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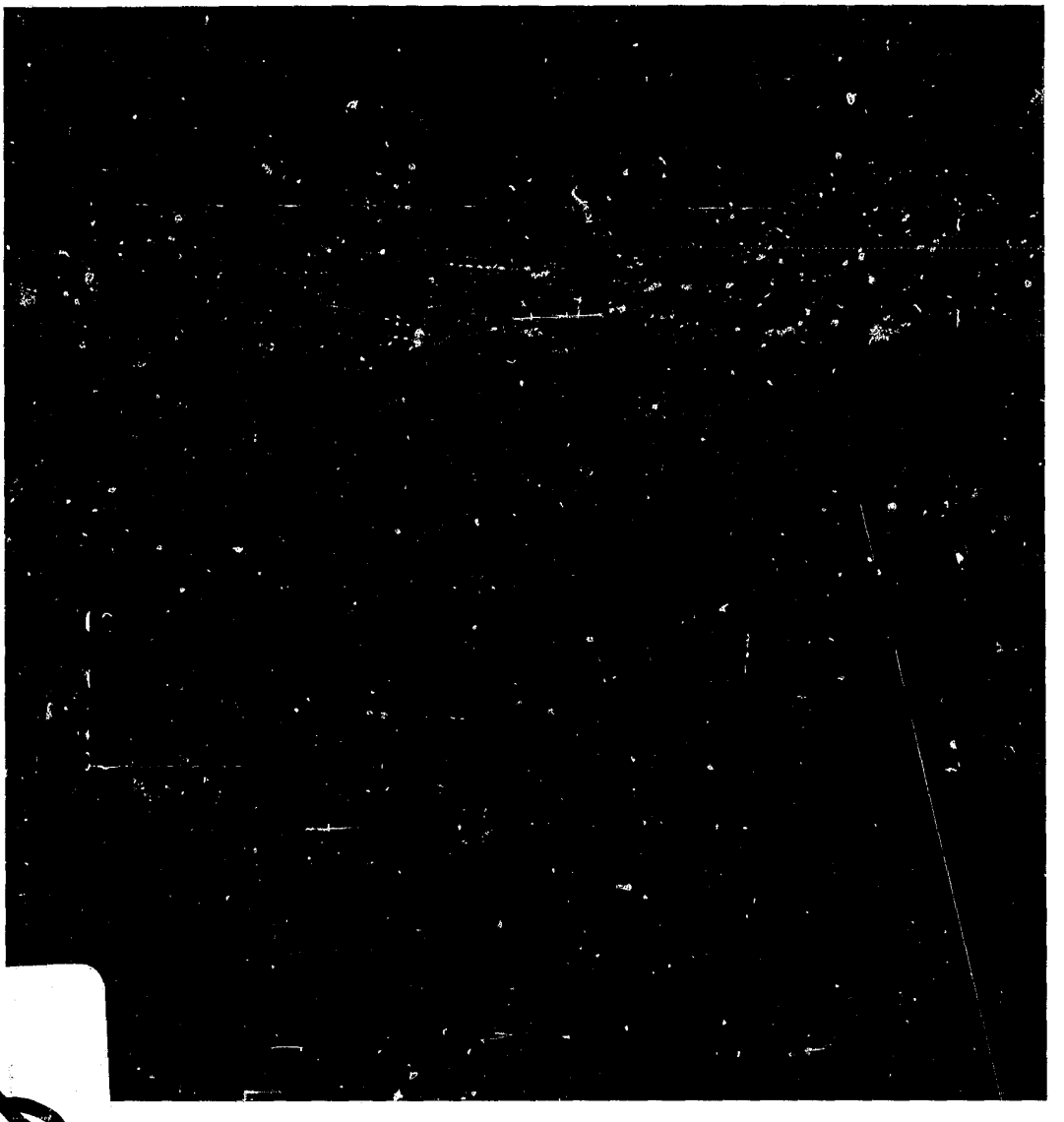

National Center for State Courts

VOLUME AND DELAY IN THE MONTANA SUPREME COURT

A Staff Study
by
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and
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The following is one in a series of eleven reports focusing on the problems of volume and delay in appellate courts. These reports are the product of an extensive data collection effort undertaken by the Appellate Justice Improvement Project in June-August, 1978, as part of its national examination of these problems.

Though each of these reports addresses the problems and procedures of a particular court, the authors wish to point out that there were in fact many factors common to all the courts examined, and several similar, if not identical problems. In view of these mutual concerns, and because the data from each of the courts were subject to the same mode of analysis, some of the factual explanations made and conclusions drawn in any one report may appear in others.

The authors wish to acknowledge the following persons, who provided assistance and contributed generously of their expertise during both the data collection effort and the writing of this report: Hon. Frank Haswell, Chief Justice; Mr. Richard Conboy, Clerk; and Gary Goff, State Court Administrator's Office. We would also like to thank the members of the Advisory Board, who reviewed the draft reports and offered guidance and direction; Dr. Jerry Goldman, who contributed substantially to the design and focus of the report; Mr. Nick Demos, for his support and encouragement of the research effort; and Mr. Sam Conti, for his supervision and advice during the writing of this report. We wish to thank Drs. Barry Mahoney and Steven Weller, former directors of this project, whose work in Phase I determined in large part the scope of the project and this report. Our special thanks to Glora Colson, who typed the numerous drafts of this report cheerfully and diligently.

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STAFF STUDY: THE MONTANA SUPREME COURT

PREFACE

In this report the staff of the National Center for State Courts' Appellate Justice Project present information and offer some related conclusions concerning the operation of the Montana Supreme Court. While this report's primary concern is the Montana appellate system, it should be viewed as but one product of a comprehensive research, evaluation, and technical assistance effort designed to help reduce delay in state appellate courts throughout the United States.

The National Center for State Courts, in response to the need for knowledge of and solutions to the problems of delay in state appellate courts, has initiated this nationwide appellate justice project. The project staff have undertaken a variety of tasks, all of which are designed to provide substantive information about the sources and severity of delay in state appellate courts, and to lead to specific recommendations or solutions to the delay problem. These tasks include an extensive review of the literature on problems of volume and delay in appellate courts and proposed solutions to those problems[1] and a bibliography of literature on the appellate process.[2]

[1] This review has been published by the National Center in a monograph entitled Volume and Delay in State Appellate Courts: Problems and Responses.

[2] Bibliography: State Appellate Court Workload and Delay, by Thomas B. Marvell (National Center for State Courts, April 1979).

In addition, the project staff have established demonstration programs designed to test and rigorously evaluate solutions to the problems of volume and delay in four diverse appellate jurisdictions.[3] Staff have also collected data from court records of the Montana Supreme Court and ten other state appellate courts across the country.[4]

Finally, technical assistance has been initiated in several state appellate courts. Included in this general technical assistance effort are the preparation of state reports for the eleven jurisdictions that were the data collection sites.

No two jurisdictions are exactly alike in the makeup and operation of their appellate court systems. Appellate courts obviously serve different populations; they are faced with different case loads; they operate under different state constitutional and statutory provisions and rules of procedure. In spite of these and other differences, appellate courts are often challenged by similar problems and can benefit from an understanding of operations in other jurisdictions. Consequently, the materials presented in this report should be useful not only to the Montana Supreme Court but to appellate courts in general.

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[3]California First District Court of Appeal; Colorado Court of Appeals; Connecticut Supreme Court (two demonstrations); Rhode Island Supreme Court.

[4]Colorado Court of Appeals; Florida Supreme Court and First District Court of Appeal; Illinois Appellate Court, First District; Indiana Court of Appeals; Nebraska Supreme Court; New Jersey Superior Court, Appellate Division; Ohio Court of Appeals, Eighth District; Oregon Court of Appeals; and Virginia Supreme Court.

INTRODUCTION

During the past two decades judges, court administrators, attorneys, litigants, members of the general public, and academic observers have all noted a dramatic increase in volume and delay in state appellate courts. Observers have indicated that in many jurisdictions the problems of delay have reached a critical level: average case processing times in appellate courts in many jurisdictions, for example, are no longer spoken of in terms of days, but rather in terms of months and years. Commentators have differed in their assessments of the specific impact appellate delay has on litigants, judges, and court personnel, but nonetheless they generally agree that court delay, in some jurisdictions, is dangerously compromising if not jeopardizing the quality of justice available to citizens.

Even though the problems of delay are for the most part clearly perceived, their causes are still primarily a matter of speculation and conjecture. In addition, while state court systems have offered numerous solutions in an effort to alleviate delay problems, the solutions remain largely untested and their effects largely unknown.

The purpose of this report is to present and summarize empirical information obtained during the project and, when supported by the information, to state specific conclusions. This report with its information and conclusions may serve also as a reference document for future court improvement. Any such improvement efforts may be by Montana Supreme Court personnel

alone or in conjunction with a technical assistance effort, tailored to the specific needs and wishes of the Montana Supreme Court, by the staff of the Appellate Justice Project. In this report two types of information have been used as a basis for conclusions. The first type of information is descriptive information concerning court rules and procedures, acquired through site visits to the court. The second type of information is quantitative data which describe the court's caseload in terms both of case characteristics and time lapse information on case processing in the Montana court. ("Case characteristics" include case subject matter, type and number of parties, attorneys, and type of judgment or order appealed from.) The quantitative data were derived from a systematic sample drawn from the court records of 708 cases from the years 1975 and 1976. The years 1975 and 1976 were selected to insure that most of the cases included in the sample would have been disposed of, and hence would include complete time lapse data, at the time of the data collection in 1978.

In the report we have relied heavily on statistical information drawn from the sample of cases from the court's records. For individuals new to statistical and social science terminology, examination of statistics-based information can be a confusing experience. Consequently, we have kept reference to statistical terms at a minimum. In those instances where statistics are necessary, they have been expressed in simplified

terms. For those more familiar and comfortable with the language of statistics, we have included more extensive statistics-based discussions in accompanying Appendices.

Section 1 begins with a brief summary of previous literature which has suggested how the problems of delay should be addressed. This is supplemented by a general analytic framework presented in Appendix A. In Section 2 a general overview of the Montana Supreme Court's rules, procedures and resources is provided. Section 3 presents descriptive data on case processing time in the Montana court, and summarizes the sources of case processing time delay. Section 4 presents general conclusions for the court's consideration.

SECTION 1

ASSESSING APPELLATE COURT DELAY

A Summary of the Literature

Previous studies have dealt extensively with the sources of delay in appellate courts and courts in general. These studies have suggested a myriad of responses available to courts challenged by expanding caseloads and unacceptable case processing times.

Although the scope of prior efforts to identify the sources of delay has varied, the conclusions of these studies have, for the most part, isolated three causes:

1) Caseload; i.e., appellate courts simply do not have the personnel or resources to keep up with increasing case volumes;[5]

2) Inefficiency; i.e., judges and other appellate court personnel do not use their time effectively. Courts are poorly organized and inadequately administered. Even if appellate court resources were increased, litigants would still encounter

[5] See, for example, Carrington, Meador, and Rosenberg, Justice on Appeal, (St. Paul, MN: West Publishing Co., 1976); "Alabama Appellate Court Congestion: Observations, and Suggestions from an Empirical Study," Alabama Law Review, Vol. 21 (1968) p. 150; Baker, Watkins, Lardy, "Appellate Court Reform," Mississippi Law Journal, 45 (1974) p. 121; Paul D. Carrington, "Crowded Dockets and the Courts of Appeal," Harvard Law Review, Vol. 52 (1969) p. 542; Cartwright, Friedman, and Wheeler, "The Business of State Supreme Courts," Stanford Law Review, Vol. 30 (1977) p. 121; "Judical Statistics of State Courts of Last Resort," Journal of the American Judicature Society, Vol. 31 (1947) p. 116; and Albert Tate, Jr., "Containing the Law Explosion," Judicature, Vol. 56 (1973) p. 228.

substantial case processing time delays;[6] and

3) A combination of both groups 1 and 2 above. There are too many cases, courts lack sufficient resources and are poorly organized and administered.[7]

As might be expected, solutions suggested by authorities to the problems of delay and volume are directly related to those authorities' perceptions of the sources of appellate court delay. For those who maintain that increased case volume is the primary source of delay, solutions emphasize devices designed to reduce the judicial workload. These solutions include increased numbers of judges and support personnel available to the court; establishment of separate appellate courts for criminal and civil cases; intermediate courts to

[6]Proponents of this position include: Harry Jones, (ed.), The Courts, the Public, and the Law Explosion, Englewood cliffs, N. J.: Prentice-Hall (1965); Ziesel, Kalven, and Buchholz, Delay in the Court, Boston, MA: Little Brown (1959); "Appellate Case Management and Decisional Processes," Virginia Law Review, Vol. 61 (1975) p. 225; R. E. English, "Crisis in Civil Appeals," Chicago Bar Record, Vol. 50 (1969) p. 231; Donald Hunter, "Riding the Circuit: Indiana Probes Delay," Judicature, Vol. 59 (1975-76) p. 18; Jacobson and Schroeder, "Arizona's Experiment with Appellate Reform," American Bar Association Journal, Vol. 63 (Sept. 1977) p. 1226; Robert Lefler, "Appellate Judicial Innovation," Oklahoma Law Review, Vol. 27, (1974), p. 321; Kenneth J. O'Connell, "Streamlining Appellate Procedures," Judicature, Vol. 56 (1973) p. 234; Sulelan and Spencer, "Constitutional Relief for an Overburdened Court," William and Mary Law Review, Vol. 8 (1967) p. 244; Editorial, "Ways to Relieve Appellate Court Congestion," Judicature, Vol. 56 (1973) p. 94; and K. C. Todd, "Appellate Delay in the Criminal Courts of Texas," Texas Bar Journal, Vol. 37 (1974) p. 454.

[7]Examples of this position are numerous. Comprehensive assessments include: Osthus and Shapiro, Congestion and Delay in State Appellate Courts (Chicago, IL: American Judicature Society, 1974); John Reed, The Applications of Operations Research to Court Delay, (New York: Praeger Publishing, 1973); the results of a symposium, "Judges on Appellate Reform," UCLA Law Review, Vol. 23 (Feb. 1976), pp. 419-500; and Richard Record, Jr., "Remedies for Backlog in the Appellate Court of Illinois," Illinois Bar Journal, Vol. 62 (1973), p. 82.

lessen the burden on courts of last resort; increased court control of the caseload by implementing selective review through certiorari; reduced opinion and brief lengths; and the issuance of memorandum opinions and oral decisions, i.e., decisions from the bench.

Proponents of the view that appellate court delay is the result of poor court organization and administration generally suggest that courts should concentrate on such efforts as employing central staff review procedures; developing computerized recordkeeping systems; developing screening systems and alternative dockets for separating error correcting cases from cases dealing with fundamental legal questions; and implementing systems of centralized court administration.

Although judges and other persons involved in appellate courts are aware of most of these suggested solutions, previous literature on appellate delay offers few guidelines to help them determine how severe the delay problem may be in a particular court, what the sources of its delay problem are, how solutions may work given the dynamics of the court, and how the solutions can be implemented and ultimately evaluated.

Before presenting a framework designed to respond to these problems it is necessary first to discuss briefly how "delay" is defined in this report.

Appellate Court Delay: A Definition and Perspective

To define delay and in turn to identify its causes, one must first define and measure case processing time. Case processing time is defined and measured in this study as the number of days that elapse between judgment in the initial forum, usually a trial court, and the date of the issuance of a final mandate by the appellate court. It should be noted that this is not the interval which the courts themselves tend to regard as the appellate case processing time: they customarily measure from the time of the filing of the appeal, which usually comes after the judgment or order below, to the time of the release of the opinion, which often precedes the issuance of a final mandate. However, this study uses a more comprehensive time frame because it represents the total time the litigants are involved in the appeal and thus is the basis by which the court's clientele (litigants) judge appellate delay. In addition, the comprehensive time frame emphasizes the importance of viewing the appeals process as a comprehensive system whose efficient operation is dependent on the actions of a variety of actors--lower court judges and clerks, who often control the preparation of records; attorneys; appellate court judges and their staff; and, where applicable, supreme court judges and their support personnel.

The determination of whether a given case processing time is acceptable or not (whether or not that amount of case

processing time constitutes "delay") is largely a perceptual matter. A year to complete an appeal may be acceptable to some actors in a particular jurisdiction but not to others, or may be acceptable in one state but not in another. More objective criteria for determining the acceptability of case processing time, however, are available and have been used in this study. These standards are the Montana court's own rules governing time requirements for accomplishing the steps in an appeal and the standards advanced by the American Bar Association.[8]

Once a determination has been made that delay exists, the next step is to identify the causes of delay. In approaching this problem the project staff have recognized that case processing time is a function of a large number of interactions among the organizational aspects of a court, the cases filed in it, and the activities of the persons in that court. To organize the analysis of these various factors and their effects on case processing time, the staff have developed a general conceptual framework of the appeals process.[9] This framework has been applied in producing the description of the Montana appellate system which is presented in Section 2.

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[8] American Bar Association Commission on Standards of Judicial Administration, Standards Relating to Appellate Courts, (Chicago, IL: American Bar Association, 1977); Montana Rules of Appellate Civil Procedure.

[9] A detailed description of this framework is presented in Appendix A.

SECTION 2

THE APPELLATE COURT SYSTEM: AN OVERVIEW OF THE MONTANA SUPREME COURT

This section of the study presents a brief overview of the structure, resources, caseload, and procedures of the Montana Supreme Court. This is done in order to provide a description both of the general appellate court environment and of how the Supreme Court has responded to the demands of that environment by adopting specific rules and procedures. This section also discusses the relation of case characteristics to case processing time.

The Montana Supreme Court is the sole appellate court in the state. Currently there are seven justices on the court, which is located in Helena. (The court was increased from five to seven justices in 1979.)

The Court is experiencing tremendous growth in its caseload. In the sample years, 1975-76, some 299 matters (1975) and 409 matters (1976) were filed. Filings in 1976 reflect a 216% increase over the 189 filings in 1970. The filings-per-judge ratio was quite low compared to the other courts in the sample--60:1 in 1975 and 82:1 in 1976.

THE PRE-DECISION PHASE

Procedure

By rule, Notices of Appeal are filed in the District Court within 30 days of the entry of judgment, except where the state is a party, in which cases the period is 60 days. It is the

responsibility of the clerk of the District Court to notify the parties and to forward these documents to the Supreme Court.

It is the responsibility of appellant's attorney to designate the record and to order the transcript. Both are due in the Supreme Court 40 days after the filing of the Notice of Appeal. Extensions for record and transcript filing, to 90 days after the Notice of Appeal, can be granted by the District Court. Further extensions must be secured from the Supreme Court, which has assigned the duty to review and grant or deny such motions to the Chief Justice.

Appellant's brief is due 30 days after the filing of the record. The court uses a measure of "substantial compliance" with regard to this step, i.e., appellant's brief is due 30 days after the filing of the reporter's transcript or the District Court file. Respondent's brief is due 30 days after appellant's brief. A reply brief, if any, is due 14 days later. Data included in this study indicated that, on the average, two time extensions were requested per appeal and were granted 99.86% of the time.

Monitoring the Caseflow

There is little active case management by the Supreme Court. The tracking of cases by the clerk's office is primarily reactive. Cases are not docketed until the filing fee is paid, or a request to docket is made by appellant's attorney. The primary responsibility of the clerk during the course

of an appeal is to keep the parties informed of when documents are filed. If an appeal is not actively prosecuted, the clerk takes no action; rather, it is the responsibility of appellee's attorney to file a motion to dismiss for want of prosecution.

Recently, the clerk's office has instituted a monthly status report on all open cases. It uses this mechanism to draw the court's attention to cases which have fallen out of sequence by 30 to 60 days. As a practical matter, the court generally will delay action for one month, until a case becomes overdue a second time. The Chief Justice will then either write the attorneys, asking that they update him on the case's status, or issue an order for dismissal unless good cause is shown.

Problems with the Pre-decision Phase

The Court has experienced substantial problems in the timely preparation and filing of both transcripts and briefs. Though long delays are common with regard to both, the Court feels generally that briefs pose a greater problem than do transcripts.

Court reporters, who are responsible for the preparation of transcripts, are county employees. However, transcripts are considered a "sideline." The Court felt that reporters are inclined to put transcript work aside in favor of more lucrative work, such as depositions, and that some District Court judges have been less than cooperative with its efforts to pressure some reporters for overdue transcripts.

However, one justice noted that transcript delays were not necessarily the fault of the reporter. Attorneys are prone to give rather vague instructions as to whether a transcript is to be typed, what parts are to be prepared, and when it is due. Requests for extension, to 90 days, are nearly always granted by District Court judges. Further extensions can be secured rather easily from the Supreme Court.

Briefs are rarely filed according to the schedule announced by court rules. As mentioned earlier, little action is taken against attorneys until their briefs are one month late. Motions for time extensions are common, and are granted with considerable regularity.

Several members of the Court said that this leniency was the result of its backlog. In their view, since the court was behind schedule in hearing and deciding appeals, it would be unfair to require attorneys to perfect appeals which the Court could not hear for several months anyway.

THE DECISION PHASE

Case Assignment

Once the appeal is perfected, a case is assigned to a particular judge in a systematic fashion. (During the period examined, this assignment was done by the Chief Justice; it is now done by the clerk's office.) It is the assigned judge's responsibility to read the record, transcript, and briefs, and to prepare a bench memorandum to be used during oral argument

(an assignment usually delegated to the assigned judge's law clerk). This assignment determines the author of the opinion unless the assigned judge turns out to be in the minority. In that event, the Chief Justice will re-assign the opinion.

Oral Argument

The court hears oral argument one week per month, 9 or 10 months per year. Four arguments are scheduled per day, two in the morning and two in the afternoon, with 40 minutes allotted to the appellant and 30 to the appellee. The appellant's attorney may split his time in any manner he wishes. Most attorneys use their full time allotment, and in many instances, exceed it. The Court is unwilling to cut off argument when it has become repetitious or has exceeded the time allowed.

Until recently, all cases were scheduled automatically for oral argument. This has changed under the new classification scheme discussed below, but the majority of cases are still set for argument.

Opinions

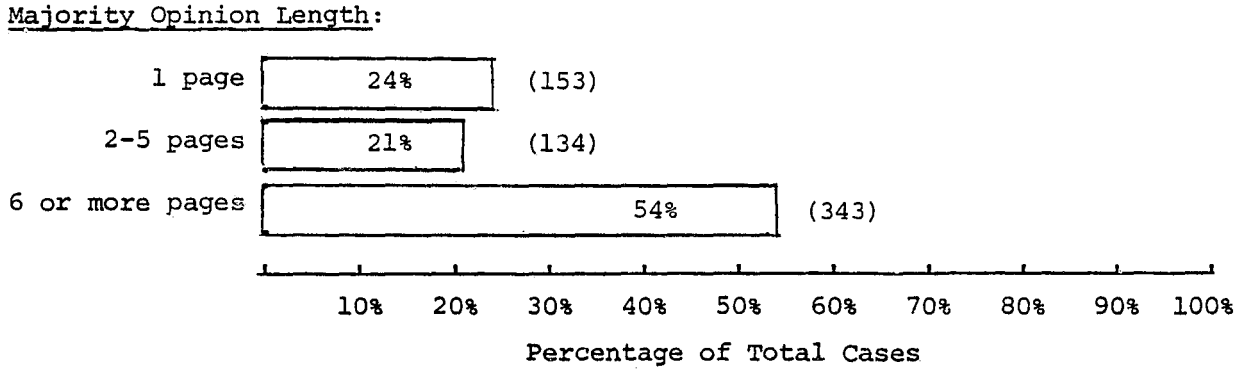
After argument, the Court confers for a straw vote. Opinion assignment is confirmed, or re-assignment is made, and a draft is due in 60 days. Circulation among the justices usually takes 10 working days, after which the opinion is issued. The assigned justice has an outside limit of 90 days in which to prepare and

circulate a draft majority opinion, or his pay is suspended until he completes it. By rule, dissenting and specially concurring opinions must be submitted within 10 days of the signing of the majority opinion. However, there were few such opinions filed during the sample years: dissents were filed in approximately 10% of the cases, separate concurrences in approximately 6%.

The Court disposes of all cases by signed opinion, and all opinions are published. As indicated by Table 2-1, the majority of opinions were over six pages long.

TABLE 2-1

PAGE LENGTH OF MAJORITY OPINION



Average opinion length 6.2 pages.

Total 100% 630 cases

Source: 630 cases out of 708 cases in which page length of minority opinion data were available.

Alternative Disposition Techniques

In the spring of 1978, the Court introduced a classification scheme for differential case treatment. There are four possible classifications: Class 1, for frivolous appeals that can be affirmed summarily; Class 2, for cases in which oral argument will be denied; Class 3, for cases to be argued; and Class 4, for cases in which re-briefing is deemed necessary. A case will be assigned to Class 2 if it meets one of the following criteria: the sole ground for the appeal is sufficiency of evidence, the appeal involves the application of well-settled principles of law, the appeal involves an unusual fact situation that is unlikely to recur, or the appeal has no precedential value.

The decision regarding classification is made by the "reviewing justice" (the assigned judge) after review of the record and the briefs. He circulates a report and a recommendation for discussion at the next Court conference. His decision is final unless two or more justices disagree. In that event, the decision on classification is made at the next Court conference by majority vote.

If an appeal is classified as "1" or "2," it is placed on the Summary Calendar and deemed submitted to the Court for decision. If an appeal is classified as "3," it is put on the Regular Calendar and set for oral argument. The Court may limit oral argument in such cases to certain issues by notifying the attorneys beforehand. If an appeal is classified as "4,"

it is returned for rebriefing. Assignment to the Summary or Regular Calendar is delayed until new briefs are filed.

Parties are notified immediately of the classification of this appeal. Counsel may protest, by motion, an assignment to the Summary Calendar. In ruling on that motion, the Court then either re-classifies the appeal or confirms its original decision.

Besides eliminating oral argument where deemed unnecessary, the Court is hopeful that the Summary Calendar will encourage the writing of shorter opinions in the future.

Characteristics of the Montana Supreme Court's Caseload

During the first phase of the Appellate Justice Improvement Project, the relationships between case characteristics and case processing time were examined in depth.[10] The results of this analysis revealed that, for the most part, there were no significant relationships between case characteristics and case processing time--cases did not systematically vary in case processing time on the basis of particular categories which describe case characteristics. Specifically, we found no significant variation between case processing time in the different categories which described the type of appellants and appellees involved in the case, the type of attorneys, the subject matter, the issues raised on grounds for appeal,

[10] See, Steven Weller, John Martin, and Elizabeth A. Prescott, Volume and Delay in Appellate Courts: Some Preliminary Findings from a National Study, National Center for State Courts, May, 1979 (unpublished).

or the source of the appeal. These findings led us to the general conclusion that differences in case processing time are attributable more to differences in the general court environment, procedures, and how the procedures are followed, rather than to identifiable differences in the nature of the cases themselves.

Table 2-2 indicates that the bulk of the Court's caseload consists of appeals from trial court judgments. Approximately seventeen percent of these were jury trials.

Civil appeals constituted 79% of the total caseload; commercial, workman's compensation, and property cases were most common. The remaining 21% were criminal appeals: robbery, burglary, assault, and narcotics cases were most common. Murder and manslaughter cases, representing 15% of the total criminal caseload, were appealed more frequently in the Montana Supreme Court than in other courts included in the study.[11]

Private attorneys represented over 75% of all litigants in the Montana Supreme Court. The public defender's office represented 1% of all appellants, and the attorney general's office represented 10% of all appellees.[12]

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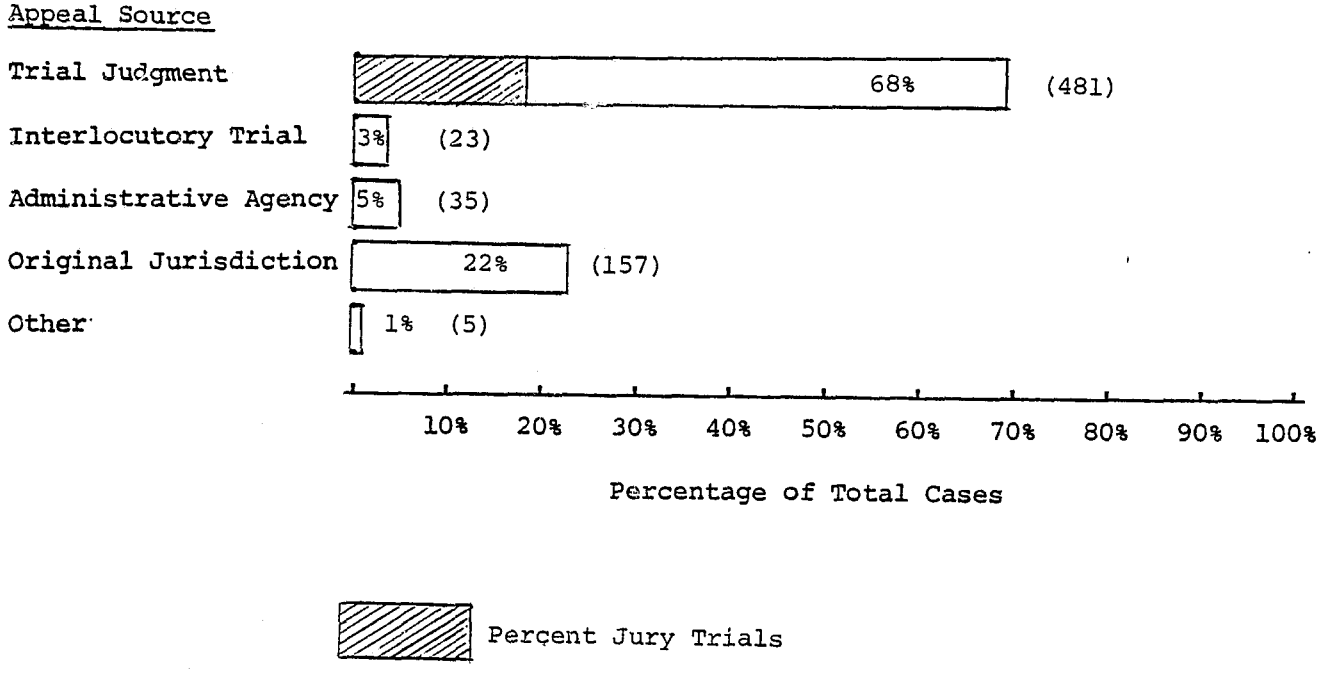
[11] See Appendix B for a detailed breakdown of the subject matter of cases in the sample.

[12] See Appendix C for a detailed breakdown of the types of attorneys in the Montana court.

TABLE 2-2

SOURCE OF APPEALS



Source: 701 cases (out of 708) in which source of appeals data were available.

Table 2-3 presents information on the frequency of cases which involve procedural complications. Very few cross-appeals, intervenors, or amicus curiae briefs appeared on the Court's docket. In addition, Table 2-3 shows that only 2% of the cases in the Court were consolidated.

As noted above, prior analysis by the project staff has indicated that differences in case characteristics do not appear to relate directly and systematically to differences in case processing time. Therefore, the next two sections of this report emphasize the effects of structural features, procedures adopted by the Supreme Court, and other aspects of the appellate environment on case processing time.

TABLE 2-3

CASE IRREGULARITIES

Irregularity Type:	Percent	N	Total N
Cross Appeal	2 %	18	708
Intervenors	2 %	15	708
Amicus Curiae	5 %	35	708
Consolidated Cases	2 %	13	708

SECTION 3

CASE PROCESSING TIME IN THE MONTANA SUPREME COURT

This portion of the report presents information concerning the length of time it took to process cases filed in the Montana Supreme Court in the years 1975 and 1976, and compares this actual processing time with court rules and the standards announced by the American Bar Association.

Table 3-1 and Figure 3-1 present a summary of the number of days required to process cases through the entire appellate system from lower court judgment to mandate in the Supreme Court. The data reveal that an average total of 370 days were required to process cases.[13] In addition, the figures presented in Table 3-1 reveal that oral argument cases averaged a processing time of 403 days, substantially longer than the 250 days that non-oral argument cases averaged.

TABLE 3-1

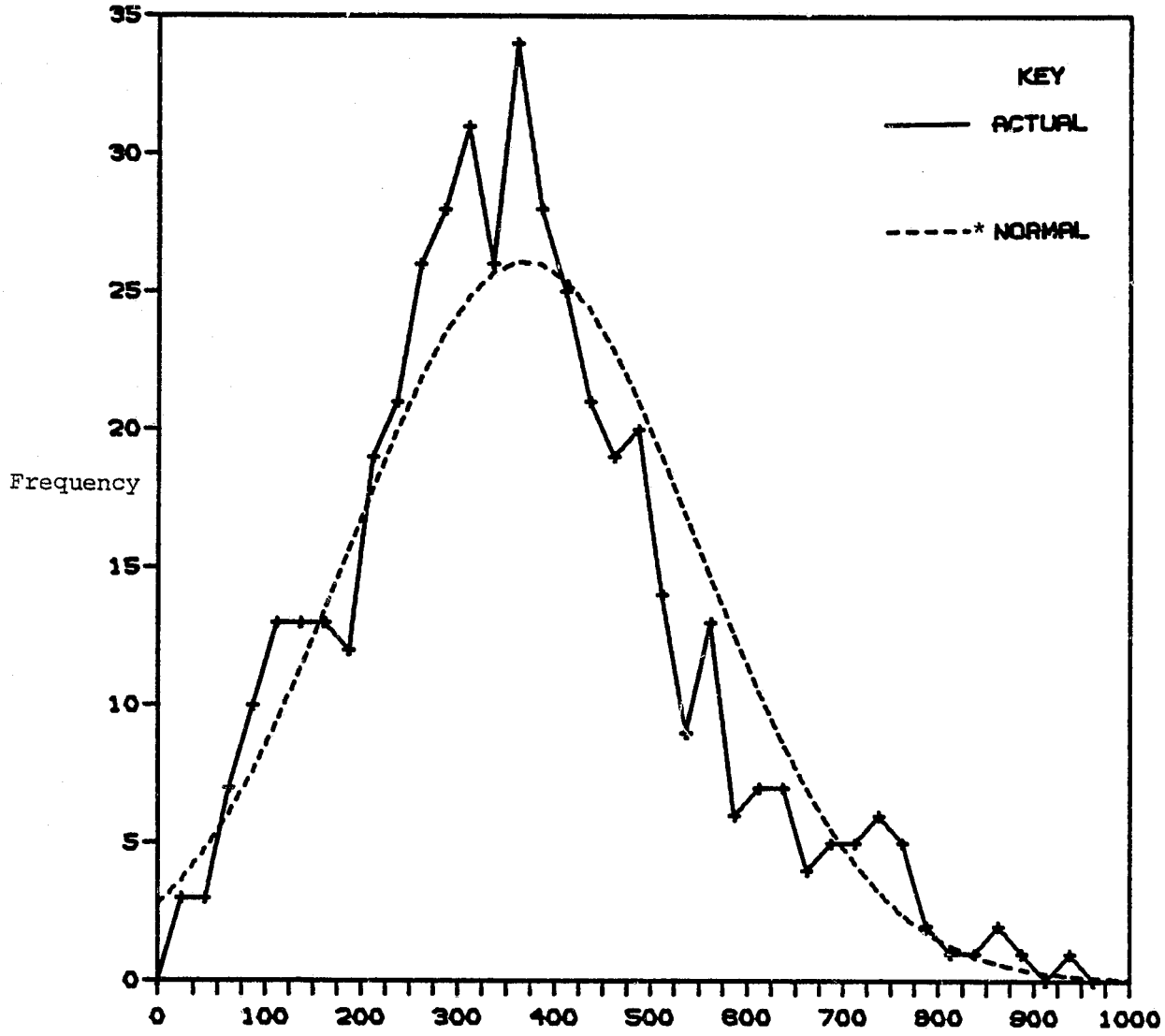
TOTAL AVERAGE CASE PROCESSING TIME

Total Processing Time:	Mean	Median	Standard Deviation	N
All Cases	370 days	355 days	180	463
Oral Argument Cases	403 days	372 days	170	362
Non-Oral Argument Cases	250 days	238 days	159	101

[13] Complete statistical descriptions of the total time interval and all other intervals, are located in Appendix D.

Figure 3-1 Total Time:

Lower Court Judgment to Appellate Court Mandate



Descriptive Statistics

Valid Cases: 463

*The curve represented by a dotted line illustrates how a normal distribution of the data, given the mean and the standard deviation, would appear, and thus provides a model against which to compare the actual distribution. For a more detailed discussion, see Appendix D.

The total case processing time measure is useful because it can be viewed as a composite indicator of the appellate system's performance. When compared to other jurisdictions included in the study, the average case processing time for both oral and non-oral argument cases in the Montana Supreme Court is rather low. This does not mean that the Court has no case processing bottlenecks, or that its case processing time cannot be improved.

Table 3-2 compares average case processing time for the different steps in the appeals process with the time requirements specified in the Court's rules and the standards established by the American Bar Association. The data reveal that the problems associated with the preparation and transmittal of documents to the Court have resulted in substantial disparity between actual processing times and these standards. Specifically, 68% of all the cases processed exceeded the maximum time prescribed by court rules of 144 days from lower court judgment to the filing of the last brief and/or the lower court record and transcript. Over 80% of the cases exceed the ABA standard. In addition, in 77% of the cases, filing the appellant's brief took longer than the 100 days fixed by court rules. In 75% of the cases, filing the appellee's brief took longer than the 30 days fixed by the rules.

Major identifiable problems at the predecision stage of the Montana appellate process include excessive transcript,

TABLE 3-2

COMPARISON OF STEPS IN CASE PROCESSING TIME WITH COURT RULES AND ABA STANDARDS, IN DAYS

ALL CASES	Mean	Median	Court Rule	% Cases above Court Rule	ABA Standards	% Above ABA Standards	N
Step 1: Trial Judgment to Materials Received	222	194	144	68 %	100 civil/ 80 criminal	81 % 86 %	459
Step 1A: Record Received to Appellant Brief	89	73	30	84 %	30 civil/ 20 criminal	86 % 90 %	399
Step 1B: Appellant Brief to Appellee Brief	69	51	30	75 %	30 civil/ 20 criminal	82 % 91 %	409
Step 1C: Lower Court Judgment to Transcript	132	104	Not Specified	-	Not Given	-	293
Step 1D: Lower Court Judgment to Appellant Brief	183	154	100	77%	Not Given	-	394
ORAL ARGUMENT CASES							
Step 2: Materials Received to Argument	81	72	Not Specified	-	Not Given	-	389
Step 3: Oral Argument to Decision	67	55	Not Specified	-	60 average/ 90 maximum*	45 % 20 %	411
NON-ORAL ARGUMENT CASES							
Steps 2 & 3: Materials Received to Decision	124	77	Not Specified	-	60 average/ 90 maximum*	61 % 43 %	94
ALL CASES							
Step 4: Decision to Mandate	20	13	Not Specified	-	Not Given	-	567

* For panels larger than three.

record, and brief preparation time. Fifty-one percent of all transcripts were filed in excess of 100 days after lower court judgment. The justices indicated that timely transcript preparation was a source of concern. In addition, at least one justice noted that attorneys may contribute to transcript delays because they often give vague instructions concerning which transcripts should be prepared and what they should contain. In any event, delay in preparing the transcripts and the lower court records undoubtedly accounted for some of the time between judgment and the filing of the appellant's brief. Clearly, attorneys would have difficulty trying to prepare briefs without having full information available concerning proceedings in the lower court. Excessive brief preparation time is probably not a result of attorneys generally preparing exceptionally long or complex briefs. On the contrary, as shown in Table 3-3, briefs filed with the Court rarely exceed the page limits specified in the court rules. Excessive brief preparation time in part might be a consequence of a significant number of briefs taking extraordinarily long, thereby dramatically skewing the average: Figures 3-2 and 3-3 show considerable inconsistency in brief filing time.

Data presented in Table 3-2 and Figure 3-4 reveal that, on the average, 81 days elapsed between the date when all materials necessary to hear a case were filed with the court and the date of oral argument. Step 2 is a waiting period:

TABLE 3-3

BRIEF PAGE LENGTHS AND COMPARISON WITH COURT PAGE LIMITATIONS

Appellant's Brief

Page Length	%	Number
1-10	21 %	105
11-20	38 %	196
21-30	20 %	102
31 & over	21 %	106
TOTALS	100 %	509
Missing Cases		199

Appellee's Brief

Page Length	%	Number
1-10	23 %	105
11-20	35 %	164
21-30	21 %	96
31 & over	21 %	98
TOTALS	100 %	463
Missing Cases		245

Appellant's Reply

Page Length	%	Number
1-10	54 %	116
11-20	33 %	71
21-30	9.7%	21
31 & over	3.3%	7
TOTALS	100 %	215
Missing Cases		490

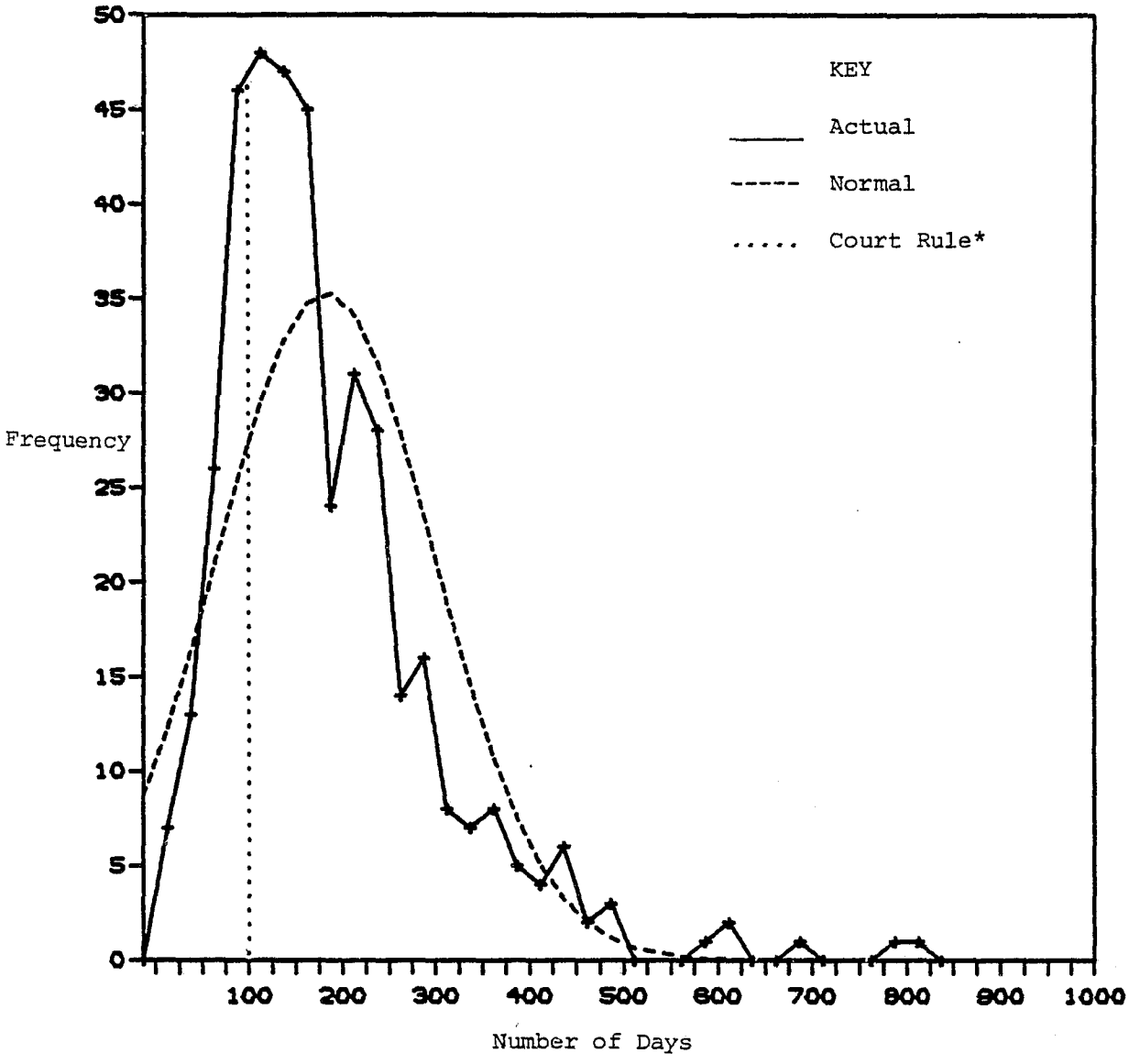
Average Number of Pages	23.5	Average Number of Pages	22.1	Average Number of Pages	22.8
Court Limit on Page Length	50 T/70 oth	Court Limit, Page Length	50 T/70 oth	Court Limit, Page Length	-
% of Briefs over Court Limit	14%*	% Briefs over Court Limit	2%*	% Briefs over Court Limit	

* 70 pages used to determine % of briefs over court limit.

Source: 509 cases out of 708 cases in which brief page lengths and comparison with court page limitations data were available.

Figure 3-2 (STEP 1D)

Lower Court Judgment to Filing of Appellant's Brief



Descriptive Statistics

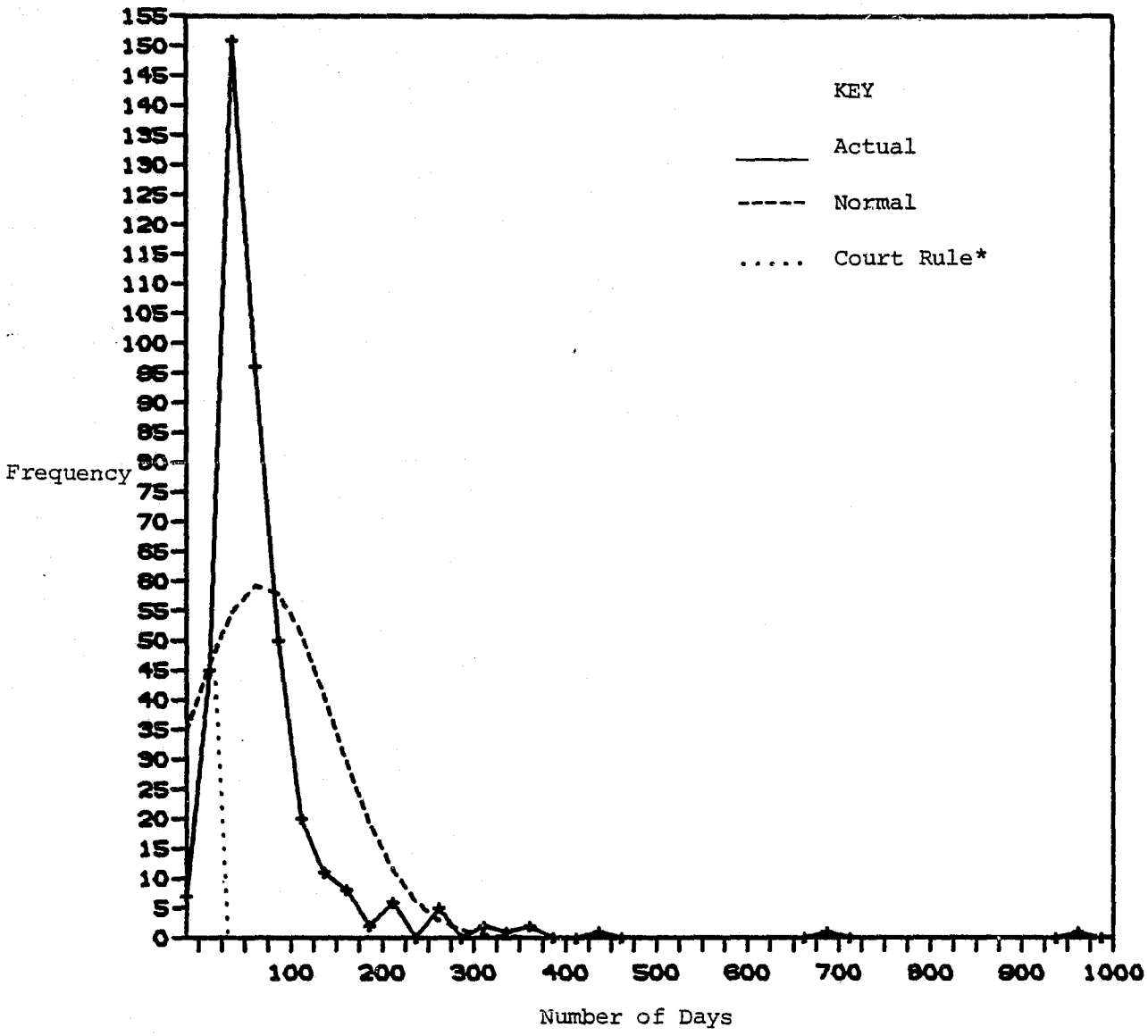
Valid Cases: 394

Mean 183 Median 155 Standard Deviation 117

*Court rules allow a maximum of 100 days.

Figure 3-3 (STEP 1B)

Appellant's Brief to Appellee's Brief



Descriptive Statistics

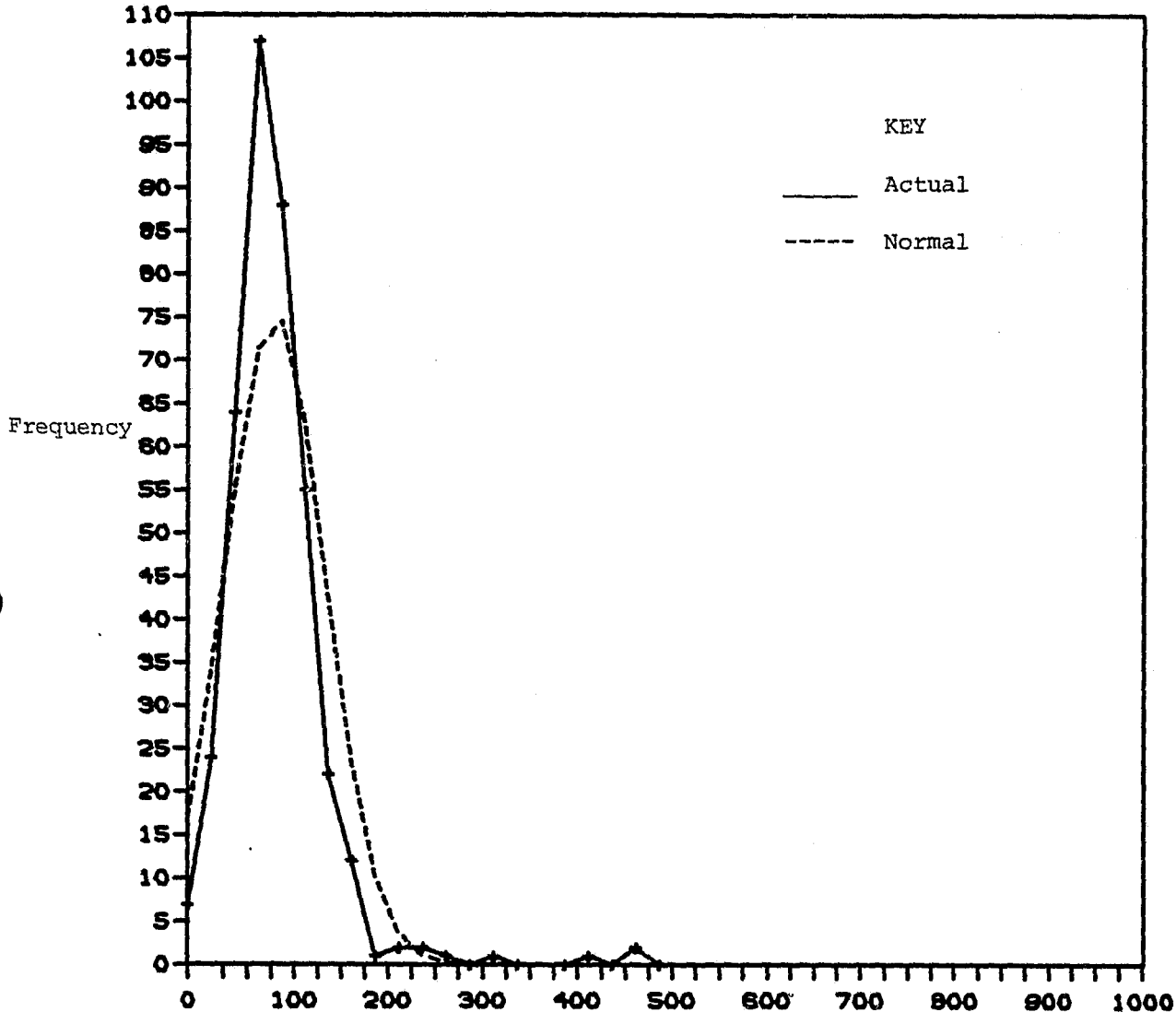
Valid Cases: 409

Mean 69 Median 51 Standard Deviation 79

*Court rules allow a maximum of 30 days.

Figure 3-4 (STEP 2)

Materials to Oral Argument



Descriptive Statistics

Valid Cases: 389

Mean 81 Median 72 Standard Deviation 53

cases are ready to be heard. Compared to other courts included in this study, the average waiting time in the Montana Supreme Court is relatively short.

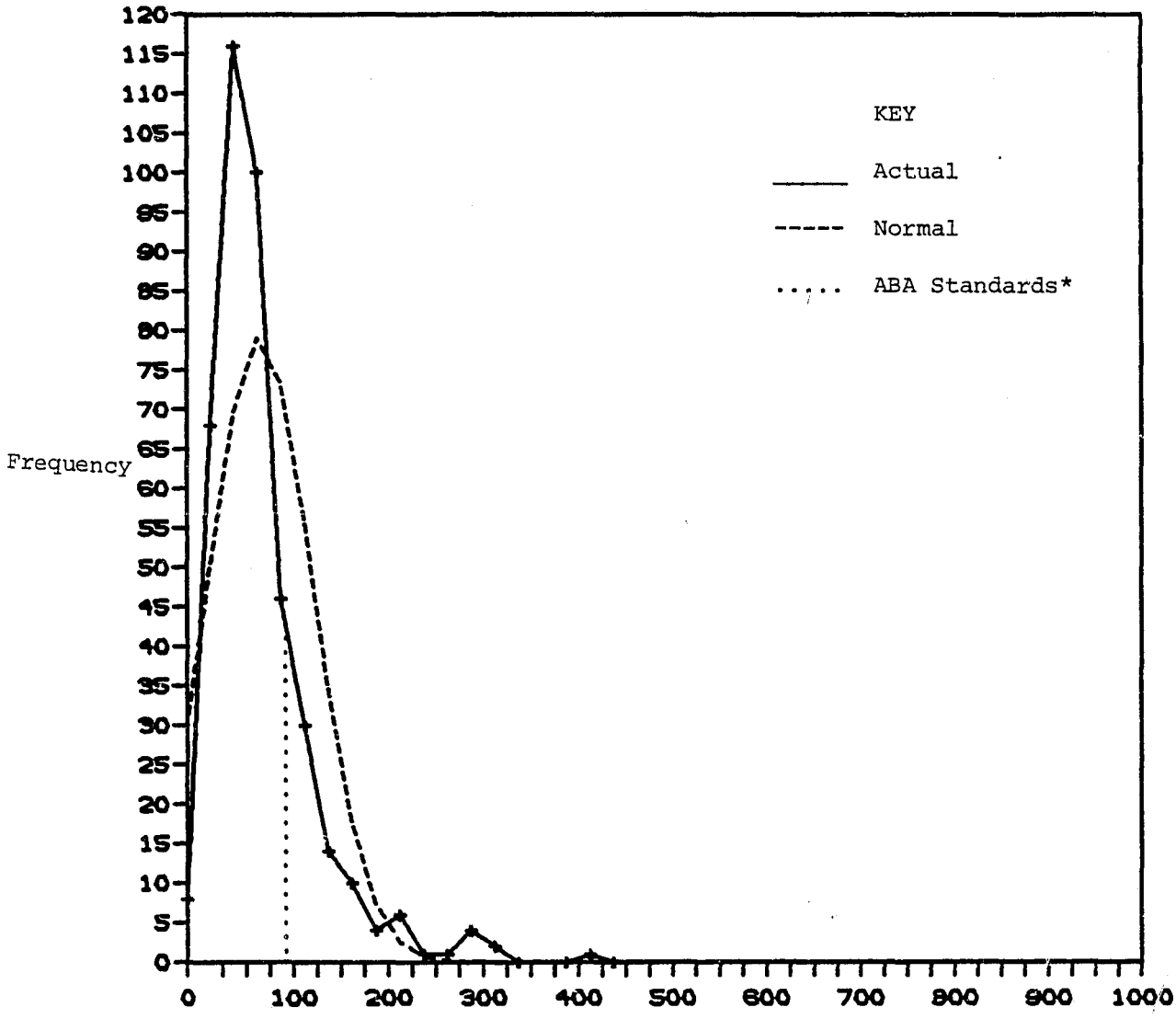
Table 3-2 also reveals that an average of sixty-seven days were required during Step 3 of the process, i.e., the period from the date of oral argument to the date of decision. The 67 day figure may be misleading because the average, as indicated in Figure 3-5, has been inflated by the existence of a few cases which took an extraordinarily long period of time. Consequently, in this instance, the 55-day median more accurately reflects elapsed time for the vast majority of cases during this step of the appellate process.

The Supreme Court has no guidelines specifying how fast cases should be decided after oral argument. However, the ABA standards provide some guidance. Data presented in Table 3-2 and Figure 3-5 reveal that 55% of all oral argument cases had decisions announced in a period of sixty days or less. Eighty percent were completed within the 90-day maximum time period established in the ABA standards.

For non-oral argument cases, the available data did not permit dividing decision-making time into two separate steps. Decision time in such cases therefore measures elapsed time between the date when all materials necessary to hear a case were filed with the Court, and the date when the Court announced a decision.

Figure 3-5 (STEP 3)

Oral Argument to Decision Announced



Number of Days

Descriptive Statistics

Valid Cases: 411

Mean 67 Median 55 Standard Deviation 56

*ABA Standards allow a maximum of 90 days.

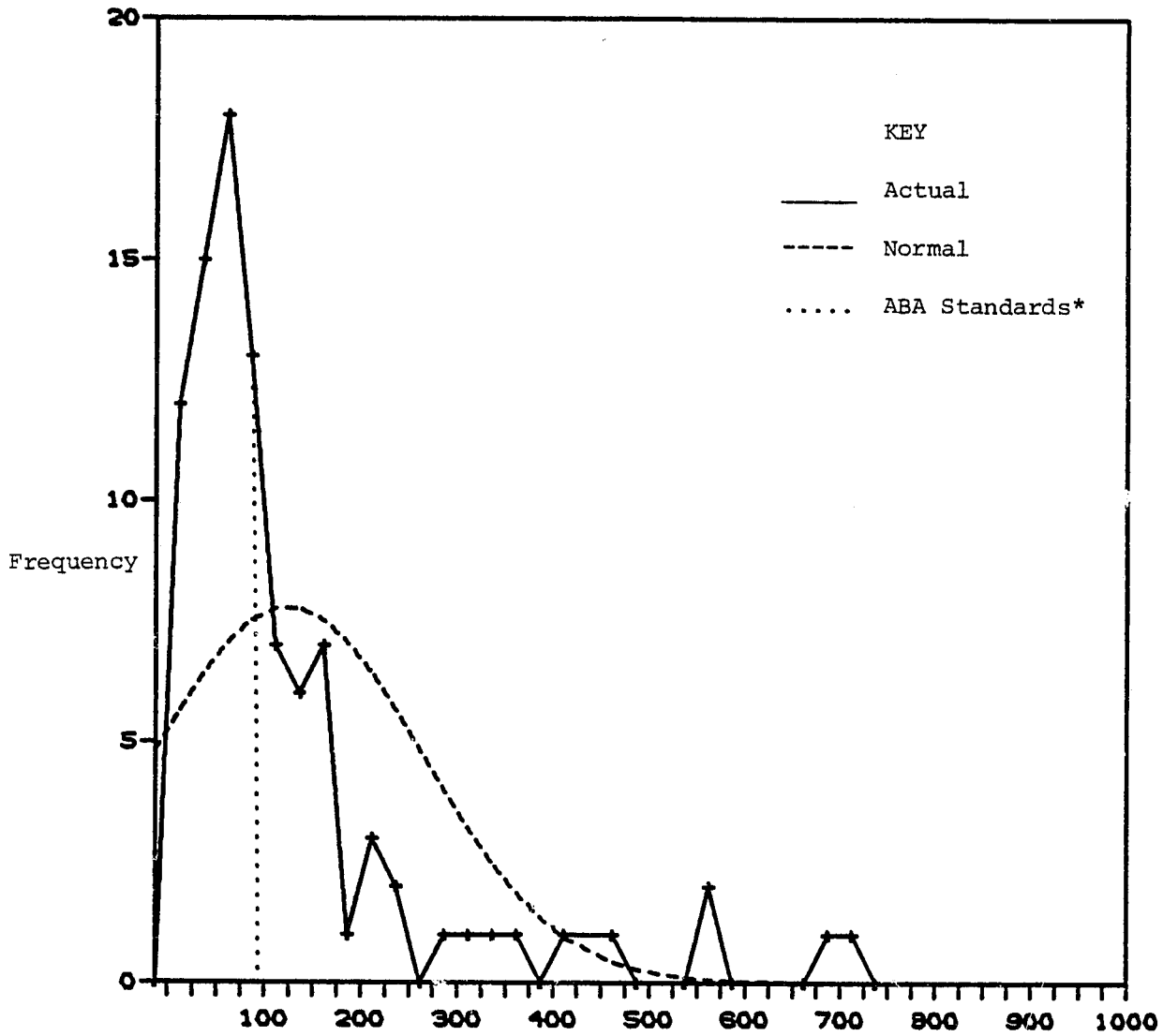
Table 3-2 and Figure 3-6 present data concerning decision time for non-oral argument cases. The data reveal that, although non-oral argument cases were generally processed more quickly than oral argument cases at the decision phase, specific times involved varied somewhat from case to case. Thirty-nine percent of non-oral argument cases had decisions announced in less than the sixty-day period recommended by the ABA, while 57% of the cases fell within the 90-day maximum time period. Moreover, 88% of the non-oral argument cases were processed in under 120 days, or double the ABA recommended average, while 96% were completed in under 180 days, or double the ABA maximum.

The variations among cases may reflect problematic aspects of the Court's scheduling procedure. Non-oral argument cases are assigned the next available spot on the calendar and are then considered in sequence. Consequently, like oral argument cases, non-oral argument cases may wait in a scheduling queue for substantial lengths of time.

Finally, Table 3-2 and Figure 3-7 reveal that Step 4, the time between announcing decisions in the Supreme Court and issuing mandates, is short, averaging only 20 days. Ninety percent of all cases decided exhibited elapsed times between decision and mandate of less than 30 days; over 96% took less than 60 days. The remaining 4% were almost exclusively cases in which petitions for rehearing were filed. This relatively

Figure 3-6 Decision Time Non-Oral Argument Cases (STEPS 2 & 3)

Materials to Date Decision Announced



Descriptive Statistics

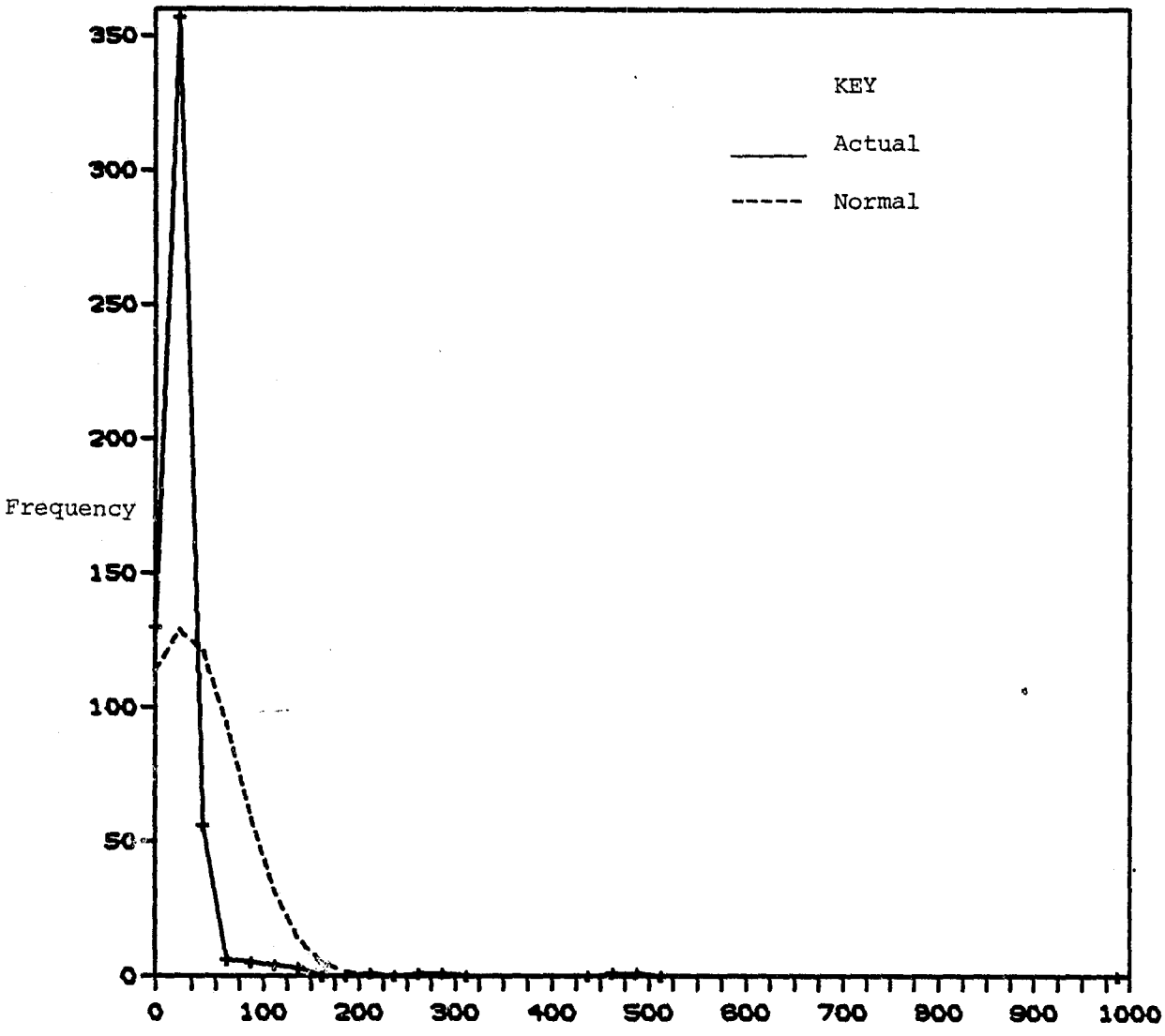
Valid Cases: 94

Mean 124 Median 77 Standard Deviation 140

*ABA Standards allow a maximum of 90 days.

Figure 3-7 (STEP 4)

Appellate Court Decision to Mandate



Descriptive Statistics

Valid Cases: 567

Mean 20 Median 13 Standard Deviation 56

short decision to mandate average may be due, in large part, to the fact that the Supreme Court is the only appellate court in Montana. Thus, its decisions do not have to go to another court for review. Another explanation may be that all five justices live and work in the same city, thereby affording greater interaction and increased collegiality, leading in turn to greater finality of opinions and also making prompt reargument possible.

Components of Total Case Processing Time: Steps in the Appellate Process

To this point, the analysis has focused on describing the number of days which elapse in each step of the appellate process and comparing the actual number of days in each step with established standards. Total case processing time is a summation of time elapsed in each part of the process. In this portion of the analysis, the focus shifts to describing total case processing time by examining the portion which is attributable to each step of the appellate process. In addition, total case processing time is described by examining the extent to which cases differ from each other in total number of processing days.

An examination of the relative contribution of each step to total case processing time should help determine where cases are being delayed. Once the points of delay are determined, the sources of delay can be isolated and identified.

An understanding of the importance of each step in the appellate process as a potential point of delay requires an understanding of the related concepts of proportion and variance. The proportion is the fraction of total time attributable to each step in the appeals process, expressed as a percentage, when the summation of all steps equals 100% of total time.[14] As noted previously, variance is a measure of the spread or variability of scores. In this study, the scores are the number of days in a particular time interval. Thus variance describes the extent to which processing days for cases within a particular time interval differ from one another. There are a number of statistics, often called measures of dispersion, available for summarizing this variability. The two measures used in this study are the variance and the standard deviation. Both measures tell us how closely the number of processing days for cases cluster around the average number of days for all cases. Variance will be small when there is a great deal of homogeneity in case processing time--when most cases cluster

[14] For example, hypothetical Case A took a total of 300 days to process from lower court judgment to mandate. One hundred percent of total time would thus be 300 days. Of this 300 day total, 150 days were attributable to time between the date of lower court judgment and the filing of materials with the supreme court. Step 1, 80 days were attributable to time waiting in the oral argument queue (Step 2), 50 days elapsed between the date of the oral argument and the announcing of the decision (Step 3), while 20 days elapsed between the date the decision was announced and a mandate issued. Converting the processing time for each step into a percentage of total time would thus reveal that for hypothetical Case A, Step 1 equals 50% (Step 1 = 150 ÷ 300), Step 2 26.66% (80 ÷ 300), Step 3 16.66% (50 ÷ 300), and finally Step 4 6.66% (20 ÷ 300), of the total case processing time. The 100% total time is thus a simple summation of each part, 50% + 26.66% + 16.66% + 6.66% = 99.98% or rounded to a whole number 100%.

closely around each other. The standard deviation is simply the square root of the variance, and is much easier to interpret than the variance, primarily because it is based on the same units (days) as the original variable. For example, total case processing time averaged 370 days in the Montana Supreme Court. The variance for this total time interval equaled 32279 units. A total variance of 32279 units or a standard deviation of 180 days when viewed in conjunction with the average of 370 days, indicates that cases in the Court were relatively heterogeneous. In other words, total case processing time varied somewhat between cases. Consequently, an identification of the contribution of each step in the appellate process variability to the total time variability is important. It is useful to identify the points at which case processing times differed and determine the sources and impact of these differences.

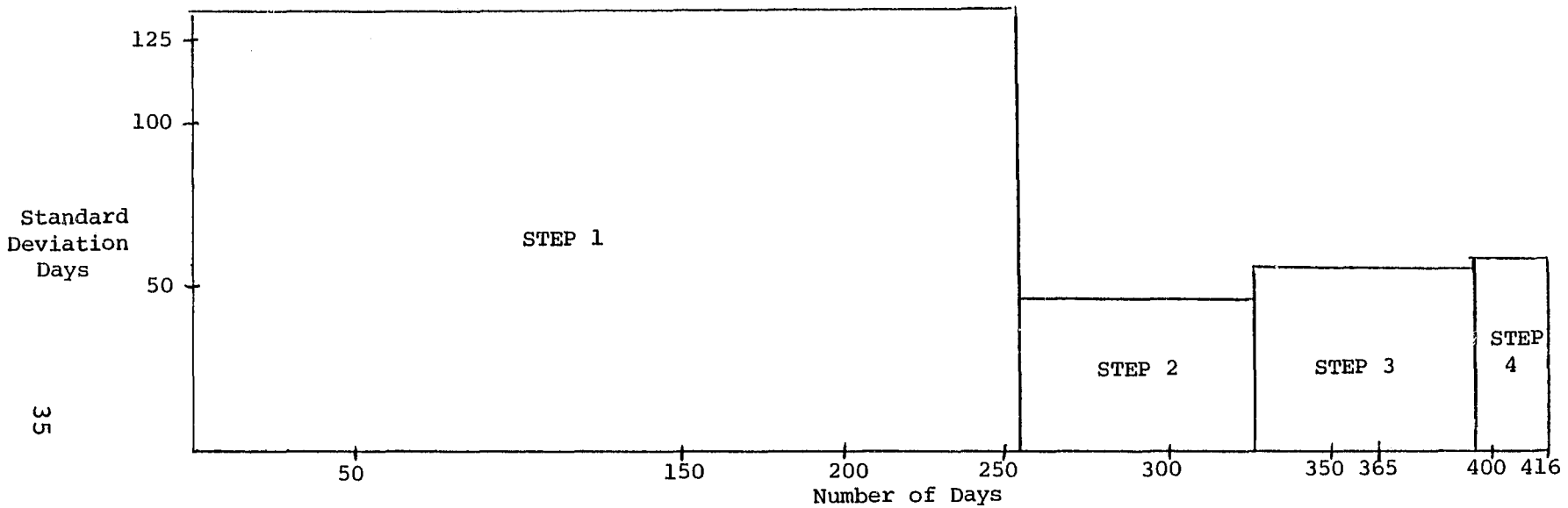
Summary measures of data are not evaluative: they do not connote good or bad judgments about the phenomena under examination. The goal of analysis is to account for variance. Insofar as variance cannot be explained, then the theories that purport to account for that variance are inadequate.

Table 3-4 applies the principles of proportion and variability to time-lapse data for oral argument cases in the Montana Supreme Court. The diagram in Table 3-4 charts the average number of days for each step in the appellate process along the horizontal X axis, while the vertical Y axis, which charts

TABLE 3-4

COMPONENTS OF TOTAL CASE PROCESSING TIME

ORAL ARGUMENT CASES



Actual Time:	Mean	S.D.	% Total Time	% Total Variance	N
STEP 1: Trial Judgment to Material Received	243 days	131	58 %	68 %	337
STEP 2: Materials to Oral Argument	82 days	47	20 %	7 %	337
STEP 3: Oral Argument to Decision	69 days	56	17 %	12 %	337
STEP 4: Decision to Mandate	22 days	58	5 %	13 %	337
TOTAL TIME	416 days	163	100 %	100 %	337

standard deviations, presents the variability of cases at each step. The mean number of days, the standard deviation, the percentage of total time, and percentage of total variance for each step in the process, are presented below the diagram.

Information presented in Table 3-4 indicates that Step 1 is an area of concern in Montana. Specifically, for oral argument cases, the interval between trial court judgment and receipt of all necessary documents in the appellate court (Step 1) averaged 241 days, or 58% of the total case processing time. The waiting period between receipt of materials and oral argument (Step 2) averaged 82 days, or 20% of the total time. The interval between oral argument and decision (Step 3) averaged 69 days, or 17% of the total time. Step 4, the period from decision to mandate, averaged only 22 days, or about 5% of the total time. The variance figures for each step indicate that variance in Step 1, which accounts for 68% of the total variance, is proportional to the percentage of total case processing time. Seven percent of the total variance is attributable to Step 2, and 12% is accounted for by variance in Step 3. Viewed together the total time and total variance percentages indicate that time elapsed during the material preparation phase is uniformly excessive. Consequently, one can conclude that the preparation period was a major problem area in the Supreme Court during the period involving the cases examined.

In addition, when examined in relation to the 17% total time average, the 12% of total variance attributable to case variability at the decision phase of the process indicates that a proportional percentage of the total time variance is attributable to variability at the decision phase of the process. In other words, cases were consistently being decided and decisions announced in a relatively short period of time after oral argument. The variation that does exist does not necessarily mean that the Court was experiencing major problems at the decision stage of the appellate process; the variability may indicate that justices were spending more time on complex cases and less time on cases which were easier to decide.

Finally, for oral argument cases, Table 3-4 indicates that Step 4 accounts for relatively small percentages of both total case processing time and total processing time variability. The 13% total variance attributable to this final stage of the process is explained, for the most part, by whether or not petitions for rehearing were filed. Where petitions were filed, issuance of final mandates generally took longer than cases where they were not.

Table 3-5 indicates that the pattern of case variability for non-oral-argument cases differs substantially from the pattern for oral argument cases. Specifically, on the average, 48% of total case processing time in non-oral-argument cases is attributable to Step 1. Steps 2 and 3 account for 49% of the total time, while Step 4 represents only 3% of the total

processing time. Perhaps more important, the standard deviations and percentages of total variance for each step indicate that the bulk of total case variability (69%) is attributable to variability during the decision phase of the process (Step 3). Case variability during the pre-decision stage (Step 1) accounts for 28% of the total variance, while the post-decision stage (Step 4) accounts for only 3% of the total.

Viewed as a composite indicator, the information presented in Table 3-5 indicates that the speed at which non-oral-argument cases are processed in the Montana Supreme Court varies substantially, and that the major sources of this substantial variability occur during the decision stage of the appellate process.

Breaking down total case processing time by steps indicates that, in both oral and non-oral-argument cases, excessive time is frequently being consumed in the materials preparation and filing stage of the appellate process. Consequently, the final sections of this report focus on the potential sources of delay at the apparently crucial pre-decision phases of the appellate process in the Montana Supreme Court.[15]

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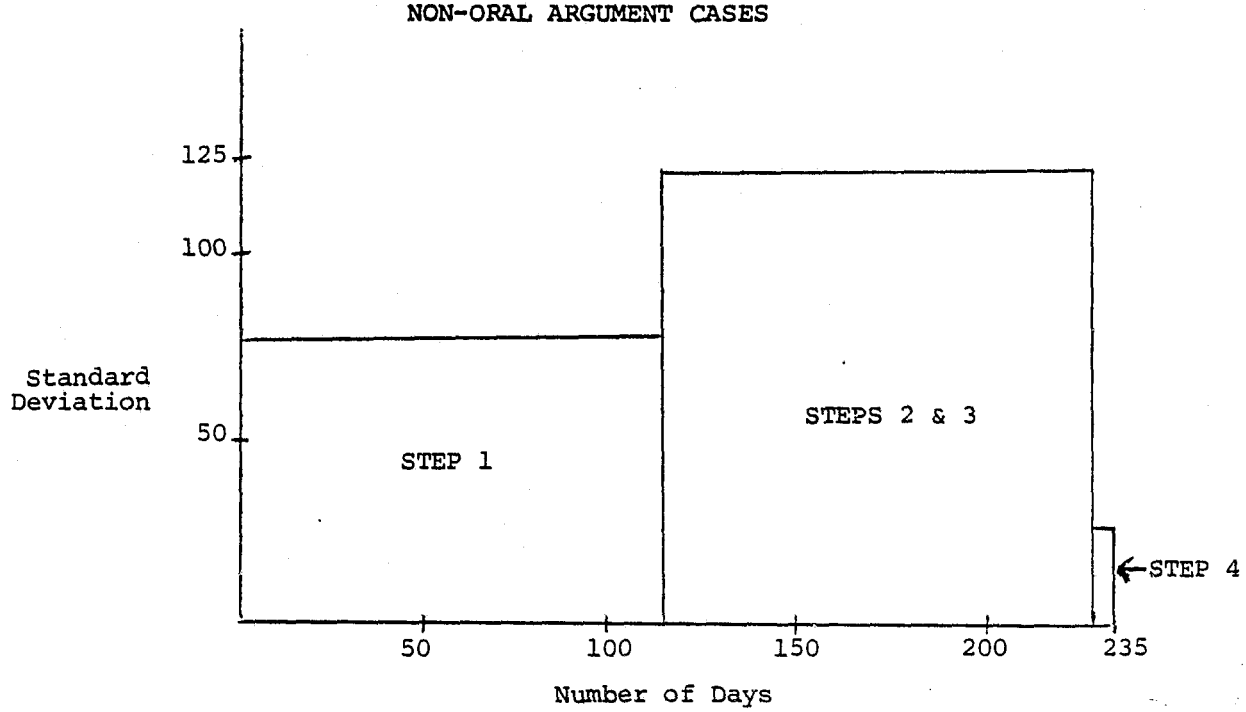
[15] Appendix E presents a brief analysis of the relationships between case features and processing time. For the most part the information presented in Appendix E indicates that differences in case processing time do not systematically relate to differences in case features.

TABLE 3-5

COMPONENTS OF CASE PROCESSING TIME
NON-ORAL ARGUMENT CASES



Actual Time	Mean	S.D.	% Total Time	% Total Time Variance	N
STEP 1: Trial Judgment to Materials Received	114 days	78	48 %	28 %	80
STEP 2 & 3: Materials to Decision	115 days	123	49 %	69 %	80
STEP 4: Decision to Mandate	6 days	26	3 %	3 %	80
TOTAL TIME	235 days	144	100 %	100 %	80

SUMMARY

Information presented previously revealed that the pre-decision phases of the appellate process present problems for the Supreme Court. Cases often exceed the court's maximum time limits for filing briefs, records and transcripts. Attorneys and trial court clerks appear to be primary sources of delay at this stage. Apparently, attorneys often fail to prepare and promptly file the documents. Trial court clerks fail to monitor the flow of case materials to insure that the time limits fixed by the appellate rules are met. Trial judges may be contributing to the problem by not consistently following any established policies on granting extensions for filing notices of appeal, records, and transcripts. In addition, it appears that trial judges are not uniformly monitoring the performance of attorneys, court clerks, and reporters during the initial stages of the appellate process.

Time-lapse data for the decision stage of the appellate process generally indicated that the court was operating efficiently at that point. Cases were being decided, opinions assigned and written, decisions announced, and mandates issued in a relatively short period of time.

The examination of the constitutional and statutory provisions which define the Supreme Court's authority, the characteristics of its jurisdiction, and the assessment of resources available to it, revealed that none of these

environment-defining features were sources of case processing delay. The legal framework does not tie the Court to outdated, unworkable procedures, but rather allows it considerable organizational and administrative flexibility. The Court's caseload was relatively small and did not place unreasonable demands on its personnel and financial resources.

The final section of this report presents specific conclusions concerning how the Supreme Court may begin to eliminate the identified sources of delay. In addition, the final section includes suggestions concerning how the court can continue to operate efficiently as case volume increases beyond its present level.

SECTION 4

CONCLUSIONS

- Although the Montana Supreme Court had rules specifying when materials under the control of lower court clerks, reporters, and attorneys were to be filed, the analysis presented previously revealed that the rules were not consistently followed during the period from which data was collected (cases filed in 1975-76).

  The justices indicated that they were aware of this problem. They subsequently discussed the feasibility of implementing new policies designed to eliminate the abuse: the Court is urged to implement the new policies and monitor filing practices more closely. Assessing the impact of new policies would require further analysis of time-lapse information from cases filed after the policies went into effect. The Appellate Justice Improvement Project can provide technical assistance to the Court for this additional analysis.

- By rule, trial court judges in Montana have the authority to grant extensions for filing notices of appeal, records, and transcripts. These rules allow for immediate case processing delay and severely limit the direct control of the Supreme Court over its caseload at crucial stages of the appellate process.

The Court should consider implementing rules which specify that extensions for filing notices of appeal, records, and transcripts must be granted by it rather than trial judges. Implementation and enforcement of these rules would do more than eliminate potential sources of delay; it would also provide the Court with consistent and more readily accessible case tracking information. Reliable case tracking information would help the Court more accurately to determine case volume.

- Oral arguments are automatically scheduled in the Montana Supreme Court. The analysis indicated that the Court was able to schedule and dispose efficiently of a caseload composed almost exclusively of oral argument cases.

  However, the Court may want to consider implementing mechanisms for screening and disposing of cases which do not require oral argument. It is possible that in the future, as congestion at the pre-decision stage of the process is eliminated, and as more cases are filed due to population increase or other changes, the practice of automatically scheduling oral arguments may become burdensome and contribute to case processing delays. These case processing delays may offset the benefits of oral argument.

- The Montana Supreme Court is required by the state constitution to complete its opinions within 90 days after submission. Data

included in this study revealed that opinion preparation time was not a source of delay in Montana. However, this 90-day period may become too long if the Court's caseload continues to expand. Consequently, the Court may want to anticipate a possible future problem and consider implementing shorter time limits on opinion preparation (e.g., a 30-day maximum) as an internal administrative policy.

- The Montana Supreme Court currently does not have an effective case tracking system. The Court is urged to develop a uniform case tracking system which should be implemented and monitored by the clerk's office.

  An effective case tracking system would enable the Court to identify rapidly cases which are overdue in some respect and would also provide general information which could be used in periodic evaluations of the system's effectiveness. The information which would need to be collected on each case includes:

  - the date of the lower court judgment;
  - the date the notice of appeal was filed;
  - the dates when records and transcripts were filed, both in the trial court and appellate court;
  - the dates when appellant and appellee filed briefs;
  - the date of oral argument (when applicable);

- the date the case decision was announced;
- the dates relevant to petitions for rehearing (when applicable);
- the date the mandate was issued;
- the dates of any motions;
- the method of case disposition;
- the effect of the disposition;
- the types and number of opinions prepared by the court.

APPENDIX A

APPENDIX A

A Framework for Examining Delay in Appellate Court Systems

This framework reflects the assumptions that delay is determined subjectively but that any attempt to measure it must begin with measuring case processing time, and that case processing time is a function of the interactions among cases filed, the organizational aspects of a court, and the actions of its participants.

Constitutional and statutory provisions (Set A in the diagram) define the legal structure in which the appellate court operates. Environmental elements that can affect the court--size of population served by the court, geographic location of the court and court personnel, workload as defined by annual filings and backlog--are listed in Set B. Resources available to the court (Set C) are the third group of elements included in the framework.

A description of the total environment (Sets A, B & C) in which the appellate court operates provides a context for analyzing the demands placed on the court and for determining the extent to which the court can adjust its rules and procedures to satisfy more efficiently those demands without enlisting the aid of other governmental units. Reforms designed to reduce case processing time may in fact depend on the alteration of some of these elements which define the general court environment. That is, it may be that in some jurisdictions courts simply do not have the resources necessary to insure acceptable

Figure A-1

APPEALS PROCESS AT THE APPEALS COURT LEVEL

A. General:

Statutes and Constitutional Provisions Applicable to Appeals Court Structure

B. Characteristics of Jurisdiction:

Number of Filings

Size of Population

Location of Court & Judges

Backlog

C. Court Resources:

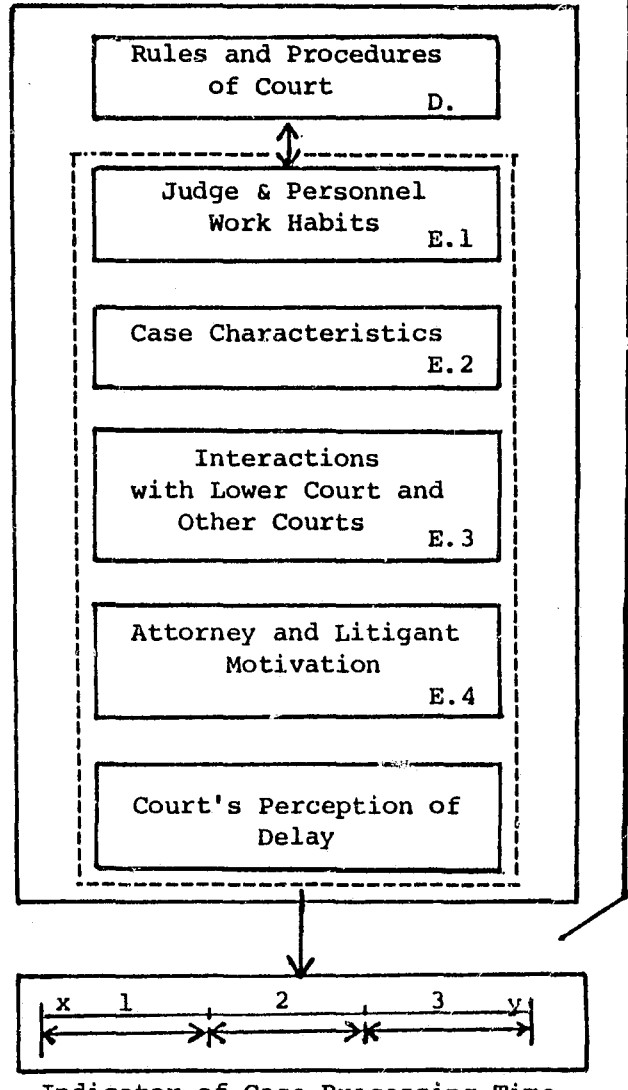
Size of Budget

Number of Judges

Number and Type of Support Staff

Record Facilities

D.& E. Case Processing:



Indicator of Case Processing Time

xy = Total Time

x = Lower Court Judgment

y = Date of Mandate

xy_1 = Judgment to Materials

xy_2 = Decision Time

xy_3 = Post Decision Time

case processing times, and that efforts to improve the court are dependent on increased court resources. The availability of those resources may be limited by constitutional and statutory provisions or the actions of other governmental actors, e.g., state legislators.

The understanding of a court's rules and procedures (Set D) is crucial to an assessment of the sources and severity of delay. Conceptually, rules are an expression of the court's goals, procedures are means to implement those goals. In addition, the rules serve as a benchmark for assessing the performance of the court: are the participants meeting the time requirements (goals) set by court rule?

The final set of elements (Set E) included in the framework relate directly to variations in case processing time. Two of the elements--judge and court personnel work habits, and attorney and litigant motivation--deal with the behavior of individuals involved in the appeals process.

The third element included in set E, interactions between the appeals court and other courts, is the nature of relationships between the appeals court and other courts whose cooperation is essential for the efficient processing of appeals, and the official and unofficial interactions among them regarding this processing. For example, in some jurisdictions, lower court judges or clerks may control the preparation of the record needed by the appeals court. If the cooperation of the lower court is lacking, extensive delay may result.

Case characteristics, another element in the set, are classified into four primary categories: variables relating to parties and their attorneys; the substantive content of the appeal; variables regarding the information provided to the court to decide the appeal (briefs, transcripts, motions, etc.); and the final appellate court work product, usually opinions.

Another element is the court's own perception of delay in the processing of appeals. This perception may be either of specific cases which are considered to require fast disposition, or of the caseload as a whole. In the former instance the perception of urgency can prompt special treatment of the cases in question; in the latter, the perception of systemic delay can prompt both increased individual productivity and reexamination and possibly revision of the appellate system.

Case processing time is one result of the elements and their interactions. This measure begins with the date of the lower court's final order or judgment and ending with the date that a mandate is issued by the appeals court. In order to isolate specific problem areas, the comprehensive time interval is divided into three steps which correspond to steps in the appellate process. The first step begins with the date of final order or judgment in the lower court and ends with the date that all materials necessary to decide a case are filed with the appeals court. Step two focuses on appellate court decision-making time, beginning with the date materials are

available and ending with the date a decision is announced. In instances where cases have oral arguments, step two is divided into two parts. The first begins with the date that materials are available to the court and ends with the date of oral argument, while the second begins with the oral argument date and ends with the date the decision is announced. The final step in the appeals process measures elapsed time, if any, between the date that the decision is announced and the date that a mandate is issued.

Using the Framework

While the conceptual framework is useful as a theoretical device, the real test is its utility as a guide in addressing the critical issues of appellate court delay. Among these issues are the following:

- How long does it take to process cases? What is the average number of elapsed days from judgment in the lower court to mandate in the appellate court? Are there large variations in elapsed time among cases? How long does each step in the appellate process take? Is there an identifiable relationship between elapsed time in one step, and elapsed time in other steps?
- When does case processing time constitute delay? Does average time per step in the appellate process exceed the limit stipulated by court rule? Do the rules accurately reflect appellate court expectations?

- Can case processing time be reduced? At what points in the process is reduction possible? What are the specific sources of case processing delay?
- If case processing time can be shortened, how can that be accomplished? What are the relationships between elements included in the framework and case processing time? Can case processing time be shortened by stricter enforcement of court rules? By increasing resources available to the court? By changes in the environment in which the court operates?

The issues and questions outlined above are addressed in the text of the report.

APPENDIX B

APPENDIX B

CASE SUBJECT MATTER

	Criminal Cases		Civil Cases		Total	
	21%	143	79%	550	100%	693
Criminal Case Type:	**%**	**#**	**Civil Case Type:**	**%**		**#**
Murder One	12 %	16	Liquor Laws	1 %		2
Murder Two	- %	-	Motor Vehicle	- %		-
Manslaughter	3 %	4	Workman's Compensation	8 %		40
Rape or Sexual Assault	4 %	5	Elections	1 %		5
Robbery	29 %	38	Taxes	6 %		30
Burglary	2 %	2	Zoning	1 %		5
Theft	2 %	3	Other Administrative Law	16 %		83
Assault	11 %	15	Commercial	22 %		115
Battery	- %	-	Landlord/Tenant	1 %		1
Fraud	4 %	5	Other Property	7 %		37
Arson	- %	-	Trust & Estates	3 %		15
Criminal Trespass	- %	-	Child Custody & Support	6 %		34
Narcotics	14 %	18	Juvenile	- %		-
Drunkenness	2 %	2	Other Domestic Relations	6 %		31
Traffic	2 %	3	Auto Personal Injury	1 %		7
Juvenile Delinquency	2 %	3	Other Injury	6 %		30
Morals	2 %	2	Labor	3 %		18
Weapons Charges	1 %	1	Other Non-Administrative	11 %		58
Disorderly Conduct	- %	-				
Other	11 %	15				
TOTAL	100 %	132		100 %		514

Source: 693 cases out of 708 cases in which case subject matter data were available.

APPENDIX C

APPENDIX C

TYPE OF ATTORNEY INVOLVED IN APPEAL

Attorney Type	Appellant		Appellee	
	Percent	Number	Percent	Number
Private Counsel	83 %	574	69 %	441
Attorney General	3 %	23	10 %	62
District Attorney	0 %	2	- %	-
Municipal Corp. Counsel	2 %	11	5 %	31
Public Defender	0 %	3	1 %	3
Legal Aid	0 %	2	0 %	1
Pro Se	5 %	33	1 %	4
Other	6 %	43	15 %	94
TOTAL	100 %	691	100 %	636

Source: 636 cases out of 708 cases in which type of attorney involved in appeal data were available.

APPENDIX D

APPENDIX D

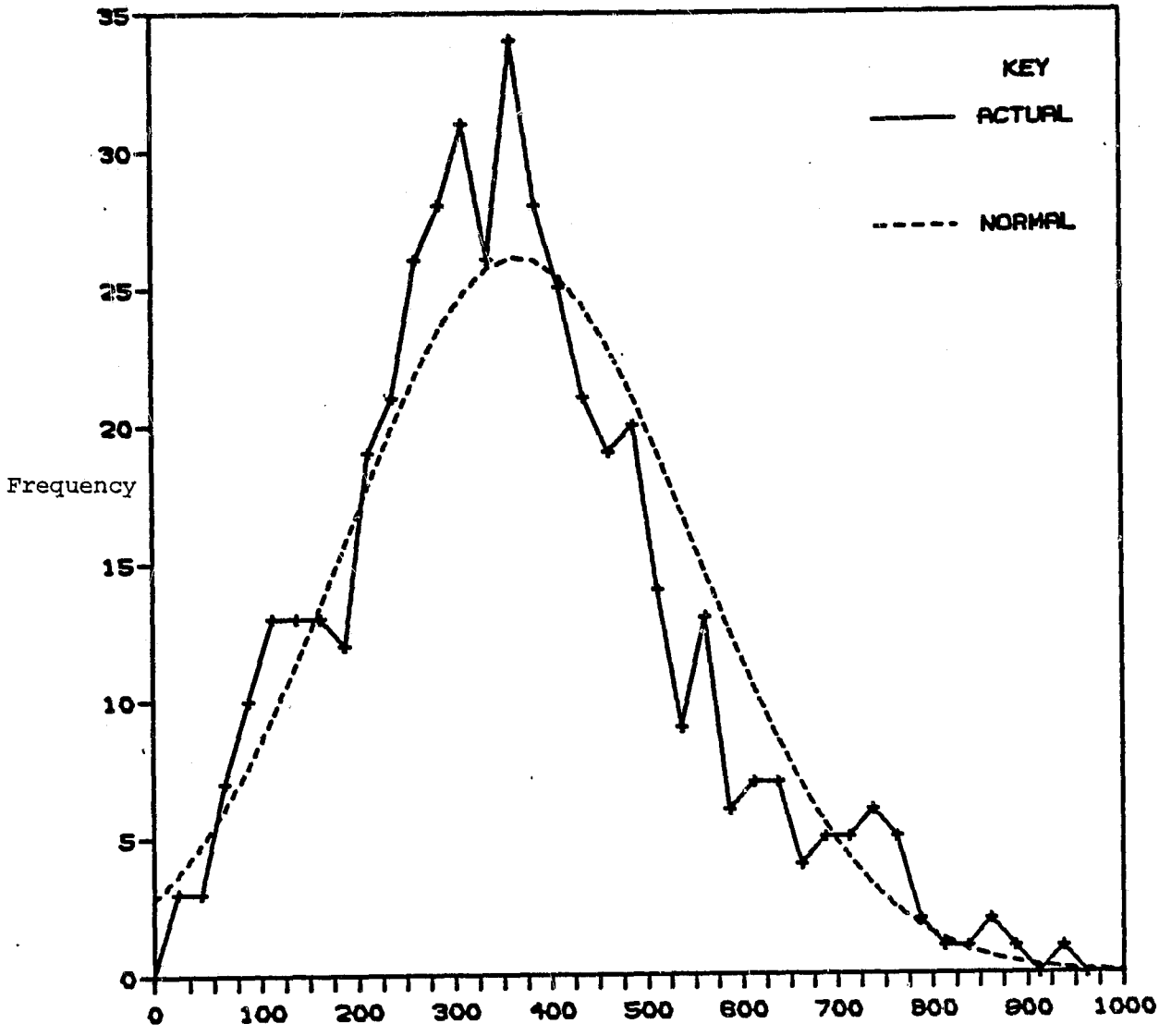
TIME INTERVAL GRAPHS

Graphs illustrating the distribution of cases for each step in the appellate process, along with statistics which describe each time interval are presented and discussed in this appendix. In addition, a summary table of statistics used in the analysis of variance portion of the study is also presented and examined.

Figure D-1, which summarizes the distribution of total case processing time data for all cases in the Montana Supreme Court included in the study sample, illustrates the format used to describe time-lapse information. The horizontal, or X, axis of the graph, which ranges from 1 to 1,000 days, refers to the total number of case processing days, while the vertical, or Y, axis represents the absolute frequency of cases. The intersections of axis X and Y are represented by + and were used as coordinates for drawing the actual curves for each time interval. A second symmetrical curve, represented by a sequence of dotted lines, has also been included in each figure. The symmetrical curves are provided in order to aid the reader when interpreting the actual case distributions illustrated by the solid line curves. All of the symmetrical curves included in this appendix are normal. The dimensions for each of the symmetrical curves are based on the actual mean and standard deviation for each time interval. Thus differences in their peakedness are due only to differences in their standard deviations.

Figure D-1 Total Time:

Lower Court Judgment to Appellate Court Mandate



Number of Days

Descriptive Statistics

Valid Cases: 463

Mean	369.90	Standard Error	8.35	Kurtosis	1.10
Median	355.00	Standard Deviation	179.67	Skewness	.73
Mode	405.00	Variance	32279.94		

.95 Confidence Interval 353.49 to 386.31

The actual case distribution curves and the symmetrical curves presented by themselves are useful devices for describing data. For example, by merely looking at the curves presented in Figure D-1, one can see that the actual distribution of cases in the Montana Supreme Court differs somewhat from the normal case distribution. In addition, the actual case distribution curve shows that there are numerous extreme cases in the Montana sample--cases which take anywhere from 700 to 1,000 total case processing days.

There are also numerous statistics which are useful for describing in detail the distribution of cases along the various time intervals. These descriptive statistics are included at the bottom of each graph.

While all of the descriptive statistics provide summary information about the nature of the distribution, each describes the distribution in a slightly different way. For example, the first three measures or descriptive statistics included with each figure, the mean, median, and mode, are all measures of central tendency or typicality, and are associated with the general notion of "average." The arithmetic mean or average is probably the most widely understood and used measure of central tendency. It is simply the sum of all scores divided by the number of scores. Because the mean can be affected by extreme scores, the median is usually also reported in descriptive tables. The median is the case at the exact mid-point of the distribution--the point or case where 1/2 of all the

cases fall below and 1/2 above. Finally the mode is simply the value that occurs most often in a distribution pattern.

The standard deviation and variance are additional measures which describe the distributions of data. Variance is the arithmetic mean of the squared deviations from the mean. (While the concept of variability is of great theoretical consequence to statisticians it is used here primarily to define standard deviation.) The standard deviation is merely the square root of variance. The size of the standard deviation is inversely proportional to the degree of data concentration about the mean. Consequently, a large standard deviation indicates that data is widely spread and exhibits little central tendency. These two measures are often referred to as measures of dispersion because, in contrast to measures of central tendency (which describe the typicality of data) these measures describe the heterogeneity of, or variation among data. Measures of dispersion are particularly important in instances where data does not strongly group around a central value in that they indicate that the measures of central tendency, the mean and median, are not representative. Thus measures of dispersion and central tendency are complimentary statistics, the latter describing where the data are grouped, the former describing how widely data are dispersed around this point. For example, applying the principles of central tendency and dispersion to the total case processing time distribution presented in Figure D-1, the statistics accompanying the graph indicate that cases do not cluster closely around the 370 day average but rather are subject to considerable variation

as evidenced by the large 180 day standard deviation.

The third set of statistics presented at the bottom of each graph, the confidence interval and standard errors, are measures which help determine how accurately the data from the sample of appellate cases reflect or represent the total caseload. Using Figure D-1 once again as an example, the .95 confidence interval statistic indicates that there is a 95% probability that the actual mean for all cases (not just the sample) in Montana will fall within a range of 353 and 386 days. In other words, if all the cases in the Montana court during the sample years would have been included in our data set, there is a 95% probability that the total case processing time mean would fall within this range of 353 to 386 days. As an added check on the statistical reliability of the results, a measure called the standard error has been included in the statistics accompanying the time interval graphs. The calculation of this measure is extremely difficult to explain and not necessary for this presentation. The interpretation of the standard error, however, is important. It essentially indicates how much fluctuation within a sample of cases can be expected. The standard error of 8.35 for the total time interval illustrated in Figure D-1, indicates that the mean or 370 days can fluctuate approximately 8.35 days higher or lower. The low standard error confirms the general reliability of the Montana sample.

The fourth and final set of statistics accompanying the time interval graphs, the kurtosis and skewness, describe the

shape of a graph or curve relative to the ideal bell-shaped curve. Both statistics indicate how closely the actual curve approximates a normal bell shaped curve, i.e., the skewness indicates whether cases generally cluster to the right or left of the mean, while the kurtosis indicates the "peakness" of the curve. The skewness statistics has a value of zero when the distribution of cases approximates a normal bell-shaped curve, while a positive value means that cases cluster to the left of the mean and a negative value indicates clustering to the right of the mean. A zero value for the kurtosis statistics indicates a normal distribution, a positive value a more "peaked" than normal curve, and a negative value, a flatter than normal curve. For example, the skewness and kurtosis statistics accompanying the curve presented in Figure D-1 indicate that cases in the Montana Court cluster to the left of the mean (or take generally less processing time than would be expected given a normal distribution) and that the curve is slightly more peaked than normal

The statistics appearing in Table D-1 amplify the relative percentage of total variance figures presented in Table 3-4. The Multiple r statistic is a summary multiple correlation which indicates the cumulative amount of total variation explained as each variable is added to the overall variance equation. An examination of the Multiple r statistics presented in Table D-1 indicates that when the last step in the appellate process variable, Step 4, is added to the equation, all of the total time variation

TABLE D-1

SUMMARY FIGURES OF VARIANCE BY STEPS IN APPEALS PROCESS

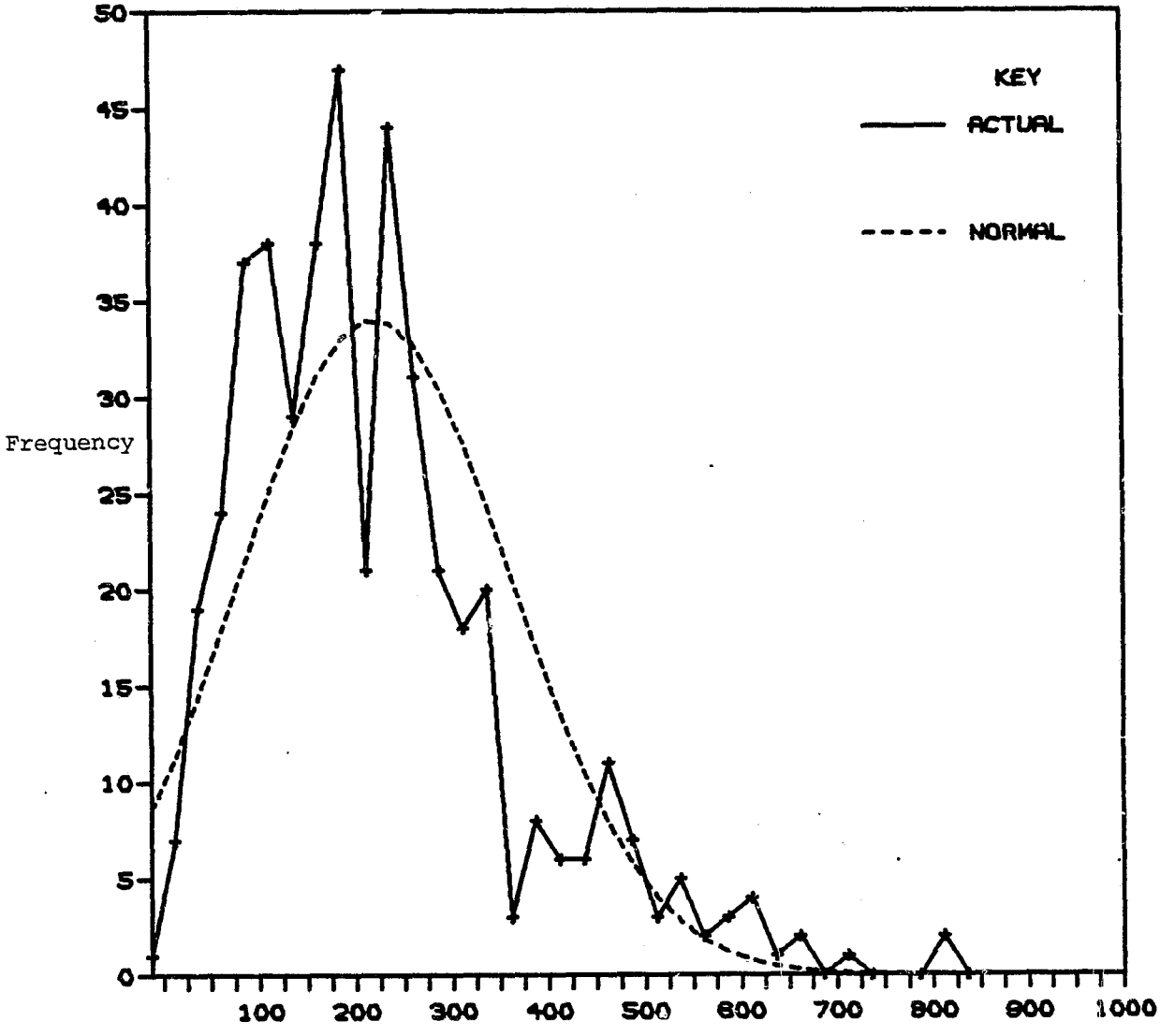
	Multiple r	r	r^2 Change	r
ALL CASES				
STEP 1 Lower Court Judgment to Materials Received by Appeals Court	.818	.670	.670	.818
STEP 2 & 3 Materials Received to Court Decision	.951	.905	.234	.578
STEP 4 Decision to Mandate	1.000	1.000	.094	.292
				(N = 425)
ORAL ARGUMENT CASES				
STEP 1 Lower Court Judgment to Materials Received by Appeals Court	.824	.680	.680	.824
STEP 2 Date Materials Received to Date Oral Argument	.867	.751	.071	.311
STEP 3 Oral Argument to Decision	.934	.873	.121	.427
STEP 4 Decision to Mandate	1.000	1.000	.126	.290
NON-ORAL ARGUMENT CASES				
STEP 1 Lower Court Judgment to Materials Received by Appeals Court	.529	.280	.280	.529
STEPS 2 & 3 Materials Received to Court Decision	.984	.969	.688	.805
STEP 4 Decision to Mandate	1.000	1.000	.030	.148
				(N = 80)

has been explained by the cumulative effects of the four steps in the process. If the final Multiple r did not equal 1.00 or 100%, one would know that a portion of the total time variance is due to error and/or the effect of other variables not included in the equation.

The Pearson's correlations r, appearing in Table D-1, indicate the bi-variant relationship between each step in the process and total time when the interactive effects of all the steps are not controlled. The r^2 indicates the cumulative amount of correlation within total processing time obtained as each variable is added to the equation. Finally the r^2 change statistics indicate the proportionate increase in explained variation accounted for by each step when the effects of other steps are controlled for. The r^2 change is thus the figure used for determining the percentages of total variance explained by each step.

Figure D-2 STEP 1

Lower Court Judgment to Materials Received



Descriptive Statistics

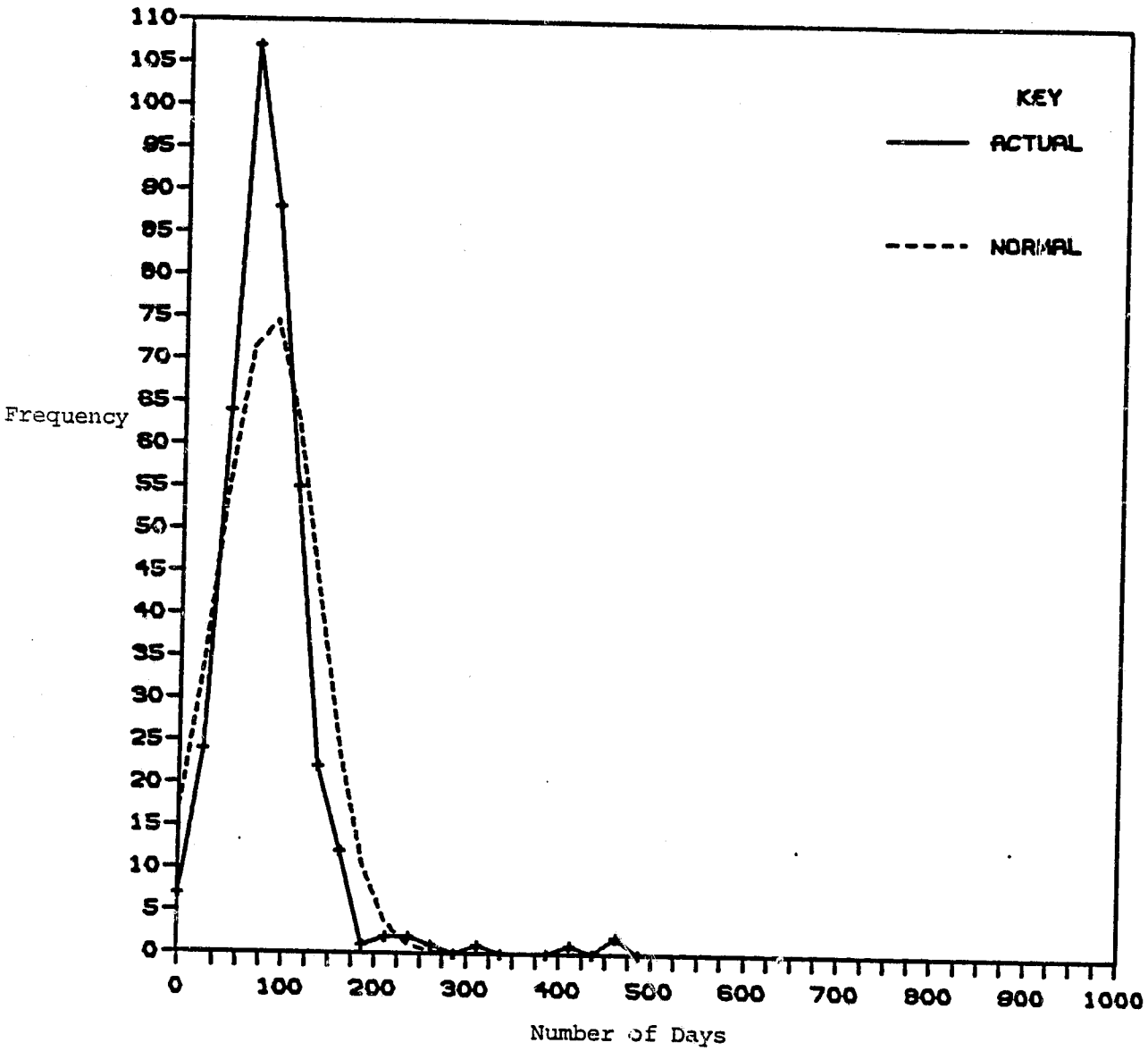
Valid Cases: 459

Mean	222.19	Standard Error	6.57	Kurtosis	1.58
Median	[illegible]	Standard Deviation	140.67	Skewness	1.16
Mode	30.00	Variance	19789.16		

.95 Confidence Interval 209.29 to 235.095

Figure D-3 STEP 2

Materials to Oral Argument



Descriptive Statistics

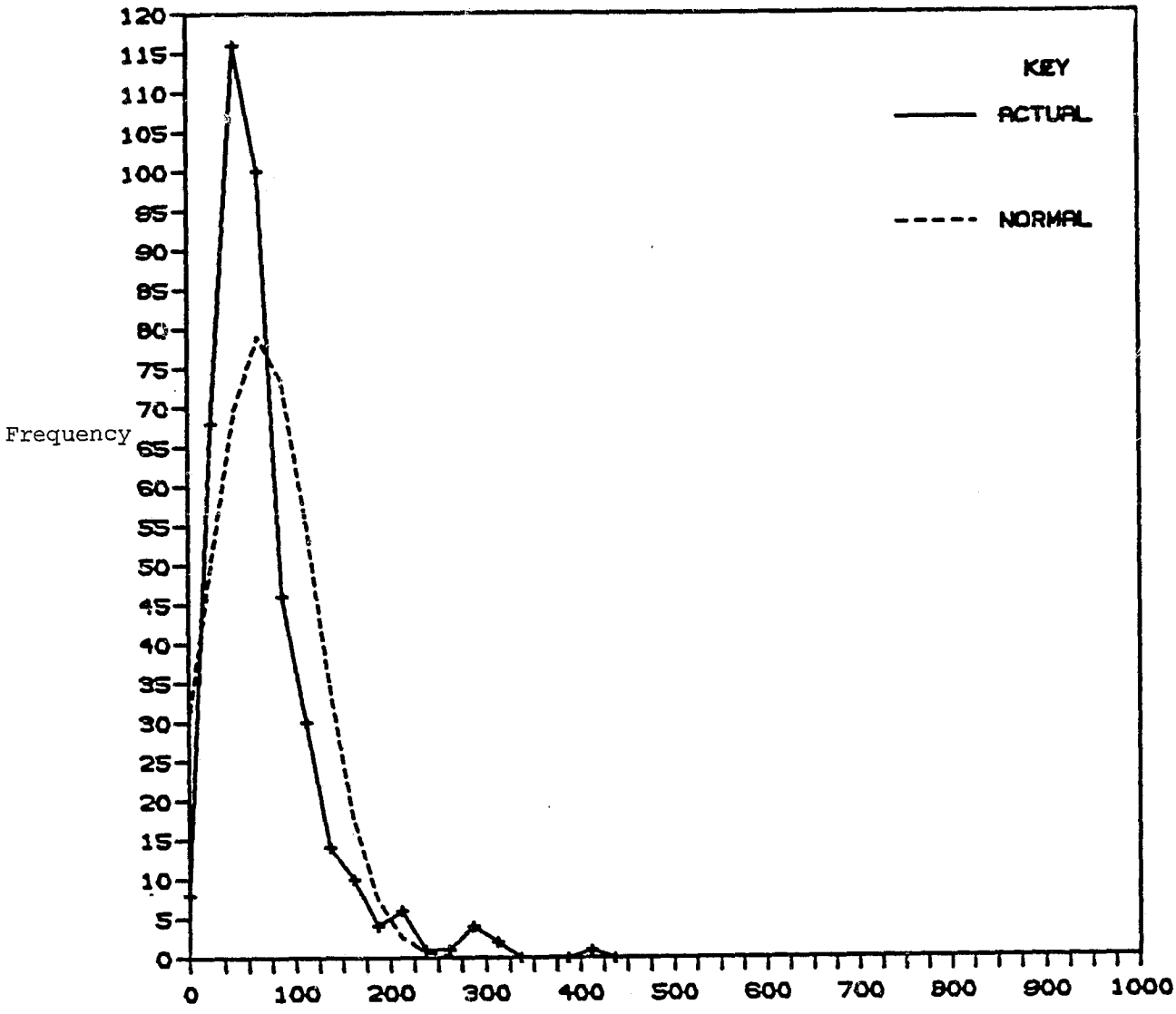
Valid Cases: 389

Mean	81.05	Standard Error	2.68	Kurtosis	17.65
Median	72.43	Standard Deviation	52.79	Skewness	3.04
Mode	71.00	Variance	2786 76		

.95 Confidence Interval 75.79 to 86.31

Figure D-4 STEP 3

Oral Argument to Decision Announced



Number of Days

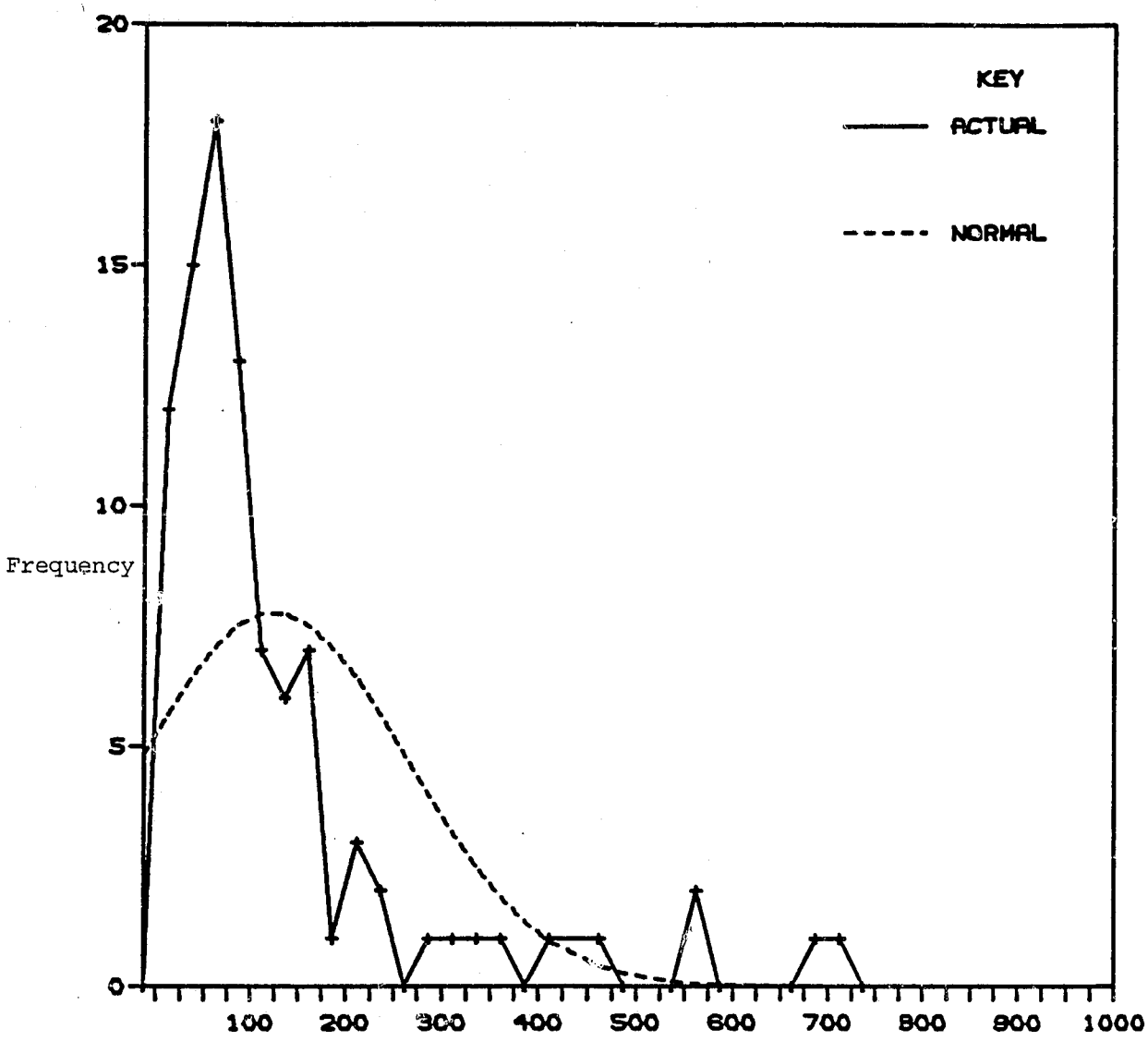
Descriptive Statistics

Valid Cases: 411

Mean	66.72	Standard Error	2.75	Kurtosis	7.77
Median	54.60	Standard Deviation	55.78	Skewness	2.31
Mode	28.00	Variance	3111.91		
		.95 Confidence Interval	61.31 to 72.13		

Figure D-5 Decision Time Non-Oral Argument Cases (STEPS 2 & 3)

Materials to Date Decision Announced



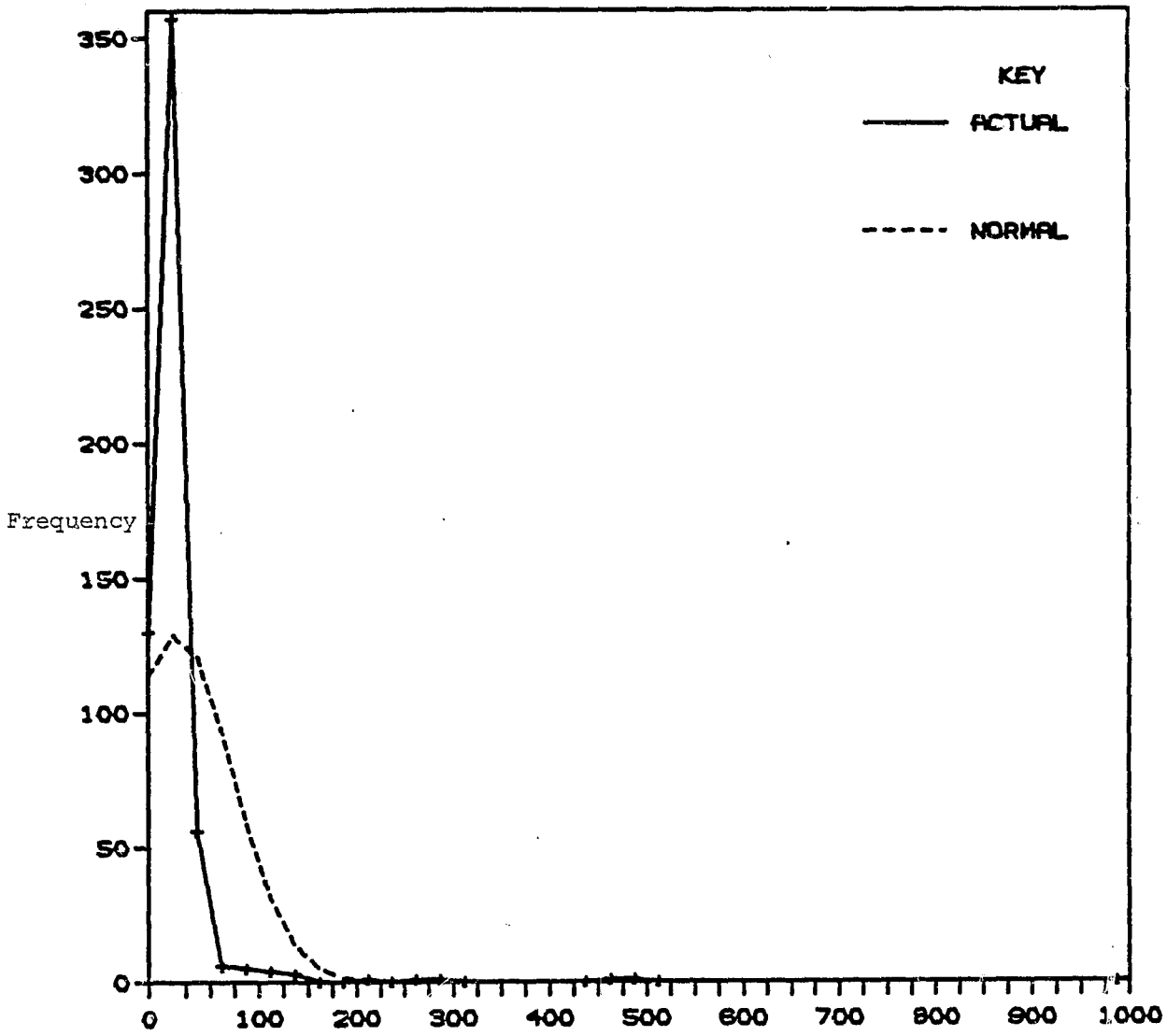
Descriptive Statistics

Valid Cases: 94

Mean	124.09	Standard Error	14.48	Kurtosis	6.50
Median	77.50	Standard Deviation	140.39	Skewness	2.46
Mode	28.00	Variance	19710.84		
		.95 Confidence Interval	95.34 to 152.85		

Figure D-6 STEP 4

Appellate Court Decision to Mandate



Descriptive Statistics

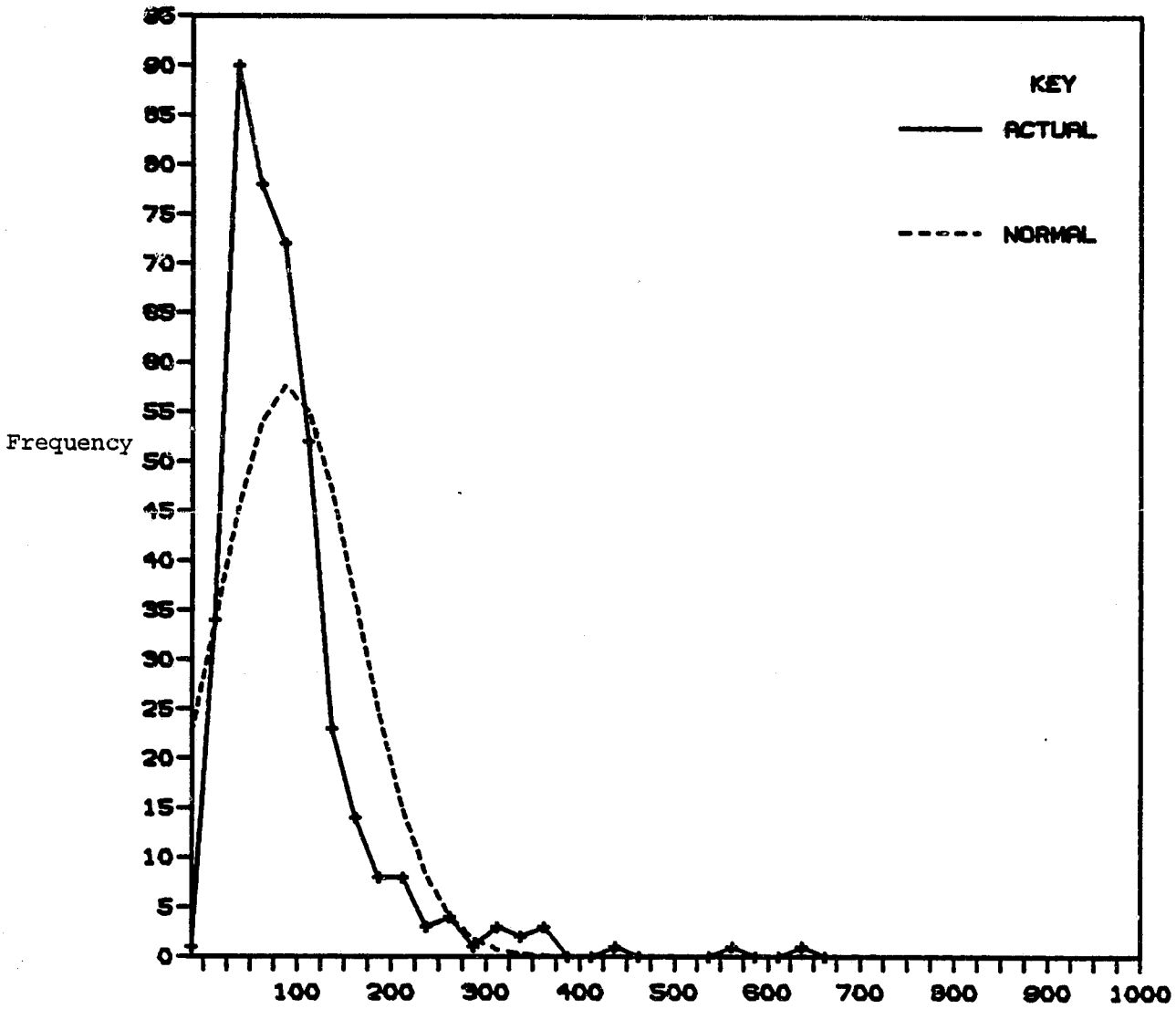
Valid Cases: 332

Mean	19.78	Standard Error	2.356	Kurtosis	196.97
Median	12.73	Standard Deviation	56.09	Skewness	12.54
Mode	-0-	Variance	3146.38		

.95 Confidence Interval 15.15 to 24.41

Figure D-7 STEP 1A

Filing of Record to Appellant Brief



Descriptive Statistics

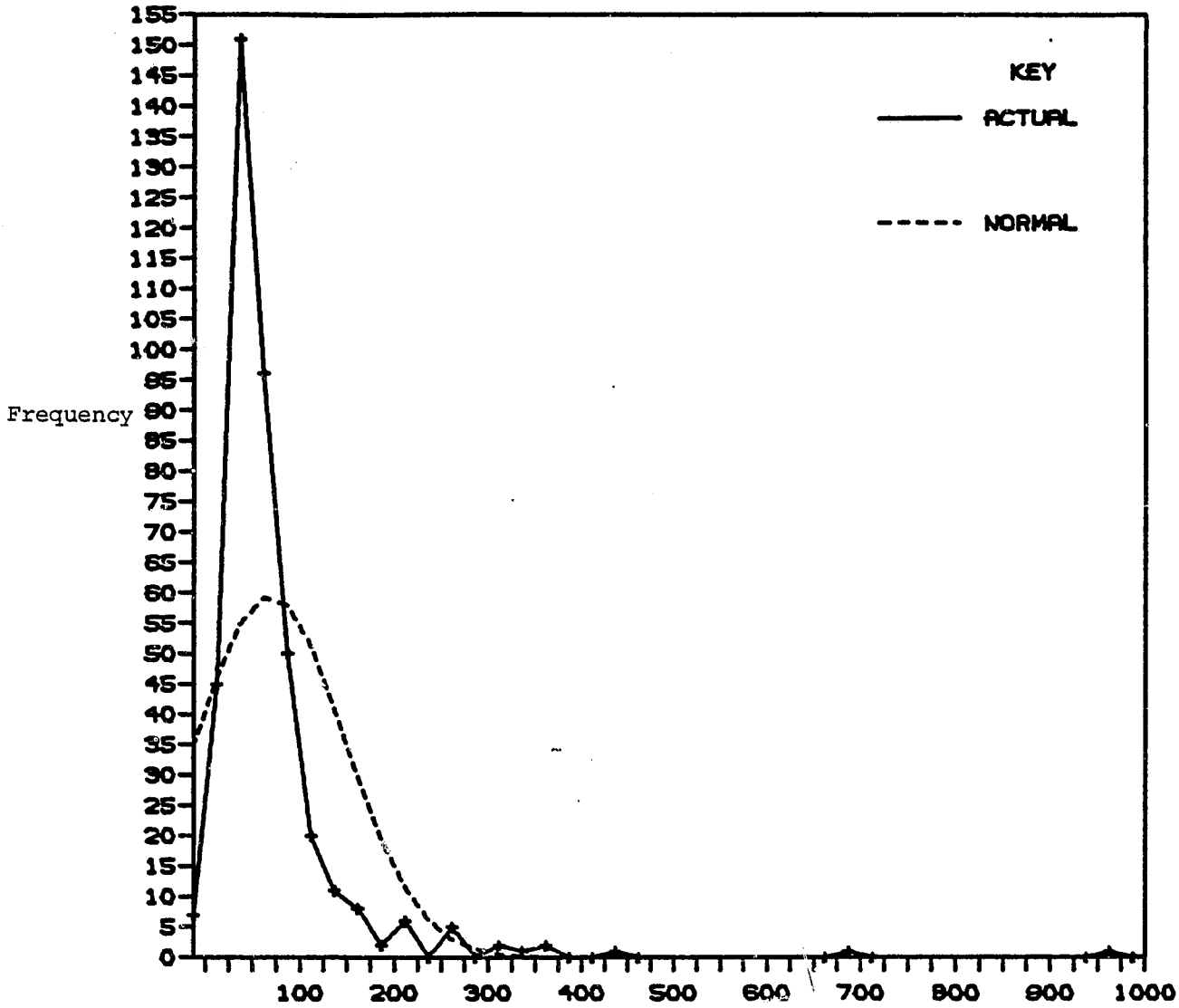
Valid Cases: 399

Mean	89.01	Standard Error	3.76	Kurtosis	12.41
Median	73.33	Standard Deviation	75.15	Skewness	2.77
Mode	31.00	Variance	5647.38		

.95 Confidence Interval 81.61 to 96.40

Figure D-8 STEP 1B

Appellant's Brief to Appellee's Brief



Descriptive Statistics

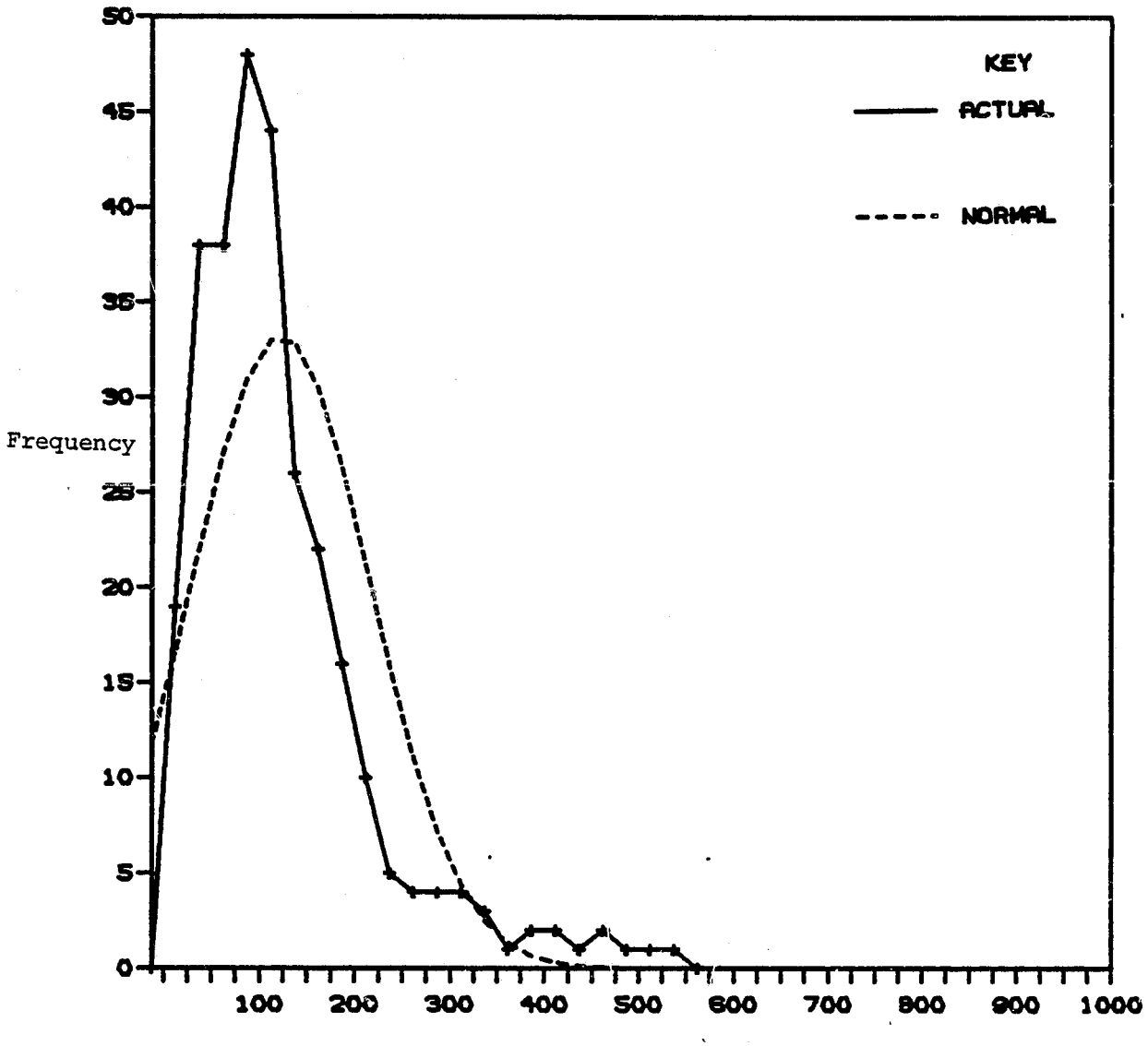
Valid Cases: 409

Mean	68.59	Standard Error	3.895	Kurtosis	49.40
Median	50.88	Standard Deviation	78.78	Skewness	5.70
Mode	28.00	Variance	6205.64		

.95 Confidence Interval 60.93 to 76.24

Figure D-9 STEP 1C

Lower Court Judgment to Transcript Filing



Descriptive Statistics

Valid Cases: 293

Mean	131.95	Standard Error	9.98	Kurtosis	142.61
Median	103.67	Standard Deviation	170.89	Skewness	10.28
Mode	84.00	Variance	29203.77		

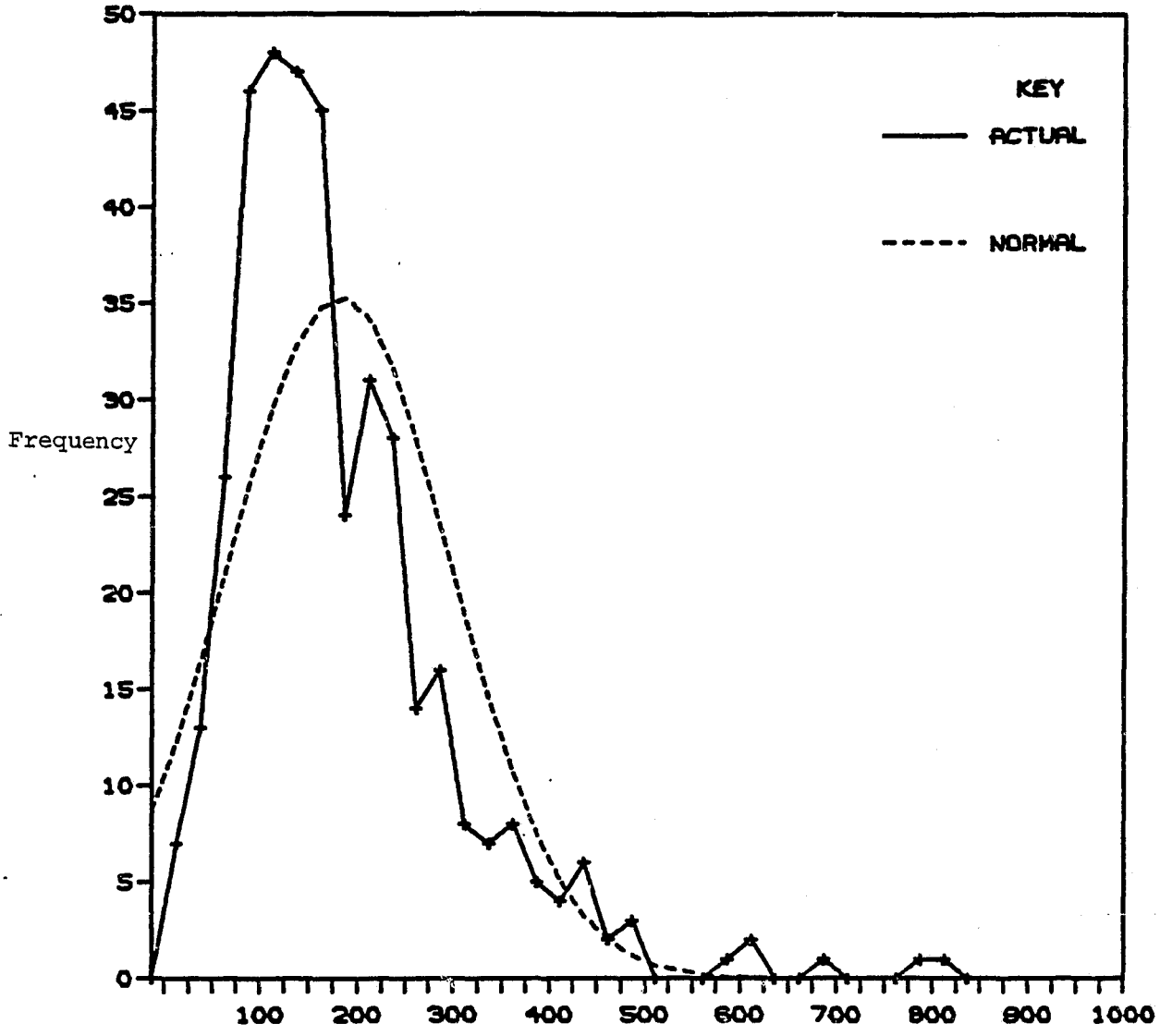
.95 Confidence Interval 112.30 to 151.60

CONTINUED

1 OF 2

Figure D-10 STEP 1D

Lower Court Judgment to Filing of Appellant's Brief



Descriptive Statistics

Valid Cases: 394

Mean	182.76	Standard Error	5.87	Kurtosis	4.97
Median	154.50	Standard Deviation	116.50	Skewness	1.75
Mode	77.00	Variance	13571.61		

.95 Confidence Interval 171.22 to 194.30

APPENDIX E

APPENDIX E

Correlates of Case Processing Time

Table E-1 presents Spearman's correlations between case features and the processing time intervals. These correlations indicate the degree to which variation in one variable is related to variation in another. The value of Spearman's correlations varies between 1.0 and -1.0, with 1.0 indicating a very strong positive relationship, zero indicated no relationship, and -1.0 indicating a very strong negative relationship. Although there are no set mathematical criteria for labeling the strength of Spearman's correlations, the conventional standards used in social science literature were used in this study. These standards are: .0 to .10 positive or negative are non-significant relationships, .10 to .19 positive or negative denote weak relationships, .20 to .50 positive or negative denote moderate relationships, and .50 to 1.0 positive or negative denote strong relationships.*

Turning to specific correlations, Table E-1 indicates no significant relationships between Step 1 and features which define the content of cases--the number of issues raised and subject matter of the appeal, the amount of information provided to the appellate court by attorneys. In other words, differences in case processing time during the predecision phase are not related to differences in the content of appeals

*For a more thorough discussion of the principles of correlation and the use of Spearman's correlations, see Hubert M. Blalock, Jr., Social Statistics, (New York: McGraw Hill Book Company, 1972), pp. 415-418.

CORRELATES OF CASE PROCESSING TIME

	Oral Argument Cases									Non oral Cases					
	STEP 1 (Lower Court Judgment to Materials)			STEP 2 (Materials to Oral Argument)			STEP 3 (Oral Argument to Decision)			STEP 2 & 3 (Materials to Decision)			STEP 4 (Decision to Mandate)		
Independent Variable	r	sig	N	r	sig	N	r	sig	N	r	sig	N	r	sig	N
Number of Civil Subject Matters	- .075	.079	(358)	.010	.431	(380)	-.022	.340	(328)	.100	.201	(72)	Not Applicable		
Number of Criminal Subject Matters	- .162	.067	(87)	-.126	.124	(74)	-.075	.258	(76)	-.108	.132	(15)	Not Applicable		
Number of Issues Raised by Appellant	.202	.001	(353)	.099	.033	(346)	.106	.022	(359)	.062	.374	(29)	Not Applicable		
Number of Issues Raised by Appellee	- .022	.322	(449)	.054	.143	(384)	.028	.285	(405)	-.065	.271	(90)	Not Applicable		
Length of Appellant's Brief	.137	.004	(381)	.057	.135	(375)	.299	.001	(391)	-.053	.386	(32)	Not Applicable		
Length of Appellee's Brief	.023	.328	(369)	.021	.338	(368)	.228	.001	(382)	.139	.254	(25)	Not Applicable		
Length of Appellant's Reply	.197	.004	(191)	-.027	.352	(189)	.135	.031	(193)	-.322	.154	(12)	Not Applicable		
Length of Trial Court Record	.364	.001	(279)	-.056	.191	(241)	.315	.001	(242)	.094	.272	(4)	Not Applicable		
Total Number of Motions	.603	.001	(459)	.155	.002	(389)	.242	.001	(411)	.227	.014	(94)	Not Applicable		
Length of Majority Opinion	Not Applicable			Not Applicable			.438	.001	(404)	.050	.334	(75)	Not Applicable		
Concurring vs. No Concurring Opinions	Not Applicable			Not Applicable			-.116	.010	(405)	-.026	.407	(83)	-.149	.001	(547)
Dissenting vs. No Dissenting Opinions	Not Applicable			Not Applicable			-.103	.019	(407)	-.035	.376	(83)	-.193	.001	(549)
Petition for Rehearing vs. No Petition	Not Applicable			Not Applicable			Not Applicable			Not Applicable			.597	.001	(567)

Source: 567 cases out of 708 cases in which correlates of case processing time data were available.

or the amount of information provided to the court by attorneys. Table E-1 does indicate that as transcript length increases elapsed time during the predecision phase slightly increases. In addition Table E-1 reveals a strong relationship between processing time and the number of motions for time extensions requested in a case. This positive relationship should not be too surprising in that time extensions would by definition increase processing time.

The correlations between case features and Step 2, the oral argument case waiting period, reveal no meaningful relationships. As noted previously, Step 2 is essentially a waiting period. Differences in elapsed case processing time during this phase of the process probably are attributable to the court's oral argument case scheduling techniques. Consequently, the lack of positive relationships between case features and waiting time is predictable. Any differences in processing time during the waiting period attributable to case features would be secondary to greater differences attributable to the scheduling procedure, and hence would not stand out in the statistical correlations.

Table E-1 does exhibit a few meaningful relationships between oral argument case features and elapsed time occurring at the decision phase of the appellate process, Step 3. Specifically, the data indicate weak to moderate relationships between the length of the majority opinion, appellant and appellee

briefs, and trial court transcripts and decision making time. There is a moderately strong tendency for decision making time to increase as the length of the majority opinion increases, and a slight tendency for cases with longer briefs and records to take longer at the decision phase than cases with less materials.

For non-oral argument cases, the correlations presented in Table E-1, indicate no relationships between decision making time and case characteristics.

Finally, Table E-1 documents a strong relationship between whether or not a petition for rehearing was filed in a case, and time elapsed during the post-decision phase of the appellate process. Cases in which petitions for rehearing were filed generally take longer at the post decision phase than cases in which petitions were not filed. Since the decision to mandate stage accounts for a relatively small portion of the total case processing time, the overall impact of petitions on total case processing time is minor.

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