the preparation stage.⁸⁷

c. Rapid transcription of audio tapes.—In jurisdictions where the record of proceedings in the trial court is taken on audiotape instead of by a court reporter, a policy of having tapes immediately transcribed in any case in which a notice of appeal is filed may resolve otherwise lingering problems of inaudible or flawed tapes. Some states, of course, require that written transcripts be filed in every case, but the immediate transcription policy would be appropriate for courts that receive many appeals of cases with taped records.

d. Communication with trial court personnel.—The responsibility for filing the trial court record in the appellate court may fall on either the attorneys or the trial court clerk. The attorneys may be sanctioned by the appellate court for dilatory behavior. However, sanctions are probably best reserved for egregious delay. In the Court of Appeal for California's First Appellate District, one Presiding Judge found that conducting regular meetings of trial court clerks within the appellate court's jurisdictional area served to alert them to common problems connected with timely preparation of records and was helpful in resolving the problems and developing trust and cooperation.⁸⁸

2. Mechanisms for Minimizing Delays During the Briefing Stage.—Lawyers handling appellate cases often want—and in some cases genuinely need—more time to prepare their briefs than is provided for by applicable statutes and appellate court rules. However, while extensions of time may be warranted, appellate courts should follow sensible and consistent policies in considering requests for such extensions and in determining the amount of time allowed. In situations where the need for an extension is not a case-specific or one-time event, but rather is the product of systemic problems such as case overload in the office of an institutional litigant such as a prosecutor or public defender, the appellate court can play a constructive role in helping to address the underlying issues. Below are specific mechanisms some IACs are using to address each type of situation.

a. Policies for responding to requests for continuances or extensions of time.—This is probably the most common (and often most vexing) problem that intermediate appellate courts face during the briefing stage. The Ohio Tenth District Court of Appeals has delegated the authority to rule on motions for extension of time to its court administrator, who has made it clear that these

87. See Anderson, *supra* note 70, at 320-23.

88. *Id.* at 322-23, 357-58.

motions will only be granted for good cause. Good cause is narrowly defined. The court has found it more effective to shift these motions from the individual judges to the court administrator so as to expedite their decisions and establish a standard policy. Perhaps most critical to the success of this policy is the court's willingness to back the administrator when counsel challenge denial of extensions.

b. Addressing the compliance problems of institutional litigants.—Public legal offices, such as those of attorney-general, prosecutors, and public defenders, are frequently understaffed, especially in their appellate sections. While these offices possess advantages of expertise and familiarity with both the court and the law in litigating against practitioners who may only occasionally represent an appellate party, often the appellate sections are significantly understaffed, creating a real disadvantage. In Washington State, the appeals courts have started to work closely with these offices to prepare schedules for briefing that recognize the limited resources but also encourage the offices to mobilize their staffs and prioritize their cases more effectively.

3. Mechanisms for Ensuring Prompt Completion of the Decision and Opinion Preparation Stage.—The time between the completion of the briefing stage and the appellate court's issuance of a decision can be subdivided into two parts: the period prior to oral argument or submission; and the post-argument (or post-submission) period. Some courts have developed practical mechanisms for handling both stages effectively.

a. Prompt calendaring of cases for argument or submission.—IACs follow different practices with respect to the calendaring of cases. The approach used by the Maryland Court of Special Appeals has proven effective for that court: cases are set for argument or submission during a specific month shortly after the record is filed. The schedule is designed to leave adequate but not excessive time for preparation of briefs by the lawyers. Other approaches are to place the case on the calendar at the time the appellant's brief is filed; or at the time the appellee's brief is filed. The effectiveness of any of these approaches depends, of course, on the parties' abilities to complete the briefing process within the schedule set by the court; and the court's ability to stick to its original schedule.

b. Use of summary calendars.—There is considerable dispute over the value of oral argument in the appellate process, but a broad consensus that it is not essential in every case.⁸⁹ Many courts use summary calendars, often with a presumption that cases on this calendar will be submitted on the briefs with no oral argument unless a special request is made and granted. The summary calendar approach enables the assigned panel to get started on the decision

89. See, e.g., JUDICIAL ADMIN. DIV., AM. BAR ASS'N, *supra* note 22, § 3.35 and accompanying commentary. This standard provides that the opportunity for oral argument "may be subject to qualifications, established by court rule" in some circumstances. Cf. Anderson, *supra* note 70, at 345-46 & n.177 (noting that thirty-one states have the grant of oral argument to the court). Additionally, in some of the states where oral argument is allowed, a case will be placed on the calendar for oral argument only if requested. In others, the case will be placed on the calendar but the parties can stipulate to no oral argument. *Id.*

process as soon as the briefing process is completed.

c. *Early assignment of cases to panels and to a “lead judge.”*—Once a truly firm date is set for submission of briefs or oral argument in a case, the case can be assigned to a panel. Some courts also assign one of the judges on the panel to be the preliminary author of the decision in the case at the time it is sent to the panel. The practice of early assignment of a “lead judge” has been criticized as giving one judge undue influence over the outcome of the case. However, it has the benefit of placing primary responsibility for resolution of the case on a single judge and thus helps establish a system of accountability for effective and expeditious preparation of a reasoned decision.

d. *Augmenting judicial and staff resources.*—Most appellate courts that require lengthy periods of time to render decisions have a backlog—i.e., a large number of cases that have been argued or submitted, but have been awaiting decision for an unacceptably long period of time. To eliminate the backlog, it will be necessary to identify and focus on resolving the “old” cases, while at the same time handling incoming cases in an expeditious fashion. Often, this will require temporary additional resources—for example, extra panels using retired judges or trial judges specially designated to sit temporarily with the IAC.

e. *Shorter opinions.*—Professors Carrington, Meador, and Rosenberg presented illustrative examples of short memorandum opinions, appropriate for different types of situations, in their landmark study *Justice on Appeal* more than a quarter-century ago.⁹⁰

This approach still offers a sound option for IACs intent on providing counsel and parties with a reasoned, but not unnecessarily lengthy, explanation of a decision. Antagonism to abbreviated procedures in appellate courts among both lawyers and legal academics has been stirred by courts that have resorted to one-word affirmances and decisions without opinion, but the memorandum decision can be both short and sufficient.⁹¹

f. *Monthly reports and judges’ meetings.*—The Ohio Eighth District Court of Appeals has made consistent use of a practice of reviewing the status of all cases awaiting decisions at monthly meetings attended by all judges. According to judges on the court, the mere existence of the meeting each month stimulates judges to move more quickly to draft a decision. The court has found that discussing the cases regularly in this manner also permits other judges to offer ideas that may cut through the logjam and assist the authoring judge or panel. Some have suggested that the monthly reports be made public.

g. *Proactive leadership by the chief judge.*—Perhaps the most valuable mechanism for ensuring prompt and effective calendaring and decision-making

90. CARRINGTON ET AL., *supra* note 37, at 243-53 app. B.

91. Some appellate courts must contend with state statutes, usually old, that can be construed as requiring the issuance of full written opinions in all cases. Data collected by the National Center for State Courts indicates that twenty-three of the thirty-five courts that participated in the *Time on Appeal* research project are required to issue a “reasoned opinion.” See Beasley et al., *supra* note 85, at 16 tbl.2. In many instances, of course, a memorandum opinion can be “full” and “reasoned” in the sense that it covers the essential ground.

processes within the court is the chief judge's active demonstration of his or her commitment to an expeditious process. Participants in the roundtable discussion at a meeting of the Council of Chief Judges noted a variety of ways that they could exercise effective leadership in this area. Suggestions included taking responsibility for providing up-to-date and accurate reports to the other judges on trends and productivity, leading monthly meetings at which caseload status is reviewed, supervising central staff attorneys' offices (either directly or through a liaison judge) to ensure that the staff is staying current with its caseload and not keeping cases too long, and meeting one-on-one with judges who consistently fall behind in drafting opinions to discuss the problem and develop a plan for remedial action.

Many of the mechanisms used by the appellate courts to reduce delays and improve performance involve some kind of monitoring and troubleshooting. While new technologies open up possibilities for dramatic improvements, they rarely reduce the need for on going supervision, problem identification, and practical problem-solving.

In examining what kinds of mechanisms have proven successful in assisting intermediate appellate courts to reduce delay and improve performance, mechanisms that involve both monitoring and troubleshooting should be emphasized. Often, technological innovations make it possible to conduct some activities far more swiftly and efficiently than in the past, but rarely do they reduce the need for constant supervision of the process. The important role played by the transcript coordinator in New Mexico illustrates how improved technology—such as vastly improved equipment and techniques used by court reporters—necessitates that attention be given to the critical stages before and after the actual preparation of the transcript. Someone must be watching to ensure that the transcript is properly and timely ordered, segments are not omitted from either the order or the product, and the final transcript is sent swiftly to the court and the parties in order to begin next stage of the process.

The monitoring and troubleshooting functions are critically important, and generally have not been performed well by American appellate courts. They will likely become even more important in the years ahead, as the introduction of new technology brings rapid change to institutions that have tended to look to precedents as the primary guide to decision-making and policy formulation.

V. LOOKING TO THE FUTURE: NEXT STEPS TOWARD IMPROVING APPELLATE CASEFLOW MANAGEMENT

From our review of the literature in the field and our study of the six intermediate appellate courts participating in this project, it appears that not much has changed in appellate case processing in the past two decades. Despite the work of the ABA standards committees, the writings of a few knowledgeable and thoughtful professors and judges, and several empirical studies of case processing that have helped shed light on the problems and on potential solutions, most appellate courts appear to have made little change in the way they handle their caseloads. The types of technological innovations discussed in Part III are very commonly used in business and industry, but have yet to be adopted

for widespread use in appellate courts even though they have great potential for increasing the speed and effectiveness of the appellate process.

As noted in Part IV, the basic strategies and techniques for effective appellate caseload management are not novel. Indeed, most of them were first advanced in the 1970s or earlier, but they have seldom been adopted in a comprehensive way in state intermediate appellate courts. Most strikingly, the same broad range of case processing times (with very lengthy times required for completion of appeals in some courts) that Martin and Prescott found over twenty years ago⁹² still seems to be prevalent. Particularly in light of the opportunities for dramatic improvements presented by the new technologies, the time seems ripe for renewed attention to appellate caseload management.

This Part discusses three main types of initiatives that should be helpful in catalyzing action—and, ultimately, significant improvements—in state intermediate appellate courts:

- development of a system for regularly collecting and publishing comparable data on the workloads, resources, structures, operational procedures, productivity, and case processing times of state IACs;
- design, implementation, and evaluation of demonstration projects aimed at significantly improving the expeditiousness of appellate case processing; and
- design and presentation of educational programs focused on appellate caseload management for judges, court staff, and others at the national, state, and regional levels.

Lastly, we consider the need to integrate caseload management into the appellate process and some final issues concerning acceptance of this principle by appellate courts.

A. National Data on the Work of IACs

To date, the most comprehensive recent compilation of empirical data on state intermediate appellate courts has been the work done by Roger Hanson in his book *Time on Appeal*.⁹³ That volume has data on case processing time in thirty-five IACs and also includes very useful information on the number of filings in each court, judicial resources (judges and law clerks), structural features, and operational procedures.

Time on Appeal provides a very valuable snapshot of the workloads, resources, and case processing times in IACs in 1993, but it was a one-time effort. There are no regularly produced statistical reports on the work of these courts and no generally available descriptions of their operational procedures.

Development of a system for regularly collecting data on the workloads, resources, organizational structures, operating procedures, productivity, and case processing times of state intermediate appellate courts would have a number of benefits:

- It would increase knowledge about the work of state IACs across the country.

92. See MARTIN & PRESCOTT, *supra* note 8, at xiv.

93. See HANSON, *supra* note 7.

- It would enable comparisons to be made about the productivity and expeditiousness of the courts and should thus provide motivation for improved performance on the part of the courts that rank low on multiple measures.
- While comparisons are especially difficult at present—mainly because of differences in jurisdiction, caseload composition, judicial and non-judicial resources, methods of categorizing types of cases and organizing calendars, and measures used to report case processing times—a focused national effort to develop meaningful statistical data would highlight these differences and should lead to acceptable ways of making meaningful comparisons.
- Comparisons would provoke discussion of the differences and lead to better understanding of the differences, the reasons for them, and the implications (for expeditiousness and other values) of different ways of organizing the work of IACs.
- Analysis of statistical data, coupled with descriptive information about organizational structures and operating procedures, should stimulate identification and adaptation of the best practices and experimentation with new approaches.
- Accurate information on workloads, resources, structures, and performance should assist in the development or refinement of appropriate standards of performance and, ultimately, should lead to improved performance and greater accountability.

Although it would be desirable to include all IACs in a national statistical data collection effort, it is more feasible to start with a subset. By beginning this effort with a manageable number of courts—say, between eight and sixteen—it should be possible to work through most of the methodological issues encountered without spreading resources too thinly.

In considering the types of information needed, care should be taken in the development of accurate descriptions of the organizational structures, allocation of resources, and operating practices and procedures of the courts. Without such descriptions, statistical data has little use. The descriptive information enables observers to understand how a court actually works, gives meaning to the statistical information, enables comparisons to be made across courts, and provides baseline information essential for measuring the impact of the introduction of new policies.

Care must be taken, too, in the development and presentation of statistical data, particularly with respect to performance measures. Because of the significant differences among IACs in case volume, resources, caseload composition, definitions of terms, operating procedures, and other factors, it will be necessary to devise methods for collecting relevant data, organizing it to enable relevant comparisons to be made, and presenting it using a variety of performance indicators.

Grant funding would undoubtedly be helpful (and may be essential) to get a multi-court IAC data collection and analysis effort started. In the long term, however, this initiative should be supported by state judicial systems and state legislatures. The courts themselves, the judicial systems of which they are integral parts, and the public will be the beneficiaries of greater knowledge about

the performance of these institutions.

B. Demonstration Projects

Demonstration projects can provide an opportunity to assess the viability of combining new technology with other programmatic innovations to achieve ambitious appellate caseload improvement goals. For example, it should be possible to design and evaluate demonstration projects that incorporate most or all of the following components in a system for handling major segments of an IAC's caseload:

- establishment of clear goals for appellate case processing, including time standards for overall case processing time and for case processing time in the major stages of the appellate process (record preparation, briefing, and appellate court decision-making);
- use of computer-aided transcription or other transcript-preparation methods to consistently enable preparation of transcripts within a seven-day period following completion of the trial;
- provision for the filing of a notice of appeal (with a copy to the IAC) within fourteen days after the conclusion of the trial; for any outstanding issues relating to the appeal (e.g., eligibility for appointed counsel, waiver of fees, agreement on contents of the record) to be resolved within ten days thereafter; and for a docketing statement with key items of information about the parties and the issues on appeal to be filed within twenty-one days after the notice of appeal is filed;
- filing of the clerk's record and the trial transcript within thirty days after the notice appeal is filed, using electronic transmission if possible;
- issuance of a briefing schedule and tentative argument/submission date by the appellate court on or (if the information in the docketing statement permits) prior to the date the clerk's record and the trial transcript are filed;
- use of computer-based management information reports to enable appellate courts to monitor for compliance—on the part of court reporters, trial court clerks, and appellate attorneys—with the time requirements established for the demonstration projects;
- establishment by the IAC of internal mechanisms and procedures to help ensure the prompt completion of all stages of the process, specifically including designation of a judge and/or senior staff person to actively monitor compliance with time requirements in the record preparation and briefing stages; and commitment by the chief judge to actively monitor compliance by the judges with time standards for the completion of work on cases assigned for decision; and
- reports made periodically by the court, to the state administrative office of the courts and to the bar and other interested groups, on the court's performance in relation to the goals set for the project.

The evaluation component of such a demonstration project will be critically important. Evaluation should help the program's leaders and the funding sources know the extent to which the project is effective (in particular, whether it is more effective than alternative approaches, including prior practices) and learn why it

works or fails to meet expectations. Developing and evaluating demonstration projects is a natural complement to a comprehensive research strategy and will also help strengthen national-level and state-level education and training efforts.

C. Education and Training

Despite the clear need for more effective case processing in appellate courts, few vehicles exist to educate appellate judges, staff (especially appellate court clerks and central staff attorneys), bar members, and other stakeholders about the concepts and techniques of sound appellate caseflow management.

One promising approach, used successfully to introduce innovations such as intermediate sanctions and drug courts at the local level, is to design educational programs for “teams” of policymakers and practitioners, whose collaboration and commitment will be essential for a significant case processing improvement effort to succeed. For a workshop on appellate caseflow management improvement, logical members of a jurisdictional team would include at least the chief judge, the clerk of court, and the chief staff attorney. Depending on the circumstances in the jurisdiction, other potential members of the team could include the appellate court’s chief information officer or other senior member of the administrative staff of the court, chiefs of the appellate litigation sections of major institutional litigants (e.g., attorney general’s office, prosecutor’s office, and public defender’s office), a bar association leader knowledgeable about appellate practice, the chief judge (and/or clerk, court administrator, or chief court reporter) of a major urban trial court that is the source of a significant percentage of the appellate court’s caseload, and a legislative leader.

Workshops for jurisdictional teams are probably best conducted at the national or regional level. Such a workshop can be a vehicle for presenting information and ideas about appellate caseflow management and, most importantly, for members of the participating teams to set goals and begin development of a plan for significant improvements in case processing. At a minimum, the workshop should provide opportunity for the key stakeholders to take a hard look at the situation in their own jurisdiction, exchange information and ideas about perceived problems, and gain a better understanding of the concerns of others whose involvement will be essential for progress to be made. In addition to workshops for teams, it will be helpful to have programs for individual judges, clerks, and staff attorneys, presented at the state or individual court level as well as at the national level.

D. Integrating Caseflow Management into the Appellate Process

The concept of caseflow management is simply not widely understood or applied in appellate courts. Indeed, one observer, commenting on an earlier draft of this manuscript, suggested that the authors should not assume that the culture of courts in general—and appellate courts in particular—accepts timeliness as a overarching value.

Timeliness need not be regarded as an “overarching” value, but it is unquestionably an important value in American jurisprudence and in public attitudes toward courts. Timely resolution of disputes is widely recognized as an

essential characteristic of a well-functioning justice system. Recognizing that timeliness affects the quality of justice, virtually every state has adopted statutes and court rules designed to produce expeditious case resolutions. In every survey of public attitudes toward courts and the justice system, delay (along with the expense of litigation) emerges as a major complaint of citizens.

If timeliness *is* an important value, and if there is good evidence that expeditious appellate case process *is* achievable,⁹⁴ then what must be done to address the chronic problems of delay that plague most intermediate appellate courts? Like Rosenberg more than three decades ago, we reject the “one-injection miracle cure” approach and recognize that progress is most likely to come from marshaling relief measures in groups.⁹⁵

The preceding section has outlined three complementary approaches—collection and dissemination of comparative data on court performance, implementation and evaluation of demonstration projects, and a sustained focus on education for key stakeholders—that should help catalyze improvements. Additionally, a broad range of strategies and techniques—many of them described in Parts III and IV and in the Appendices to this report—can be employed to address issues of backlog and delay. For real progress to be made, however, justice system leaders—most importantly (but not exclusively), the chief judges of the intermediate appellate courts—must acknowledge timeliness as an important value and recognize the necessity of integrating caseload management principles and techniques into the appellate process.

Integrating caseload management into the appellate process should be possible without infringing upon other important values of a well-functioning intermediate appellate court. These other values include:

- impartiality in decision-making;
- the capacity for judges to read and think individually about cases that come before them;
- collegiality in decisionmaking and opinions;
- reasoned decisions;
- uniformity and consistency in decisions; and
- working conditions that attract lawyers of high quality to the appellate courts, keep them on the bench, and foster their concern for individual litigants and for the integrity of the appellate process.

In an environment that requires group decision-making processes and includes strong-minded individuals, disagreements over the relevance of conflicting precedents, the appropriate application of law to the facts of particular cases, and a host of other issues are inevitable. In some cases, substantial amounts of time may be required to reach decisions or resolve differences over the wording of an opinion. A sound approach to caseload

94. A few intermediate appellate courts—notably the Minnesota Court of Appeal and the three divisions of the Tennessee Court of Appeals—clearly handle their caseloads very expeditiously. See HANSON, *supra* note 7, at 12-18; see also Beasley et al., *supra* note 85, at 14 tbl.1.

95. Cf. Rosenberg, *supra* note 53, at 55.

management will acknowledge the inevitability of some disagreements within the court and the need for time to resolve some differences prior to the issuance of an opinion. However, it will also recognize that a high proportion of cases involve no sharp disagreements, which should permit the issuance of an opinion in a relatively short period of time. Similarly, a sound approach to caseload management will recognize that some cases should be allowed extra time for the filing of the record or the preparation of briefs, but will also recognize that in a high proportion of cases it is feasible to complete these stages quite expeditiously. Perhaps most importantly, a sound approach to caseload management will recognize that, in addition to the parties' interests, there is a strong public interest in minimizing delays and that the appellate court must exercise responsibility for the expeditious operation of the process, beginning at the time a notice of appeal is filed.

Timeliness in the resolution of appeals and the integration of caseload management into the appellate process are fundamentally leadership issues. They are issues with respect to which sustained attention from persons in positions of leadership over a period of years will be important. Given the rapidity of leadership changes in IACs (with the chief judge position often rotating on a yearly basis), it seems desirable to develop a leadership group or cadre committed to expeditious appellate case processing. Within each court, the cadre would logically include other judges (especially those likely to become future chief judges), the clerk and chief deputy clerks, and the chief staff attorney. Externally, the leadership group could include the heads of the appellate sections of major institutional litigants, bar leaders who specialize in appellate litigation, legislative leaders, and—perhaps most importantly—the chief justice of the state's court of last resort and the state court administrator.

In some states, statutes, court rules, established case law, and long-established practices may have to be changed in order to achieve effective caseload management. However, archaic statutes, rules, precedents, and practices *can* be changed when they clearly lead to undesirable results. If court and bar leaders are truly committed to timeliness as an important value in the judicial process, they will find ways to achieve the changes and integrate caseload management into appellate court operations.

While opportunities for improvement in the operation of intermediate appellate courts abound, there is also some cause for optimism. Some IACs have organized and mobilized themselves to integrate caseload management concepts and techniques into their cultures. They have communicated their goals and expectations to the bar and to the trial courts, and they have modeled expeditious case processing by rendering their own decisions in a timely manner. Perhaps most importantly, they have taken responsibility for the entire appellate process, from the filing of a notice of appeal to the issuance of a decision in the case. Although much more remains to be learned and done, there is a good base of knowledge and experience on which to build.

Table 1. Descriptive Information for the Six Courts

	Maryland	New Mexico	Ohio 8th District	Ohio 10th District	Washington I	Washington II
Geographic Scope of Jurisdiction	Statewide	Statewide	Regional (single county judicial district)	Mixed (statewide for some administrative law matters; single county for others)	Regional (3 judicial districts, 6 counties)	Regional (13 counties)
Number of Judges	13	10	12	8	10	7
Size of Panels	3	3	3	3	3	3
Method of Selection	Governor appoints; retention election	Partisan election; non-partisan retention	Non-partisan election	Non-partisan election	Non-partisan election	Non-partisan election
Selection Area	Circuit & Statewide	Statewide	Statewide	Statewide	District	District
Term (Years)	10	8	6	6	6	6
Term of Chief Judge (Years)	Indefinite	2	Varies (usually 1 year)	Varies (usually 1 year)	2	2
Use of Senior Judges	No, but retired judges are used	No	No	No	No	No
Number of Non-Judge Judicial Officers	None	None	None	3 appellate magistrates	4 commissioners	2 commissioners
Number of Law Clerks per Judge	2	1	2	2	2	2
Number of Staff Attorneys	9	15	6	7	7	3

Table 2. Appeals Filed in 1999 in Relation to Judges and Other Judicial Resources

	Maryland	New Mexico	Ohio 8th District	Ohio 10th District	Washington Division I	Washington Division II
Filings	1962	948	1833	1500	1879	1229
Number of Judges	13	10	12	8	10	7
Filings Per Judge	151	95	153	188	188	176
Number of Law Clerks for Individual Judges	26	10	24	16	20	14
Filings Per Law Clerk	75	95	76	94	94	88
Number of Staff Attorneys	8	15	6	7	7	2
Filings Per Staff Attorney	245	63	306	214	268	615
Filings Per Combined Judge and Law Clerk Resource	50	47	51	63	63	59
Filings Per Composite Judicial Resources (i.e., per combined total of judges, other judicial officers, law clerks, and staff attorneys)	1962/47= 42	948/35= 27	1833/42= 44	1500/34*= 44	1879/41**= 46	1229/25***= 49

* Includes three appellate magistrates.

** Includes four commissioners.

***Includes two commissioners.

Table 3-A. Filings and Dispositions for the Six Courts, 1998

	Maryland	New Mexico	Ohio 8th District	Ohio 10th District	Washington Division I	Washington Division II
Civil Filings	1186	533	1435	1307	740	479
Civil Dispositions	1175	413	1237	1279	717	480
Criminal Filings	765	424	709	345	821	597
Criminal Dispositions	804	371	663	364	861	499
Total Filings	1951	957	2144	1652	1561	1076
Total Dispositions	1979	784	1900	1643	1578	979

Table 3-B. Filings and Dispositions for the Six Courts, 1999

	Maryland	New Mexico	Ohio 8th District	Ohio 10th District	Washington Division I	Washington Division II
Civil Filings	1219	573	1265	1145	684	414
Civil Dispositions	1167	390	1217	1294	769	470
Criminal Filings	743	375	568	355	742	516
Criminal Dispositions	661	370	644	328	839	596
Total Filings	1962	948	1833	1500	1426	930
Total Dispositions	1828	760	1861	1622	1608	1066

Table 4-A. Time from Filing to Disposition in the Six Courts, 1999

	Maryland	New Mexico	Ohio 8th District	Ohio 10th District	Washington Division I	Washington Division II
Average time, from filing to resolution—all cases	322 days	Reg. Cal.: 428 days Summ. Cal.: 160 days	Reg. Cal.: 479 days Summ. Cal.: 237 days		536 days	568 days
Days to resolve 75th percentile case	Civil: 336 days Criminal: 344 days				Civil: 592 days Criminal : 797 days	Civil: 605 days Criminal: 805 days
Days to resolve 95th percentile case	Civil: 425 days Criminal: 443 days				Civil: 615 days Criminal: 1054 days	Civil: 652 days Criminal: 955 days
Percentage of cases pending longer than 210 days from filing*			1st Q: 44.7% 2nd Q: 50.4% 3rd Q: 50.4% 4th Q: 47.9%	1st Q: 35.4% 2nd Q: 33.7% 3rd Q: 32.3% 4th Q: 30.0%		

*A special 180-day guideline applies to original actions. These data include cases beyond that guideline.

Note: Where no information is shown, it was not possible to obtain data from the courts' reports.

Table 4-B. Time from Filing to Disposition (in Days) in the Six Courts, 1998

Maryland	New Mexico	Ohio 8th District	Ohio 10th District	Washington Division I	Washington Division II
75% decided: Civil-392 Criminal-355	Average time (in days): Regular-470 Summary-153	Average time (in days): Regular-396 Summary-219	Percentage of cases pending past 210-day guideline: * 1stQ-32.5% 2ndQ-36.7% 3rdQ-32.3% 4thQ-33.6%	75% decided: Civil-644 Criminal-644	75% decided: Civil-687 Criminal-690
95% decided: Civil-553 Criminal-507		Non-merits cases: Regular-92 Summary-54		95% decided: Civil-865 Criminal-1152 Average time: Civil-554	95% decided: Civil-988 Criminal-1082 Average time: Civil-587

*A special 180-day guideline applies to original actions. These data include cases beyond that guideline.

Table 4-C. Time from Filing to Disposition (in Days) in the Six Courts, 1999

Maryland	New Mexico	Ohio 8th District	Ohio 10th District	Washington Division I	Washington Division II
75% decided: Civil-336 Criminal-344	Average time (in days): Regular-428 Summary-160	Average time (in days): Regular-479 Summary-237	Percentage of cases pending past 210-day guideline*: 1stQ-35.4% 2ndQ-33.7% 3rdQ-32.3% 4thQ-30%	75% decided: Civil-592 Criminal-797	75% decided: Civil-605 Criminal-805
95% decided: Civil-425 Criminal-443		Non-merits cases: Regular-114 Summary-52		95% decided: Civil-615 Criminal-1054 Average time: Civil-521 Criminal-546	95% decided: Civil-652 Criminal-955 Average time: Civil-521 Criminal-601

*A special 180-day guideline applies to original actions. These data include cases beyond that guideline.

Table 5. Average Time (in Days) in Stages for Appeals, 1999

	Notice to Record Filed	Record to Brief Filed	Brief Filed to Argument or Submission	Argument or Submission to Decision
Maryland Civil	189	96	53	65
Maryland Criminal	71	114	40	85
New Mexico Summary	94†		54	14
New Mexico Regular	142	113	82	124
Ohio Eighth District	49	145	216	35
Washington Division I	128	172	246‡	
Washington Division II	111	328	262‡	

†This figure is the total in days from notice of appeal until calendaring and the next figure is the total in days from calendaring until submission.
Briefs are not filed in summary cases in New Mexico.

‡These figures are the totals in days from the completion of briefing until decision.

Appendix A
Note on the Impact of Technology on
Appellate Caseflow Management

ROGER A. HANSON*

Appellate court performance can be enhanced through the use of existing and future technological possibilities. Introduction of automated processing is a way for courts to improve their record-keeping and related functions and to increase their efficiency. Both record-keeping and efficiency are central to case management, which in turn underlies the resolution of cases in a timely manner. For state intermediate appellate courts, in general, and the courts under study, in particular, improvements in both of these areas are warranted.

At the general level, intermediate appellate courts have experienced substantial technological innovations. During the 1980s, many, if not most, courts saw the implementation of first (or subsequent) generation online docketing systems. These systems either replaced strictly manual systems with ledgers and paper and pen entries, word processing systems limited to generating notices and orders, or mainframe systems that were part of larger county or state-wide proprietary arrangements with fixed report production generation capabilities. These were often designed to meet the record-keeping needs of executive agencies who controlled the configuration of software design.

For the courts under study, the ability to generate management information related to timeliness was constrained. All of the courts had difficulty in providing information on the timeliness of civil and criminal appeals at basic steps in the appellate process for cases on either a regular calendar or a special expedited calendar. The information generated and used in this report was delivered at some cost and energy to the courts involved. Data were not a product of point-and-click movements. Thus, the project appreciates the generous efforts that the courts made to respond to our requests. Nevertheless, the information obtained was not as complete as it should have been, and the inability of most courts to generate adequate information greatly restrains the opportunity to compare time frames among the courts.

In this Appendix, we examine how improvements in technology might substantially increase what state intermediate appellate courts know about their degree of expedition as well as enable them to see how they stand in relation to others. Three areas of technology are the focus of attention. These are automated management information systems, issue tracking, and electronic filing. For each area, suggestions are made on how courts can benefit from these technological applications, what questions they need to ask in considering their usage, and what guidelines they might follow in sorting out possible

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configurations of technology. The discussion is aimed at providing courts with a framework to use in assessing the desirability of possible technological applications.

1. *Management Information Systems.*—The basic technological application that appellate courts need to consider involves the development of a method for obtaining information on how timely they are in discharging their decision-making obligations, ranging from ruling on procedural motions to rendering opinions after oral argument. The following five recommendations or guidelines are intended to provide appellate court judges and administrators with some basic premises that will affect their efforts to design adequate systems and to work with management information specialists to make either local area networks (LAN) or wide-area networks (WAN) flexible and practical management information systems.

Guideline Number One: A management information system is different from an automated docketing system.

Many appellate courts have automated docketing systems, but this information is stored primarily for the purpose of tracking events in the life of a case (e.g., filing dates for critical events, the outcome of rulings on motions and the final resolution of an appeal, and the pending status of cases) for record-keeping purposes. The functional difference between an automated docketing system and a management information system is that record-keeping systems do not support a platform for analysis of case processing. In some mainframe environments, the preparation of management reports is contingent on a management information specialist writing code to extract appropriate cases. The time and resource requirements needed to write appropriate code to perform statistical calculations cannot be considered trivial, and, logically, it becomes a greater burden as the bench becomes more sophisticated and asks for more advanced, exploratory, and explanatory management reports.

Consequently, the appellate court leadership needs to recognize that the daily operation of a management information system is a function that should be kept separately from the tasks of system administration and maintenance (e.g., gateways, routers, and protocols). In all likelihood, the platform required for a management information system will entail a viable, stand-alone end-user environment (i.e., LAN or WAN based personal computer (PC) environment) to support the periodic analysis of all available caseload information. Once the court recognizes the distinction between the two functions (and that as the functions are discrete, so too should be the platforms that support the tasks), it will be easier to envision how to proceed to produce the type of information and reports the court deems worthwhile.

Guideline Number Two: There are a wide range of hardware and software configurations that can support a management information system platform.

In its simplest form, the system might entail one individual working with one PC using any number of available off-the-shelf statistical software packages, as well as any available proprietary software. Often the matrix of data (or, where courts are using relational databases, the tables of data and relations) that is, in fact, the court's "information" can be imported (if not already in a PC environment) into a PC that uses any number of software packages. This type of

management information system has limitations such as restricted read-and-write accessibility and difficulty supporting any number of concurrent users.

A more accessible system configuration would support multiple users whether or not a judge, administrator, law clerk, secretary, senior staff attorney, clerk, and deputy clerk of court each had his or her own personal computer as part of a LAN (or WAN). The implication of the wide range of available configurations is that the type of output the judges and administrators wish to generate should drive the process of system design and configuration, not vice versa.

Guide Number Three: Some of the simpler types of management information systems can take advantage of hardware already in place and minimize the resources expended to implement a workable information system.

Some very sophisticated PC software that can handle significant size databases (e.g., twenty, thirty, or forty megabytes) while executing advanced statistical techniques and procedures can be obtained at reasonable costs. Hence, the financial, personnel, and time resources a court must expend need not be viewed as necessarily prohibitive.

Guideline Number Four: The utility of any information system is contingent upon the individuals who use the system and the purposes for which it was created.

Judges, managers, and court staff need to communicate their respective questions and concerns to each other. Management information needs to be demystified. It is not the by-product of some elaborate configuration of technology that can solve problems confronting the court. A management information system is defined by its end users, their ability to manipulate the application and utilities available to them, and the benefit derived by those users from the information they extract to understand the operations of the court. Some management information specialists might focus on hardware, but it is necessary to devote an equal amount of resources to cultivating end user expertise.

Guideline Number Five: The utility of management information systems correlates directly to the ability of each end user to apply the information received.

Each end user will define a “useful” information system differently; all information systems will evolve and progress over time and different parts of the courts will variously converge and diverge in their interests and needs. Indeed, the information required by the judges will not always be the same as the management information requirements of the court administrative office in monitoring case processing or as the clerk’s office in producing case processing notices, letters, and reports. For this reason, it is preferable for systems to possess a great deal of flexibility and have the capacity to change and adapt. Judges and court managers should be particularly leery of any docketing or information software (whether proprietary or from a commercial vendor) that promises to serve as a once and future panacea. Rather, it is important to understand that all management information systems will need to undergo periodic restructuring to remain current and to support the evolving legal and court environment, as well as the changing needs of the end user.

These guidelines should permit administrators and judges to have a more focused dialogue concerning management information systems. Judges will learn that the court can be responsive to their needs, and they should be able to suggest a range of alternative computer and software configurations and a series of viable options as opposed to forced choices.

2. *Issue Tracking*.—A second type of technological application particularly relevant to appellate courts is the use of automation to support issue tracking. This use of technology is not new, but it merits attention because, although it has proven highly successful in some instances, it has not been adopted on a widespread basis. Essentially, if a court has an on-line docketing system, acquisition of additional software will allow data relating to procedural events and dates to be combined with new data on issues and, thereby, permit identification of similar cases. The necessary software is available for purchase or can be developed in a proprietary form by a court.¹ Data on issues require the development of a dictionary of issues, statutory provisions, and case law. Pending cases then are examined for the purpose of issue and statutory classification to see if there is a group of similar pending cases that might be put on the same calendar for a single panel's consideration.

The clustering of cases permits the resolution of an issue by a lead case, whose opinion is applicable to the remaining cases, so that the remaining cases are decided in a more summary fashion. Where the issues in cases are identical, greater efficiency and improved quality are realized because judges can read the same statutes and case law for many cases and spend more time on lead opinions. Where the issues resemble one another, background work is pertinent to all the cases and the panel is likely to gain greater familiarity within the area of law represented by the issues.

A court that developed its own issue tracking system in conjunction with its development of an on-line docketing system is Division One of the Arizona Court of Appeals in Phoenix. Before the additional software was put into place, the court used a software package to search for cases with common issues. As a result, it can assess the advantages and disadvantages of relying on software that is readily available compared to developing proprietary software.

Issue tracking operates in Division One with the chief civil and criminal staff attorneys categorizing individual cases based on issues listed in the docketing statement and entering the issue-related information into a database according to codes the staff attorneys have established. Once a case has been perfected, the information obtained from the on-line docketing system is added and the issues stated in the briefs are reviewed to check issue consistency. The staff attorneys use information from the database in assigning cases, on a weighted basis according to issue difficulty, to other staff attorneys who prepare prehearing memoranda for the panels of judges.

1. Available software packages are likely to cost a few hundred dollars and can be installed on a PC. Data from the docketing system can be imported into the PC and merged with the data to be entered on the issues.

Concerning issue tracking, the chief staff attorney informs the court clerk of issue similarities prior to the calendaring of cases. As a result, the clerk might assign six to nine additional cases dealing with the same issue (e.g., premises liability relating to swimming pools, restitution, or revocation of driver's licenses) with a resulting increase in the total number of cases decided each month, without requiring additional work by the judges. The productivity gains from additional cases being assigned to panels in Division One proved sufficient to reduce a substantial criminal case backlog, despite a considerable increasing trend in the number of appeals filed with the court.

For other courts, the desirability of an issue tracking system hinges on the answers to several questions. Are there a substantial number of single-issue cases? Are they likely to involve the same or similar issue in many instances? Does the court believe that it decides cases on the basis of issues even through the factual circumstances might be different? If all the answers are affirmative, then an issue-tracking program warrants further investigation.

3. *Electronic Filing.*—A third area of technological innovation that promises to improve the efficiency of the appellate process is the use of electronic communication among parties, their attorneys, and a court. The possible forms or documents to be sent to a court include pleadings, motions, transcripts, and briefs. The use of Internet technology and appropriate software make it possible for documents to be prepared on an attorney's PC, and the data from those documents to be transmitted, received, and stored by a court in exactly the same format. Because the documents are being communicated electronically instead of in the paper format, the innovation is called "e-filing."

Three kinds of cost and time savings in communications to attorneys are apparent and need only be summarized. First, documents can be sent without the expense of either hand delivery or messenger services. Furthermore, there is no printing cost, photocopying cost, and no use of envelopes, postage, or communication management. Electronic communication is virtually communication cost-free to attorneys.

Second, electronic communication is compatible with how attorneys prepare documents. Most attorneys no longer dictate or compose in long hand. Because attorneys are accustomed to PCs and laptops, they do not need to master new technology to avail themselves of e-filing. Hence, their learning how to communicate electronically is virtually cost-free. Third, the instantaneous transmission now available avoids the inevitable and frequent inconveniences associated with other methods of communication. Even the speediest messenger might have to wait in line or incur transportation problems. Thus, the risks of late delivery are minimized and the anxiety costs of possible missed deadlines are almost zero with electronic filing.

Yet, despite these obvious gains in efficiency, the application of electronic filing has been limited, particularly to federal trial and bankruptcy courts, with some application in selected state trial courts and with minimal experience in state appellate courts. The Arizona Court of Appeals, Division Two, in Tucson, and the North Carolina Supreme Court are two exceptions. Based on this experience, the focus here is on questions that state appellate courts are likely to have when they consider the advantages and disadvantages of integrating electronic filing into

their existing case management systems. *A court without a case management information system is not a promising candidate for electronic filing because the advantages to a court of accessing documents stored electronically will be lost with a manual information system or a strictly on-line docketing system.*²

It is also important to focus more narrowly on the questions a court needs to ask concerning the gains that it might receive from an electronic filing system, what it must do to secure those gains, and what costs it is likely to incur that might offset gains in productivity or efficiency. Looking at e-filing from an intermediate appellate court's perspective, there are six key questions surrounding the benefits of e-filing.

As more knowledge is gained through technological improvements and more experience is gained from more pilot programs, the questions will change. The questions are not necessarily listed below in order of importance, but they begin with those likely to be raised in a court possessing minimal working knowledge of electronic filing and proceed to those that might be raised in courts that already have some background information or contact with electronic filing.

The first question concerns the possible benefits to a state appellate court from electronic filing. The list of positive incentives is somewhat theoretical because of the limited applications to date. However, the leading benefits are thought to include the following:

- Greater preservation of documents by avoidance of lost, damaged, or stolen paper case files.
- Reduction in the storage costs of paper documents.
- Reduction in the time and personnel required to store and retrieve paper documents.
- A search capacity, not available by reading paper documents, that enables topics of specific interest to be located expeditiously in lengthy documents.
- A greater opportunity for multiple people, such as judges, managers, and court staff, to access and read documents simultaneously than when paper documents have to be shared.

2. See JAMES McMILLAN, A GUIDE TO ELECTRONIC FILING (1999).

A modern case management system also is required. Case management systems currently are responsible for tracking all cases, documents, filing fees, judge and jury assignments. . . . In an electronic filing environment, the case management and document management systems must be integrated. Data can be shared between these systems without re-keying. . . .

The benefits of this integration include significantly faster and more accurate access to case information. For example, while it will be possible to perform text searches in the document management system to find papers, using this approach exclusively could prove inefficient because the same data formatted for document retrieval may exist in many other pleadings. . . .

Id.

- Tighter integration of legal documents, key procedural events, and dates than when papers are in case files and separated from either a manual or an on-line docketing system.

To realize these promising gains in efficiency, the second question concerns the form in which the court uses the documents it has received electronically. Does a court need to use documents only in an electronic format to gain the benefits of e-filing? What if copies are made? Who pays for them? Does the photocopying of multiple copies eliminate savings in storage costs? Basically, this question focuses on whether a court under an electronic filing system might end up paying the costs of reproduction that attorneys previously bore. To avoid this situation, does electronic filing appear to require that either judges, court employees, or both restrict their review of documents to the electronic form?

It is unlikely that e-filing will make a court a “paperless” institution. However, the extent to which the benefits of e-filing are secured hinges on the extent to which judges and court staff are willing to read and use documents in electronic format (i.e., on a computer screen).

This question is likely to remain salient until the emergence of a new generation of appellate judges who are more accustomed to reviewing and analyzing documents electronically. Hence, a considerable amount of education on the value and ease of viewing documents electronically, aimed at judges, would seem necessary to e-filing’s success.

A third question: how does e-filing work? Is it like e-mail? E-filing is not e-mail with an attachment, but the process can be viewed as follows. An attorney decides to file a document and prepares it on a PC. Then the attorney connects to a court’s (or private company’s) Internet page and clicks on a link to enter an e-filing system. The attorney provides a username and password assigned by the court, which accepts them as a signed signature. The attorney responds in a menu format to a series of queries posed by a court’s (or vendor’s) software: What is the type of document, case file and name, the party filing the document, and the document itself? Once the filing is completed, the court’s computer responds with an electronic document receipt and serves other attorneys based on a pre-established list of attorneys capable of sending and receiving messages electronically. Additionally, appropriate docket entries are made and the document becomes part of a case management system strictly for access by the judges, managers, and court staff.

A fourth question concerns hardware and software requirements for the transmission of documents from the outside to the court. The federal court experience is considerable. Basically, attorneys practicing in federal courts where e-filing already exists must have Internet access and Web browser software so that they can access a court’s software. Currently, an attorney will also have to have a Portable Document Format (PDF) writer and reader to upload and retrieve electronic filings. For a court, two servers are needed. One server handles access from attorneys and the other handles a court’s access to documents received and a court case management system.

In the federal court context, an attorney would prepare a document on a

PC with a word processor of choice. The document would be saved and then printed using Adobe's PDF Writer. Using a Web browser, the attorney would then connect to a court's home page and file the motion. The attached PDF document (PDF is a proprietary standard for Adobe, Inc. that enables a document to be displayed exactly as it was prepared) would then be forwarded to a court's Website and stored in its database.

The federal court hardware and software configuration might be considerably different from possibilities in state appellate courts because the federal initiative is being guided by the Administrative Office of the U.S. Courts, which is developing a joint integrated next-generation management information system with electronic filing. This comprehensive system connects attorneys through the Internet to an e-filing system. Those documents are connected through an in-house-designed web server to an in-house-designed case management and document management system.

State courts might not have the resources required to develop and maintain all of the necessary hardware and software capabilities. However, a variety of private companies have the necessary hardware and software, as well as expertise, to link attorney-based communications to a court. What a state appellate court must decide is what components the court can "outsource" to private companies. If a court decided that a private company should provide the transmission both between filers and the court, attorneys would log on to a private company's website and follow procedures (menu choices) in stating what was being filed. Documents would be filed with the court electronically because the company had set up a separate connection between its system and the court's web or e-mail server. However, whether the court provides its own e-mail filing system or depends on an e-mail provider (vendor), the court still needs to connect the electronic documents to its case management and document management systems. Otherwise, the court will realize few efficiency gains. It will also be important that the filings are retained in the court's, rather than the vendor's, archive.

This description suggests that the tools of electronic communication are neither available to everyone nor free. Investments by attorneys in paying fees to a vendor and by a court in connecting its case management system to electronic document systems are required, with the expectation that not every party or attorney will file electronically. Thus, courts need to be prepared to continue to have paper submissions, and for the foreseeable future, endure the costs of running parallel filing systems.

A fifth question addresses the kinds of documents an appellate court especially benefits from receiving electronically. Having electronically-transmitted transcripts can potentially be advantageous because of the reduction in storage costs and because of the benefits of a search capacity in reviewing lengthy documents. Yet, will judges be willing to review lengthy electronic transcripts in complex civil and criminal cases? Perhaps their central staff attorneys and law clerks might, but will judicial acceptance of their new practice require a lengthy transition period? Moreover, this topic of application suggests that the benefits of conversion from paper to an electronic format are not simply quick communication, but they also fall in the management and analysis of

lengthy documents with benefits redounding to a court, attorneys, and court reporters. The ability to store and communicate transcripts electronically seemingly would be in the self-interest of reporters both in terms of management ease and cost effectiveness. Moreover, this aspect of electronic documents would appear to be viable without a court's involvement.

Sixth, what have been the experiences of state appellate courts to date? An effort in the Arizona Court of Appeals, Division Two, at Tucson, is a multi-phased project that currently services the legal defenders office and soon will include the office of the attorney general in the submission of motions and briefs, with plans to expand similar electronic filing service to other litigants. An ambitious phase to be implemented this year will allow the court's major trial court (Pima County, Tucson) to submit the record on appeal electronically.

Concerning the first phase that enables the two institutional offices to transmit documents, the court has set up the electronic filing system with internal funding. Attorneys in the two institutional offices connect with the court's website on the Internet and register, set up cases, and send documents that are stored on the court's server. The attorneys are required to have a PC, access to the Internet, and a Java-enabled browser. The court has an electronic document management system in place that integrates electronic documents received with its case management system. This system has been operational since 1998.

The planned phase involving the appellate record is called the Blueback Project because the Pima County Superior Court Clerk uses blue paper backing to send the paper record to the court of appeals. The anticipated and forthcoming change will allow the clerk to electronically transmit imaged paper records and indices of the records to the appellate court.

Prior to transmission, the clerk will convert the imaged documents from a proprietary IBM format to a standard TIF format, with some necessary software work funded by the court. Once converted, the record and index of the record will be incorporated into the court's electronic document management system, which will update the court's case management information system and make the record in the case available to all court personnel in Division Two.

Members of the court and outside attorneys anticipate particular consequences from the switch to electronically-stored documents. Many predict that practice with the new system will be the key to reducing cost and storage problems inherent in traditional paper systems. Law clerks, central staff attorneys, and justices believe that only through experience will they have a realistic sense of the magnitude of these savings. For example, they think that only by repeated attempts will they know how to gain the maximum value of a search capacity in analyzing documents. Interestingly, outside attorneys have a parallel outlook because they believe that paper copies will still be needed in some instances. Given that the thrust of the new system is aimed at criminal appeals, the views of criminal defense attorneys are pertinent. Those attorneys see the continuing importance of paper to show clients in particular instances

(e.g., in *Anders*³ cases or habeas corpus petitions) copies with the court's hand-stamped acceptance to avert claims of ineffective assistance of counsel. Whether these and other possible concerns are on target will be tested in the near future. Hence, it will benefit not only Division Two but other courts as well if an evaluation is in place to capture the effects of the innovation.

The North Carolina Supreme Court began a parallel initiative in 1999 with the support of the State Justice Institute and a partnership with IBM. Institutional law offices, private attorneys, and pro se litigants can transmit a broad range of documents to the court. Potential users need a PC, access to the Internet, a browser (the court recommends Microsoft Internet Explorer), and the Adobe Acrobat software, which converts a word processing document or scanned image into a single PDF file that can be accepted by the e-filing system. Electronically-generated documents such as motions, petitions for review, and briefs are the customary documents transmitted, although paper documents such as transcripts and exhibits can be transmitted if scanned into electronic form by a user.

Users contact a Web page, established and currently maintained by IBM. The users register on the Web page and establish usernames and passwords. Actual use of the system is accomplished through a link on the Web page to a set of step-by-step instructions. Documents are transmitted from a user's PC to the Web page and from there to a server maintained by the court. The data on the form that a user has entered are then imported from the server into the court's case management system (via Visual FoxPro database management software). As soon as the data have been transmitted, a screen comes up on the Web page and informs a user that a document has been received. This screen can be printed out and serve as a receipt of timely filing. Additionally, an electronic mail message is sent to the user verifying receipt of a document. Finally, after receiving a document, staff in the clerk's office opens it and reviews it for completeness and correctness. Any problems are communicated by the clerk's office to a user by telephone.

Because the project is in the early stages of development, its consequences are not yet fully known. The institutional offices of criminal appellate defense attorneys and the Attorney General's Office are the primary users to date. Resources limit the potential for pro se litigants to use the system. Pro se litigants who are indigent and/or incarcerated are not likely to use the system. The court sees the potential benefits in reduced storage space and related costs. However, judges still rely on paper copies, although, in chambers, law clerks use documents in their electronic format because of the advantages of the cut-and-paste option available to them in preparing memoranda on cases. Obviously, continued implementation of the innovation is necessary for a determination of the precise net gains to the court, the bar, and the litigants.

In sum, the experiences in Tucson and North Carolina demonstrate the

3. See *Anders v. California*, 386 U.S. 738 (1967) (requiring a court to afford a full internal review to any motion to withdraw from representing the indigent client based on asserted lack of applicable issues by court-appointed counsel in a criminal case).

technical feasibility of electronic filing in state appellate courts. Their applications are sufficiently different in scope and court context to indicate that electronic filing is a flexible application of technology. Documentation of the consequences of these two innovative efforts should not only help each of the two courts refine their systems but should also help clarify the possible net gains that other courts might expect to receive.

4. *Summary.*—Technology is a tool to enhance efficiency in the resolution of appellate cases. Management information systems, issue tracking, and electronic filing are pertinent areas of application. Each offers a different set of problems and prospects for success. Yet, beyond the possible gains in efficiency, these technologies should be seen as an opportunity for courts to take stock of existing practices.

Because a unique contribution of technology is the capacity to process large bodies of information in a large number of cases in a quick and programmed manner, technological innovation promises to reduce inadvertent delay caused by forgetfulness, omission, and oversight. Delay because cases have fallen through the cracks is possible in every appellate court. Even in the smallest courts, the current inventory and recent court decisions number in the thousands and stretch the human capacity to record, store, manage, and resolve cases quickly and accurately.

As a result, every appellate court should look at its existing policies, procedures, and practices in light of these technologies and ask how can it improve its current system. Do we really know what our cases look like? To what extent do we group cases by issues? If not, why not? Exactly what are the characteristics that shape the timeliness of resolution? Do we have information available that can answer that question? How many paper copies do we now require? Are they all necessary? What can be done to reduce unnecessary duplication? Undertaking such an assessment of existing system operations is likely to result in improving day-to-day practices and overall efficiency of the appellate process even if, upon reflection, introduction of a particular technological application is not deemed to be suitable.

Appendix B
A Catalog of Appellate Caseflow
Improvement Mechanisms

Following a previous revision of the American Bar Association's appellate time standards in 1988,¹ a 1990 ABA-sponsored project report entitled *Delay on Appeal* turned its attention toward prescribing change methodology for identifying specific causes and cures to meet the needs of individual appellate courts.² The project sponsored two workshops for judges and staffs of eight different appellate courts (four courts attended each workshop) to spur the establishment of backlog and delay reduction programs. Its report contains a catalog of mechanisms used by different courts at that time, eschewing evaluation of the effectiveness of any particular technique, but enunciating some basic principles:

Delay reduction methods should assist the court in controlling the caseflow from the time the appeal is initiated until it is concluded. Unnecessarily intricate procedures need to be simplified so that the time and effort devoted to monitoring control points is minimized. The court should assume responsibility for identifying cases that do not require full appellate treatment and process those cases differently. Likewise, administrative and judicial functions need to be distinguished so that judge time is properly apportioned to matters requiring judicial discretion and expertise.³

The mechanisms and techniques discussed in *Delay on Appeal* cover the gamut of appellate court innovations proposed and implemented during the 1970s and 1980s:

- screening by use of information statements;
- differentiated procedures, such as:
 - multiple-track programs,
 - accelerated docketing, and
 - motions on the merits;
- scheduling orders;
- trial court liaisons;
- manuals and forms;
- training programs;
- appendices;
- court reporting methods including:
 - electronic sound recording,
 - computer-assisted transcription, and

1. JUDICIAL ADMIN. DIV., AM. BAR ASS'N, STANDARDS RELATING TO APPELLATE DELAY REDUCTION (1988).

2. See RITA M. NOVAK & DOUGLAS K. SOMERLOT, DELAY ON APPEAL (1990).

3. *Id.* at 93-94.

- video recording;
- transcript management through centralized control and sanctions;
- record limitations;
- electronic filings;
- attention to lawyer functions, including:
 - for-cause extensions,
 - prehearing conferences,
 - selective briefing, abbreviated briefs or submissions, and restricted numbers of briefs;
 - law office case management,
 - coordination with institutional lawyers;
- changes in judicial functions, including:
 - staff assistants,
 - eliminating or restricting oral argument,
 - expanded oral argument,
 - improving argument calendars,
 - memorandum decisions,
 - monitoring opinion production,
 - word processing and electronic mail;
- structural adjustments, such as:
 - adding judges,
 - adding legal staff,
 - creating intermediate appellate courts,
 - modifying jurisdiction,
 - unified review of criminal appeals,
 - plea bargains on appeals, and
 - disincentives to appeal.

A separate set of mechanisms was outlined for use in reducing backlog. Many of the techniques listed were identical, but some additional ones were:

- docket review;
- temporary judges;
- appellate magistrates or commissioners;
- modifying assignment procedures;
- creating special panels, and
- expanding argument calendars and opinion-writing goals.

Many of these ideas for improving appellate court caseload management have been around for some time. Almost every one is being used in one or more of the six courts studied in this project. Nevertheless, not enough is truly known about just how effective many particular mechanisms have proven to be in speeding the flow of cases, except for the specific findings on the processes

employed by courts included in Martin and Prescott's seven-court study⁴ or Chapper and Hanson's four-court examination.⁵ It is possible that the most significant potential for delay reduction is offered by yet another set of mechanisms: education of judges in case processing, combined with efforts to absorb new judges into the court's case processing culture.

4. See JOHN A. MARTIN & ELIZABETH PRESCOTT, *APPELLATE COURT DELAY* (Michael J. Hudson ed., 1981).

5. See JOY A. CHAPPER & ROGER A. HANSON, *NAT'L CTR. FOR STATE COURTS, INTERMEDIATE COURTS: IMPROVING CASE PROCESSING* (1990).

Appendix C

Appellate Court Caseflow Management Self-Assessment Questionnaire

The Self-Assessment Questionnaire contained in this Appendix is designed to be used in two ways: as a stand-alone instrument that enables leaders of an appellate court to undertake a swift assessment of the court's caseflow management system; and as an adjunct to an independently conducted study of appellate case processing in a jurisdiction.

The Self-Assessment Questionnaire contains a total of sixty-six questions, each focused on actions or attitudes that reflect the court's level of performance in relation to one of the ten key elements of sound appellate caseflow management discussed in Section B of Part IV. Each question is scaled, allowing responses between 1 (low) and 5 (high) on the court's performance with respect to the subject matter of the question. There are at least five questions relating to each of the key elements.

Once a questionnaire has been completed, it can be self-scored, using the *Questionnaire Scoring Sheet* that follows question 66, and the results can easily be graphed using the form that accompanies the scoring sheet. As a stand-alone diagnostic instrument, the questionnaire can be useful in giving an individual appellate judge or clerk a good overall sense of the strengths and weaknesses of the court. However, the Self-Assessment Questionnaire can be even more valuable in getting an accurate picture of strengths and weaknesses if a number of different practitioners are involved in the process. Having a number of different individuals participate in a court's self-assessment process also makes it possible to learn the extent to which the perceptions of different practitioners diverge on particular topics. It can be very useful, for example, for judges, clerk's office staff, and appellate staff attorneys to compare the results of their assessments, noting areas where there is consensus on problems that need to be addressed and discussing the reasons why their responses to some questions may differ.

If an independent study of an appellate court is being conducted, it will be useful to have judges and staff complete the questionnaire as part of the preparation for a site visit by the study team. If study team members can review the responses to the questionnaire prior to conducting on-site interviews, they should be able to focus their interviews and other data collection efforts much more effectively. Additionally, of course, the results provide a data base that will be helpful in the study team's analysis of the situation in the jurisdiction with respect to appellate caseflow management.

Finally, even if no one in the appellate court completes the Self-Assessment Questionnaire, it can still be a very useful tool for studying appellate case processing in a jurisdiction. Members of a study team can use it to help shape questions for on-site interviews and, in the analysis phase, to help assess the court's performance in relation to key elements of sound appellate caseflow management.

Instructions: Score the court on each question. If you are uncertain, use your best estimate. If you are assessing caseload management in a division of the court, make appropriate modifications in the wording of the questions. After completing this form, transfer your scores to the scoring sheet. Then plot the results on the assessment graph.

1. The court has adopted time standards that establish expected outside time limits on case-processing time from the filing of the notice of appeal to the disposition of the appeal for major categories of cases.

1	2	3	4	5
No standards or guidelines	Informal guidelines exist			Yes—written guidelines adopted and published

2. All judges regularly receive management information reports that enable them to know the number of pending cases in the court; the distribution of these cases by age since argument or submission; and the status of each case.

1	2	3	4	5
No	Some information			Yes—all of this information is regularly provided (at least monthly)

3. When new appellate caseload management programs or procedures are being considered, the court's leaders consult with leaders of the bar and of other organizations that may be affected (e.g., prosecutor, public defender, and trial courts).

1	2	3	4	5
No	Sometimes			Yes, as a standard policy

4. The appellate court *both* takes responsibility for cases *and* counts every case as pending from the date that the notice of appeal or similar initiating petition for review is first filed.

1	2	3	4	5
No	Some categories of cases			Yes

5. The chief judge of the court has endorsed the court's (or the ABA's) case-processing time standards.

1	2	3	4	5
No	Quiet support within the court			Yes, publicly and emphatically

6. There is a commonly shared commitment, on the part of the judges, to the principle that the court has responsibility for ensuring expeditious case processing.

1	2	3	4	5
No shared judges commitment		Some judges are committed		Virtually all are committed

7. Members of the judges' support staffs (law clerks, judges' secretaries, and central staff counsel) are knowledgeable about caseload management principles and techniques, and use them in helping to manage caseloads and individual cases.

1	2	3	4	5
No		Some		Yes—virtually all are knowledgeable and use the principles and techniques

8. The court regularly conducts training on caseload management principles and techniques for judges and staff.

1	2	3	4	5
No training		Some training; conducted irregularly		Yes

9. The court has established, and uses, a system for evaluating the effectiveness of judges in managing the cases for which they are assigned primary decisional responsibility.

1	2	3	4	5
No		Some criteria exist		Yes

10. The court has few or no cases pending for more than the maximum length of time established by its own case-processing time standards or, alternatively, the ABA case-processing standards.

1	2	3	4	5
Don't know	Many cases are older than the court's (or ABA's)	About 30% are older	10-15% are over the standards	No cases or a few are over the standards

11. There are published policies and procedures governing the caseload process, readily available to judges, the court's staff, and bar members.

1	2	3	4	5
No		Exist for some areas		Yes, covering all major caseload issues/areas

12. The chief judge plays a leading role in initiating caseflow management improvements in the court.

1	2	3	4	5
No		Sometimes		Yes

13. The appellate court appoints counsel rapidly upon receipt of a notice of appeal or other document indicating that a criminal defendant is indigent.

1	2	3	4	5
Rarely or never		Sometimes		Always

14. Electronic transmission of trial court records and of motions and briefs on the appeal is used by the appellate court.

1	2	3	4	5
No		For some purposes		Yes

15. The appellate court exercises supervisory responsibility over preparation of the record, rules promptly on issues involving designation of the record, and requires designations to be filed with the appellate court as well as with the trial court.

1	2	3	4	5
No		Exercises some oversight		Yes

16. The appellate court has established a procedure for use in simple cases that provides for accelerated filing of the record and similar procedures regarding speedy briefing and decision in these cases.

1	2	3	4	5
No		Has established limited special process for some types of cases		Yes

17. The appellate court supervises transcript preparation, including establishing rules, assuring expeditious payment to the transcript preparer, and requiring the filing of an ordering statement in the appellate court.

1	2	3	4	5
No		Uses some of these supervisory techniques		Yes

18. Assess the difficulty an attorney has in obtaining a continuance of the due date for filing the brief.

1	2	3	4	5
Easily obtainable upon request or stipulation		Attorney must show cause, but request is usually granted	Can be obtained only on written motion showing substantial cause	

19. Judicial support staff or clerk's office staff notify judges of cases that have been pending for long periods of time and cases in which there have been repeated continuances.

1	2	3	4	5
No		Some		Yes

20. Judges attend national or in-state seminars on appellate caseload management and related topics.

1	2	3	4	5
No		Some judges attend, no standard court policy	Yes—all judges are expected to attend sessions periodically	

21. Judges who do an effective job of managing those cases for which they are responsible are publicly recognized for excellent performance.

1	2	3	4	5
No		Sometimes		Yes

22. The court disposes of at least as many cases as are filed each year, in each general category of cases.

1	2	3	4	5
No—filings consistently exceed dispositions		Some years, in some categories of cases		Yes, consistently

23. The court's staff at all levels are aware of the court's case-processing time standards and other caseload management goals.

1	2	3	4	5
There are no goals		Some are aware	Top staff are aware	Yes

24. The court encourages use of technology by accepting computer-generated briefs, including those with HTML links, and promoting use of advanced methods for rapidly preparing trial court transcripts.

1	2	3	4	5
No		Has used some new technologies	Embraces full range of advanced technology	

25. The court has a process for screening cases for assignment to different appellate processing tracks.

1	2	3	4	5
No screening process		Some differentiated treatment		Multi-track

26. Judges' commitment to effective caseload management is demonstrated by their actions in holding lawyers to schedules, limiting continuances to situations in which good cause is shown, and allowing continuances only for short intervals.

1	2	3	4	5
Generally, no		Inconsistent		Generally, yes

27. The system of scheduling cases for briefing and argument provides attorneys and the court with certainty that a case will be argued or submitted shortly after the briefs are filed.

1	2	3	4	5
Rarely	Less than half of the time	50-70% of the time	70-90% of the time	90-100% of the time

28. The court has a central staff unit that regularly monitors the caseload, identifies problems (e.g., pending caseload increasing or certain cases taking unduly long), and recommends action to the chief judge or other judge with administrative responsibility.

1	2	3	4	5
No		Some central staff monitoring; occasional recommendations		Yes

29. The court has time standards/guidelines governing the time interval between each major stage in the appellate litigation process and enforces rules governing timely submission of papers and briefs.

1	2	3	4	5
No	Guidelines cover some but not all intervals			Yes

30. The court has a standard orientation program for new judges and new staff members in which the court's policies and expectations regarding caseload management and timely case processing are covered thoroughly.

1	2	3	4	5
No	Some orientation			Yes, thorough orientation

31. The court decides motions quickly so that the basic schedule for considering a case is not delayed by motions being filed.

1	2	3	4	5
No	Has some system to expedite motions			Processes motions swiftly

32. Any judge on a panel assigned a case may place a case screened for summary treatment on a calendar for full argument and consideration.

1	2	3	4	5
No	Judge may recommend, but court decides			Yes

33. The chief judge is widely regarded—by judges, staff, the bar, and others—as actively committed to reducing delays and implementing effective appellate caseload management procedures.

1	2	3	4	5
No	Mixed perceptions			Yes

34. The court's caseload management goals and its performance in relation to the goals are subjects of regular communication with the bar and media.

1	2	3	4	5
No	Sporadic communication			Yes

35. The court regularly produces reports that show trends in filings, dispositions, pending caseloads, and case-processing times.

1	2	3	4	5
No		Some trend analysis		Yes—regular analysis of trends in all these areas

36. The judges discuss the status of the caseload and other caseload management issues at regularly-held judges' meetings.

1	2	3	4	5
No		Sometimes		Yes

37. Consultation with attorneys, by a judge or court staff member, occurs early in a case to set deadlines for completion of stages of the case.

1	2	3	4	5
No	Only if requested by attorney	Sometimes	Mainly in complex cases	Yes, in all cases

38. The judges recognize the need to monitor the pace of litigation and are actively committed to seeing the court meet standards for expeditious case processing.

1	2	3	4	5
No		Some judges recognize the need		Yes

39. Judges' support staffs and clerk's office staff help in achieving the court's goals (e.g., in contacts with attorneys, including scheduling cases for argument dates).

1	2	3	4	5
No		Some		Yes

40. The court regularly conducts training sessions for practicing lawyers (especially young lawyers) to familiarize them with the court's caseload management policies, procedures, and expectations.

1	2	3	4	5
No		Some training, conducted irregularly		Yes

41. Judges who have administrative responsibility meet with the judges in their panels or divisions to review the status of pending caseloads and discuss ways of dealing with common problems.

1	2	3	4	5
No		Occasionally		Yes, at least monthly

42. The court regularly produces management information reports that enable judges and staff to assess the court's progress in relation to its caseload management goals.

1	2	3	4	5
No		Information available on some goals		Yes

43. Mechanisms for obtaining the suggestions of court staff about caseload management problems and potential improvements exist and are used by the court's leaders.

1	2	3	4	5
No		Occasionally		Yes

44. Attorneys file briefs on or before the scheduled due date for their brief and are ready to proceed on the argument date.

1	2	3	4	5
Rarely	Less than half the time	50-70% of the time	70-90% of the time	90-100% of the time

45. Judges whose performance, in cases which they have been assigned for opinion preparation, is below acceptable standards are assisted and receive negative sanctions if their performance does not improve.

1	2	3	4	5
No		Sometimes		Yes

46. The court follows established procedures to identify inactive cases and dispose of them.

1	2	3	4	5
No		Occasional reviews and purges of inactive		Yes—regular are done and “purge” procedures are followed

47. The court administrator or clerk of court is widely regarded—by judges, staff, and others—as knowledgeable about appellate caseflow management principles and practices, familiar with the court's caseload situation, and effective in recommending and implementing policy changes.

1	2	3	4	5
No	Mixed perceptions			Yes

48. The time required to complete case processing is generally within the time standards adopted by the court or (if no standards have been adopted by the court) does not exceed the ABA case-processing time standards.

1	2	3	4	5
Don't know	Many cases over standards	Fair performance in relation to standards	Good performance; some improvement desirable	Yes— the court is consistently within the standards

49. Techniques for avoiding or minimizing attorney schedule conflicts are part of the scheduling system, and attorneys' schedules are accommodated to the extent reasonably possible.

1	2	3	4	5
Attorney	Some techniques are used; system could be improved on some goals		Techniques are used and work well; no improvement needed	

50. The judges transmit drafts of opinions and decisions electronically among themselves to expedite the decisional process.

1	2	3	4	5
No electronic capability	Some use of network to send drafts		Almost always	

51. Senior staff members regularly meet with judges in leadership positions to discuss caseload status and develop plans for addressing specific problems.

1	2	3	4	5
Occasionally			Yes	

52. Judges with administrative responsibility review information on the caseload management performance of judges in the court (or in their divisions), give public recognition to those doing an outstanding job, and meet with those whose performance is subpar to discuss improvements

1	2	3	4	5
No		Sometimes		Yes

53. The court has adopted goals for the time within which ready cases are argued or submitted.

1	2	3	4	5
No		Informal expectations exist		Yes

54. Key management information reports are widely distributed to judges and staff, and include short written analyses that highlight problems and issues.

1	2	3	4	5
No		Limited distribution and little analysis		Yes

55. The court provides information about its caseload management goals and about its performance in relation to these goals to the media on a regular basis.

1	2	3	4	5
No		Occasionally		Yes, regularly

56. Simple cases that may be amenable to swift disposition are identified at an early stage for special processing.

1	2	3	4	5
Never	Rarely	Some—mainly if counsel requests	Some categories of cases	Yes, routinely

57. Court staff members attend national or in-state seminars on caseload management and related topics.

1	2	3	4	5
No		Some staff members have such training		Yes—virtually all staff members periodically receive such training

58. The court has established goals for the maximum size of its pending caseload(s) and has developed plans for reducing its caseload to that number (or, if the current caseload is at an acceptable size, for ensuring that the caseload does not exceed the goal that has been set).

1	2	3	4	5
No	Some goals exist; status of plans unclear			Yes

59. The chief judge and clerk/court administrator regularly meet to review caseload status, discuss policy and operational problems affecting caseload management, and develop specific policies and plans.

1	2	3	4	5
Rarely or never	Irregularly		Yes, at least once a week	

60. How frequently are cases that are ready to be scheduled for argument or submission delayed because there are more ready cases than can be reached on the schedule dates available?

1	2	3	4	5
Very frequently	Frequently	Occasionally	Rarely	Never

61. Staff members who do an effective job of managing caseloads for which they are responsible are publicly recognized by the court's leaders for their good performance.

1	2	3	4	5
No	Sometimes			Yes

62. The appellate court requires that a copy of the notice of appeal or similar initiating document be filed with the appellate court at the same time it is filed in the trial court.

1	2	3	4	5
No	Sometimes			Yes

63. Every pending case on the court's docket has a "next action" date scheduled, including a decision date within the goals set by the court.

1	2	3	4	5
Most cases do not have next action date scheduled	Approximately 10-20% of cases have no next action date scheduled	Approximately 200-40% of cases have no next action date scheduled	Almost all cases have a next action date scheduled	Yes

64. The court has adopted goals for the time within which opinions are prepared by the judge responsible for the opinion.

1	2	3	4	5
No		Informal expectations exist		Yes

65. Judges consistently prepare opinions in cases within the time period set by the court's standards or, if no standards covering the opinion preparation stage have been adopted, within 45 days in simple cases and 90 days in all cases.

1	2	3	4	5
No standards and many opinions		Some opinions are prepared quickly but a significant number take many months		Yes—time standards exist and are met consistently

66. The following caseflow management information is readily available and regularly used.

(Y = Yes; N = No)

<u>Available</u>	<u>Used</u>	<u>Information</u>
_____	_____	Number of pending cases, by case type
_____	_____	Age of pending cases (frequent distribution, within age categories)
_____	_____	Change (number and age) in pending cases from last report
_____	_____	Age of pending caseload compared to time standards
_____	_____	Age of cases at disposition, by case type
_____	_____	Percentage of briefs filed on first scheduled due date
_____	_____	Number of continuances of scheduled events in each case
_____	_____	Reasons for each continuance
_____	_____	Number and proportion of dispositions by type of disposition
_____	_____	Annual filings and dispositions, by case type

To score this question, add the number of Y's in the "Available" and "Used" columns, and divide the total (____) by 4. RESULT: _____

*Appellate Caseflow Management Self-Assessment Questionnaire***Questionnaire Scoring Sheet****Instructions:** Record the score for each question in the appropriate space below

Leadership	Goals	Information	Communications	Caseflow Management Procedures
5.	1.	2.	3.	4.
12.	23.	14.	11.	13.
33.	29.	24.	36.	15.
41.	34.	35.	37.	16.
47.	48.	42.	43.	17.
52.	53.	50.	55.	25.
59.	64.	54	62.	27.
		66.		44.
				49.
				56.
				60.
				62.
TOTAL= _____ Out of 35 possible, Divide total by 35: SCORE _____	TOTAL= _____ Out of 35 possible, Divide total by 35: SCORE _____	TOTAL= _____ Out of 40 possible, Divide total by 40: SCORE _____	TOTAL= _____ Out of 35 possible, Divide total by 35: SCORE _____	TOTAL= _____ Out of 60 possible, Divide total by 60: SCORE _____
Judicial Commitment	Staff Involvement	Education and Training	Mechanisms for Accountability	Backlog Reduction/ Inventory Control
6.	7.	8.	9.	10.
18.	19.	20.	21.	22.
26.	28.	30.	31.	46.
38.	39.	40.	32.	58.
65.	51.	57.	45.	63.
			61.	
TOTAL= _____ Out of 25 possible, Divide total by 25: SCORE _____	TOTAL= _____ Out of 25 possible, Divide total by 25: SCORE _____	TOTAL= _____ Out of 25 possible, Divide total by 25: SCORE _____	TOTAL= _____ Out of 30 possible, Divide total by 30: SCORE _____	TOTAL= _____ Out of 25 possible, Divide total by 25: SCORE _____

*Appellate Caseflow Management Self-Assessment Questionnaire***Graph of Self-Assessment Questionnaire Results**

Instructions: Using the scores recorded on the Questionnaire Scoring Sheet, plot the final score for each dimension on the graph below.

