# REDUCING THE TIME AND COST OF THE APPELLATE PROCESS

## ARIZONA APPELLATE PROJECT REPORT



Funded by LEAA in cooperation with the
National Center for State Courts
Grant No. 75DF-99-0011

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The Honorable Eino M. Jacobson, Judge, Arizona Court of Appeals
The Honorable Mary M. Schroeder, Judge, Arizona Court of Appeals
*Co-Chairmen*

## Advisory Committee

The Honorable James Duke Cameron, Chief Justice, Supreme Court of Arizona — *Chairman*

The Honorable Robert C. Broomfield, Presiding Judge, Maricopa County Superior Court
The Honorable Ben C. Birdsall, Presiding Judge, Pima County Superior Court
The Honorable Winslow Christian, Justice, California Court of Appeals
Herbert L. Ely, Member, Arizona State Bar
John P. Frank, Member, Arizona State Bar
Dean Ernest Gellhorn, Arizona State University College of Law
Mark I. Harrison, Immediate Past President, Arizona State Bar
The Honorable Shirley M. Hufstedler, Judge, U. S. Court of Appeals for the Ninth Circuit
Seth M. Hufstedler, Member, California State Bar
Representative Peter Kay, Arizona State House of Representatives; Chairman, Judiciary Committee
Craig R. Kepner, Member, Arizona State Bar
Dean Joseph Livermore, University of Arizona College of Law
Frederic S. Marquardt, Editor, Arizona Republic
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Senator Jones Osborn, Arizona State Senate; Chairman, Judiciary Committee
Robert K. Park, Chief Legal Counsel, State Compensation Fund
Willard Pedrick, Professor of Law; Formerly Dean, Arizona State University College of Law
Mike Pulitzer, Editor, Arizona Daily Star
Prof. Maurice Rosenberg, Columbia University School of Law

William P. Dixon, Member, Arizona State Bar — *Project Director*

John Mueller, National Center for State Courts — *Project Monitor*

October, 1976

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# I. INTRODUCTION.

During 1975 and 1976 nearly 300 lawyers in Phoenix and Tucson, Arizona participated in an experiment to study whether an appellate court can decide cases quickly and fairly, soon after trial on the basis of skeletal written materials and without a transcript, but with full oral presentation by counsel.

The experiment was funded by a grant from the Law Enforcement Assistance Administration to the Arizona Supreme Court, and was conducted with the aid and cooperation of members of the Advisory Council on Appellate Justice and the staff of the National Center for State Courts.

The major findings of this experiment reflect that panels simulating an appellate court were able to decide a majority of cases with extended oral argument, an abbreviated record, and only limited memoranda of staff and counsel. The experiment also revealed that the participants perceived the greatest disadvantage in such a procedure to be lack of transcript.

This is a report setting forth the reasons for undertaking the experiment, the methodology used, the findings which resulted, our conclusions drawn from these findings, and our observations on the approaches which the experiment suggests may be tried in the future.

While the report is written by the co-chairmen, who take full responsibility for detail, it has been comprehensively reviewed and revised in the light of consultation with the Advisory Committee and staff.

## II. WHY THIS EXPERIMENT — THE DIMENSIONS OF THE PROBLEM.

It is by now commonplace to speak of the crisis of volume in our courts, and in recent years considerable attention has been focused on this volume in the appellate courts. While the load in all courts is increasing, the load on the appellate courts is rising even faster than that in the trial courts; the burden is shared by both the state and federal jurisdictions.[1]

Arizona, with one of the most rapidly growing populations in the country, is no exception. In 1965, when the state's intermediate appellate court was first established, the total filings in that court numbered fewer than 500. Ten years later, while the number of judges doubled from 6 to 12, the number of filings had more than tripled. At the same time, the filings in the Arizona Supreme Court doubled as well.

Appellate courts are reacting to the problems of volume in many ways. Although the responses are varied, one thing is clear: the traditional method of deciding every appeal on the basis of judges' personal review of full records, extensive briefs by counsel, lengthy oral argument, and disposition by means of elaborate published written opinions, is disappearing. Being substituted are a number of different methods, which either singly or in combination intend to streamline the process and relieve the burden of the appellate judiciary.

It is not the function of this report either to detail or to criticize these methods.[2] It is, however, useful to have some understanding of the principal new techniques now being used by appellate courts in order that the elements of the Arizona Appellate Project can be seen in proper perspective. Generally the principal innovations include the following:

1. Elimination of published opinions in a large number of cases, and use of brief memorandum decisions, some no more than a sentence or two.

2. Increased use of central staff to summarize the briefs of the parties so that the judges no longer read all of the briefs before oral argument; staff screening of cases at an early stage, including recommendations on the length of briefs and argument; staff drafting of the proposed orders and decisions. The most extensive use of this type of central staff has been in the intermediate appellate court of Michigan, where approximately 30

[1] In the federal courts, appellate filings increased 300% between 1961 and 1974. See 1974 Ann. Rep. of the Ad. Office of the United States Courts, 179. In the state courts of Illinois, California and Michigan, for example, appellate filings increased between 100% and 200% in seven-year periods during the late 1960's and early '70's. See Ad. Office of the Ill. Cts., 1965 Ann. Rep. to the Sup. Ct. of Ill., at 23 (1966); Ad. Office of the Ill. Cts., 1972 Ann. Rep. to the Sup. Ct. of Ill., at 61 (1972); Jud. Coun. of Cal., Twentieth Biennial Rep., at 138 (1965); Sup. Ct. of Mich., 1967 Ann. Rep. incl. Jud. Stat's., at 12 (1967); Ann. Rep. of the Mich. Ct. of App., 56 Mich. App. xx (1974).

[2] For analysis of recent appellate developments, see, for example, D. Meador, *Appellate Courts Staff & Process in the Crisis of Volume* (West 1974); J. D. Hopkins, "The Winds of Change: New Styles in the Appellate Process," 3 *Hofstra Law Review* 649 (1975); Reports & Recommendations of the Advisory Council on Appellate Justice, 1975. Also see "Symposium: Judges on Appellate Reform," 23 *U.C.L.A. Law Review* (1976).



lawyers assist the 18 judges.[3] Some courts, while resisting radical enlargement of central staff, have increased the number of law clerks assigned to individual judges. Members of the California Supreme Court now utilize three law clerks, while the Chief Justice has ten law clerks at his disposal.

3. The elimination or drastic reduction in the length of oral argument in all but the most significant cases. Total elimination of oral argument has been most extensive in the Fifth Circuit, but in all courts oral argument of more than a half hour per side is rare.[4]

4. Increase in the number of appellate judges. The utility of this device may well be reaching the point of diminishing return. As aptly pointed out by Professor Hazard, a proliferation of appellate courts can convert the appellate system into a "Judicial Tower of Babel," divesting each intermediate court of significant authority.[5]

5. Use of settlement conferences conducted by a staff member or by an appellate judge to encourage the parties to settle their dispute prior to appellate court disposition.

Many of these innovations are built upon the common premise that not all appellate cases need be handled in the same way. Under these new procedures, some cases do not receive a published opinion; some are not fully briefed or argued orally; some never reach the full appellate court at all.

If cases are to be treated differently, then there must be serious consideration given both to who determines how a given case should be handled and on what basis such determinations are made. Many of these reforms share tendencies first to delegate the classification function increasingly to staff, and second to base all determinations solely on written submissions.

Such trends suggest a growing depersonalization of the appellate judicial process which many have found disquieting.[6] In the past, litigants could fairly be assured that their briefs would be read by the judges, that their counsel would have an opportunity to address the judges personally in oral argument, and that the decisions of their cases would be written by a judge or under a judge's personal direction. When courts rely heavily

[3] For a discussion of the Michigan court's use of staff, see Lesinski & Stockmeyer, "Prehearing Research and Screening in the Michigan Court of Appeals," 26 *Vanderbilt Law Review* 1211 (1973). For a discussion of Arizona Supreme Court use of staff, see Cameron, "The Central Staff: A New Solution to an Old Problem," 23 *U.C.L.A. Law Review* 465 (1976).

[4] See Haworth, "Screening and Summary Procedures in the United States Courts of Appeals," 1973 *Washington University Law Quarterly* 257. The Fifth Circuit has described its procedures in Murphy v. Houma Well Serv., 409 F.2d 804 (5th Cir. 1969); Huth v. Southern Pacific Co., 417 F.2d 526 (5th Cir. 1969).

[5] G. Hazard, "After the Trial Court – The Realities of Appellate Review," *The Courts, the Public and the Law Explosion* 60, 80-81 (H. Jones, ed., 1965).

[6] See, for example, Reports and Recommendations of the Advisory Council on Appellate Justice on Improvement of Appellate Practices Including San Diego Conference Report, pp. 32-38 (1975).

upon central staff for initial screening of briefs and for recommended decisions, and when oral argument is eliminated, all those assurances are gone. When such new procedures are coupled with the large scale abolition of written published opinions available for all to read and evaluate, an inevitable result is the diminished visibility and accountability of the appellate judiciary.

At the same time, most appellate reform to date has concentrated on relieving the burden of the judiciary without focusing directly on the rising costs of appeal which must be borne by the parties, or in the case of indigent criminal appeals, by the public. The amount of time required for lawyers to review a full record and prepare complete briefs is large, and in an inflationary era, lawyers charge higher hourly rates. While precise figures are not available, the experience of lawyers serving on this Advisory Committee is that appellants in a civil appeal must expect to pay a minimum of $2,000 to $2,500 for attorneys' fees alone; $5,000 to $10,000 is very common and some fees are far higher. Transcript costs are also significant. In Arizona, the average cost of a transcript is now estimated by the court reporter for the presiding judge of Maricopa County Superior Court to be $200 per day of trial.

The Arizona project was an effort to evaluate experimentally a new process that might retain the virtues of expedited procedures, but would eliminate the tendency towards depersonalization and reduce counsel fees and transcript costs to litigants. The experiment accepted the basic premises that (a) many cases can be decided on an expedited basis through elimination of many traditional steps, (b) staff assistance to the court is important, and (c) not all cases warrant a full published opinion. However, the experiment departed from other appellate innovations in several significant respects. First, under the procedures used in the Arizona experiment, the appellate panel itself would consider the cases almost immediately after trial. Second, the court itself, not staff, would decide whether a case could be summarily decided, and if not, what additional procedures by way of further briefing, argument, or transcript were necessary. Finally, and perhaps most important, the opportunity for oral argument and the concomitant open exchange between counsel and judges would be maintained in virtually all cases. The procedure most closely resembles the procedure now utilized by many appellate courts in handling applications for mandamus and other extraordinary writs.



## III. OBJECTIVES OF THE EXPERIMENT.

This experiment drew heavily on the proposals of the Honorable Shirley M. Hufstedler, Judge of the United States Court of Appeals for the Ninth Circuit, and Seth M. Hufstedler, a practicing attorney and former president of the California State Bar Association.[7] It also drew upon the experience of the English system, where there is predominant reliance upon oral argument as opposed to written briefs.[8]

In a series of articles, the Hufstedlers developed a proposal for summary appellate review shortly after the new trial motion is determined. The appellate court would hear oral argument but there would be only limited briefs and no transcript.

At the heart of the Hufstedler proposal is a distinction between the two basic functions of an appellate court: the review of the case for prejudicial error (termed the error-correcting function), and the review of important questions requiring a full statement of the law for purposes of establishing precedent applicable in other cases (referred to as the institutional function). A basic hypothesis of the Hufstedler proposal was that the institutional function required more traditional appellate review, but that the error-correcting function could be performed by prompt review after the trial, with only a discretionary appeal from that determination.

The Arizona project[9] provided a live demonstration of the Hufstedler proposal to test the hypothesis and more generally to suggest the utility of summary appellate review at an early stage. The specific questions which the project sought to answer were:

1. To what extent can cases be decided almost immediately after trial without transcript or full briefs, but with the benefit of oral argument?

2. To what extent does such review result in saving of elapsed time between filing of an appeal and adjudication?

3. Can oral argument be used adequately to inform the court of the issues presented?

4. Can limited memoranda by counsel, prepared for the purpose of a new trial motion, adequately inform the Court about a case?

5. Can a skeletal staff memo intended as a summary of issues, points and authorities, assist the Court?

6. To what extent do cases which can be decided in this summary fashion involve purely error-correcting functions of the Court; do the cases

[7] Hufstedler, "New Blocks for Old Pyramids: Reshaping the Judicial System," 44 *Southern California Law Review* 901, 910 (1971). Judge Hufstedler's ideas are expanded on in an article co-authored with her husband, Seth M. Hufstedler. See Hufstedler & Hufstedler, "Improving the California Appellate Pyramid," 46 *Los Angeles Bar Bulletin* 275 (1971).

[8] See D. Meador, *Criminal Appeals: English Practices & American Reforms* (University Press of Virginia 1973).

[9] For a preliminary discussion of the Arizona Appellate Project, see Jacobson, "The Arizona Appellate Project: An Experiment in Simplified Appeal," 23 *U.C.L.A. Law Review* 480 (1976).

involving reshaping of the law require fuller presentation and judicial consideration?

7. Can such a procedure result in a saving of judge time?

8. Can such an experiment provide any indication of saving of counsel time and expense for litigants by use of such a procedure?

The project was not intended to provide a scientifically reliable statistical basis for predicting the success of the procedure. The data which has been compiled should not be so interpreted. Rather, the project was intended to provide experience with such procedures and to suggest possible avenues for future experimentation and reform.

The project was particularly novel in that it superimposed a test system upon real lawsuits to see whether it was possible to obtain a sense of the fairness and acceptability of the procedure without actually using the procedure to determine the cases.

The experiment involved 75 actual civil cases in which judgment had recently been entered and a motion for new trial had been filed. In each case, a panel of lawyers simulating an appellate court panel reviewed both the new trial motion and specially prepared staff memoranda, heard the actual arguments on the motion for new trial, and then, outside the presence of the trial judge, conducted additional oral argument. At the conclusion of the argument, the panel retired to determine whether it was able to decide the case on the materials presented, and if so, what its decision would be. All participants, the panel members and advocates, filled out extensive questionnaires to evaluate the process. The number of volunteer man hours involved in such an experiment has been enormous, and we are deeply indebted to all of the members of the bar who participated.

The completed questionnaires themselves were kept in strictest confidence so that the panel's decision would have no influence on the later course of the litigation. Each of the cases then proceeded in the normal fashion: the trial judge ruled on the new trial motion, the losing parties decided whether to appeal or not to appeal, and the actual appeals taken proceeded in accordance with established Arizona procedure.

While such a summary method of review may well have even greater utility for criminal cases than for civil cases, only civil cases were used in this experiment in order to avoid any possible impact on the constitutional and statutorily protected rights of the criminal defendant.

Prior to undertaking the experiment, it was necessary to generate the cooperation of those lawyers and judges whose services were essential to its conduct. This began with a meeting of leading members of the bar in the counties to be affected — Pima and Maricopa (Tucson and Phoenix) — and the presiding judges of these counties, together with laymen who in the past had shown an interest in the judicial process. From this meeting,



a consensus was drawn that the experiment held practical promise and that those present would pledge their support to its implementation. From this group and others were also drawn an Advisory Committee to offer suggestions, criticisms and support for the project itself. The composition of the Advisory Committee consists of lawyers, judges, newspaper editors, legislators, deans of the two Arizona law schools and laymen interested in judicial reform.

This committee was active in offering suggestions at the beginning of the experiment, in evaluating the experiment's progress at the midway point, and in preparing this report at its conclusion.

Arizona Supreme Court Chief Justice James Duke Cameron requested, by a letter published in the Arizona Bar Journal, the cooperation and participation of members of the bar in the conduct of the experiment.

Arrangements were then made with the law schools at Arizona State University and the University of Arizona to supply the students for the preparation of briefing memoranda to be used by the lawyer panels.

The entire project was placed under the administrative direction of William P. Dixon, Project Director. Compilation of statistical data was made with the assistance of Prof. Dickinson McGaw, Department of Political Science, Arizona State University.

This is the first experiment to our knowledge which has attempted to simulate an appellate procedure in the context of actual court litigation. The results dramatically suggest that a high proportion of cases can be fairly decided in this manner, and that the bar is receptive to such expedited procedures.

## IV. METHODOLOGY.

In order to conduct this experiment, a laboratory was necessary which would, as closely as possible, approximate an appellate oral argument. The trial court hearing motions for new trial provided such an environment. At this point in the trial court proceedings, the decision has been reached on the merits of the litigation, a document has been prepared attacking that decision, a response has been filed, and oral argument has been set to argue the issue. In a simplified form, this is the familiar appellate procedure of opening brief, answering brief, and oral argument.

Unlike the setting of an appellate oral argument, however, where the lawyers come to the appellate court to conduct their advocacy, it was necessary to bring the appellate court (the lawyer panel) to the lawyers in the trial court setting. Some administrative problems were created because the lawyer panels were busy practicing attorneys, the time period between notification of the hearing on the motion for new trial and the actual trial was normally less than 15 days, and it was necessary to review and prepare staff memoranda within this period.

The project director developed as much lead time as possible by contacting each judge handling civil matters on Friday of each week to ascertain if that judge had a motion for new trial or motion for rehearing pending. These individual checks were necessary in Maricopa County, where the bulk of the experiment was conducted, since that county did not utilize a Master Calendaring system. If a motion for new trial had been set, it was then necessary for the project director to review the court's file on that case to ascertain its compatibility with the project's aims.

At the beginning of the project, it was felt that the volume of motions for new trial would allow the project director to pick and choose only those motions in cases which had a high probability of future appeal. To this end, certain criteria were adopted to predict appealability. These included the amount of money involved, the parties to the litigation, the novelty of the issues presented, and the questioning of trial counsel to determine their decision to appeal if adversely affected by the motion for new trial. However, it became almost immediately apparent that the volume of new trial motions was not sufficient to permit this selectivity if the project was to be completed within the time frame allowed. While the project director did use some discretion in determining which new trial motions would be used in the experiment,[10] the result was that most new trial motions heard in Maricopa and Pima Counties during 1975 and early 1976 were included in the project.

Upon being notified that a new trial motion had been set, the project

[10] The discretion used was negative in nature, that is, rather than positively choosing cases which had a high probability of appeal, only those cases which the director felt had no possibility of appeal were rejected.



director or a law student under his direction reviewed the clerk's file and reproduced pertinent portions of it. This reproduction always included the complaint, answer, pretrial memoranda and judgment or verdict and also included such other pertinent material as would be helpful in recreating the factual and legal issues presented by the case.

Based upon this material, a student prepared a "Demonstration Panel Briefing Sheet" (see Exhibit A) for use by the panel. This briefing sheet resembled work often done by an appellate court central staff in the preparation of appellate memoranda.

The briefing sheet and the reproduction from the clerk's file were then delivered to the members of the demonstration panel, usually two to three days prior to the oral argument on the motion for new trial.

Selection of attorneys to sit as judges on the demonstration panels originally was done from lists compiled by the Advisory Committee consisting of attorneys with a strong background in appellate practice. This list was soon exhausted because of the number of panels ultimately involved (162 attorneys participated as panel members). Attorneys were drawn from all sections of the bar, although most had some appellate practice background. As a result, the panelists represented a more random selection of practicing lawyers which, in our opinion, makes their reactions more representative of the views of the bar as a whole.

The project director, upon being notified of a new trial motion setting, immediately contacted counsel involved in arguing the motion to obtain their permission to have the panel sit on their case. Upon obtaining permission from trial counsel, the trial judge involved was contacted by letter advising him of the presence of the demonstration panel and requesting notice of any continuance of the oral argument.

The project director also sent letters to five potential panelist attorneys requesting their assistance in the project and giving them a choice of cases and dates upon which to sit. Experience showed that out of the five requested appearances, three panelists could be impanelled. Also sent to the potential panelists was the message from Chief Justice Cameron and a copy of procedures prepared by the project director and the co-chairmen.

The road from original setting to impanelling a three-lawyer court to hear oral argument was not always smooth, pockmarked by continuances of oral argument, busy court calendars, and litigants reluctant to have panelists sit on their particular case. However, for the 75 cases upon which panelists actually sat, the following scenario was typical:

1. The panel members sat and listened while trial counsel argued the pros and cons of the motion for new trial to the trial judge. During this period of oral argument, the panelists themselves were instructed to make no comment and ask no questions to avoid any possibility that their com-

ments or questions might influence the court in deciding the fate of actual litigants before the court.

2. Following the close of oral argument to the court, and in the absence of the trial judge, the panelists were then given the opportunity to ask any questions they desired of trial counsel.

3. Following the close of this portion of the oral argument, the panelists then met and filled out the "Panel Questionnaire." (A copy is attached as Exhibit B.) The Panel Questionnaire sought to determine whether, if this case were actually appealed, the panel would affirm, reverse or be unable to reach a decision based upon the law student briefing sheet, the memoranda of trial counsel in support and in opposition to the motion for new trial, and the oral argument presented. In addition, the Panel Questionnaire sought information, if the panel was unable to decide, as to the reasons for the indecision and if, in the panelists' opinion, the case would deserve a written opinion. Also, the panelists were asked to complete an "Individual Questionnaire" (copy attached as Exhibit C) and the trial counsel were likewise asked to complete an "Attorney's Questionnaire" (copy attached as Exhibit D).

The statistical data presented in this report is drawn primarily from the Panel, Individual and Attorney Questionnaires. As a further check on the experiment's effectiveness, the project intends to compare the results of the panel determination with the results actually reached on appeal by an appellate court. Of the cases heard by the panelists, appeals were perfected in approximately 20, providing at least a small sampling for this comparison purpose.[11]

Twenty-five workmen's compensation cases also were intended to be handled under this procedure, utilizing, instead of lawyer panels, actual appellate judges sitting on actual cases. To this end a great deal of time and effort was expended in attempting to persuade the Workmen's Compensation Bar of the utility of the project, devising procedures to be utilized in the process, and drafting forms. The results were disappointing as only three actual cases were submitted under the procedure, too few to draw any conclusions.

In reviewing the statistical data and the conclusions drawn from that data, some important caveats need to be stated. First, the experiment on the part of the panels was a simulation; that is, the panels' decision did not have an actual effect on the litigation. Second, lawyers rather than judges were used in the decisional panels. Third, the experiment only used 75

[11] None of the cases actually had been decided by the Arizona Appellate Court at the time this report was prepared. Only six were at issue.



civil cases, a rather small sampling for true statistical purposes. And fourth, various problems were encountered in gathering information from the questionnaires. These problems centered primarily upon some inadequacies of the questionnaires themselves. For these reasons, we do not pretend that the statistical data would withstand critical statistical analysis. However, we do believe that the data presented is indicative of what might be expected if the procedures outlined were actually placed in operation, and that it provides insights into areas in which no data of any kind has previously been gathered.

## V. STATISTICAL ANALYSIS.

A. *To What Extent Could the Simulated Panels of Appellate Judges Decide the Cases Using this Procedure?*

1. Of the 71 cases in which the panelists' decision was ascertainable,[12] the panel was able to decide 53 or 75%. The panel was unable to decide 18 or 25%.

2. The panel decisions were:

| AFFIRM | REVERSE | MODIFY | UNABLE TO DECIDE |
|---|---|---|---|
| 58% | 16% | 1% | 25% |

3. In order to determine whether a trend exists based upon the type of case involved, a breakdown of the decision by case type was analyzed.[13] Such an analysis shows:

| | *Type of Case* | | | |
|---|---|---|---|---|
| *Decision* | *Contract* | *Tort MV* | *Tort NMV* | *Other* |
| Affirmed | 38% | 67% | 58% | 57% |
| Reversed | 5 | 19 | 17 | 20 |
| Modified | 0 | 0 | 0 | 6 |
| Undecided | 57 | 14 | 25 | 17 |
| | 100% | 100% | 100% | 100% |
| (Number of responses) | (37) | (63) | (48) | (46) |

4. To test the hypothesis that the institutional function would cause the most difficulty in reaching a decision, in those cases in which the panel was unable to decide, panelists were asked to indicate factors which accounted for their indecision.[14]

[12] In four of the six cases where the Panel Questionnaires were missing, we are unable to determine the panel's result from the data.

[13] The numerical breakdown of cases within each category is as follows:

| | | |
|---|---|---|
| contract | | 20 |
| tort — motor vehicle | | 22 |
| tort — nonmotor vehicle | | 17 |
| other, including: | | |
| | domestic relations | 2 |
| | nonclassified | 7 |
| | declaratory judgment | 1 |
| | wrongful death | 1 |
| | probate | 1 |
| | condemnation | 1 |
| | statutory interpretation | 1 |
| | lien foreclosure | 1 |
| | administrative law | 1 |
| | | 16 |
| | | 75 |

[14] Panelists were also given the opportunity to supply "other" reasons in several categories. The responses in this category were not statistically significant.



The responses were:

| | |
|---|---|
| Unable to decide because there were factual conflicts requiring a transcript | 80% |
| Insufficient background information | 34% |
| Complexity of legal issues | 12% |
| (Total responses 50) | |

5. All panelists were asked to rate the difficulty of deciding the case in order to ascertain whether the materials presented were sufficient. The responses were:

| | |
|---|---|
| Quite easy | 49% |
| Moderately difficult | 34% |
| Very difficult | 17% |
| (Total responses 190) | |

6. Applying this same factor to case type, the data shows:

| | *Type of Case* | | | |
|---|---|---|---|---|
| *Difficulty* | *Contract* | *Tort MV* | *Tort NMV* | *Other* |
| Very difficult | 33% | 4% | 23% | 15% |
| Moderately difficult | 23 | 28 | 30 | 58 |
| Quite easy | 44 | 68 | 47 | 27 |
| | 100% | 100% | 100% | 100% |
| (Number of responses) | (43) | (69) | (47) | (45) |

B. *Correlation of Cases Deserving Published Opinions with Other Factors.*

In an attempt to isolate the correctional function of the court from its institutional function, the participants were asked whether the particular case deserved a written opinion. Rule 48, Rules of the Arizona Supreme Court, presently allows the rendition of Memorandum Decisions (nonpublished) by the appellate court of those cases having no precedential value. These responses showed:

1. Of the 75 cases, the panelists responded that a published written opinion was warranted in 35 cases or 47%.[15]

2. In the 18 cases which the panel was unable to decide, the panel felt that 13 or 72% required a written opinion.

3. Of the 53 cases which the panelists were able to decide, the panel responded that 22 or 42% required a written opinion.

4. The responses of arguing attorneys to this question indicate that:

33% of attorneys in affirmed cases believed a published opinion was necessary.

[15] This figure may seem high as compared to other jurisdictions. However, in reviewing the reasons stated as to why a published opinion was felt to be warranted, the answers generally reflected a legitimate lack of existing authority. Arizona in comparison with other states has a relatively small body of reported case law.

68% in reversed cases recommended an opinion.

77% in undecided cases recommended opinions.

(Based on 139 responses)

5. A correlation of the need for published opinion with the decisional difficulty of the case reflects that of those panelists finding the case very difficult to decide, 22% wanted a written opinion. Of those panelists who found the case moderately difficult, 43% wanted a written opinion. Of those finding the case easy, 34% wanted a written opinion.

6. Panelists' determination of necessity of written opinion by type of case.

| | Type of Case | | | |
|---|---|---|---|---|
| *Necessity of Written Opinion* | *Contract* | *Tort MV* | *Tort NMV* | *Other* |
| Yes | 63% | 32% | 55% | 68% |
| No | 37 | 68 | 45 | 32 |
| | 100% | 100% | 100% | 100% |
| (Number of responses) | (71) | (108) | (83) | (44) |

C. *Sufficiency of Oral Argument.*

1. In testing the overall sufficiency of oral argument, panelists' responses were:

| | |
|---|---|
| More than adequate | 32% (61 responses) |
| Adequate | 48% (93 responses) |
| Less than adequate | 20% (37 responses) |
| | (Total responses 191) |

2. In indicating specific areas of insufficiency, the panelists responded as follows:

| | *Percentage of Panelists Responding* |
|---|---|
| Apparent unpreparedness | 5% ( 9 responses) |
| Failure to present facts clearly | 9% (18 responses) |
| Failure to draw issues clearly | 11% (22 responses) |
| Failure to clarify murky areas of the case | 11% (21 responses) |
| Failure to respond helpfully to court's questions | 3% (16 responses) |

3. Of the panelists on cases which were unable to be decided, 35% found oral argument less than adequate.

D. *Adequacy of Staff Memoranda.*

The responses to the overall adequacy of the staff memoranda as an aid in reaching a decision were:

| | |
|---|---|
| More than adequate | 32% |
| Adequate | 48% |
| Less than adequate | 20% |
| | (Total responses 189) |



In the undecided cases, 36% of the panelists found the staff memo less than adequate.

E. *Sufficiency of Counsels' New Trial Memoranda.*

1. To ascertain the effect of the written material of counsel on the result, the panelists responded to the overall sufficiency of counsels' memoranda as follows:

| | |
|---|---|
| More than adequate | 18% |
| Adequate | 47% |
| Less than adequate | 35% |
| | (Total responses 191) |

2. The percentages did not vary significantly between the cases which the panel was able to decide and those which the panel was not able to decide.

F. *Necessity of Transcript.*[16]

Panelists were asked whether a full transcript would have been helpful, essential, or unnecessary in reaching a decision.

1. The responses were cross-classified with the results the panel reached in each case.

*Importance of Full Transcript by Decision*

| | | Decision | |
|---|---|---|---|
| *Importance of Full Transcript* | *Affirmed* | *Reversed* | *Undecided* |
| Essential | 15% | 26% | 60% |
| Helpful | 28 | 11 | 24 |
| Unnecessary | 57 | 63 | 16 |
| | 100% | 100% | 100% |
| (Number of responses) | (98) | (27) | (42) |

2. Responses were also cross-classified with type of case under consideration.

*Importance of Full Transcript by Case Type*

| | Type of Case | | | |
|---|---|---|---|---|
| *Full Transcript* | *Contract* | *Tort MV* | *Tort NMV* | *Other* |
| Essential | 51% | 23% | 33% | 22% |
| Helpful | 27 | 37 | 25 | 29 |
| Unnecessary | 22 | 40 | 42 | 49 |
| | 100% | 100% | 100% | 100% |
| (Number of responses) | (37) | (35) | (40) | (41) |

[16] Arizona does not require a motion for new trial as a prerequisite for appeal. However, such a motion is necessary if the sufficiency of the evidence is to be challenged. This requirement may have skewed the cases in the project toward those involving evidentiary problems.

3. Although the panelist questionnaire contained questions intended to ascertain the utility of a partial transcript as opposed to a full transcript, the responses to the questions did not provide any meaningful data because of the lack of clarity in the questions.

4. As noted above, lack of transcript was the single most important factor perceived by the panel as responsible for inability to decide cases.

5. Lack of transcript was also perceived as the principal disadvantage of this procedure. (See Section H *infra*).

G. *Lapsed Time Between Trial Court Judgment and Disposition on Appeal.*

The amount of time which elapsed between the trial court's judgment and the hearing by the simulated appellate court varied considerably, but the time in most cases ranged between six and ten weeks.

This data obviously reflects the time elapsed between the date of judgment and the motion for new trial. If this procedure were in actual operation, the appellate hearing would be after the ruling on the trial court motion, and a period of additional time would have to be added.

Also, in those cases in which a published opinion is required, and for those cases which could not be decided on this basis, substantial additional time would elapse before final decision.

H. *Perceived Acceptance and Desirability of the Procedure.*

1. In order to obtain some measure of the overall perceived desirability of this procedure, all panelists and attorneys were asked how they thought competent appellate counsel would view this procedure. The responses were:

| | |
|---|---|
| Highly desirable | 17% |
| Desirable | 50% |
| Undesirable | 33% |

(Total responses 361)

There were no statistically significant differences between panel and attorney responses.

2. We compared the responses of panelists in cases which were able to be decided with responses of those in cases which could not be decided.

In the cases which could not be decided (44 responses), the results were:

| | |
|---|---|
| Highly desirable or Desirable | 47% |
| Undesirable | 53% |

Of the panelists in cases which could be decided (139 responses):

| | |
|---|---|
| Highly desirable or Desirable | 77% |
| Undesirable | 23% |



3. Panel members were asked to evaluate their attitude prior to and subsequent to participation in the panel project. The table below shows pre-test and post-test results. A positive attitude prevailed both before and after participation in the panel. Fifty-seven percent indicated their attitude toward the procedure was excellent or good before the panel, and about the same percentage was found in the post-test.

*Summary Review Attitudes, Pre-test and Post-test*

| | *Pre-test* | *Post-test* |
|---|---|---|
| Excellent | 12% | 19% |
| Good | 45 | 39 |
| So-so | 33 | 25 |
| Poor | 9 | 10 |
| Very unlikely | 1 | 7 |
| | 100% | 100% |
| (Number of responses) | (208) | (204) |

Since at the aggregate level the above table shows both positive movement in the "excellent" category from pre-test to post-test and negative movement in the "very unlikely" category, we examined the amount of change at the individual level. Taking the difference between the pre-test and post-test scores for individuals, we determined whether the attitude of the panelist changed upward or downward or did not change at all. Analysis of the results showed a tendency toward an overall improved attitude with 27% changing upward, 52% not changing at all, and 21% changing downward.

5. Finally, panelists were asked to indicate what they thought were the positive and negative features of the summary review procedure.[17] The results are displayed in the following two tables. Most respondents cited positive rather than negatives features. Speedy appellate review was identified as the most positive effect, while lack of confidence over the transcript not being available was identified as the most negative effect of the procedure.

*Percent Mentioning Positive Features*

| *Item* | *Percent* |
|---|---|
| Speedy appellate review | 68% |
| Monetary savings to litigants | 66% |
| Savings in court time | 65% |
| Savings in counsel time | 54% |
| Making appellate procedures more available | 39% |

(Total responses 361)

[17] Participants were given the opportunity to make free, unstructured comments on the advantages and disadvantages of this procedure. While this opportunity was freely exercised, we have not attempted to categorize these responses.

*Percent Mentioning Negative Features*

| *Item* | *Percent* |
|---|---|
| Lack of confidence over transcript not available | 48% |
| Lack of confidence in reasoned result being reached | 26% |
| May generate nonmeritorious appeal | 24% |
| Unwillingness to trust staff preparation | 23% |
| Would not work and would duplicate effort | 22% |
| May generate more appeals | 20% |

(Total responses 361)



## VI. CONCLUSIONS.

The following conclusions are suggested by an analysis of the statistical data:

1. A majority of cases could be decided by a summary procedure shortly after trial using minimal written materials, but with the support of staff memoranda and extensive oral argument.

2. Oral argument, counsel's memoranda, and the staff memoranda were considered adequate or more than adequate in a sizeable majority of the cases.

a. With respect to oral argument, unpreparedness of counsel and responsiveness to questions were negligible problems. While we can only speculate as to the reasons for the satisfaction with oral argument displayed in this experiment, it may possibly be a product both of the short lapse of time between the actual trial and the argument, and the fact that counsel making the argument in most cases was counsel which had participated in the trial. It should be pointed out that oral argument before the panelists was generally in an informal atmosphere where counsel were encouraged to respond to questions immediately after each other rather than in the formal sequence of opening — response — rebuttal. The high marks oral argument received suggest that such an informal procedure may more readily educate a judicial panel than the traditional formal oral arguments before an appellate court.

b. A greater percentage of panelists (35%) were dissatisfied with counsel memoranda than with staff memoranda or oral argument (20%).[18]

c. The degree of satisfaction shown with staff memoranda is more significant when we consider that the memoranda were prepared by law students and not by professional court staff members.

3. Tort motor vehicle cases appear to lend themselves best to this procedure. Panelists were able to reach a decision in 18 of the 22 tort motor vehicle cases. This result could possibly be influenced by the fact that litigation lawyers were involved as panelists and may have a better understanding of tort law than in other areas. Conversely, contract cases appear to be least able to be disposed of by this procedure, since 50% of those cases were unable to be decided.

4. The greatest single disadvantage to the procedure would appear to be the lack of transcript. This was the reason for the panels' difficulty in deciding 82% of the cases which were unable to be decided. Also, approxi-

[18] Participating counsel at the time of oral argument were aware that the matter would be presented to the project panel. No such advance warning was present at the time they submitted the motion for new trial and response. It is likely that counsel memoranda prepared expressly for the reviewing panel would prove more satisfactory.

mately half of the participants listed the lack of transcript as a disadvantage of the procedure. Even in the cases which were in the able-to-be-decided category, 42% of the panelists felt a transcript would either be essential or helpful. However, the fact remains that despite these responses the panelists were able to decide most of the cases without a transcript. It is thus difficult to determine whether a transcript was in fact necessary or highly desirable, or whether the responses of the participants reflect the desire for a placebo to reinforce confidence in the court's decision and understanding of the facts.

5. The results cast some doubt upon the basic Hufstedler hypothesis that error-correcting cases can best be decided by this procedure, and institutional cases require further appellate proceedings for decision. The best criterion we have for determining whether a case was institutional or error-correcting was whether the panel felt that a published opinion was required.

a. Tending to support the Hufstedler hypothesis is the fact that a higher proportion of the cases which were undecided were felt to require a published opinion.

b. Tending to militate against the hypothesis is the fact that only 12% of the panelists felt that complexity of legal issues was a factor in their inability to decide a case. As noted above, the predominant reason for indecision was lack of a transcript, which may or may not be related to the institutional nature of the case. Panelists were able to decide more than half of the cases which they felt warranted a published opinion, and in the bulk of those cases, the opinion was felt to be warranted because of the need for clarification of legal issues and a lack of controlling authority. Of those panelists who found the cases very difficult to decide, only 22% felt that they warranted a written opinion, while in those cases which were easy to decide, 34% felt that an opinion was warranted.

c. Based upon the data outlined, we can reasonably conclude that the form of expedited review can be used for both institutional as well as error-correcting cases, not merely the latter as was originally hypothesized.

6. The bar is generally receptive to an expedited procedure of this sort.

7. The responses showed a significant amount of agreement on the principal positive and negative aspects of the procedure. Substantially more than half of the respondents viewed time and money savings as the principal advantages. The principal disadvantage was perceived as lack of transcript, but slightly less than half of the respondents saw this as a disadvantage.

8. It is believed that use of this procedure would result in substantial



savings of counsel time, and a resultant saving of cost to litigants. This would be the result principally of the reduced length of legal memoranda, the immediacy of the hearing after trial, and the elimination of transcript costs.

9. Savings of judicial time can also result from speedy hearing and shorter written materials to review. For those cases which the panel was unable to decide on this expedited basis, the savings will, of course, be less. Nevertheless, to the extent that the procedure serves to narrow the issues to be considered, there will be some savings. However, no substantial savings of judicial time can be accomplished unless the Court is able to calendar cases for argument soon after all memoranda are filed, and unless the Court adheres rigidly to the practice of issuing brief written decisions immediately after the argument in all cases not requiring a published opinion.[19]

10. The generation of more appeals was not seen as a significant disadvantage.

11. The experiment has shown that it is possible for many bar members to participate in an experiment simulating actual court procedures. Nevertheless, this type of experimentation requires meticulous administration and extensive efforts to assure that all participants understand the method and purpose of the experiment.

[19] The Arizona Constitution requires written appellate decisions with reasons. In states not having this requirement, the use of oral opinions or brief written orders showing only the disposition when appropriate, would add to the saving in judicial time.

## VII. A SUGGESTED APPELLATE COURT PROCEDURE.

Based upon the conclusions drawn from this experiment, an appellate procedure embracing the following appears to be feasible. Time limitations may be varied, but the overall goal is to bring the matter up for appellate hearing as soon after judgment as possible.

1. Notice of appeal must be filed within 30 days from the judgment or denial of post-trial motions.

2. Appellant's opening memorandum (not exceeding 20 pages in length) to be filed within 15 days of the notice of appeal.

3. Appellee's answering memorandum (not exceeding 20 pages in length )to be filed within 15 days of appellant's opening memorandum.

4. A reply memorandum to be filed within five days.

5. Transmission of the entire trial court record, excluding transcripts, to the appellate court within 30 days of the notice of appeal.

6. Preparation by central appellate staff of an appellate memorandum for judge's use based upon the opening and answering memoranda of counsel and the trial record. The appellate memorandum should be prepared and distributed within 15 days from the "completion of the record on appeal."

7. The setting of oral argument on appeal within 30 days of the completion of the record on appeal. Not less than 30 minutes per side should be scheduled.

8. The decision of the court to affirm, reverse or modify in all cases deemed not requiring published opinion should take place immediately following oral argument in the form of an oral opinion or brief per curiam decision. In those cases requiring published written opinion, normal assignment procedures should prevail.

9. In those cases in which a decision cannot be reached based upon the materials presented, the Court should isolate the reasons for their indecision (lack of transcript, full or partial, or complexity of legal issues requiring additional memoranda) and take such steps as are necessary to correct these inadequacies by:

a. Ordering transcripts to be prepared within 30 days.

b. Ordering additional memoranda on points of concern within 30 days.

c. Scheduling of additional oral argument if deemed helpful.

10. Discretionary review of the Court's decision by application for rehearing motion and, if decision is by intermediate appellate court, by application to court of last resort.



## VIII. SUGGESTIONS FOR AREAS OF FURTHER STUDY AND IMPLEMENTATION.

At the conclusion of this study, based upon the data contained in this report, the following recommendations with respect to future implementation and study are made:

1. In view of the perceived desirability of transcripts as indicated by this experiment, a further experiment involving the use of actual or simulated appellate court panels might profitably be undertaken in a jurisdiction in which transcripts are being made available on an expedited, computerized basis. It is believed that further experimentation along these lines is now being considered by the A.B.A. and is encouraged by this committee.

2. There will be a follow-up study of those cases involved in this experiment which actually proceed through the Arizona appellate process. The follow-up will compare the manner of disposition on appeal with the decisions of the panels.

3. In light of the findings with respect to transcripts and the apparent greater utility of this procedure in deciding tort as opposed to contract cases, it is suggested that an appellate court might implement this procedure on a controlled basis in cases screened to eliminate those contract cases in which the necessity of transcript appears high.

## RECOMMENDATION WITH RESPECT TO ARIZONA

The Advisory Committee concluded that the results of this project justify implementation in Arizona on a controlled basis. The Advisory Committee requested the Chief Justice of the Supreme Court of Arizona to appoint a committee to draw up rules, along the lines suggested in Part VII of this report, to be utilized in a limited number of actual cases before Arizona appellate courts pursuant to stipulation by the parties.

Eino M. Jacobson
Mary M. Schroeder
*Co-chairmen*

DEMONSTRATION PANEL BRIEFING SHEET

_____
Plaintiff(s)

v.

Before Judge _____
Division _____

_____
Defendant(s)

Plaintiff(s) Attorney:

Defendant(s) Attorney:

(Use back of page if more space needed)

I. Generally, what is this case about? What is the central issue or issues?

II. Facts which appear to be agreed on this record. (Take into account all pleadings, memoranda, pre-trial orders, etc.)

III. Facts on which there appear to be disagreement.

IV. Result: Judgment (verdict) for (Defendant) (Plaintiff).

V. Issues and position of the parties in the new trial motion.

VI. Issues which appear in the record apart from issues raised in the motion for new trial.

VII. Issues not raised in the new trial motion which might be raised on appeal.

VIII. Legal analysis, including:

(a) Discussion of issues.

(b) Key and/or controlling cases.

(c) Recommendation, if possible.

(d) Suggested questions to ask attorneys in argument.

THIS MEMO WAS PREPARED BY:

_____
(Signature)

EXHIBIT A

PANEL QUESTIONNAIRE FOR ENTIRE PANEL

Name of case _____

Number of case _____

1. The decision of the panel was

   ( ) affirm

   ( ) reverse

   ( ) modify

   ( ) unable to reach decision

2. If a decision was reached, please supply a statement of the grounds for this decision.

3. If the panel was unable to reach a decision in this case, was this because of

   ( ) lack of background information

   ( ) factual conflicts which required a transcript

   ( ) complexity of legal issues presented

   ( ) other

4. Does this case warrant an appellate court's preparing a published written opinion?

   ( ) Yes, because _____

   ( ) No, because _____

_____
(Signature)

_____
(Signature)

_____
(Signature)

EXHIBIT B



PLEASE NOTE: To facilitate this experiment, this case is being heard by lawyers simulating an appellate court. If this procedure were in actual operation, appellate judges would be hearing the cases, not lawyers.

INDIVIDUAL DEMONSTRATION PANEL QUESTIONNAIRE

1. Name and number of case.

   (a) Type of case (e.g., torts, contracts, condemnation, administrative law, etc.)

2. (a) Before taking part in the demonstration, I rated the chances it would be useful at:

( ) Excellent ( ) Good ( ) So-so ( ) Poor ( ) Very Unlikely

   (b) After taking part, I rated its usefulness:

( ) Excellent ( ) Good ( ) So-so ( ) Poor ( ) Very Unlikely

   (c) As to the difficulty of deciding the case as presented, it was:

( ) Very difficult ( ) Moderately difficult ( ) Quite easy

3. As an aid to reaching a decision on this matter, I found:

   (a) The staff legal memoranda were:
   (fill in with appropriate number)

   ( ) more than adequate (10, 9, 8 or 7)
   ( ) adequate (6, 5)
   ( ) less than adequate (4 or less)
   ( ) other

   (b) Memorandum in support of new trial and response was:
   (fill in with appropriate number)

   ( ) more than adequate (10, 9, 8 or 7)
   ( ) adequate (6, 5)
   ( ) less than adequate (4 or less)
   ( ) other

   (c) Oral argument was: (fill in with appropriate number)

   ( ) more than adequate (10, 9, 8 or 7)
   ( ) adequate (6, 5)
   ( ) less than adequate (4 or less)
   ( ) other

4. If the staff legal memoranda was less than adequate, in what particulars did this inadequacy appear:

   [ ] fairly and succinctly summarizing the points briefed in the parties' memoranda

   [ ] identifying the decisive legal issues

   [ ] presenting the pertinent record references

   [ ] supplying legal research supplementing the memos of the parties

   [ ] other

EXHIBIT C
(1 of 3)

5. If the memorandum in support of the new trial or the response thereto were less than adequate, in what particulars did this inadequacy appear:

[ ] superficiality
[ ] incompleteness by one or both counsel
[ ] failure to identify controlling factors
[ ] unpreparedness of counsel

6. If oral argument was less than adequate, in what particulars did this inadequacy appear:

[ ] apparent unpreparedness
[ ] failure to present facts clearly
[ ] failure to draw issues clearly
[ ] failure to clarify murky areas of the case
[ ] failure to respond helpfully to panelist's (court's) questions

7. The causes of difficulty in deciding this case were due to: [rate 3, 2, 1 or 0 to show most difficulty to least]

[ ] lack of background information
[ ] lack of transcript to help resolve factual conflicts
[ ] complexity of legal issues presented
[ ] other

8. To resolve factual conflicts:

[ ] a full transcript would have been [ ] essential
[ ] helpful
[ ] unnecessary

[ ] selected parts of the transcript would have been
[ ] essential
[ ] helpful
[ ] unnecessary

If selected parts of the transcript would have been essential or helpful, please identify which parts.

9. Time you spent prior to oral argument on motion for new trial:

(a) Familiarizing yourself with file: _____ minutes
(b) Doing additional legal research: _____ minutes
(c) Pre-oral argument conference: _____ minutes

10. Length of oral argument: _____

11. Time expended in post-oral argument proceedings:

(a) In conferences: _____ minutes
(b) In additional legal research: _____ minutes
(c) In writing decisions: _____ minutes

12. If appellate courts utilized a procedure which embraced the elements present in your panel presentation, in your opinion would competent appellate counsel of your acquaintance view such a procedure as:

[ ] highly desirable
[ ] desirable
[ ] undesirable

EXHIBIT C
(2 of 3)



13. The positive features of such a procedure would be:

[ ] savings in appellate court time
[ ] savings in appellate counsel time
[ ] monetary savings to litigants
[ ] making appellate procedure more readily available
[ ] speedy appellate review
[ ] other

14. The negative features of such a procedure would be: [If undesirable, which of the following factors would account for such a reaction]

[ ] unwillingness to trust staff preparation
[ ] lack of confidence in a reasoned result being reached
[ ] lack of confidence because transcript not available
[ ] summary procedure may generate non-meritorious appeal
[ ] summary procedure may generate more appeals, increasing appellate caseloads
[ ] procedure would simply not work in a majority of appeals and thus duplicate effort
[ ] other

15. If the appellate court were to use this procedure rather than the existing appellate procedure, in your opinion:

(a) The three main gains would be:

(b) The three main losses would be:

_____
(Signature)

EXHIBIT C
(3 of 3)

PLEASE NOTE: To facilitate this experiment, this case is being heard by lawyers simulating an appellate court. If this procedure were in actual operation, appellate judges would be hearing the cases, not lawyers.

ATTORNEY'S QUESTIONNAIRE

Name of case _____

Number of case _____

1. How much time did you spend in the following:

| | | Hours | Minutes |
|---|---|---|---|
| (a) | preparation of memorandum? | _____ | _____ |
| (b) | preparation for oral argument? | _____ | _____ |
| (c) | oral argument before trial judge? | _____ | _____ |
| (d) | additional oral argument before panel? | _____ | _____ |

2. Did presence of the panel cause you to spend more time overall than you otherwise would have in preparing and arguing?

( ) Yes Hours _____ Minutes _____ ( ) No

3. If an appellate procedure were devised which would embrace the elements present in your panel presentation, in your opinion would competent appellate counsel of your acquaintance view such a procedure as:

( ) highly desirable ( ) desirable ( ) undesirable

4. If highly desirable or desirable, which of the following factors would account for such a reaction:

( ) savings in appellate court time
( ) savings in appellate counsel time
( ) monetary savings to litigants
( ) making appellate procedure more readily available
( ) speedy appellate review
( ) other

5. If undesirable, which of the following factors would account for such a reaction:

( ) lack of confidence in a reasoned result being reached
( ) lack of confidence because transcript not available
( ) summary procedure may generate non-meritorious appeal
( ) summary procedure may generate more appeals, increasing appellate caseloads
( ) procedure would simply not work in a majority of appeals and thus duplicate effort
( ) other

6. Would knowledge of the panel's decision in your case influence your decision to appeal?

( ) Yes ( ) No

7. If this procedure were substituted in this case for the existing appeal procedure, in your opinion:

(a) The three main gains would be:

(b) The three main losses would be:

8. Does this case warrant an appellate court's preparing a published written opinion?

( ) Yes, because _____

( ) No, because _____

_____
(Signature)

EXHIBIT D



END