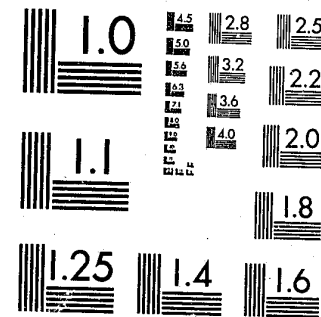


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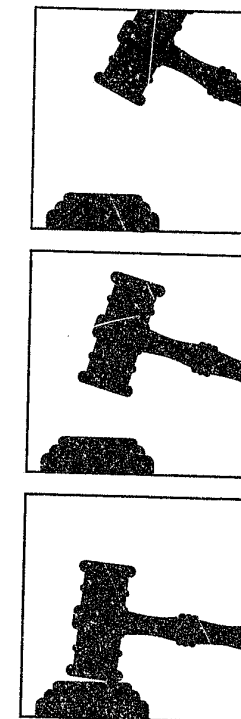
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volume and delay



In the Oregon
Court of Appeals

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VOLUME AND DELAY IN
THE OREGON COURT OF APPEALS

A Staff Study

by

John A. Martin

and

Elizabeth A. Prescott

A Publication of

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NATIONAL CENTER FOR STATE COURTS

The Volume and Delay Staff Study Series
Series Editor: Michael J. Hudson,
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THE NATIONAL CENTER FOR STATE COURTS

The National Center for State Courts is a nonprofit organization dedicated to the modernization of court operations and the improvement of justice at the state and local level throughout the country. It functions as an extension of the state court systems, working for them at their direction and providing for them an effective voice in matters of national importance.

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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. Herbert Schwab, Chief Judge, Court of Appeals; Hon. Loren Hicks, State Court Administrator; and Douglas Bray, Management Analyst, 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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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 Oregon Court of Appeals. While this report's primary concern is the Oregon 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 problems¹ and a bibliography of literature on the appellate process.²

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

²Bibliography: 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 Oregon Court of Appeals 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 Oregon Court of Appeals but to appellate courts in general.

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; Montana Supreme Court; Nebraska Supreme Court; New Jersey Superior Court, Appellate Division; Ohio Court of Appeals, Eighth District; 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 Oregon court personnel

alone or in conjunction with a technical assistance effort, tailored to the specific needs and wishes of the Oregon 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 Oregon 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 467 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 Oregon Court of Appeal's rules, procedures and resources is provided. Section 3 presents descriptive data on case processing time in the Oregon court, and summarizes the sources of case processing time delay. The fourth and final section of the report 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 Form," Mississippi Law Journal, Vol. 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; "Judicial 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

⁶Proponents 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.

⁷Examples 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, it is necessary first to 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 more comprehensive time frame was selected 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 Oregon 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 Oregon appellate court system which is presented in Sections 2 and 3.

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

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

SECTION 2

THE APPELLATE COURT SYSTEM: AN OVERVIEW OF THE OREGON COURT OF APPEALS

This section presents a brief overview of the structure, resources, caseload and procedures of the Oregon Court of Appeals, paying special attention to specific rules and procedures adopted by the court in response to the demands of the legal environment within which the court operates. It also discusses the relation of case characteristics to case processing time.

The Oregon Court of Appeals is the only intermediate appellate court in the state. It sits in the state capitol in Salem, in the same building complex as the Supreme Court, and shares some administrative staff with that Court. Since September 1, 1977 the Court of Appeals has had ten judges. Prior to that time, and during the years in which cases were filed on which data were collected for this study, the court had six judges. The jurisdiction of the Court of Appeals was limited to criminal cases, domestic relations, probate, and administrative law cases prior to January 1, 1978.

The cases in the sample reported in this study were filed in the years 1975 and 1976. In 1975 there were 1539 appeals filed, or 256 appeals per judge. In 1976 there were 1847 appeals filed, or 308 appeals per judge. The ratio of filings per judge was the second highest of all the courts included in the study.

Panel Structure

The Court of Appeals sits in three permanent panels of three judges each, with the Chief Judge sitting as a fourth judge on all three panels. Each panel meets each week and an all court conference is held each week. At the panel meetings, each panel votes on the disposition of all cases argued before it since the last meeting. The responsibility for opinion writing is not assigned until after the vote on disposition is taken. The panels also decide which cases on the next oral argument calendar will be decided by bench opinion; the section on alternative or summary dispositions discusses the process in detail. The all court conference considers all opinions from all of the panels. This process is designed to assure that conflicts between panels are resolved by the Court as a whole. The all court conference can return an opinion to a panel for rewriting and can reverse a panel decision.

Case Assignment

The Chief Judge of the Court of Appeals determines the assignment of cases to panels and, within each panel, the assignment of opinions to judges after oral argument. In assigning cases, the Chief Judge may take into account the number of unfinished opinions each judge has. The Chief Judge indicated that in those instances where he felt it necessary to avoid assigning more opinions to a judge he would encourage that judge to reduce his backlog to the point where he could again take on new cases, so as not to let one judge slow up the Court.

Alternate or Summary Disposition of Appeals

The Court of Appeals has devised two methods for reducing the effort required to dispose of certain appeals. Both methods are directed at the opinion writing stage of the process. As of the time of this study, the court had not adopted any formal means for deciding cases summarily prior to oral argument.

The first method adopted by the court is the use of bench decision in certain cases. The bench decision is used only to affirm the lower court. The decision to issue one is made in a panel conference before oral argument. If one judge objects after oral argument, a bench decision will not be issued in that case. Cases decided by bench decision do not go to the weekly conference of the full court. Nearly every case decided in this manner is a so-called "Anders" appeal in criminal cases (arising from the decision of the Supreme Court in Anders v California, [1967] 386 U.S. 738).

The second method employed is the use of short or one-word opinions in selected cases. Again, this device is used only in affirming a lower court decision. Two classes of cases are candidates for this treatment: 1) criminal cases involving private counsel in which the court concludes that no substantial issue of law has been raised (if public counsel were involved, these cases would probably be disposed of by bench decision); and 2) civil cases which raise no substantive issue of law and are limited to reviewing the sufficiency of the evidence. The judges indicated to project staff that in each instance, they

have the court really acting as a surrogate jury, and as such it should not be required to write a detailed opinion rehashing the evidence any more than a jury would be so required.

Oral Argument

The Court of Appeals automatically schedules all cases for oral argument when briefing is complete. If the appeal is from a district court, fifteen minutes of argument are allowed to each side. Thirty minutes per side is allowed in all other appeals. However, the court strongly encourages short oral arguments and will readily silence an attorney whose presentation appears to be uninformative. Thus, few oral arguments require the full time allotted to them.

Oral arguments are scheduled for eight days every month. All cases that are ready ten days before the arguments begin are scheduled for that month. This was the only court in our sample that did not limit the number of oral arguments scheduled per day, and it was the only court in our sample with no backlog of ready cases waiting for oral argument.¹⁰ The September, 1978, oral argument calendar, for example, had 167 cases. Panel arguments are staggered so that the Chief Judge can attend all oral arguments.

¹⁰ The court is able to schedule and dispose of so many cases at oral argument because the attorneys identify those cases in which they intend to offer argument and those in which they will stand on their briefs prior to calendaring. This way, the court can set a schedule that most accurately reflects the time required per case.

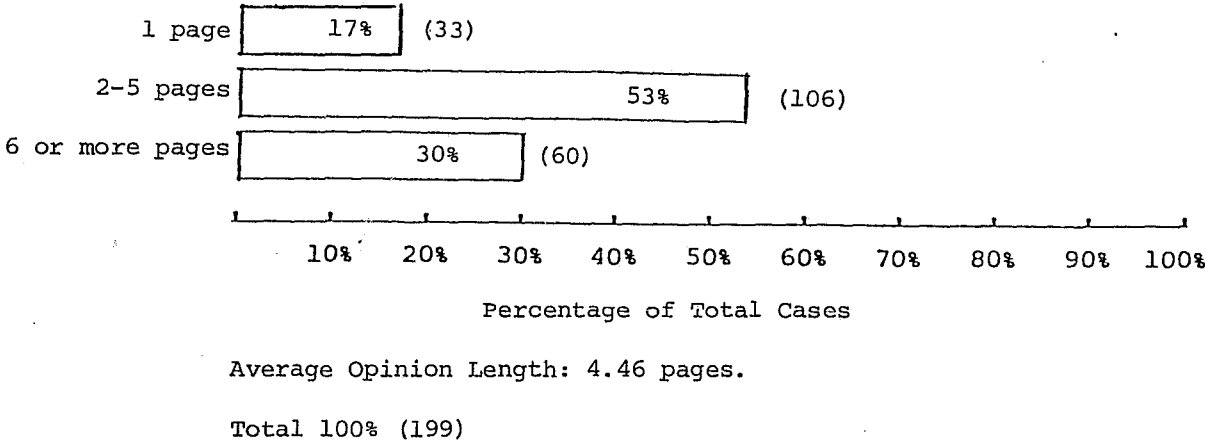
Decisions and Opinions

All opinions in the Court of Appeals are published. As indicated in Table 2-1, the majority of opinions are between two and five pages long. Only thirty-three of the 199 opinions in the sample were one page opinions.

TABLE 2-1

PAGE LENGTH OF MAJORITY OPINION

Majority Opinion Length:



Case Tracking and Interaction with Lower Courts

The Court of Appeals exercises firm control over the progress of all cases from the filing of the Notice of Appeal. All documents are filed directly with the Court of Appeals, including the Notice of Appeal, the Designation of Record, and the trial transcript. All documents filed are recorded on a computer, which provides a daily tickler to identify cases in which briefs or transcripts are late.

The Court of Appeals controls all extensions of time once the Notice of Appeal is filed. One extension of 30 days

and a second extension of 10 days can be granted by the court clerk for the filing of briefs or transcripts. All further extensions must be granted by the Chief Judge, who has made it clear to the bar that they will not be granted lightly.

Control over extensions by the Court of Appeals is particularly important with respect to production of transcripts. Court reporters are considered officers of the Court of Appeals, subject to all of its rules. The rules place the responsibility for producing transcripts on the reporters once the attorneys have designated the portion of the record to be prepared. The court reporter, and not the attorney, is thus responsible for seeking extensions for filing transcripts.

Additionally, in appeals from cases originating in the District Courts (trial courts of limited jurisdiction), the judges of the court rely upon cassette tapes made by the trial court. These are the official records from these proceedings, and no hard copy is produced. However, appeals of this type represent a small percentage of the total caseload.

The average total case processing time in Oregon was the shortest of the courts in our sample. This appears to be due in large part to the Court's toughness on extensions and its ability to track cases on a daily basis. Another important fact is that the time limits for filing documents in the Court are the shortest of the courts in our sample.

Sanctions for Failure to Meet Time Limits

In addition to the ability to spot late cases, the Court of Appeals possesses and uses strong sanctions against both

court reporters and attorneys to assure that time limits are met. Reporters are officers of the Court and as such can be disciplined by it. Penalties can include barring a reporter from further trial court work until all late transcripts are completed.

The computer flags all cases in which the appellant's attorney is seven days late in filing his brief. Notices are then sent to those attorneys. If a brief is not filed within ten days after that notice, the computer automatically produces a notice of dismissal which is promptly mailed. An order of the Chief Judge is required to reopen a case dismissed for this reason. Once the appellee's brief becomes seven days overdue, a notice goes out to the appellee's attorney. Failure to file a brief within ten days after that notice deprives the appellee of the right to file the brief or to argue the case. If an attorney is regularly late in filing briefs, he can expect to be reprimanded by the Chief Judge.

These sanctions provide the Court with a powerful tool for enforcing its time limits. Its willingness to use those sanctions is one important reason for its shorter case processing time.

Characteristics of the Oregon Court's Caseload

During the first phase of the Appellate Justice Project, the relationships between case characteristics and case processing time were examined in depth.¹¹ The results of this analysis

¹¹See, 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).

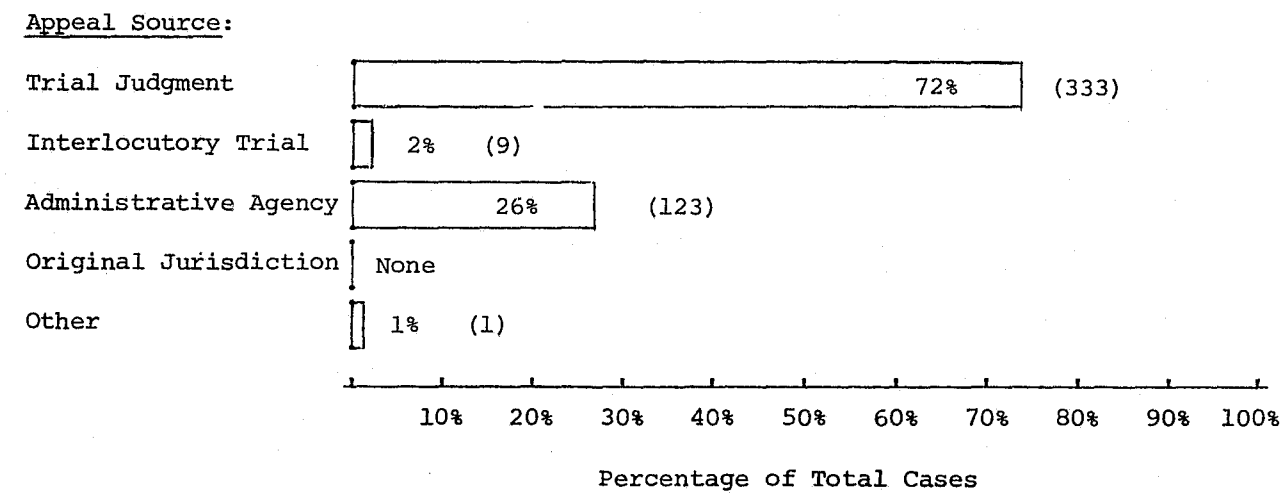
revealed, for the most part, no significant relationships between case characteristics and case processing time--cases did not systematically vary in procedural case processing time on the basis of particular categories which describe substantive case characteristics. Specifically we found no significant 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 as grounds for appeal, 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 and procedures and in the manner in which the procedures are followed, than to identifiable differences in the nature of the cases themselves.

Table 2-2 indicates that the bulk of the Court's caseload is composed of appeals from trial court judgments. Less than one quarter of these trial judgments were jury trials.

Civil appeals account for 53% of the total caseload, and the remaining 47% represents criminal appeals. The most common civil appeals were administrative law cases. In contrast to the other jurisdictions included in this study, murder, manslaughter, rape and sexual assault cases accounted for a relatively small percentage of the criminal caseload.¹²

¹²See Appendix B for a detailed breakdown of the subject matter of the cases in the sample.

TABLE 2-2
SOURCE OF APPEALS



Source: 466 cases (out of 467) for which source of appeal data were available.

Either the public defender or the attorney general's office represented litigants in well over one-half of all the appeals examined.¹³

Table 2-3, which presents information on the frequency of cases which involve procedural complications, reveals that very few cross appeals, intervenors or amicus curiae briefs appeared on the Court's docket. In addition, Table 2-3 shows that only 7% of the cases in the Court were consolidated.

¹³See Appendix C for a detailed breakdown of the types of attorneys in the Nebraska Supreme Court.

TABLE 2-3
CASE IRREGULARITIES

Irregularity Type	Percent	N	Total N
Cross Appeal	2 %	7	467
Intervenors	4 %	19	467
Amicus Curiae	1 %	5	467
Consolidated Cases	7 %	32	467

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 Oregon court and other aspects of the appellate environment, rather than case characteristics, on case processing time.

SECTION 3

CASE PROCESSING TIME IN THE OREGON COURT OF APPEALS

This portion of the report presents information concerning the actual length of time it took to process sample cases filed in the Oregon Court of Appeals in 1975 and 1976, and compares that actual processing time with court rules and with 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 appeals process from lower court judgment to mandate of the Court of Appeals. The data reveal that, on the average, a total of 240 days was required to process cases.¹⁴ In addition, the figures presented in Table 3-1 reveal that oral argument cases, on the average, took substantially longer than cases which did not have oral arguments--a 268 day average versus a 130 day average.

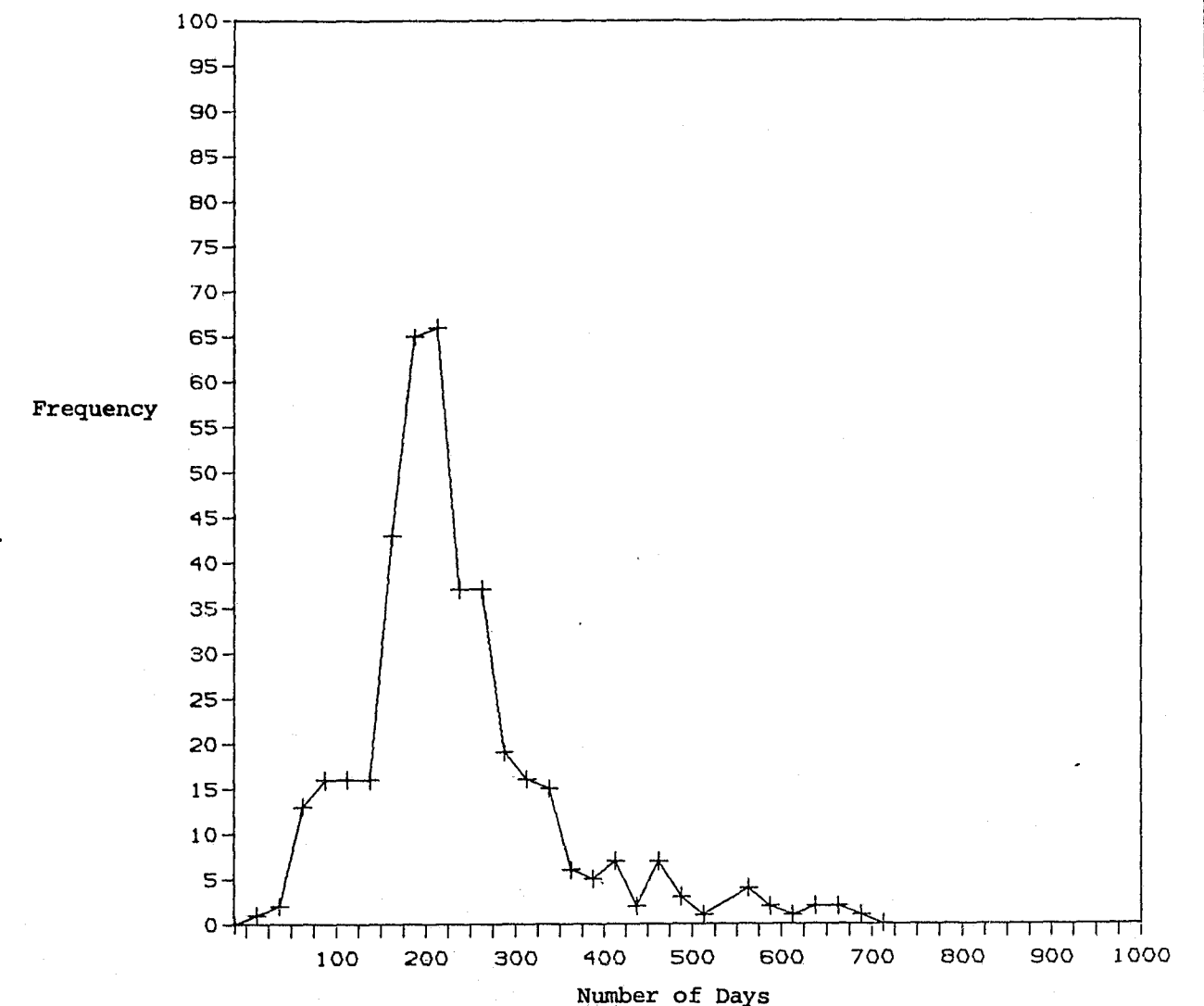
TABLE 3-1

TOTAL AVERAGE CASE PROCESSING TIME

Total Processing Time	Mean	Median	Standard Deviation	N
All Cases	240	211	192	406
Oral Argument Cases	268	226	102	325
Non-Oral Argument Cases	130	91	60	81

¹⁴Complete statistical descriptions of the total time interval and all other time intervals, are located in Appendix D.

Figure 3-1 Total Time:
Lower Court Judgment to Appellate Court Mandate



Descriptive Statistics

Valid Cases: 406 (out of a sample of 467)

Mean 240

Median 211

Standard Deviation 192

The total case processing time measure is useful in that it can be viewed as a composite indicator of the appellate system's performance. Compared to the other jurisdictions included in the study, the total average case processing time in the Oregon Appellate process was much lower than the averages for those other courts; in fact, the total case processing time average for the Oregon Court was the lowest of all the eleven courts included in the study.

Table 3-2 presents average case processing time for the different steps in the appeals process as compared with the time requirement specified in the court's rules and the standards established by the American Bar Association. The data reveal that the problems associated with preparation and transmittal of documents to the appellate court have resulted in some disparity between actual case processing time and standards articulated both by court rules and the American Bar Association. The amount of disparity, however, is much less in the Oregon court than in other courts included in the study.

Specifically, 32% of all the cases processed by the Court of Appeals exceed the maximum time limit set by court rule of 150 days from lower court judgement to the filing of the last brief. In addition, 51% of the cases took longer than the 105 days prescribed by court rule for the appellant to file a brief after a lower court judgment. Fifty-four percent of the appellees took longer than the thirty days specified by the court rule to file briefs.

TABLE 3-2

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

	<u>ALL CASES</u>	<u>Mean</u>	<u>Median</u>	<u>Court Rule</u>	<u>% Case Above Court Rule</u>	<u>ABA Standard</u>	<u>% Case Above ABA Standard</u>	<u>N</u>
	Step 1 Trial Judgment to Materials Received	147	137	180 Civil/ 120 Crim.	38% **	100 Civil/ 80 Criminal	93% 89%	361
	Step 1A: Record Received to Appellant Brief	41	31	60 Civil/ 30 Crim.	22% ***	Not Given	---	111
	Step 1B: Appellant Brief to Appellee Brief	38	31	30	54%	30 Civil/ 20 Criminal	64% 97%	328
	Step 1C: Lower Court Judg- ment to Transcript	59	56	Not Specified	---	Not Given	---	269
61	Step 1D: Lower Court Judg- ment to Appellant Brief	115	106	120 Civil/ 90 Crim.	51% ****	Not Given	---	269
	<u>ORAL ARGUMENT CASES</u>							
	Step 2: Materials Received to Argument	29	22	Not Specified	---	Not Given	---	335
	Step 3: Oral Argument to Decision	24	17	Not Specified	---	60 Average/ 90 Maximum*	9% 3%	334
	<u>NON-ORAL ARGUMENT CASES</u>							
	Steps 2 & 3: Materials Received to Decision	Insufficient Data			---	60 Average/ 90 Maximum*	---	---
	<u>ALL CASES</u>							
	Step 4: Decision to Mandate	56	36	Not Specified	---	Not Given	---	328

*For panels larger than three.

**150 days used to determine % of cases above court rule.

***45 days used to determine % of cases above court rule.

****105 days used to determine % of cases above court rule.

Excessive brief preparation time is not a result of attorneys preparing exceptionally long briefs. On the contrary, as shown in Table 3-3, briefs filed in the Oregon court are comparatively short. Nor is extended brief preparation time a consequence of a substantial portion of briefs taking extraordinarily long and skewing the average: Figures 3-2 and 3-3 show remarkable consistency in filing. Rather, excessive brief preparation time appears to be accounted for by the Court's policy of allowing attorneys one thirty-day extension for filing briefs. When thirty days is added to the time fixed by court rule, 18% of appellants and 9% of appellees file late briefs.

Table 3-2 indicates that filing transcripts in the Court of Appeals took an average of 59 days. Although the Court does not have a rule specifically stipulating when transcripts should be filed, a policy of sixty days is generally followed by the court. Just under 30% of all transcripts were filed in excess of the sixty day policy. Again, when the possibility of one thirty-day extension is added, the disparity between prescribed and actual filing intervals decreases. Less than 8% of all transcripts were filed in more than ninety days. Consequently, unlike most of the courts included in this study, transcript preparation and filing does not appear to be a serious problem in the Court of Appeals.

TABLE 3-3

BRIEF PAGE LENGTHS AND COMPARISON WITH COURT PAGE LIMITATIONS

Appellant's Brief			Appellee's Brief			Appellant's Reply		
Page Length	%	Number	Page Length	%	Number	Page Length	%	Number
1-10	55%	193	1-10	82%	268	1-10	58%	20
11-20	30%	108	11-20	11%	38	11-20	29%	10
21-30	10%	37	21-30	5%	15	21-30	3%	1
31 & over	5%	15	31 & over	2%	6	31 & over	10%	3
TOTALS	100%	353	TOTALS	100%	327	TOTALS	100%	34
Missing Cases		114	Missing Cases		140	Missing Cases		433

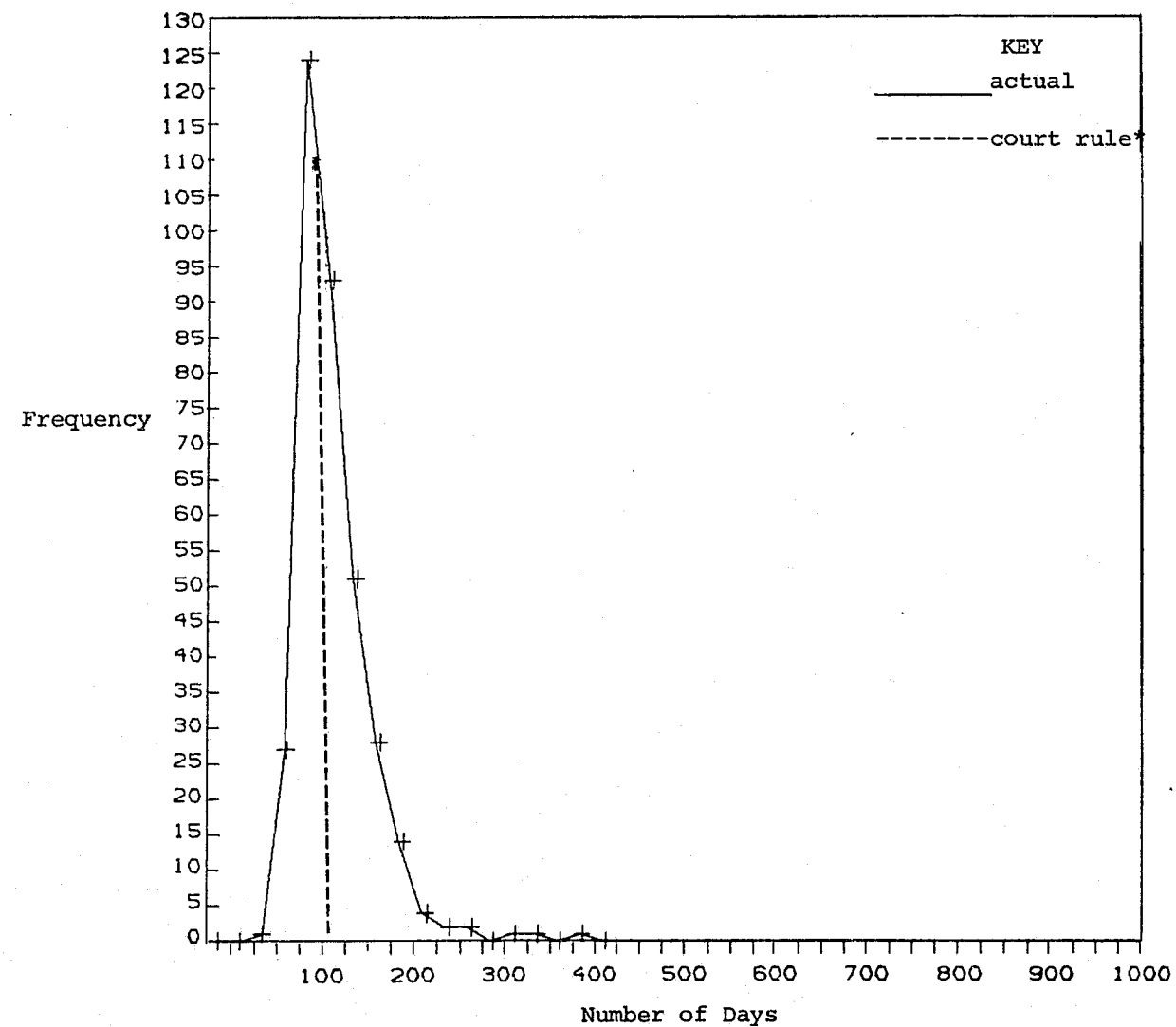
Average Number of Pages	12.1	Average Number of Pages	6.93	Average Number of Pages	10.67
Court Limit on Page Length	no rule	Court Limit, Page Length	no rule	Court Limit, Page Length	no rule
% of Briefs over Court Limit	N/A	% Briefs over Court Limit	N/A	% Briefs over Court Limit	N/A

* Printed

** Appellant Limited to 100 Pages Total

Figure 3-2 STEP 1D

Lower Court Judgment to Filing of Appellant's Brief



Descriptive Statistics

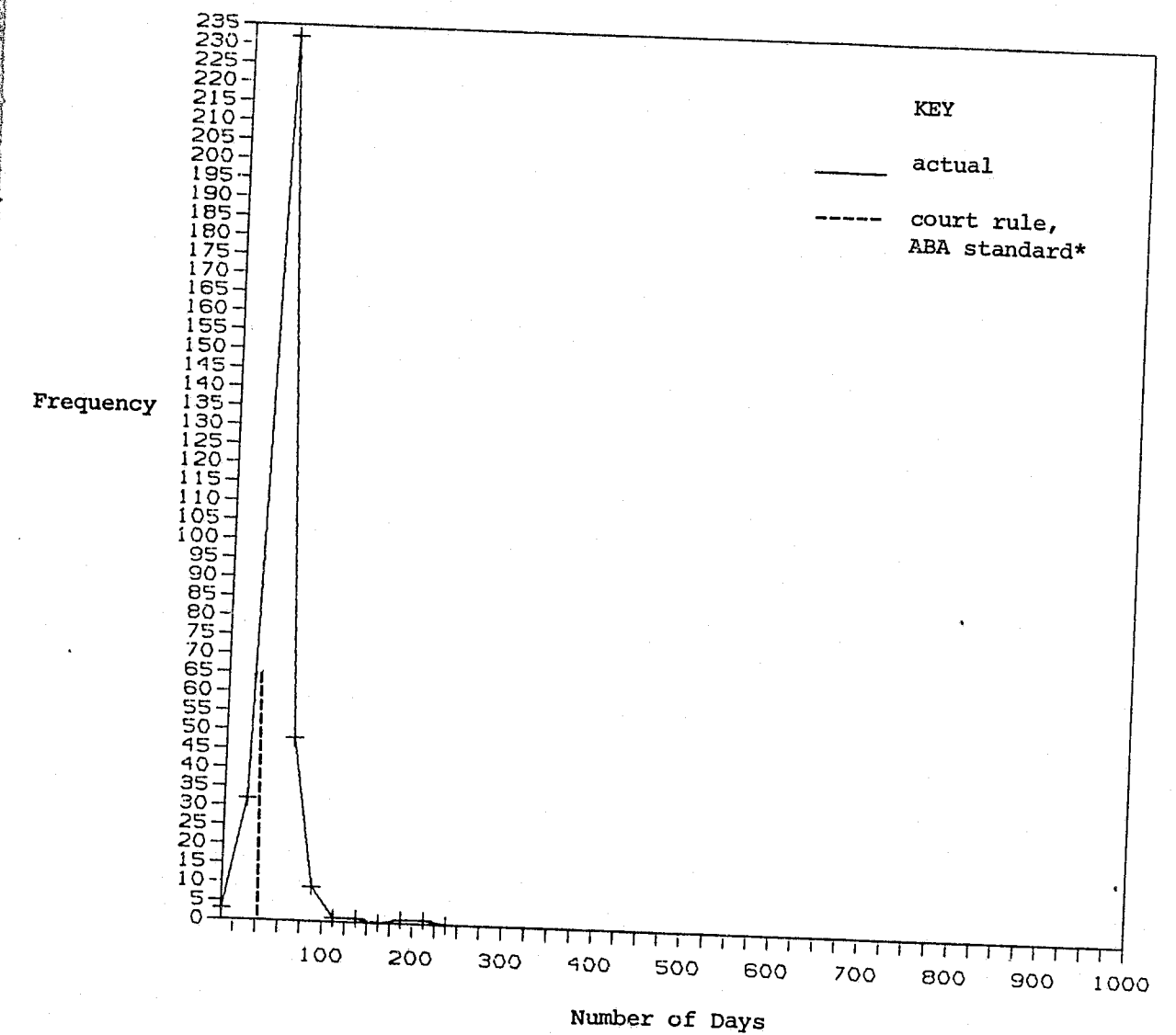
Valid Cases: 349

Mean 115 Median 106 Standard Deviation 42

*105 days used to determine time limitation specified by court rule.

Figure 3-3 STEP 1B

Appellant's Brief to Appellee's Brief



Descriptive Statistics

Valid Cases: 328

Mean 38 Median 31 Standard Deviation 21

*Court rules and ABA standards impose 30 day time limitation.

Turning to the decision phases of the appellate process, Table 3-2 presents data concerning the number of days between materials and oral argument (Step 2) and oral argument to decision (Step 3). Step 2 is a waiting period: cases are ready and waiting to be heard. On the average 29 days elapsed between the date on which all materials necessary to hear a case (briefs and transcripts) were received by the Court of Appeals and the date on which oral argument was heard. This 29 day figure may be misleading because, as indicated in Figure 3-4, the existence of a few cases which took an extraordinarily long period of time inflated the average. Consequently, in this instance, the 22 day median more accurately reflects elapsed time for the vast majority of cases during this step of the appeals process. Compared to other courts included in this study, the twenty to thirty day waiting period is extremely short.

Table 3-2 and Figure 3-5 also reveal that an average of twenty-four days were required during Step 3 of the process-- from the date of oral argument to the date of decision. The Court itself has no guidelines specifying how fast cases should be decided. However, the twenty-four day average is certainly acceptable when compared to other courts and the standards established by the American Bar Association. Only 9% of the Oregon cases took longer than the 60 day standard suggested by the ABA, and only 3% exceeded the ABA 90 day maximum.

Figure 3-4 STEP 2
Materials to Oral Argument

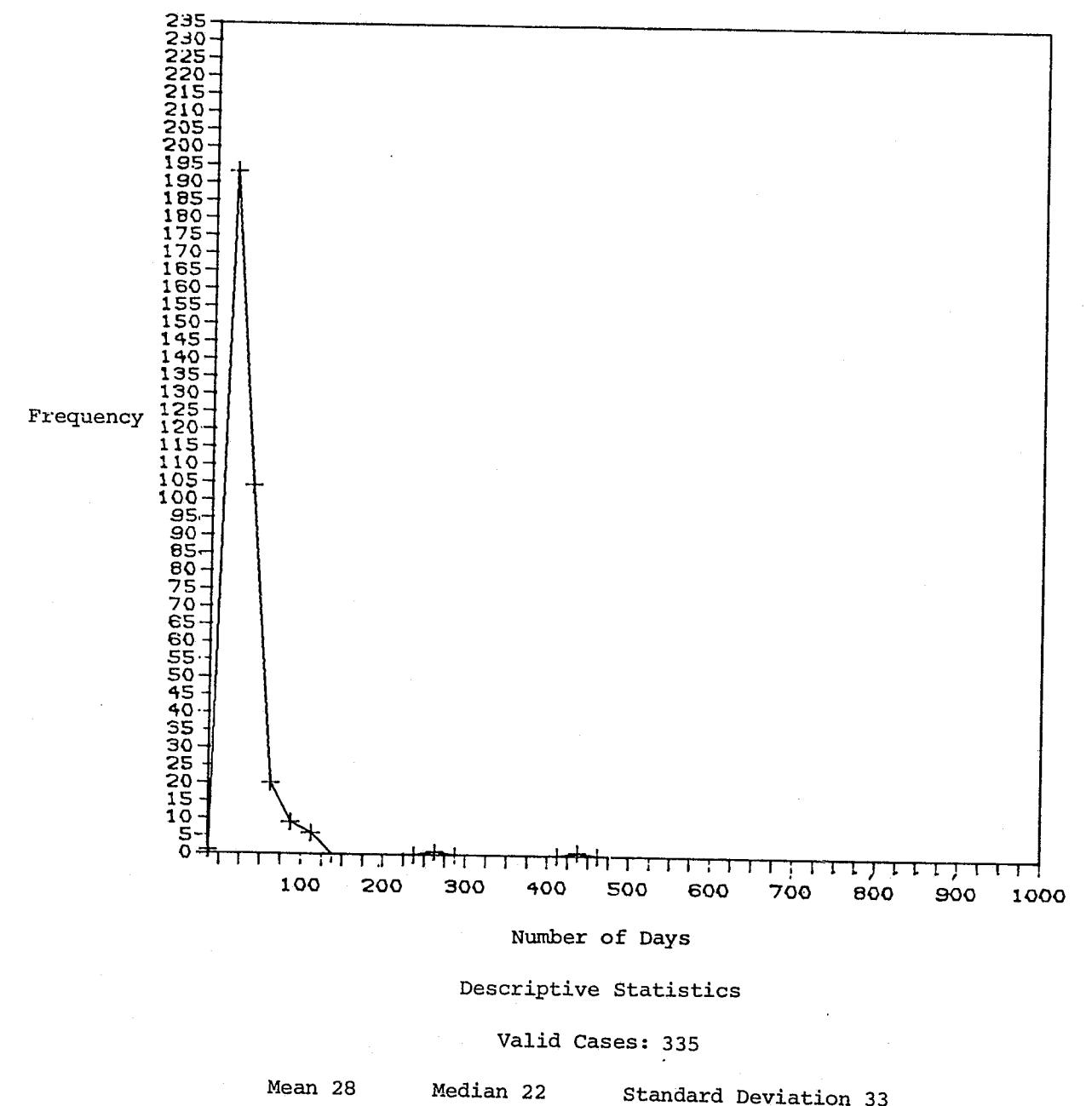
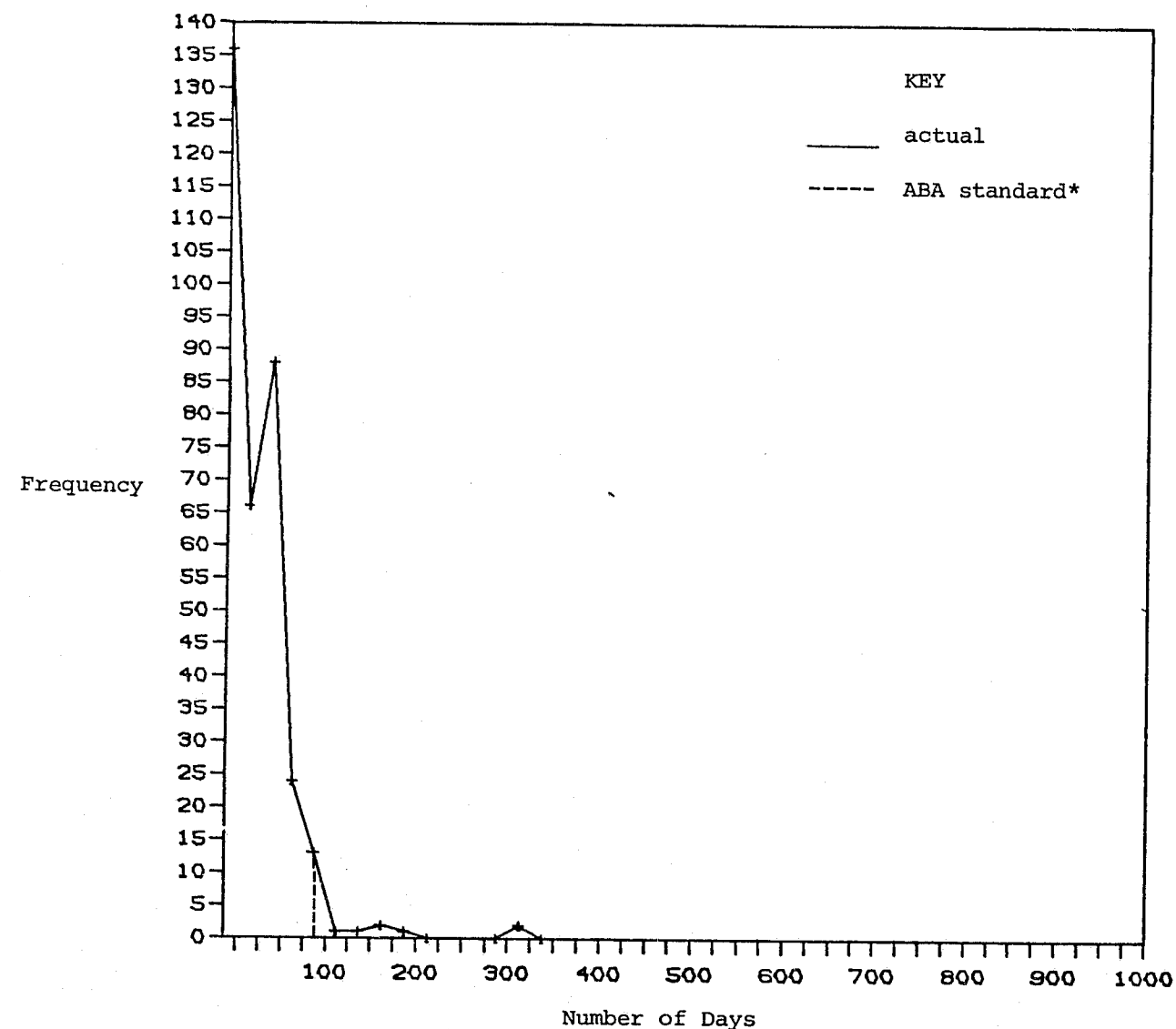


Figure 3-5 STEP 3

Oral Argument to Decision Announced



Descriptive Statistics

Valid Cases: 334

Mean 24

Median 17

Standard Deviation 36

*ABA standards allow 90 day maximum.

Sufficient decision making time data for non-oral argument cases were not available. However, as noted previously, total processing time for non-oral argument cases averaged only 130 days. Consequently, given this relatively short total time average, it is doubtful that decision time for non-oral argument cases often exceeds ABA standard.

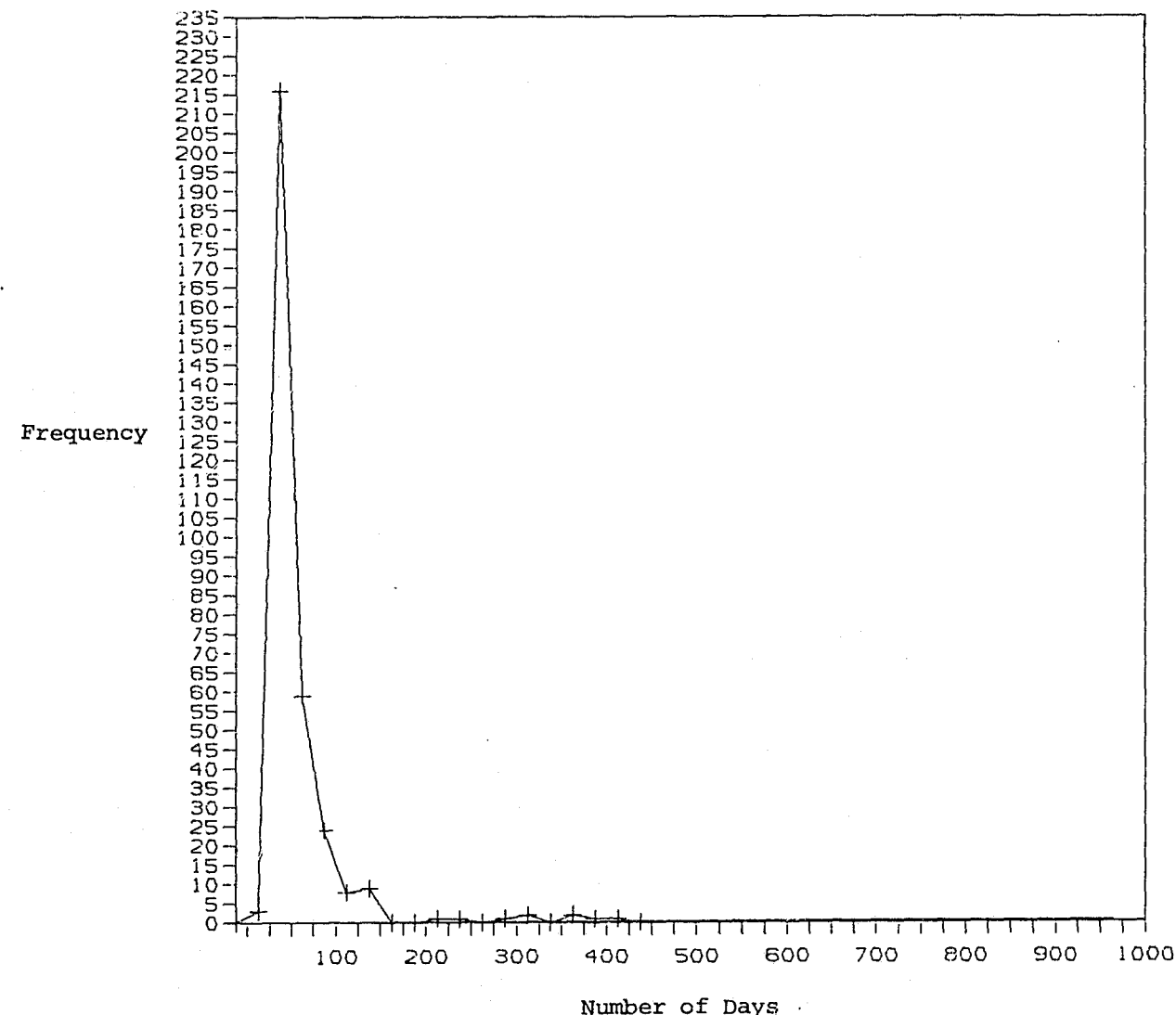
Finally, Table 3-2 and Figure 3-6 reveal that, on the average, the time between decision and mandate (Step 4) is relatively short: an average of 56 days. The 56 day average is perhaps misleading in that it has been inflated by a few cases which took an extraordinarily long period of time. The 36 day median more accurately reflects post-decision time for the majority of cases. In fact, 58% of all the cases decided exhibited elapsed time between decision and mandate of between 30 and 40 days, and 74% took less than 60 days. The remaining 26%, cases which took over 60 days, were almost exclusively those in which petitions for certiorari were filed with the Oregon Supreme Court.

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

Figure 3-6 STEP 4

Appellate Court Decision to Mandate



Descriptive Statistics

Valid Cases: 608

Mean 56 Median 36 Standard Deviation 52

of the analysis the focus is shifted to describing total case processing time by examining the relative contribution of each step, i.e., by describing the proportion of the total case processing time which is attributable to each step of the appellate process. In addition, total case processing time is described by examining the amount of variation in case processing time, i.e., 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 the case processing time total 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, with the summation of all steps equals 100% of total time.¹⁵

¹⁵ 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%.

As noted previously, variance is a measure of the spread or variability of scores. In this study, the scores are the number of days per case 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 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 averages 240 days in the Oregon appellate system. The variance for this time interval equals 36675 units and the standard deviation is 191 days. A total variance of 36675 units or a standard deviation of 191 days when viewed in conjunction with the average of 240 days, indicates that cases in the Oregon court are relatively heterogeneous. In other words, case processing time does vary from case to case in the Oregon Court of Appeals. Much of this variation, as noted previously, is due to the substantial differences between oral and non-oral

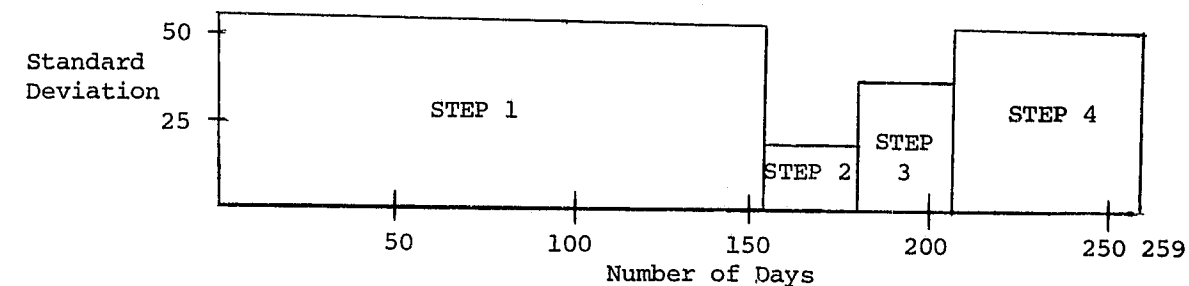
argument cases. The oral, non-oral argument case distinction, however, does not account for all of the total variation between cases. Consequently, an identification of the contribution of each step's variance to the total variance remains an important consideration. It is useful to identify the points at which case processing times differ 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.

In Table 3-4 the principles of proportion and variability are applied to time-lapse data for oral argument cases from the Oregon Court. The diagram appearing 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 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 case processing time for oral argument cases at each step in the Oregon appellate process is relatively short, and that

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	153 days	53	59%	49%	317
STEP 2: Materials to Oral Argument	27 days	20	11%	9%	317
STEP 3: Oral Argument to Decision	24 days	36	9%	20%	317
STEP 4: Decision to Mandate	55 days	50	21%	22%	317
TOTAL TIME	259 days	100	100%	100%	

cases do not differ dramatically in processing time. The pre-decision phase from judgment below to the date at which all materials are available to the appellate court represents, on the average, 153 days or 59% of the total processing time. Step 2, materials to oral argument, represents 11% of the total time, while Step 3, oral argument to decision, accounts for only 9% of the total. Step 4, decision to mandate, on the average takes 55 days or represents 21% of the case processing time total. The percentage of total variance figures and standard deviations for each step indicate that time elapsed during the pre-decision phase of the process is remarkably consistent. What little variability there is between cases at the pre-decision phase is apparently due to the fact that some cases received one or two thirty-day extensions for materials preparation. The figure of 49% of total variance for Step 1 may be somewhat misleading. That figure is a percentage of the total case processing time variance and this total variance for oral argument cases is actually small. Consequently, the 49% figure represents about one-half of a very small whole.

Variability between cases during the waiting stage (Step 2) of the appellate process is extremely small as evidenced by the minute 20 day standard deviation. In fact variability attributable to the waiting stage accounts for only 9% of the total case processing time variability.

The decision stage of the appellate process (Step 3) seems to account for a disproportionately large share of the total case processing time variance, as evidenced by the 36 day standard deviation and 20% of total processing time variance figure. This disproportionately large variability does not mean that the Oregon court is experiencing problems at the decision stage of the appellate process. On the contrary the variability probably reflects the court's techniques for rapidly disposing of simple cases (e.g., bench decisions), while reserving relatively more time for more difficult cases.

Finally, Table 3-4 indicates that, for oral argument cases, the decision to mandate stage of the appellate process (Step 4) accounts for about 20% of both the total case processing time and total case processing time variance. As noted previously, most of the differences in case processing times at this final stage of the process are due to petitions for rehearing. Cases where petitions for certiorari were filed with the Oregon Supreme Court generally took substantially longer than cases where petitions were not filed.¹⁶

¹⁶See Appendix E.

SUMMARY

Information presented previously revealed that the Oregon Court of Appeals was operating efficiently and uniformly for cases filed in the data collection years. Once cases came under the direct control of the Court, it dealt expeditiously with them.

The pre-decision, decision and post-decision phases of the appellate process were not areas of particular concern. Data revealed that average case processing times at these steps were relatively short and not subject to wide variation. The panel procedures, the assignment of opinions to specific judges, and the all-court conference techniques were working well. 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 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. Rather, that framework allows the Court considerable organizational and administrative flexibility. Its caseload, although relatively large, did not place unreasonable demands on its personnel and financial resources.

In the final section of this report, specific conclusions concerning why the Oregon Court of Appeals operated so efficiently during the period from which data for this study were collected are presented. In addition, conclusions concerning how the Court can continue to operate efficiently as case volume increases beyond its present level, and as the subject matter jurisdiction of the court may change, are also presented.

SECTION 4

CONCLUSIONS

- The Oregon Court of Appeals was operating efficiently during the years spanned by the cases which produced data for this study (cases filed in 1975-76).

Relevant documents from lower court proceedings and attorneys' briefs consistently were prepared and filed with the Court within time limits established by its rules. Once materials were made available to the Oregon court, cases did not wait long for court consideration. Arguments were scheduled and heard, cases decided, opinions written, decisions announced, and mandates issued, generally within a very short period of time.

Specific reasons why the Court of Appeals was operating efficiently, while other courts with comparable caseloads were not, are difficult to identify and substantiate. Analytically it is always easier to identify serious problems. Nevertheless, the materials presented in this report suggest that the Court's success is attributable to the combined effects of the following:

- strict enforcement of reasonable court rules and policies,
- the Court's control of its caseload at all phases of the appellate process,
- the Court's use of modern recording equipment and computer-based technology,
- regular and comprehensive use of "tickler" mechanisms to spot filing delinquencies immediately,

- the Court's perception of its rule as one of correcting error rather than setting precedent,
- the Court's heavy reliance on simplified time-saving procedures,
- the high degree of collegiality within the Court of Appeals,
- the frequent interaction and cooperation between the Court of Appeals and the Supreme Court,
- dedicated Court leadership committed to the goal of speedy case processing.

- Rules governing the filing of all relevant appeal case materials, i.e., notices of appeal, records, transcripts, and briefs, are clearly articulated and strictly enforced by the Oregon court.

Once notices of appeal have been filed, the court notifies lower court personnel and attorneys in advance when subsequent materials should be filed by issuing a scheduling order. One thirty-day time extension will be granted if requested, but the Court does not encourage this practice. Additional requests for extensions of time are scrutinized carefully and usually are denied. The Chief Judge of the Court of Appeals takes an active role in the monitoring of cases during this crucial pre-decision phase. Although the Court has demonstrated a willingness to impose sanctions against those who abuse the system, there is rarely need for such sanctions.

Since ready cases do not wait long to be considered by the Court, it can justify strict rule enforcement. Attorneys can be certain that their cases will normally be heard within thirty days after all materials have been filed.

- Unlike many appellate courts, the Oregon Court of Appeals has control of its caseload during all phases of the appellate process.

Case documents are filed directly with the Court of Appeals. Repeated extensions for filing them may be granted only by the Chief Judge. These rules have essentially eliminated a problem which has produced substantial delay at the pre-decision phase of the process in other appellate courts included in this study.

- The Oregon court system uses computer technology and tape recording equipment appropriately, which has expedited the processing of appeals.

Trial proceedings from courts of limited jurisdiction are recorded in Oregon. The cassette tape of the trial court proceedings is considered the official transcript of testimony in such courts by the Oregon Court of Appeals. Reporters do not have to type these transcripts, and, consequently, time delay attributable to transcript preparation is often avoided.

Information concerning the dates when case materials should be filed, and when they actually are filed, is recorded by the clerk's office and stored in the Oregon computer system. The computer system includes terminals in the court clerks' offices, which can be operated easily by court personnel. Using the computer system, the court clerk periodically generates printouts which list filings due on a particular date. If a

computer check indicates that necessary documents have not been filed, the clerk's office prepares dismissal notices and sends them to delinquent counsel a few days after the materials become overdue.

- Judges sitting on the Oregon Court of Appeals perceive the role of the court as correcting error rather than setting precedent.

The judges believe that the Oregon Court of Appeals' primary function is to decide cases rapidly and to write concise opinions stating the reasons for their decisions. The tasks of establishing precedent and developing substantive law is perceived as the function of the Supreme Court.

- The Court of Appeals relies heavily on simplified, time-saving procedures, including oral decisions announced immediately after cases are heard, short briefs, and short opinions.

The oral decision technique is used primarily for affirming many simple, single-issue criminal appeals (the so-called Anders appeals), and disciplinary actions from state correctional facilities. In addition, the Court of Appeals groups routine criminal appeals on its calendar and hears them at a rate of ten to twelve per hour. The court believes this grouping technique is effective primarily because the State Public Defender's office and Attorney General's office, which are responsible for the majority of criminal appeals, are both extremely efficient.

- The Oregon Court of Appeals encourages collegiality among its members.

Judges meet for a panel conference immediately following each day's oral arguments. During this conference, cases are discussed and assigned to judges for opinion preparation. The Chief Judge sits on all of the court's panels and considers each judge's workload before assigning additional cases to that judge. In addition, the Chief Judge chairs the weekly all-court conference.

All of the judges sit in Salem and have offices in close proximity to one another. Even though the Court is empowered to sit in other locations throughout the state, it has not done so in recent years.

- The judges on the Oregon Court of Appeals have frequent contact with the justices of the Supreme Court. Both courts sit in Salem, have offices in buildings next to each other, share the same clerk's office staff, and observe the same filing requirements.

When petitions for review are filed in the Supreme Court, they serve automatically as petitions for rehearing in the Court of Appeals. Within ten days, the Court of Appeals must decide whether or not to grant rehearing. If it denies rehearing, the Supreme Court then must decide whether or not to grant the petition for review.

- When the Oregon Court of appeals was established in 1969, it did not inherit a massive backlog of cases nor a set of historically entrenched procedures. (However, the court did receive a current calendar of 309 cases, which were re-assigned from the Supreme Court.) The current Chief Judge has served in that capacity since the Court's beginning, setting its direction over the past decade.
- The Court's jurisdiction expanded dramatically in 1978, when it became the exclusive court of initial appellate jurisdiction, the Supreme Court becoming a court of discretionary review only. Prior to 1978, as previously mentioned, the Court only heard appeals in criminal cases, domestic relations, probate, and administrative law. This vastly expanded civil jurisdiction may make it difficult to process cases as rapidly as the Court has in the past.

The Court should anticipate the need for changes in its structure and processes as a result. For example, it may need more judges to deal expeditiously with the caseload. This may, in turn, lead to problems with collegiality in the court: panel conflicts may increase, and may require a mechanism other than resolution by the whole court or the Supreme Court.

In addition, the Court may be interested in experimenting with new processing techniques, e.g., the introduction of central staff screening for civil cases or of preargument settlement conferences. The staff of the Appellate Justice Project can offer technical assistance, or provide a further examination of the Court, if so desired.

APPENDIX A

APPENDIX A

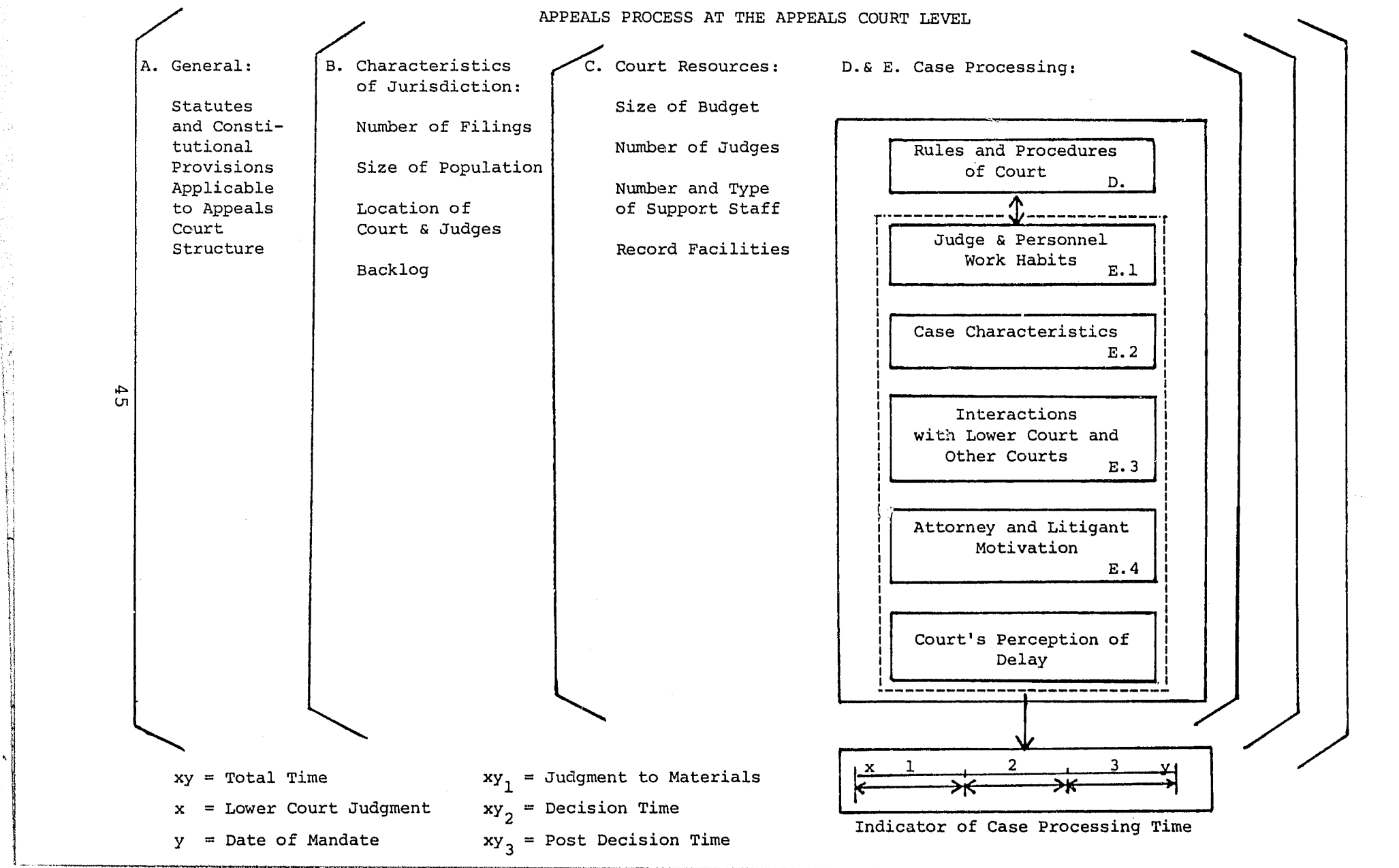
A Framework for Examining Delay in Appellate Court Systems

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



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 47% (220)			Civil Cases 53% (237)		Total 100% (457)	
<u>Criminal Case Type:</u>	<u>%</u>	<u>#</u>	<u>Civil Case Type:</u>	<u>%</u>	<u>#</u>	
Murder One	3 %	7	Liquor Laws	2 %	5	
Murder Two	- %	-	Motor Vehicle	1 %	2	
Manslaughter	3 %	6	Workman's Compensation	7 %	16	
Rape or Sexual Assault	8 %	17	Elections	- %	-	
Robbery	12 %	25	Taxes	2 %	5	
Burglary	13 %	26	Zoning	2 %	4	
Theft	10 %	21	Other Administrative Law	51 %	125	
Assault	2 %	4	Commercial	1 %	2	
Battery	1 %	1	Landlord/Tenant	- %	-	
Fraud	1 %	1	Other Property	1 %	2	
Arson	1 %	2	Trust & Estates	1 %	1	
Criminal Trespass	1 %	1	Child Custody & Support	14 %	35	
Narcotics	17 %	35	Juvenile	1 %	3	
Drunkenness	1 %	2	Other Domestic Relations	7 %	16	
Traffic	1 %	1	Auto Personal Injury	1 %	2	
Juvenile Delinquency	3 %	6	Other Injury	2 %	5	
Morals	1 %	1	Labor	4 %	11	
Weapons Charges	1 %	2	Other Non-Administrative	4 %	9	
Disorderly Conduct	1 %	1				
Other	23 %	48				
TOTAL	100 %	207	TOTAL	100 %	243	

*Source 457 cases out of 467 cases for which case subject data were available.

APPENDIX C

APPENDIX C TYPE OF ATTORNEY INVOLVED IN APPEAL *

<u>Attorney Type</u>	<u>Appellant</u>		<u>Appellee</u>	
	<u>Percent</u>	<u>Number</u>	<u>Percent</u>	<u>Number</u>
Private Counsel	41 %	191	22 %	102
Attorney General	6 %	29	71 %	329
District Attorney	1 %	4	3 %	15
Municipal Corp. Counsel	1 %	5	2 %	8
Public Defender	46 %	214	1 %	6
Legal Aid	3 %	16	> 1 %	1
Pro Se	1 %	6	> 1 %	1
Other	- %	-	- %	-
TOTAL	100 %	465	100 %	462

*Source: 465 cases out of 467 cases for which type of attorney 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.

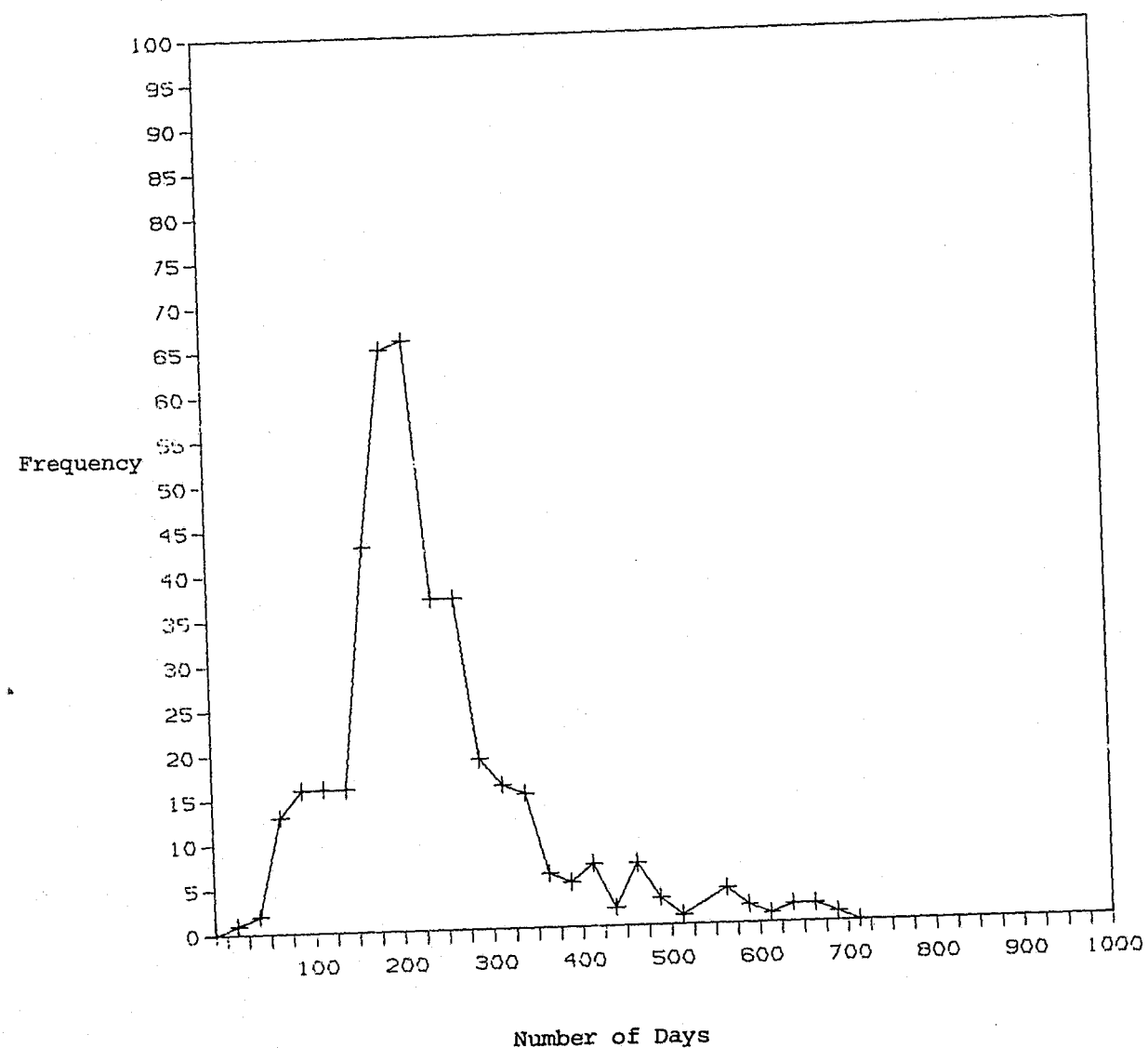
Figure D-1, which summarizes the distribution of total case processing time data for all cases in the Oregon Court of Appeals included in the study sample, illustrates the format used to describe time-lapse information. The horizontal, or X, axis of the graph, which ranges from 1 to 1,000 days, refers 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.

Case Distribution curves or graphs presented by themselves are useful devices for describing data. For example, by merely looking at the curve presented in Figure D-1, one can see that the bulk of cases in the Oregon Court of Appeals cluster around a point which represents approximately 250 total case processing days. In addition the graph shows that there are a few extreme cases which take anywhere from 450 to 725 total case processing days.

There are also numerous statistics which are useful for describing, in detail, the distribution of cases along the various

Figure D-1 Total Time:

Lower Court Judgment to Appellate Court Mandate



Descriptive Statistics

Valid Cases: 406

Mean	240.14	Standard Error	9.50	Kurtosis	184.97
Median	210.90	Standard Deviation	191.51	Skewness	11.44
Mode	167.00	Variance	36675.45		
		.95 Confidence Interval	221.46 to 258.83		

case processing 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 generally cluster around the 240 day average.

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 Oregon will fall within a range of 221 and 259 days. In other words, if all the cases in the Oregon 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 narrow range of 221 to 259 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 9.50 for the total time interval illustrated in Figure D-1, indicates that the mean of 240 days can fluctuate approximately 9.50 days higher or lower. The very low standard error thus once again confirms the high reliability of the 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

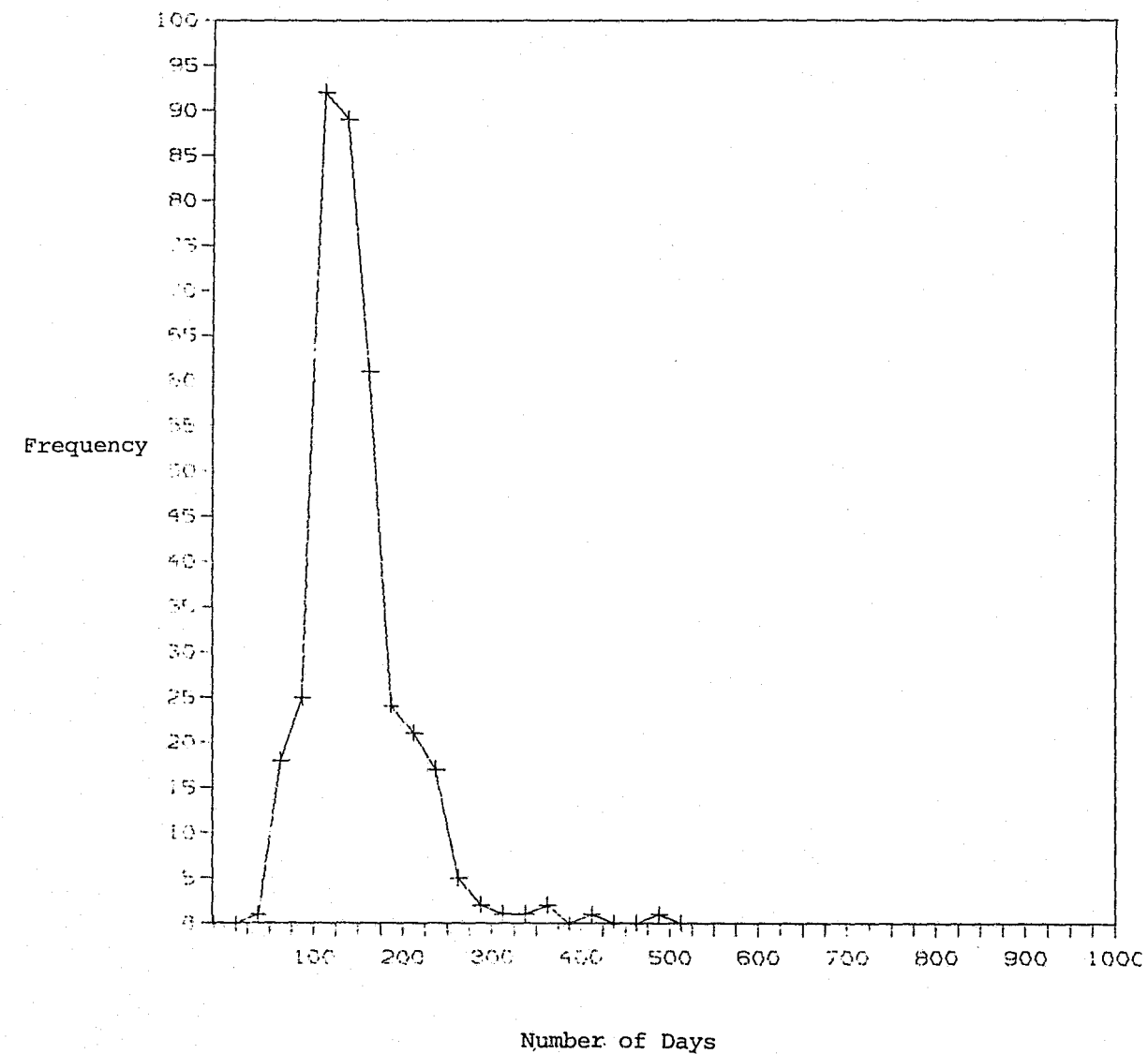
the right of the mean. A zero value for the kurtosis statistics indicates a normal distribution, a positive value a more "peaked" than normal curve, and a negative value, a flatter than normal curve. For example, the skewness and kurtosis statistics accompanying the curve presented in Figure D-1 indicate that cases in the Oregon court fall 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 substantially more peaked than normal.

The statistics appearing in Table D-10 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-10 indicates that when the last step in the appellate process variable, step 4, is added to the equation, all of the total time variation 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-10 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

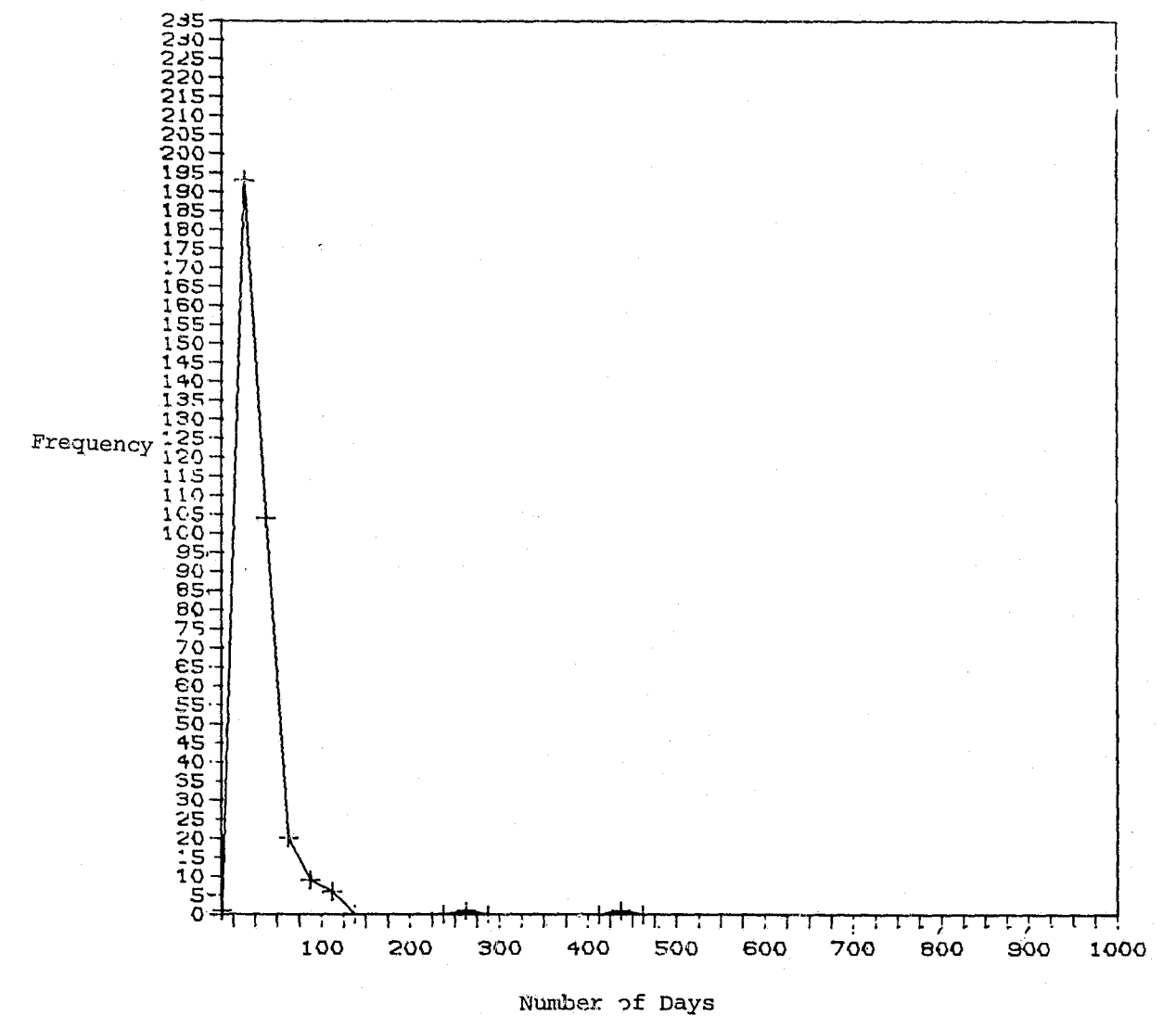


Descriptive Statistics

Valid Cases: 361

Mean	147.29	Standard Error	2.86	Kurtosis	6.90
Median	137.12	Standard Deviation	54.31	Skewness	1.78
Mode	122.00	Variance	2949.24		
.95 Confidence Interval 141.67 to 152.91					

Figure D-3 STEP 2
Materials to Oral Argument

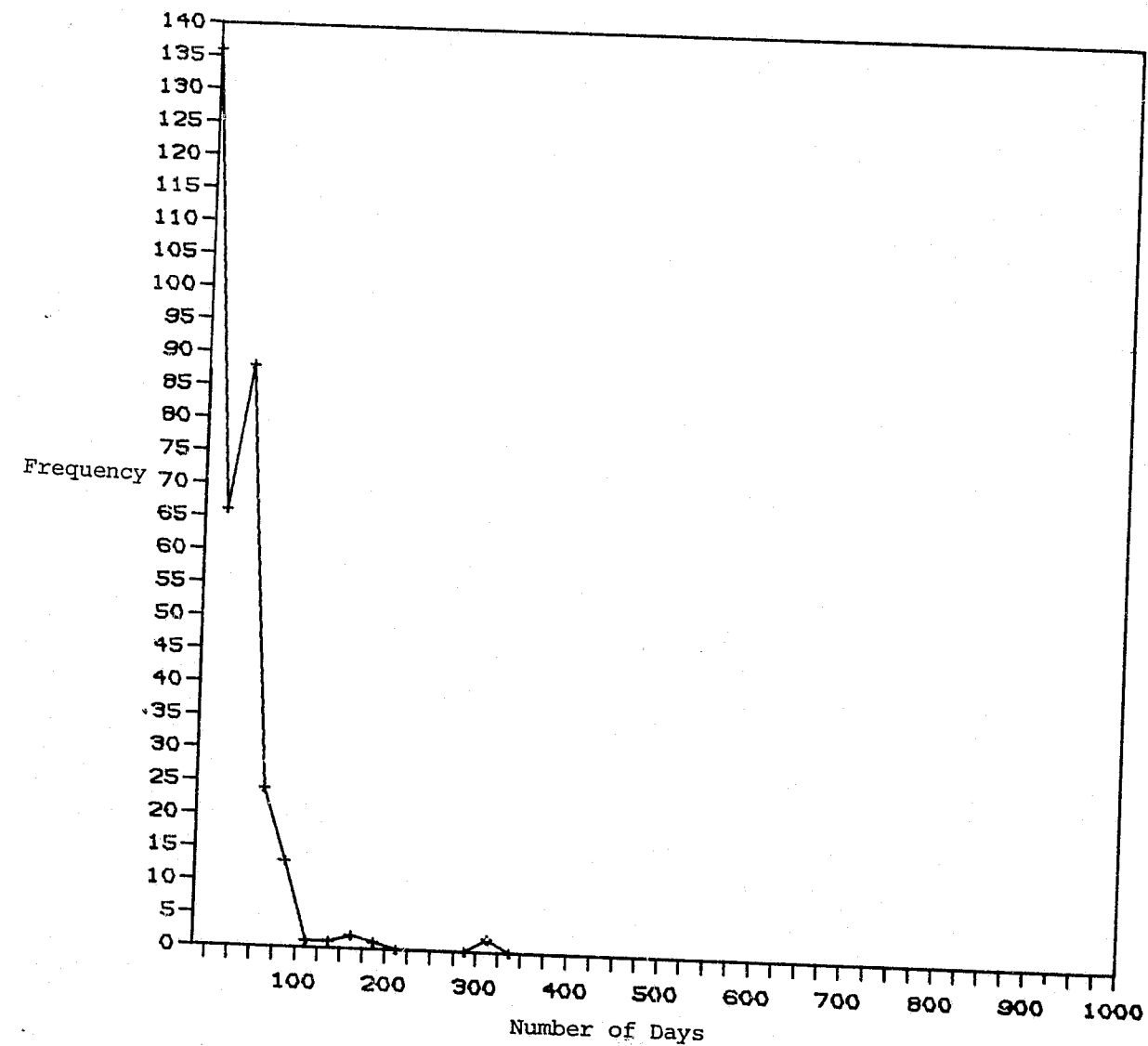


Descriptive Statistics

Valid Cases: 335

Mean	28.63	Standard Error	1.79	Kurtosis	74.78
Median	21.75	Standard Deviation	32.86	Skewness	7.05
Mode	19.00	Variance	1079.84		
.95 Confidence Interval 25.10 to 32.16					

Figure D-4 STEP 3
Oral Argument to Decision Announced

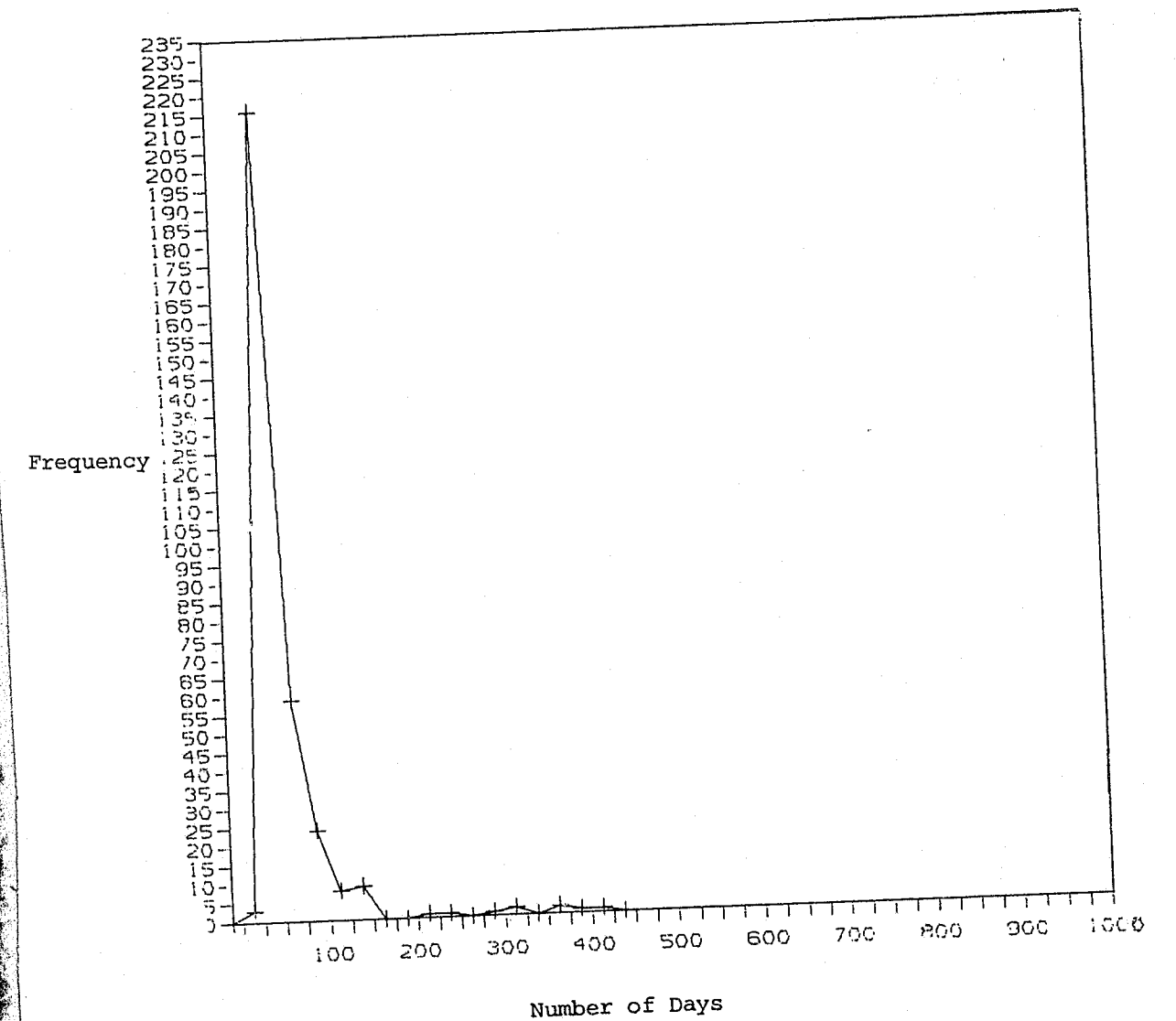


Descriptive Statistics

Valid Cases: 334

Mean	24.13	Standard Error	1.97	Kurtosis	24.94
Median	17.17	Standard Deviation	35.92	Skewness	3.94
Mode	0	Variance	1290.33		
.95 Confidence Interval 20.26 to 27.99					

Figure D-5 STEP 4
Appellate Court Decision to Mandate

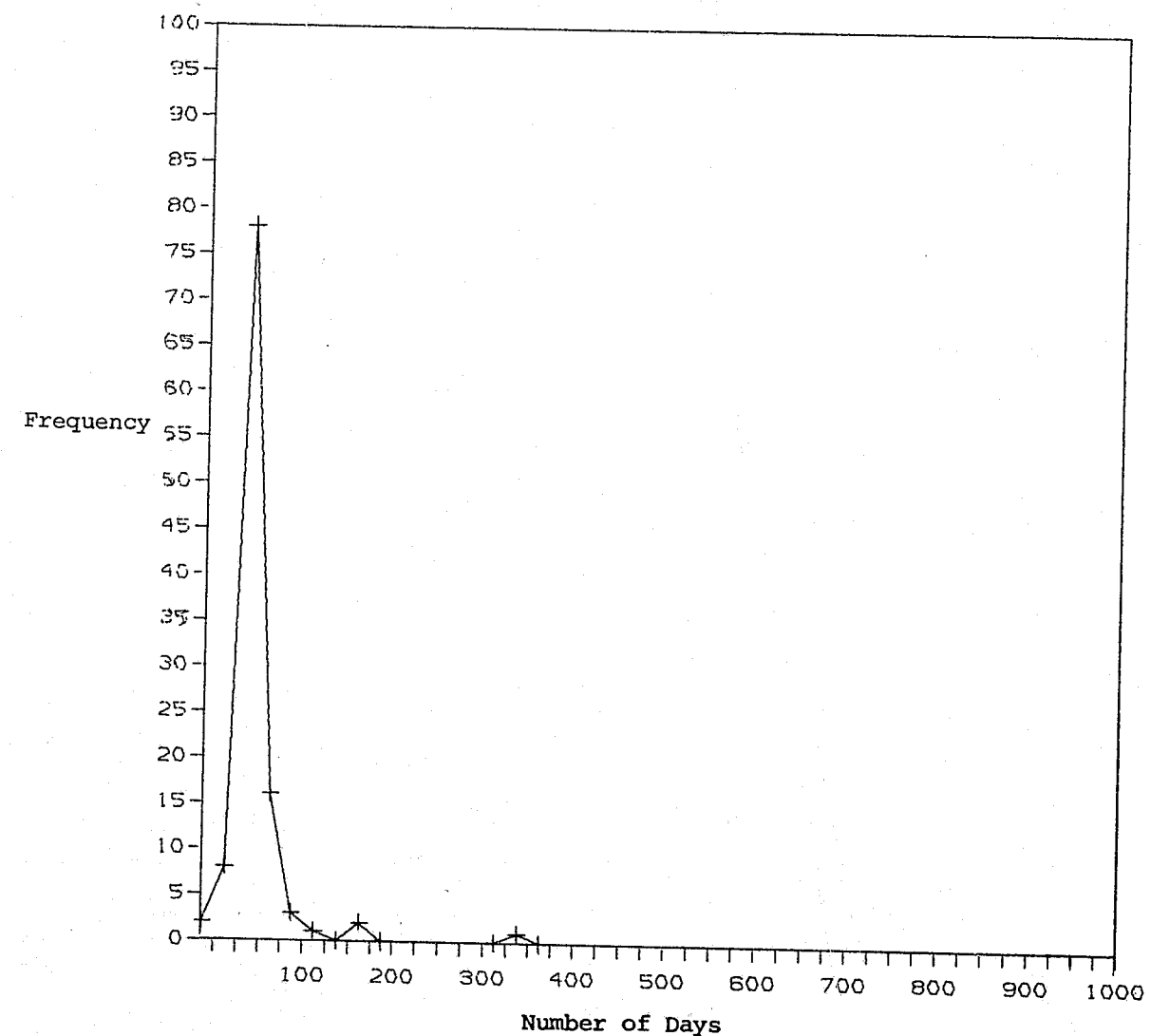


Descriptive Statistics

Valid Cases: 328

Mean	55.75	Standard Error	2.89	Kurtosis	21.61
Median	36.06	Standard Deviation	52.32	Skewness	4.30
Mode	31.00	Variance	2737.23		
.95 Confidence Interval 50.06 to 61.43					

Figure D-6 STEP 1A
Filing of Record to Appellant Brief

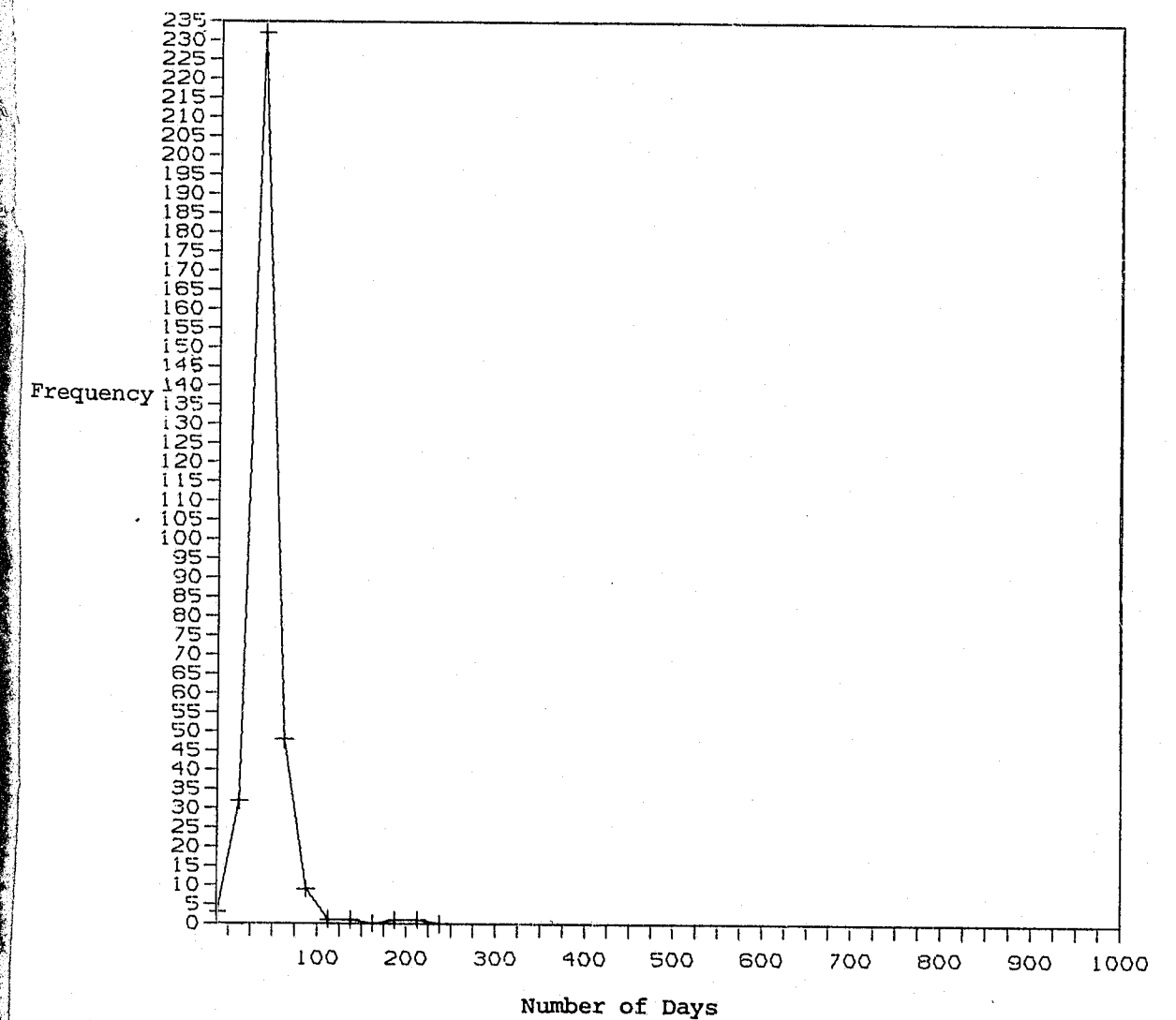


Descriptive Statistics

Valid Cases: 111

Mean	41.13	Standard Error	3.58	Kurtosis	39.72
Median	31.25	Standard Deviation	37.77	Skewness	5.55
Mode	30.00	Variance	1426.57		
.95 Confidence Interval 34.02 to 48.23					

Figure D-7 STEP 1B
Appellant's Brief to Appellee's Brief

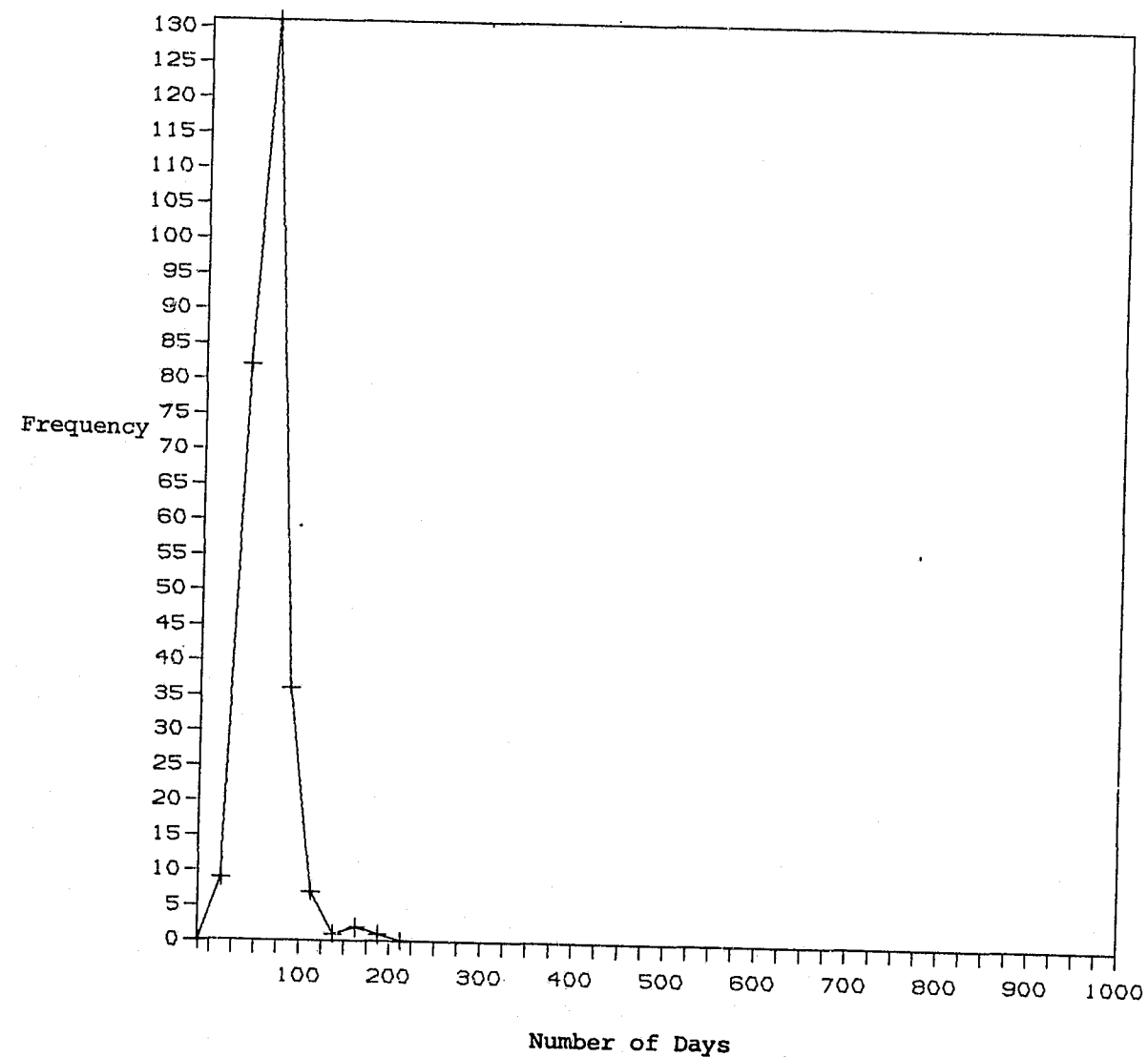


Descriptive Statistics

Valid Cases: 328

Mean	38.07	Standard Error	1.15	Kurtosis	24.69
Median	31.15	Standard Deviation	20.82	Skewness	3.81
Mode	30.00	Variance	433.44		
.95 Confidence Interval 35.81 to 40.33					

Figure D-8 STEP 1C
Lower Court Judgment to Filing of Transcript

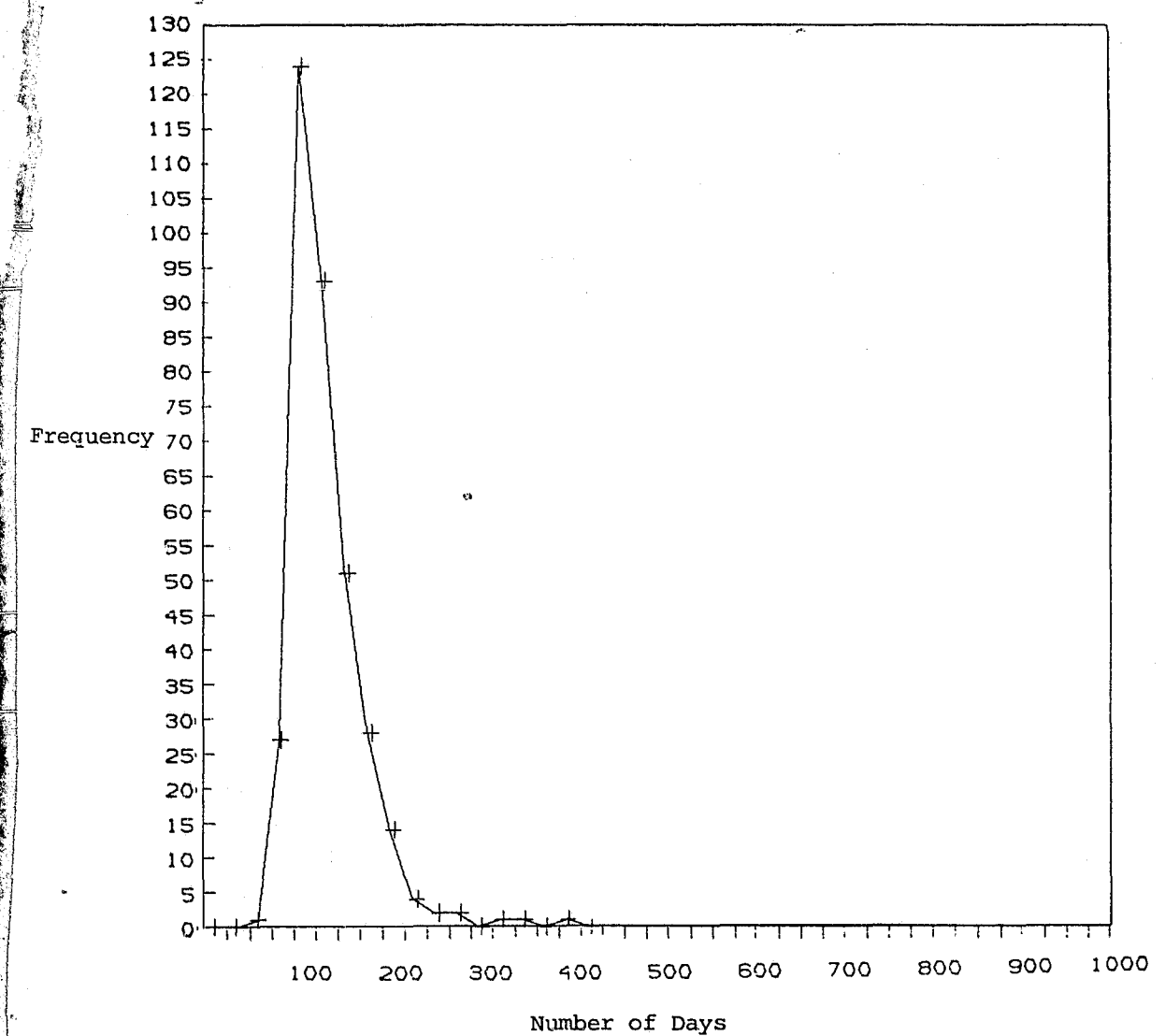


Descriptive Statistics

Valid Cases: 269

Mean	58.57	Standard Error	1.38	Kurtosis	5.39
Median	56.15	Standard Deviation	22.57	Skewness	1.61
Mode	58.00	Variance	509.59		
		.95 Confidence Interval	55.86 to 61.28		

Figure D-9 STEP 1D
Lower Court Judgment to Filing of Appellant's Brief



Descriptive Statistics

Valid Cases: 349

Mean	115.26	Standard Error	2.25	Kurtosis	8.72
Median	106.25	Standard Deviation	41.96	Skewness	2.20
Mode	91.00	Variance	1760.83		
		.95 Confidence Interval	110.85 to 119.68		

TABLE D-1

SUMMARY FIGURES OF VARIANCE BY STEPS IN APPEALS PROCESS

	<u>Multiple r</u>	<u>r</u>	<u>r² Change</u>	<u>r</u>
<u>ORAL ARGUMENT CASES</u>				
STEP 1 Lower Court Judgment to Materials Received by Appeals Courts	.698	.487	.487	.698
STEP 2 Date Materials Received to Date Oral Argument	.758	.576	.089	.282
STEP 3 Oral Argument to Decision	.883	.781	.204	.605
STEP 4 Decision to Mandate	1.000	1.000	.218	.723

(N=317)

APPENDIX E

CONTINUED

1 OF 2

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 indicating 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 reveals few significant relationship between time spent in the first stage of the appellate process and case features. The exceptions to this general picture of no relationship include a moderate correlation between processing time and the number

* 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

APPENDIX E
CORRELATES OF CASE PROCESSING TIME

Independent Variable	STEP 1 (Lower Court Judgment to Materials)			Oral Argument Cases						Non oral Cases STEPS 2 & 3 (Materials to Decision)			STEP 4 (Decision to Mandate)		
	r	sig	N	r	sig	N	r	sig	N	r	sig	N	r	sig	N
Number of Civil Subject Matters	-.082	.124	(199)	.009	.450	(176)	-.092	.111	(176)	Too few cases			Not applicable		
Number of Criminal Subject Matters	.164	.020	(159)	-.056	.241	(157)	.002	.486	(156)	Too few cases			Not applicable		
Number of Issues Raised by Appellant	.095	.004	(313)	-.093	.053	(299)	.191	.001	(298)	Too few cases			Not applicable		
Number of Issues Raised by Appellee	-.001	.490	(357)	-.011	.418	(331)	.033	.271	(330)	Too few cases			Not applicable		
Length of Appellant's Brief	.421	.001	(342)	.071	.098	(334)	.488	.001	(333)	Too few cases			Not applicable		
Length of Appellee's Brief	.315	.001	(319)	.177	.001	(320)	.673	.001	(319)	Too few cases			Not applicable		
Length of Appellant's Reply	Too few cases			Too few cases			Too few cases			Too few cases			Not applicable		
Length of Trial Court Record										Too few cases			Not applicable		
Total Number of Motions													Not applicable		
Length of Majority Opinion	.514	.001	(361)	-.169	.001	(335)	.173	.001	(334)	Too few cases			Not applicable		
Concurring vs. No Concurring Opinions	Not applicable			Not applicable			.541	.001	(192)	Too few cases			.281	.001	(189)
Dissenting vs. No Dissenting Opinions	Not applicable			Not applicable			.212	.001	(221)	Too few cases			.003	.480	(215)
Petition for Rehearing vs. No Petition	Not applicable			Not applicable			.211	.001	(221)	Too few cases			.175	.006	(215)
	Not applicable			Not applicable			Not applicable			Not applicable			.756	.001	(328)

of time extensions in a case. This should not be too surprising in that time extensions would by definition increase case processing time.

The correlations between case features and Step 2 reveal no relationships. Since this step of the process is essentially a waiting period, the lack of relationships is not too surprising. Table E-1 does indicate meaningful relationships between case features and processing time spent at the decision stage of the appellate process (Step 3). Specifically the data reveal moderate to strong relationships between the length of appellant's and appellee's briefs, the majority opinion, and decisionmaking time. Cases with relatively longer briefs and opinions take slightly longer to process than cases where less information is considered. Since the briefs and opinions in the Oregon court, as indicated in Section 2, are relatively short, and since decision time is also relatively short, these relationships should not be interpreted to indicate that briefs and opinions are a major source of delay.

Finally, Table E-1 documents weak to moderate to strong relationships between whether or not cases had dissenting opinions, and whether or not cases had petitions for rehearings, and post-decision time. As indicated previously, judges in the Oregon court noted the tendency for cases with dissents to take longer than cases without dissents. Although the data bears out the judges concern, and a 30 day limit for preparing dissents is

advisable, the presence of this relationship does not necessarily mean that dissenting opinions are a major delay source. Since there are so few dissenting opinions and the decision to mandate stage represents a relatively small percentage of total case processing time, the overall impact of added preparation time for dissents is minor. The same general conclusion can be applied to the relationship between petitions for rehearing and post-decision processing time--the impact of petitions for rehearing in the Oregon court on total case processing time is relatively minor.

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