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MANAGING THE CRIMINAL APPEALS PROCESS:

THREE ALTERNATIVE APPROACHES

FINAL REPORT
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By

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Although the project focused on three appellate courts with mandatory criminal jurisdiction, we tried to put information from these courts in perspective. Parallel interviews were conducted with key participants in three additional jurisdictions. For this reason, we wish to extend our thanks to the presiding judge, clerk of court, and heads of the criminal appellate unit in the prosecutor's and public defender's offices in Colorado, the District of Columbia, and Minnesota for their time and valuable responses to our questions.

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INTRODUCTION

The state criminal appeals process is vital to the integrity of the legal system. Challenges to lower court convictions must be carefully, effectively, and efficiently handled. A well-functioning appeals process is necessary to the goals of both due process and deterrence.

Over the past decade the volume of state criminal appeals has been increasing at a rate far exceeding that of crimes, arrests, and criminal prosecutions. The rise in volume and resulting backlogs and delays have led many appeals courts to modify their procedures. Virtually every aspect of what we understand as the traditional process has been modified. The patterns of activity have been irregular, however. Although each type of modification has its adherents, we in fact know very little about these "success stories." In addition, despite parallel increases in volume, many courts have considered possible reforms, but have not undertaken any procedural changes. Hence, we thought it useful to look at the experiences of jurisdictions where reforms became settled policy to see what light they shed on the problems and prospects of appellate reform.

The project focused on three management approaches that span the spectrum of alternatives. They are (1) case management in the Illinois Appellate Court, Fourth District in Springfield, (2) staff screening for submission without oral argument in the California Court of Appeal, Third

District in Sacramento, and (3) fast-tracking procedures in the Rhode Island Supreme Court.

Based on interviews with key participants and quantitative analyses of each court's caseload, we have tried to describe how each approach satisfies the participants. Because appellate court reform has not always been successful, we believe that there are lessons to be learned, especially the relationship between each approach and the fundamental issue of the quality of justice.

This report contains the project's major written work products. In order to reach the widest possible audience, we have prepared separate papers on particular facets of the project for different groups. There is some overlap because the papers draw on the same data base. However, the following brief description highlights the content of each paper.

o Managing the Criminal Appeals Process. This paper is an overview of key aspects of the project. It will be available as a Research-In-Brief from the National Institute of Justice.

o How to Handle Criminal Appeals. This paper presents data on the caseload composition and the ways in which different approaches impact case processing times in each court. It is also published in the The Judges' Journal.

o Linking Appellate Court Reform to Incentives. Drawing from the interview data, this paper outlines a typology of incentives based on the context of first-level appeals courts. Satisfaction of these incentives

contributes to the acceptance of the management approach used in each jurisdiction.

o Administering Justice in Criminal Appeals. This paper outlines attitudes of participants, by jurisdiction, on key aspects of the appellate process -- the function of appeals, required procedures, the role of oral argument, advantages and disadvantages of alternative management approaches and the determinants of quality.

o Organizing the Criminal Appeals Process. Attitudes held by the different sets of participants -- judge, government attorney, public defender, retained counsel and appointed counsel -- are compared in terms of the functions of appeals, essential aspects of the appellate process, and the determinants of quality.

The individual papers are followed by a common set of references.

MANAGING THE CRIMINAL APPEALS PROCESS

Joy A. Chapper and Roger A. Hanson
Justice Resources
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The research reported here is supported by a grant to Justice Resources from the National Institute of Justice, although the conclusions do not necessarily reflect the policies of the Institute, neither do they represent the policies of the American Bar Association, which assisted in the research. We wish to express our thanks to Bernard Auchter, project monitor at the Institute, a distinguished advisory board of practitioners and scholars, and the judges, court staff, government attorneys and defense counsel who gave generously of their time and energy. We are most grateful.

INTRODUCTION

Over the past decade the volume of state criminal appeals has increased at a rate far exceeding that of crimes, arrests and trials (Marvell and Lindgren, 1985). The brunt of this pressure has been borne by first-level appeals courts with a mandatory jurisdiction. A number of these courts have been successful in enhancing their ability to meet their volume increases without increases in resources. These courts use a variety of procedures involving differences in the extent to which they modify the traditional appellate process and the degree of control the court exerts over the appellate process (See Wasby, 1981).

The general pattern of appellate reform is an uneven one, however. Many courts have considered making changes, often at length, but have not acted on any proposal. Other courts enter into experiments which never become institutionalized. It has become all too clear that reforms adopted in one court do not necessarily lead to the acceptance of those reforms in other locations or even their introduction (See Wasby, 1987:131).

One reason for this pattern is the persistence of questions about the effect of modified procedures on the quality of the appellate process. While methods exist to reduce appeal time, there is concern about the means by which these reductions are achieved. For example, how does a modified procedure affect an attorney's ability to present his or her arguments? Does a streamlined procedure increase the likelihood that decisions are reached without adequate information? Do modified procedures predetermine case outcomes? Prior research has paid insufficient attention to these kinds of questions.[1]

A second reason is uncertainty regarding the transferability of various reforms. Are the factors that have led to the successful introduction of reforms present in other jurisdictions? What needs to be taken into account to enhance a procedure's suitability and feasibility for other locations?

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[1] Researchers have begun to focus attention on first-level criminal appeals courts and the use of modified procedures to deal with problems of volume and delay. See, for example, Baum, 1977; Beiser, 1974; Davies, 1981, 1982; Kanner and Uelmen, 1984; Neubauer, 1985; Olson and Chapper, 1983; E. Thompson, 1980; Wold and Caldeira, 1980; and Wold, 1978. Individuals with state appellate bench experience have recognized this literature and commented on its utility and implications (R. Thompson, 1986, 1987). Hence, it will be interesting to see the extent to which basic research and practitioners' concerns influence one another in the future.

The experiences of three courts where reform procedures have become settled policies provide an opportunity to learn how basic approaches to managing the criminal appeals process can be developed while still taking into account special factors within each jurisdiction. These courts are the Illinois Appellate Court Fourth District in Springfield, the California Court of Appeal Third District in Sacramento, and the Rhode Island Supreme Court. This Research-In-Brief outlines the results and implications of research that we conducted during the last two years in these three jurisdictions.

WHAT DO THE PROCEDURES LOOK LIKE?

The three courts cover the range of alternative ways of handling criminal appeals. Springfield employs case management and affirmatively monitors compliance with its scheduling orders. Sacramento has a no-argument calendar that relies on an experienced attorney staff to screen cases. Rhode Island uses a procedure to identify appeals that can be resolved through abbreviated procedures. (A brief description of the three basic approaches and the versions used in each of the courts is set out below. For more detail, see Appendix I.)

Case management procedures are directed at reducing case processing time by setting and enforcing achievable time frames for the appeal. Springfield accomplishes this by a scheduling order indicating the due dates for the record and the parties' briefs, and the expected date for oral argument, which is available upon request of counsel.

The effect of no-argument calendars is to reduce the time judges have to spend on non-argued appeals; the time consumed prior to the completion of briefing is not affected. Case processing time may also be reduced by advancing the submission of no-argument appeals. In Sacramento, staff recommendations for submission without argument are presented to a three-judge panel which determines whether to request waiver of argument. If argument is waived, the appeal is promptly submitted to that panel for decision. All other appeals are calendared for oral argument.

Fast tracks focus on appeals that do not require full briefing. This permits a court to direct its resources to cases in which full appellate treatment is considered necessary and to accelerate the disposition of other appeals. In Rhode Island, an appeal appropriate for disposition on a show-cause calendar is identified by a single justice at a conference with counsel shortly after the filing of the record. Show-cause appeals are submitted for decision on limited written statements and argument on a motions calendar. The remaining appeals proceed to briefing and argument.

The three approaches vary in terms of how they treat essential components of the appeals process, their points of intervention, the role assigned to staff, and their objectives. It is important to recognize, however, that all three involve some type of case differentiation. Rhode Island screens early and subsequently places some cases on a show cause calendar and others on a regular calendar. Sacramento screens after the briefs are filed and then places some cases on a no-argument calendar and others on a regular calendar. Springfield's criminal case management system sets uniform time deadlines but incorporates a no-argument option for cases in which counsel do not request argument.

Yet, despite their differences, each of the three courts has accomplished the delay-reduction goals that it set out to accomplish (Chapper and Hanson, 1987b). In addition, a clear majority of the participants surveyed in each jurisdiction believed that the same quality of justice is provided to all cases (Chapper and Hanson, 1987a).

These three experiences reinforce the lesson that there is no single approach to delay reduction, and no "best" approach applicable to all courts. Appellate courts have the opportunity to choose among alternative approaches to find the one approach or combination of approaches that best accommodates local circumstances while incorporating different values and priorities.

WHAT IS THE CONTEXT INTO WHICH NEW PROCEDURES WERE INTRODUCED?

In most discussions of court reform, the emphasis has been on the "what" -- the procedures themselves and the results achieved. Too little attention has been paid to the context in which the procedures are introduced. The context is important as it shapes how individuals view the world and what they believe is important.

The dominant function of the appellate process is the review of lower court proceedings. This function, performed virtually out of public's view, is far removed from the trial court processing of evidence. Appellate courts deal primarily with issues requiring careful research and analysis; communication is largely in terms of the written word, with limited personal contact between and among the participants.

First-level appeals. Courts hearing first-level, mandatory criminal appeals are the workhorses of the state appellate court system, handling the vast majority of the growing volume of criminal appeals. The three courts examined are first-level appeals courts: the Springfield and Sacramento courts are intermediate appeals courts; the Rhode Island Supreme Court provides the state's only appellate review.

The composition of the courts' caseload -- the business before them -- varies considerably as a result of the organization of the court system and underlying state law. For example, Illinois has a unified trial court with a right of appeal to the Appellate Court. As seen in Table 1, Springfield thus has a more diverse caseload (and less serious in terms of offense and sentence severity) than Rhode Island and Sacramento, where less serious criminal cases are handled in limited jurisdiction trial courts with an appeal, de novo or on the record, to the general jurisdiction trial court. Determinate sentencing schemes in California and Illinois (and mandatory incarceration provisions in the Illinois law) generate a large volume of appeals raising sentencing issues, a situation that does not occur with indeterminate sentencing in Rhode Island. Similarly, California law permits direct appeals in guilty plea cases, resulting in a large volume of such appeals and an increased number of challenges to trial court denials of suppression motions.

Routine caseloads. Despite these differences, the three courts share an essential characteristic of the environment of first-level appeals courts: a high volume of relatively straightforward cases and a much smaller volume of more complicated ones. As a result, there is a striking similarity across courts in how judges and lawyers view their respective criminal caseloads. In each of the three courts, judges, prosecutors, and defense counsel see the majority of the caseload (the average jurisdiction-wide estimates ranged from 54% in Rhode Island to 59% in Sacramento) as "routine" rather than "complex," a distinction based largely on the novelty of the issues raised. Furthermore, the participants believe that cases can be differentiated for practical purposes and they agree that routine cases can be appropriately handled under modified procedures.

The common environment of a caseload dominated by routine appeals shapes the way the different procedures operate. Although the courts chose different approaches to handling criminal appeals, the different procedures handle roughly the same kinds of cases. In each court well over half of all criminal appeals are handled through modified procedures. In both Sacramento and Springfield roughly 70% are submitted without oral argument; in Rhode Island, about 60% are handled on the show cause calendar.

In fact, a similar percentage of virtually all categories of cases is handled under each jurisdiction's modified procedure. For example, the percentage of appeals arising from jury trial convictions resolved through modified procedures in Rhode Island, Sacramento and Springfield is 56%, 68% and 64% respectively, although this type of conviction varies considerably across the courts. Differences in the percentage of a given type of case handled under a modified procedure, where they occur, appear to be the result of the procedure itself or of the court's jurisdiction.

Table 1

Composition of Criminal Appeals [1]
(Percent of cases)

Characteristics	Jurisdiction: Rhode Island (n=127)	Sacramento (n=501)	Springfield (n=275)
Basis of Appeal			
Jury Trials	74	51	58
Court Trials	0	4	12
Pleas	0	40	8
Post Convictions	19	2	13
Other	6	3	8
Offenses			
Homicide	16	10	9
Other Crimes against Persons	45	50	26
Property	15	22	29
Driving	3	1	10
Drugs	2	10	6
Probation Revocation	11	2	8
Other	9	6	11
Issues			
Evidence	59	32	71
Instructions	20	14	23
Sentence	9	42	53
Procedure	17	12	25
Statutory Construction	4	2	4
Constitutional	26	21	34
Defective Plea	0	3	15
Other	7	3	15
Anders	0	11	3
Sentence			
Fine, Probation, Incarceration (less than 2 yrs.)	21	18	26
Incarceration (2-10 yrs.)	27	54	43
Incarceration (more than 10 yrs.)	30	24	22
Other	5	3	3
Not applicable (pretrial/interl.)	0	2	7
Missing	16	0	0

1 The data reflect closed cases in which the court made a decision on the merits. For Sacramento and Springfield, we looked at 1983 filings; 1983 and 1984 filings are used for Rhode Island because of its smaller caseload.

The general pattern is that different procedures are being applied to what appear to be substantially the same types of cases and at roughly the same rate. We believe this to be the result of the consensus with regard to the nature of the criminal caseload.[2]

A caseload characterized by a substantial number of routine appeals is probably typical of all first-level appeals courts. In the research courts, somewhat over half of the criminal calendar was perceived as routine, and a similar percentage of cases was in fact handled through modified procedures. Other courts may differ in their assessment of the precise number and the exact types of appeals appropriate for specialized handling and the degree of differentiation that they wish to undertake. It seems likely, however, that there is in every court a sizable number of routine cases and a set of acceptable procedures for handling them.

WHAT DO THE PARTICIPANTS GET OUT OF IT?

Impact on case processing time. In all three courts, alternative approaches reduced the elapsed time from the filing of the notice of appeal to final disposition. The "box-and-whisker" charts in Figure 1 illustrate some of the approaches' effects on closed cases in which the courts made decisions on the merits. The box represents the range of cases falling between the 25th and the 75th percentiles. The horizontal line inside the box represents the 50th percentile (or median). The whisker represents an outlier; here it represents the case at the 90th percentile.

In Springfield, case management procedures resulted in an intended uniformity of the entire calendar, as demonstrated by the squatness of the boxes. Disparity was minimized, as evidenced by the relatively small difference between the fastest and the slowest cases. In addition, because the time frames in the scheduling order tracked the times provided by court rules and the court enforced those deadlines, differences in times between argued cases and those decided without argument were modest. This is seen by the similarly shaped boxes for the two sets of cases.

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[2] The similar rates of cases handled under modified appellate procedures among the three jurisdictions despite observable differences in court organization, jurisdiction, state sentencing laws and basic management approaches parallel key trial court activities. A basic finding from Eisenstein's et al's study of nine trial court communities is that the rate of guilty pleas is nearly the same despite differences in demographic patterns, crime rates, and court procedures. Moreover, the going rates for sentences, according to Eisenstein et al, emerge from a broad consensus among the participants (Eisenstein, 1988).

Figure 1

FIGURE 1a

CASE PROCESSING TIMES IN SPRINGFIELD

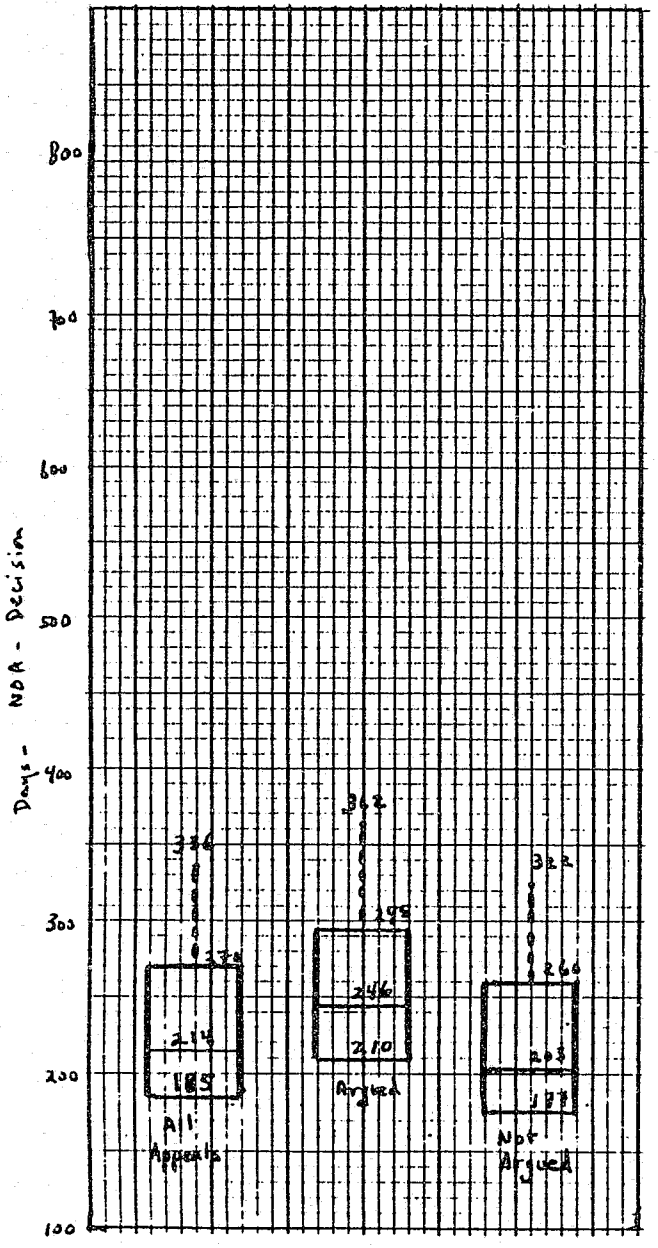


FIGURE 1b

CASE PROCESSING TIMES IN SACRAMENTO

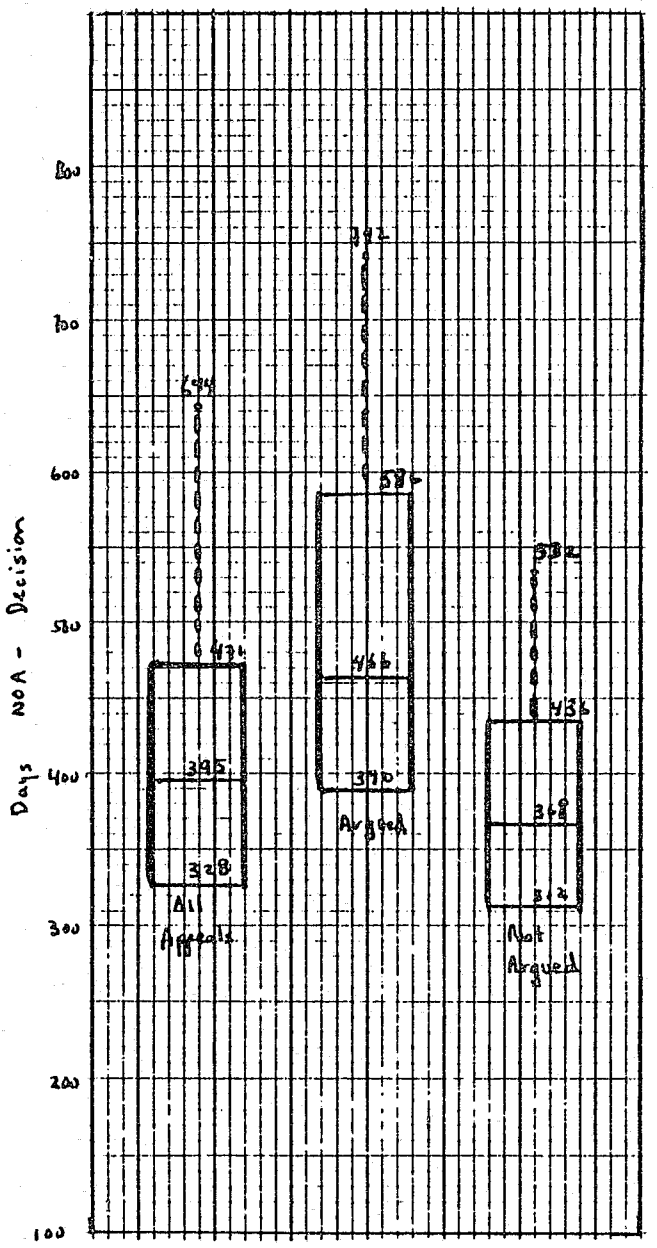
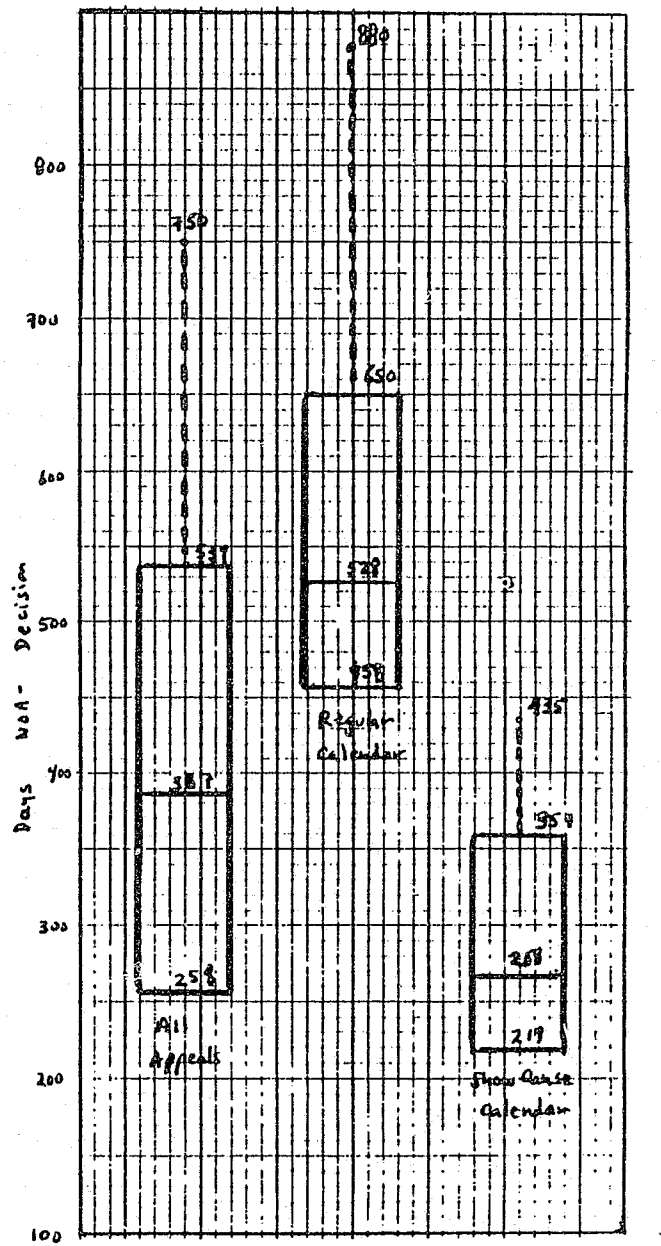


FIGURE 1c

CASE PROCESSING TIMES IN RHODE ISLAND



Finally, case management achieved the objective of preventing cases from inadvertently taking an excessive amount of time. This is seen by the very short whiskers, which indicates that the slowest cases do not take much longer than most of the other cases.

In Sacramento, differentiated handling through a no-argument calendar moved the non-argued cases in a more efficient manner, permitting the court to devote the time savings to argued cases. As a result, one sees that argued cases have a considerably greater median time, a more elongated box, and a longer whisker than the non-argued cases. However, although the court monitored case preparation on an individual basis, there was a fairly substantial range of times within each of the two calendars: Each box is elongated and the whiskers are long.

A key objective in Rhode Island was to reduce overall appeal times by accelerating the disposition of appeals directed to the show cause calendar. The chart for Rhode Island illustrates the effects of the sharp procedural differentiation. There was a considerable difference between the median times for the regular calendar and the show causes cases. The procedure was also effective in achieving uniform disposition times for the show cause cases; this is seen by the much smaller box and the shorter whisker for the show cause cases than those on the regular calendar.

The three courts illustrate three different ways to reduce appeal time. Case data show that alternative procedures reduced appeal time for appeals handled under them; overall appeal time for all courts also dropped. As the procedures affected different parts of the total appellate process and operated in different ways, their effects vary considerably from court to court. Each court adopted a procedure which addressed the problems it found most troublesome.

Impact on quality. Management approaches are not forced upon a jurisdiction; they are put into place because they meet the aspirations of active, reform-oriented judges and attorneys. New procedures become institutionalized because they meet the participants' working criteria of how cases are best handled. In each jurisdiction, a large majority of participants is satisfied that all cases, including those handled under modified procedure, receive the same quality of justice (65% in Rhode Island, 84% in Sacramento, and 71% in Springfield). What accounts for these levels of satisfaction that all cases receive the same quality of justice? We attempted to understand how and why that occurred through tapping the views of the judges and attorneys on the effects of their respective procedures.

The interviews strongly confirm that satisfaction with the quality of justice is not strongly related to systemic performance. Although all three approaches reduce appeal time, delay reduction is not the only or

even the ultimate effect the participants credited. In fact, individuals' views concerning an approach's impact on case processing time, efficiency, and productivity bear almost no relationship to their assessment of its impact on the quality of justice.

These observations are drawn from the data in Table 2. This table presents correlations between the participants' views on what the approach in their court is accomplishing and their views on the quality.[3] We asked the participants first to indicate how the approach affected systemic performance, such as case processing time (items 1, 2, and 3), efficiency (items 4 and 5), and productivity (items 6 and 7), as well as issues that we chose to call nonsystemic factors (items 8 through 12). As seen in the table, the nonsystemic factors are much greater than those associated with case processing time, efficiency, and productivity.[4]

Basically, the evidence tells us that if the participants see a modified procedure as allowing more time for complex cases (item 8) and not creating an affirmance track (items 9 through 12), they are satisfied that cases treated under the procedure receive the same quality of justice as those on the regular calendar. Moreover, these jurisdiction-wide patterns hold true for the different positions; judges, court staff, government attorneys, public defenders, retained counsel, and appointed counsel share these working criteria (See Hanson and Chapper, 1987a, 1987b).[5]

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[3] The gamma coefficients measure the association between pairs of attitudes. The higher the coefficient, the stronger the association between the attitudes. Our benchmark criteria are that coefficients between 0 and $\pm$ .3 are weak, those between $\pm$ .31 and $\pm$ .6 are moderate, and those above $\pm$ .6 are strong. A positive coefficient means that if an individual agrees with one proposition, he or she agrees with the other one; a negative coefficient means that if an individual agrees with one proposition, he or she disagrees with the other one.

[4] As an illustration of the lack of a predictable relationship between systematic factors and quality, the data indicate that if two participants perceive the approach in their court reducing overall case processing time, one is likely to be satisfied that the same quality of justice is rendered to all cases and one is likely to be dissatisfied.

[5] These findings are consistent with a general theory of public organizations developed by Lipsky (1980). According to this theory, participants in public organizations, such as courts, prisons, jails, welfare agencies, and so forth, view quality in terms of their individual caseloads and clients. Most find it difficult to rise above their immediate responsibilities and relate their work to measures of performance such as efficiency and productivity, which require a system-level understanding. On the other hand, the theory predicts that court participants relate to

Table 2

Correlates of the Participants' Satisfaction
That All Cases Receive the Same Quality of Justice[3]
(Gamma Coefficients)

	Rhode Island N = 18	Sacramento N = 63	Springfield N = 45
The approach in your court. . .			
Case Processing Time[1]			
1. Reduces case processing time for all cases	-.11	.39	.40
2. Reduces case processing time for show cause cases/cases submitted without oral argument	.16	.29	.21
3. Reduces case processing time for regular calendar/ argued cases	-.11	.42	.23
Efficiency[2]			
4. Reduces time judges are required to devote to individual cases	-.36	.05	.16
5. Reduces time attorneys are required to devote to individual cases	.44	.20	.01
Productivity[2]			
6. Allows attorney to handle more cases in the same amount of time	.03	.35	.08
7. Allows the Court to handle more cases in the same amount of time	.51	.10	.29

Table 2 (cont.)

Non-Systemic Criteria[1]	Rhode Island N = 18	Sacramento N = 63	Springfield N = 45
8. Allows the Court to spend time on complex cases.	.79	.46	.64
9. Creates the appearance of second class justice	-.91	-.84	-.30
10. Makes it more difficult to uncover reversible errors	-.70	-.78	-.21
11. Causes the Court's decisions to be decided without sufficient information	-.86	-.70	-.36
12. Makes the outcome a foregone conclusion	-.70	-.61	-.64

1 (For Rhode Island and Sacramento) Procedures in most appellate courts involve some differentiation among criminal cases. In your court, for example, some cases are (directed to summary disposition procedures/decided without oral argument)...

(For the Appellate Court of Illinois) Illinois is one of the few appellate courts to enter a scheduling order in every appeal...

One possible impact of this procedure is on case processing time- the time from NOA to decision .. please indicate the extent you agree or disagree that the procedure in your court affects case processing time in each of the following ways.

2 Obviously, case processing time is not the only aspect of the appellate process affected by a given procedure... Please indicate the extent to which you agree or disagree that the procedure in your Court produces the following effects.

3 Based on your experience, how satisfied are you that cases (handled under the show-cause procedures/submitted without argument) received the same quality of justice as cases on the regular calendar that are argued?

Hence, what is most important to the judges and lawyers in every court is that modified procedures enable them to devote more time to the complex appeals while not jeopardizing the adequacy of review for the routine cases. Because judges and attorneys believe that working distinctions can be made between routine and complex cases, they want procedures to allow them to devote the time that is appropriate for both types of cases.

The lack of sharp differences between positions in regard to quality holds true for one other vital issue: the aspects of the criminal appeals process that the participants believe to be required in every case. If some participants strongly believe that full-blown procedures are necessary in every case and others strongly believe that modified procedures are appropriate, this disagreement inhibits experimental tests of proposed changes. The conventional wisdom is that views of this topic do diverge, in accordance with the conflicting goals of different positions. As a result, when a proposal is brought up for consideration, the discussion may terminate because it is assumed that one or more sets of participants will find it unacceptable.

Contrary to this perspective, our interview data reveal very few statistically significant differences on what judges, government attorneys, public defenders, retained counsel, and appointed counsel deem to be required (Hanson and Chapper, 1987b). Participants in the three jurisdictions were asked to agree or disagree whether full, written briefs, oral argument, panel conference, a written decision, and a publishable opinion were required in every case. The only major area of disagreement finds both government attorneys, and all types of defense counsel more strongly agreeing than do judges that written decisions are essential. An explanation of the court's decision is uniformly considered the least dispensable aspect of the process as far as attorneys are concerned. However, the widespread consensus on the other aspects suggests that the traditional process is much more modifiable than the conventional wisdom suggests. Thus, the implication of this and other findings is that the process is open to change, especially if new alternatives provide the court and counsel with more time for complex cases and the assurance that the alternative avoids even the appearance of creating an affirmance track.

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issues such as whether the outcome of a case is a foregone conclusion or whether it is more difficult to uncover reversible error when a case is expedited. That is, judges and attorneys know from their own experience whether a modified procedure is an affirmance track.

CONCLUSION

First-level appeals courts with a mandatory criminal jurisdiction, despite variations in caseload composition, have caseloads that are heavily routine. Although they use different procedures, they differentiate cases in much the same way: different procedures handle substantially the case kinds of cases.

The successful experiences in these courts confirm the proposition that appellate delay is not inevitable and that there is no single best approach for every court. Appellate courts have the opportunity to choose among alternative approaches and to find the one approach or combination of approaches that best addresses their particular problems.

The experiences of these three courts provide lessons for those seeking to implement delay reduction programs. The evidence indicates that the immediate objectives of delay reduction are not responsive to the incentives associated with institutionalized programs. Increased productivity, greater efficiency, and reduced case processing time, are not the ultimate criteria that individual judges and attorneys rely on in assessing the merits of alternative approaches to managing the appellate process.

The reality of the appellate court context is a growing caseload with a wide diversity of cases with different requirements and demands. This context gives rise to a particular combination of intellectual desires, managerial expectations, and standards of quality that emphasizes the importance of permitting the participants to allocate their time among these cases in a way that allows them to devote the time they believe appropriate to each.

One of the reasons why courts have been unwilling to consider or adopt new procedures has been the belief that the changes would be opposed by the bar. Evidence from this research, however, indicates that judges, government attorneys, and defense counsel do not hold significantly different views toward the requirements of the appellate process. Moreover, the participants share common criteria in assessing the impact on the quality of justice of the basic approach to handling criminal appeals. This suggests that when appellate courts consider making adjustments in their procedures, they should not assume, without at least some exploratory evidence, that changes are automatically unacceptable.

Judges are in the position to initiate discussions concerning reforms and to communicate their ideas to the attorneys. They have the responsibility of drawing attention to problems of volume and delay and initiating the search for possible solutions. Judges, however, must be sensitive to everyone's qualitative concerns about the impact of delay reduction procedures. They should be able to demonstrate that new procedures will

not establish affirmance tracks and will permit participants to allocate their time as warranted.

LOOKING AHEAD

The implications of the court research, of course, should be strengthened by further inquiry. By building on this first effort to measure participants' attitudes quantitatively both the theory and management of the state criminal appeals process can be more firmly grounded in reality. From our perspective, the next wave of systematic research flows in the following directions:

o Generalization of the current research findings. Greater confidence in our results and their implications can be achieved by verifying this study's working hypotheses in other courts using different versions of case management, decision without oral argument, and fast tracking. That is, future researchers need to determine how well the present findings can be generalized to other courts that report some success in dealing with problems of delay through the adoption of some procedural innovation.

o Refined measurement of incentives. Whereas the current research conceptualizes a typology of incentives that underlay the institutionalization of planned change, the supporting evidence is tentative. Yet, because incentives are widely acknowledged to be the sine qua non of successful reforms, future researchers should concentrate on refining the measurement of incentives.[6]

o Organizational theory. The current research uses the theory of public organizations developed by Lipsky (1980) to understand the attitudes of participants. It is reasonable to extend Lipsky's theory in order also to understand how the organizational structure of appellate courts affects their work processes and decisions.

o Performance assessment. Although the participants in the three research sites are satisfied that the approach in their court provides the same quality of justice to all cases, this measure needs to be complemented by a broader range of performance indicators. Past and ongoing research has analyzed performance standards for trial courts; such work is equally needed at the appellate level.[7]

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[6] Future studies can be guided fruitfully by other NIJ-sponsored research, such as that conducted by Thomas Church and Milton Heumann (1987) on incentives in trial court delay reduction.

[7] Research on trial court performance standards is underway at the National Center for State Courts with the support of the Bureau of Justice Assistance. Parallel work is needed to determine the extent to

o Outcomes. The issue of reversals in criminal appeals deserves examination in light of the participants' aversion to affirmance tracks. We have only limited information on the wide range of possible outcomes when a case is reversed and virtually no information on the nature of the error or its surrounding circumstances. Systematic research is needed to expand our knowledge of this crucial indicator of what appellate courts do and to suggest how some errors may be avoided through improved trial court practices.

Future research has the promising potential of not only increasing our theoretical and applied knowledge of appellate courts, but it can contribute to our understanding of courts in general. We all need to know which generalizations hold true for both trial and appellate courts and which ones apply to only one level. A unified and useful theory of courts, however, can only be achieved by pursuing the frontiers of research.

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which procedural innovations adopted by many appellate courts several years ago, such as increased staff involvement, is related to efficiency, productivity and quality of decisions, as measured by objective indicators of output. The relationship between outcome measures and how courts are organized into regions, divisions, or panels, also needs to be examined.

Appendix 1

Appeals Procedures in Three Courts

Case management. Management procedure are directed at reducing case processing time by setting achievable time frames for the appeal. This is typically accomplished by a scheduling order which sets the dates on which events are to occur. A court may choose time frames for the entire period from notice of appeal to disposition or only between certain stages of the appeal (e.g., notice of appeal through briefing).

Case management procedures were adopted in 1977 for both criminal and civil appeals by the five-judge Appellate Court in Springfield. Based on information provided in a form docketing statement filed by appellant shortly after an appeal is filed, the court enters a scheduling order indicating the due dates for the record, the parties' briefs, and the expected date for oral argument. In criminal appeals the time permitted for record preparation and briefing is the time provided by court rules. Cases are scheduled for argument 45 to 60 days after the close of briefing. Time deadlines are strictly enforced. The court's affirmative case management operates in a context in which oral argument is available upon request of counsel (usually made in the brief). Decisions on the merits are either by published opinions or unpublished orders; the decision to publish is made independently of whether the appeal was argued.

Submission without oral argument. Approximately 35 state appeals courts submit at least some of their appeals without oral argument. The effect of "no-argument" calendars is to reduce the time judges have to spend on non-argued appeals. Case processing time may also be reduced by advancing the submission of no-argument cases. However, the time consumed prior to the completion of briefing is not affected. Although there is great variation in the specific procedures used, a common practice involves screening to identify these cases and their subsequent preparation by central staff attorneys rather than by the judges' individual law clerks.

In the seven-judge Sacramento court, one of the six regional districts of the state's intermediate appellate court, the current "routine disposition appeal" procedure dates from the early 1970s. Each appeal is reviewed after briefing. The initial screening is done by the principal staff attorney who assigns appeals he believes will not require oral argument to staff attorneys for research. These appeals are presented to a three-judge panel. If, after discussion, the panel concludes that oral argument is not necessary, counsel are asked to waive argument. Appeals which do are submitted for decision to the panel which requested the waiver. All other appeals are scheduled for oral argument. Decisions on the merits are by either published or unpublished opinion, a determination made independently of the argument/no-argument decision.

Fast-Track procedures. Unlike case management procedures and the no-argument calendar, fast tracks focus on appeals that do not require full briefing. By differentiating appeals early, cases susceptible to acceleration can be placed on a separate track calling for modified preparation and abbreviated time frames. This permits a court to direct its resources to cases in which full appellate treatment is considered necessary; for the other cases, shortened time frames can sharply reduce case processing time and the time required to be spent on an appeal by the court and counsel.

The five-member Rhode Island Supreme Court adopted its show-cause calendar for criminal appeals in 1981. The distinctive feature of court practice is a prebriefing procedure triggered by the filing of the lower court record. Appellant subsequently files a statement of up to five pages summarizing the issues presented in the appeal; filing by appellee is optional. A justice then holds a conference in each appeal, the outcome of which is an order directing its subsequent handling. Cases the justice concludes do not warrant full briefing are set for hearing on a show cause calendar and are argued before the full court. Each side may file a supplemental statement of up to ten pages. Show cause dispositions, which require unanimity, generally result in a one-page order. The remaining appeals proceed to briefing and argument to the entire bench. Decisions in the briefed appeals are by published opinions.

How to Handle Criminal Appeals

by

Joy A. Chapper and Roger A. Hanson
Justice Resources

The research reported here is supported by a grant from the National Institute of Justice, although the views expressed do not necessarily represent the policies of the Institute. The authors wish to thank the appeals court, court staff, and appellate bar in Rhode Island, Sacramento, and Springfield. This research clearly would not have been possible without their cooperation and support. We also acknowledge helpful comments received from Bernie Auchter, John Cariotto, Honorable Winslow Christian, Dan Hall, Honorable Thomas Kleinschmidt, Honorable Roselle Pekelis, David Price, and Barbara Smith and the role of Katherine Wegner in preparing this article.

Introduction

The contemporary trend in criminal appeals is extraordinary. Nationwide figures indicate that the number of appeals is doubling every ten years, a rate of increase greater than changes in the incidence of crime, arrests, and trials over the same time period. (Marvell and Lindgren, 1985).

Expansion of caseload pressures on all the key participants in the appellate process -- judges, government attorneys, defense counsel, and court staff -- heightens concern over the timely resolution of criminal appeals. The deterrent effect of criminal sanctions is undermined by lengthy appeals which postpone the finality of trial court convictions (Carrington, et. al, 1976). Justice is compromised when reversals are reached after defendants have been incarcerated for long periods of time (Christian, 1971). Finally, because criminal appeals generally are given priority in scheduling, the slower the pace of criminal appeals, the greater the backlog in the also increasing volume of civil appeals.

There is no single approach to delay reduction. The fact that delays in the processing of appeals undermine justice is no prescription for a single approach to delay reduction. As the National Center for State Courts demonstrated (Martin and Prescott, 1981), "delayed" courts often do not resemble one another. That is, courts with similar overall processing times can have quite different elapsed times at different stages of the appeals process -- record preparation, briefing, awaiting submission, and pending decision.

Additionally, even in jurisdictions with the same time patterns, the participants may not necessarily agree on what the problem is. Is the problem inadequate productivity? Or is it inefficiency? The former suggests the need for resolving more cases, overall, in the same amount of fixed time (e.g. more opinions per month) whereas the latter suggests the need for reducing the amount of time spent in resolving individual cases. Finally, judges and attorneys in different jurisdictions may incorporate values differently in their plans to reduce delay. For example, to ensure the visibility of the court's decision-making process one court might preserve oral argument for most cases and another might publish a high percentage of its opinions.

The value in comparing different approaches. There is a great deal to be learned about the prospects and problems of introducing changes in appeals courts by selectively focusing on jurisdictions that have reduced delay.[1] Part of our work over the past two years has been to examine

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[1] Courts that have adopted a new approach to handling criminal appeals and have accomplished whatever goals they set out to accomplish are worthy of examination because the landscape is cluttered with failed

three such courts. They are the Illinois Appellate Court Fourth District in Springfield, the California Court of Appeal Third District in Sacramento and the Rhode Island Supreme Court.

These courts span the spectrum of alternative ways of handling state criminal appeals. Springfield employs case management and affirmatively monitors compliance with its scheduling orders. Sacramento has a no-argument calendar that relies on an experienced court staff to screen cases it believes do not require oral argument. Rhode Island uses a fast track procedure to differentiate cases requiring full briefing, oral argument, and published opinion from those that do not.

These courts provide an opportunity to learn how approaches can be developed both to meet different facets of delay and take into account special factors within each jurisdiction. Hence, the objective of this article is to (1) describe the courts' experiences and to (2) suggest how other courts might build on that history. Our findings are based on systematic interviews with most of the key participants -- judges, government attorneys, defense counsel, and court staff in all three jurisdictions -- and a close examination of individual case files.[2]

Three approaches to handling criminal appeals.

The three basic approaches under consideration vary in terms of how they treat essential components of the appeals process, their points of intervention, the role assigned to staff, and their objectives. Furthermore, each court has customized its approach so that even those courts using an approach similar to one of the three research sites, will not look exactly the same.

Case management. Management procedures are directed at reducing case processing time by setting achievable time frames for the appeal. This is typically accomplished by a scheduling order which sets the dates on which events are to occur. A court may choose time frames for the

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attempts at reform. This includes courts which consider making changes, often at length, but fail to act on any proposal and courts which enter into experiments which never become institutionalized. For this reason, jurisdictions where most of the participants are relatively satisfied with an approach offer a basis for learning more about what seems to work and why.

[2] One important caveat is that this article is not intended to evaluate the relative effectiveness of one manner of handling appeals over another. Because we do not believe that there is a single best approach, this article should not be interpreted as pronouncing one method as the correct one for every court.

entire period from notice of appeal to disposition or only between certain stages of the appeal (e.g., notice of appeal through briefing).

Case management procedures were adopted in 1977 for both criminal and civil appeals by the five-judge Appellate Court in Springfield. Based on information provided in a form docketing statement filed by appellant shortly after an appeal is filed, the court enters a scheduling order indicating the due dates for the record, the parties' briefs, and the expected date for oral argument. In criminal appeals the time permitted for record preparation and briefing is the time provided by court rules. Time deadlines are strictly enforced. The court's affirmative case management operates in a context in which oral argument is available upon request of counsel (usually made in the brief). Decisions on the merits are either by published opinion or unpublished orders; the decision to publish is made independently of whether the appeal was argued.

Submission without oral argument. Approximately 35 state appeals courts submit at least some of their appeals without oral argument (Roper et al., 1985). The effect of "no-argument" calendars is to reduce the time judges have to spend on non-argued appeals. Case processing time may also be reduced by advancing the submission of no-argument cases. However, the time consumed prior to the completion of briefing is not affected. Although there is great variation in the specific procedures used, a common practice involves screening to identify these cases and their subsequent preparation by central staff attorneys rather than by the judges' individual law clerks.

In the seven-judge Sacramento court, one of six regional districts of the state's intermediate appellate court, the current "routine disposition appeal" procedure dates from the early 1970s. Each appeal is reviewed after briefing. The initial screening is done by the principal staff attorney who assigns appeals he believes will not require oral argument to staff attorneys for research. These appeals are presented to a three-judge panel. If, after discussion, the panel concludes that oral argument is not necessary, counsel are asked to waive argument. If argument is waived, the appeal is submitted for decision to the panel that requested the waiver. All other appeals are scheduled for oral argument. The court later decides whether to publish the opinion in a case.

Fast-Track procedures. Unlike case management procedures and the no-argument calendar, fast tracks focus on appeals that do not require full briefing. By differentiating appeals early, cases susceptible to acceleration can be placed on a separate track calling for modified preparation and abbreviated time frames. This permits a court to direct its resources to cases in which full appellate treatment is considered necessary; for the other cases, shortened time frames can sharply reduce case processing time and the time required to be spent on an appeal by the court and counsel.

The five-member Rhode Island Supreme Court adopted its show-cause calendar for criminal appeals in 1981. The distinctive feature of court practice is a prebriefing procedure triggered by the filing of the lower court record. Appellant subsequently files a statement of up to five pages summarizing the issues presented in the appeal; filing by appellee is optional. A justice then holds a conference in each appeal, the outcome of which is an order directing its subsequent handling. Cases the justice concludes do not warrant full briefing are set for hearing on a show cause calendar and are argued before the full court. Each side may file a supplemental statement of up to ten pages. Show cause dispositions, which require unanimity, generally result in a one-page order. The remaining appeals proceed to briefing and argument to the entire bench. Decisions in the briefed appeals are by published opinions.

It is important to recognize that all three approaches involve some type of case differentiation and handle some cases under modified procedures. Rhode Island screens early and subsequently places some cases on a show cause calendar and others on the regular calendar. Sacramento screens after the briefs are filed and then places some cases on a no-argument calendar and others on the regular calendar. Springfield's criminal case management system sets uniform time deadlines but incorporates a no-argument option for cases in which counsel do not request argument.

The context for court reform.

In most discussions of court reform, the emphasis has been on the "what" -- the procedures themselves and the results achieved. Neglected in this emphasis are two types of factors in which the procedures are introduced. The first type consists of court organization, jurisdiction, and caseload composition. Differences along these dimensions are what make appellate courts look different. The second is the court's working environment.

Concerning the first type of contextual factors, the three courts illustrate the wide diversity that exists in courts of appeal. The Springfield and Sacramento courts are intermediate appeals courts; the Rhode Island Supreme Court provides the state's only appellate review. But even as courts of first review, they deal with quite different caseloads as a result of the organization of each state's court system and underlying state law. The state of Illinois, for example, has a unified trial court from which there is a right to appeal to the Appellate Court. Springfield thus has a more diverse caseload (and less serious in terms of offense and sentence severity) than Rhode Island and Sacramento where less serious criminal cases are handled in a limited jurisdiction trial court with an appeal, de novo or on the record, to the general jurisdiction trial court.

Determinate sentencing schemes in California and Illinois (and mandatory incarceration provisions in the Illinois law) generate a large volume of appeals raising sentencing issues, something that does not occur in Rhode Island which has indeterminate sentencing. Similarly, California law permitting direct appeals in guilty plea cases results in a significant number of challenges in Sacramento to the trial court's denial of suppression motions. A snapshot of what constitutes a criminal appeal in each court is seen in Table 1.[3]

The three courts chose different approaches to handling criminal appeals, which was not surprising since they are structured differently. It is surprising to find that the courts all differentiate cases in much the same way. This is probably due to their common working environments. An essential characteristic of the environment surrounding first-level appellate courts is that they are the workhorses of state appellate systems especially in the area of criminal appeals. They are confronted with a high volume of relatively straightforward cases and a smaller volume of more complicated ones. As a result, there is a striking similarity across courts in how judges and lawyers view their respective criminal caseloads. In each of the three courts, the majority of the caseload (ranging from a low of 54% in Rhode Island to a high of 59% in Sacramento) is seen, on average, as "routine" rather than "complex," a distinction based largely on the novelty of the issues raised. However, cases involving single issues, non-controversial facts, or sentencing questions are other identifiable characteristics of routineness.

Although prior studies (Beiser, 1974; Wold, 1978) have observed that routineness is a fact of appellate court life, we believe that this fact implies that different procedures handle roughly the same kinds of cases. Evidence from the three courts supports this view: In each well over half of all criminal appeals is handled through modified procedures. In both Sacramento and Springfield roughly 70% are submitted without oral argument. In Rhode Island, about 60% are handled on the show cause calendar.

What is most revealing is that despite variation in caseload composition, a similar percentage of virtually all categories of cases is handled under each jurisdiction's modified procedure. For example, the percentage of appeals arising from convictions following jury trials that are resolved through modified procedures in Rhode Island, Sacramento and Springfield is 56%, 68% and 64% respectively, although this type of conviction varies considerable across the courts. Similarly, the respective percentages for appeals involving crimes against persons that are processed under a modified procedure are 64%, 70%, and 73%.

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[3] The data reported in this article reflect closed cases in which the court made a decision on the merits. For Sacramento and Springfield, we looked at 1983 filings; 1983 and 1984 filings are used for Rhode Island because of its smaller caseload.

TABLE 1

Relative Frequency of Certain Characteristics Among Criminal Appeals
(Percent of cases)

Characteristics	Jurisdiction: R h o d e Island (n=127)	Sacramento (n=501)	Springfield (n=275)
Basis of Appeal			
Jury Trials	74	51	58
Court Trials	0	4	12
Pleas	0	40	8
Post Convictions	19	2	13
Other	6	3	8
Offenses			
Homicide	16	10	9
Other Crimes against Persons	45	50	26
Property	15	22	29
Driving	3	1	10
Drugs	2	10	6
Probation Revocation	11	2	8
Other	9	6	11
Issues			
Evidence	59	32	71
Instructions	20	14	23
Sentence	9	42	53
Procedure	17	12	25
Statutory Construction	4	2	4
Constitutional	26	21	34
Defective Plea	0	3	15
Other	7	3	15
Anders	0	11	3
Sentence			
Fine, Probation, Incarceration (less than 2 yrs.)	21	18	26
Incarceration (2-10 yrs.)	27	54	43
Incarceration (more than 10 yrs.)	30	24	22
Other	5	3	3
Not applicable (pretrial/interl.)	0	2	7
Missing	16	0	0

Where there are differences in the percentage of a given type of case handled under a modified procedure, they appear to be the result of the procedure itself, or the court's jurisdiction. For example, Rhode Island's lower percentage of cases raising constitutional issues that is handled by modified procedures (41% as opposed to 59% in Sacramento and 62% in Springfield) may reflect the concerns of the single-level appeals court. This and the earlier screening may also explain Rhode Island's lower percentage of homicide cases handled by modified procedures (20% as opposed to 36% and 59%). The general pattern, nonetheless, is that different procedures are being applied to what appear to be substantively the same types of cases and at roughly the same rate. We believe that it is the similarity in the participants' views of the criminal caseload--some are seen as routine and some are complex -- that accounts for this situation. Our interviews corroborate this interpretation. Judges and attorneys in all three jurisdictions defined the cases handled under modified procedures (i.e., show cause or no argument) in essentially the same way as they defined routine cases.

The effects of the three approaches.

Briefing and Court Decisions. Based on the evidence that case management, submission without argument, and fast-track approaches differentiate roughly the same types of cases, our working hypothesis is that briefing by attorneys and the nature of the court's decisions are parallel in the three courts. The rationale is that if the cases selected for full (or modified) review are essentially similar, then attorneys and judges treat each set of cases similarly. Measurable aspects of attorney and judicial activities are the lengths of briefs and opinions (in pages). The prediction that the lengths will be similar across jurisdictions is tested against data presented in Table 2.

As hypothesized, the brief lengths (both appellants and appellees) are nearly identical across the three sets of fully briefed and argued cases. Affirmance rates constitute additional evidence to support the proposition that the procedures are treating like cases alike.

Our interpretation of these data is that routineness exercises a powerful influence in what appellate courts do despite good reasons they each have for selecting one procedural approach over another. Appellate courts treat criminal cases in much the same way although they choose quite different routes to resolving them.[4] On the other hand, alternative

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[4] In other research related to the study of three approaches to criminal appeals (See Chapper and Hanson, 1987), we examined how and why cases are placed on a regular calendar or under some modified procedure. Contrary to the intellectual critics of appellate courts (e.g.

Table 2

Comparison of the Effects of Different Appellate Court Procedures on Briefing and Court Decisions

Jurisdiction

	Rhode Island		Sacramento		Springfield	
	Regular Calendar (n=50)	Show Cause Calendar (n=8)	Argued (n=162)	Submitted Without Argument (n=342)	Argued (n=83)	Submitted Without Argument (n=192)
Average Brief Length						
Appellant	28.7	N.A.	27.7	13.8	26.4	17.8
Appellee	25.5	N.A.	28.4	12.2	21.1	15.6
Average Opinion Length	12.6	10.8	15.3	6.4	9.7	5.9
Affirmance Rate (Fully Affirmed)	62%	71%	63%	82%	63%	80%

approaches affect the length of case processing time because they build in different deadlines and focus on different stages of the process.

Springfield. Motivating factors behind Springfield's adoption of its case management procedures in 1977 included an average appeal time of 23 months and the embarrassment of appeals "falling through the cracks" in the court as well as in attorneys' offices (Craven and Appleton, 1979). The docketing statement provided the information and the scheduling order the vehicle the court needed to assert control over its caseload. Case management was combined with an existing no-argument calendar, determined by attorneys when they declined to request oral argument. By 1979 average appeal time had been reduced to under eight months, a pace which has been maintained despite increases in workload.

The "box-and-whisker" chart in Figure 1 illustrates some of the approaches' effects on the elapsed time from filing to final disposition. This technique, used in trial court research (Ryan et al., 1981), shows the entire range of times and conveys more information than numbers alone. The box represents the range of cases falling between the 25th and the 75th percentiles. The horizontal line inside the box represents the 50th percentile. The whisker represents an outlier; here it represents the case at the 90th percentile.

As shown in the chart, case management procedures resulted in an intended degree of uniformity of the entire calendar, as demonstrated by the squatness of the boxes. Case management, which is supposed to minimize disparity in processing times, is successful as evidenced by the relatively small difference between the fastest and the slowest cases. In addition, because the time frames in the scheduling order tracked the times provided in court rules and the court enforced those deadlines, differences in times between argued cases and those submitted without argument are modest. This is seen by the similar shaped boxes for the two sets of cases. Finally, case management achieves the objective of preventing cases from inadvertently taking an excessive amount of time. This is seen by the very short whiskers, which indicates that the slowest cases do not take much longer than most of the other cases.

Sacramento. The Court's current "routine disposition appeal" procedure was developed in the early 1970s in order to permit the court to respond to an increasing volume of cases without an increase in judicial resources. Although the court saw no increases in judicial positions

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Davies, 1981, 1982), we found no evidence that the modified procedure was seen as an affirmance track in any of the three jurisdictions. By an affirmance track, we mean that a procedure ensures that reversible error is not likely to be found, thereby minimizing the overturning of convictions especially in serious cases.

Figure 1

FIGURE 1a

CASE PROCESSING TIMES IN SPRINGFIELD

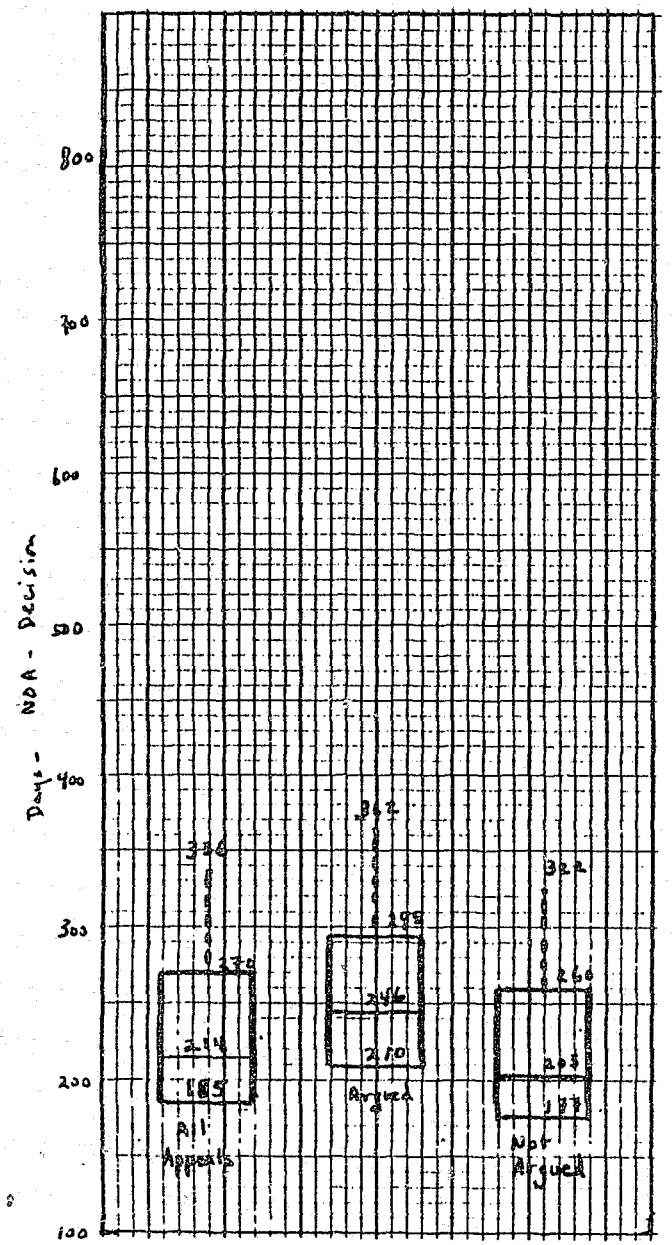


FIGURE 1b

CASE PROCESSING TIMES IN SACRAMENTO

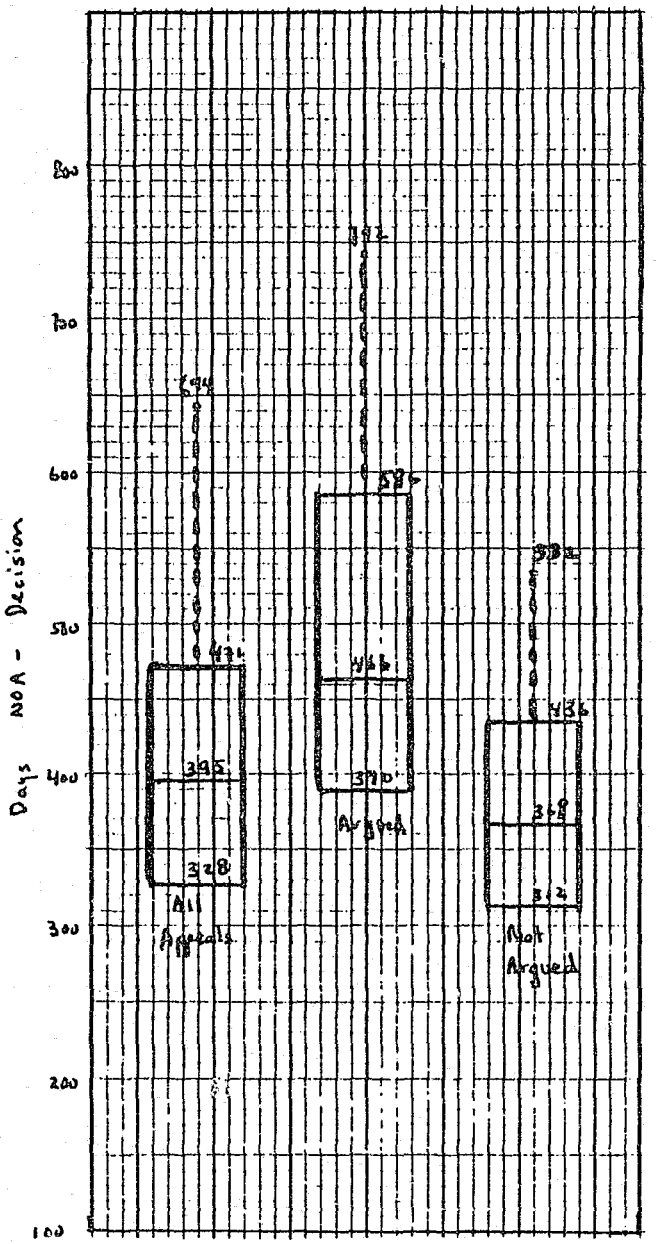
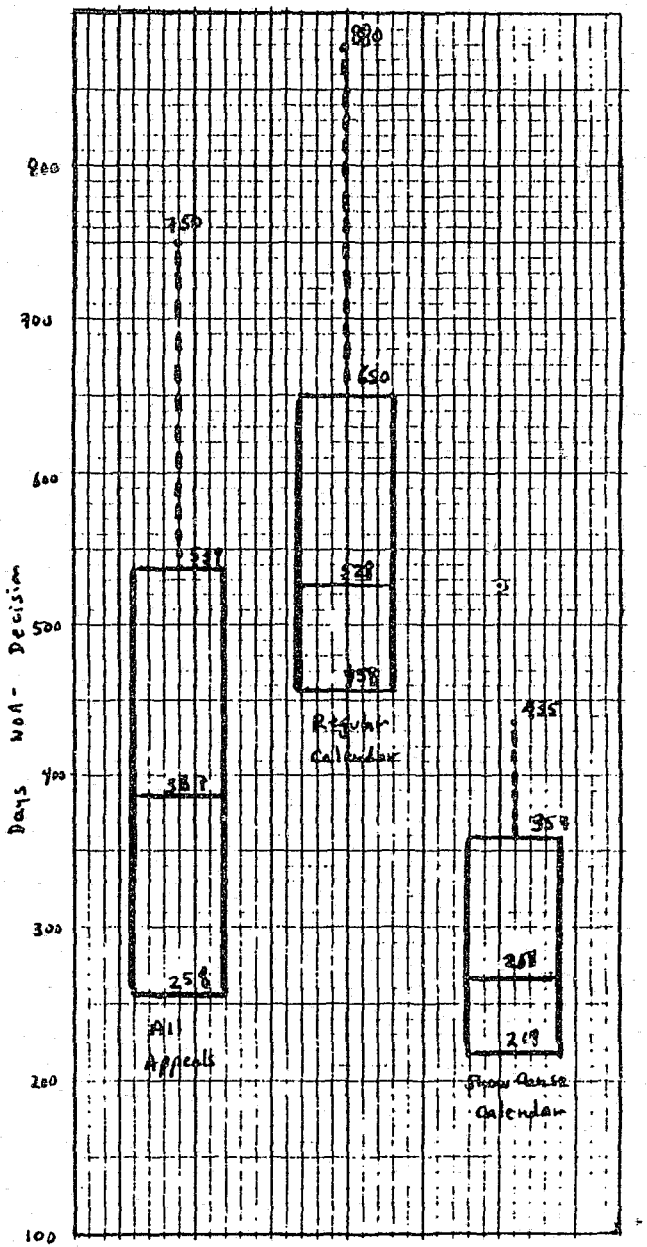


FIGURE 1c

CASE PROCESSING TIMES IN RHODE ISLAND



between 1970-1985 case processing time remained stable and criminal case backlog did not develop.

The differentiated handling under the submission without argument approach is intended to move the non-argued cases in an efficient manner and to devote those time savings to argued cases. As a result, one expects argued cases to have a considerably greater median time, a more elongated box, and a longer whisker than the non-argued cases. An inspection of Figure 2 reveals precisely that sort of picture. However, Figure 2 also indicates that although the court monitors case preparation on an individual basis, there is a fairly substantial range of times within each of the two calendars: Each box is elongated and the whiskers are long.

Rhode Island. The procedures adopted in Rhode Island in 1981 were part of a multiphased attack on pervasive problems of delay and limited resources. Prior to that time every appeal was fully briefed and argued, with criminal appeals receiving an absolute priority on the argument calendar. The prebriefing and show cause procedures first adopted for criminal appeals were to reduce overall appeal times, enable the court and the small institutional offices to allocate their scarce time where most needed, and, by directing some appeals to a separate motions calendar, to permit the court to reduce the backlog of appeals awaiting oral argument (Olson and Chapper, 1983). In three years substantial progress was made. Overall time from docketing to disposition was halved by 1984, from 20 months to 10 months.

The box-and-whisker chart for Rhode Island (Figure 3) illustrate the effects of the sharp differentiation. One expects that there will be a considerable difference between the median times for the regular calendar and the show cause cases. This is borne out by the respective times of 528 versus 268 days. Similarly one expects the early screening to homogenize the show cause cases and to eliminate the likelihood of any show cause case from taking an excessive amount of time. The expectations are met as seen by the much smaller box and the shorter whisker for the show cause cases than those on the regular calendar.

Appealing to the future.

The experiences of the three courts that we have studied intensively indicate that while caseload composition varies, caseloads in these courts of mandatory jurisdiction are heavily routine. Additionally, although they use different procedures, they handle a similar profile of cases under their modified procedures. Whereas the different delay approaches may achieve different delay reduction goals, the work of judges and attorneys may be quite similar.

What do the experiences of these three courts suggest as general principles for handling criminal appeals? We believe that there are at least two basic lessons to be learned.

First, the successful experiences of Sacramento, Springfield, and Rhode Island demonstrate that appellate courts have the opportunity to choose among alternative approaches and to find the one approach or combination of approaches that best suits them. There is more than one way to reduce delay and to accommodate local circumstances.

Second, the evidence indicates that courts have to be willing to modify basic approaches. Approaches must be seen independently from a given application by a particular court and should be tailored to fit another court's context, problems, and participants views toward the appellate process in general. Because delay is a multifaceted problem, courts must acquire the data to document where their problems are in order to build a consensus as to the goals new procedures are designed to achieve and to generate a commitment to carry out those goals.

Linking Appellate Court Reform to Incentives: What Has Mass Appeal?

by
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Washington, D.C.

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Abstract

The objective of this paper is to present some initial ideas on the nature of incentives surrounding court reform, ideas which emerge from a larger, comparative examination of alternative approaches to handling criminal appeals.

Despite the differences in the jurisdiction, organization, and caseload composition of first-level appellate courts, we believe that aspects of the appellate court context give rise to a set of mutually reinforcing incentives. Based on systematic interviews with professional participants in the criminal appeals process, we propose an incentive structure consisting of professional, managerial, and what we choose to call street-level incentives. This paper describes these incentives and how this incentive structure plays a role in the process of establishing new ideas as settled policy. Contrary to what might be expected, the data suggest that many of the ostensible goals of delay reduction and perhaps similar reforms may not be responsive to the sorts of rewards essential to the institutionalization of innovations.

Introduction

A prominent observation of contemporary court reform is that efforts to improve the administration of justice frequently fall short of desired objectives despite good intentions and the potential payoffs of proposed changes. It is contended that reformers all too often ignore the fact that the professional participants in the legal process have an investment in maintaining the status quo because, over time, they have conformed their behavior to existing procedures and have shaped the procedures to meet their mutual interests (Feeley, 1983; Church, 1982; Mahoney et al., 1981; Nimmer, 1978). For a reform to succeed, therefore, judges and attorneys must be offered incentives to overcome the normal resistance to change and to make the disruption that all change brings worthwhile (Hillsman, 1982).

The persistence of delay in case processing and the failure-ridden history of the effort to reduce it demonstrate all too clearly that a good idea -- one that matches a recognized problem with a promising alternative method for addressing it -- is necessary but not sufficient. The uneven tradition of reform reinforces the observation that such goals as delay reduction are not ends in themselves and good ideas are not self-executing.[1]

Failures occur at every stage of the policy process. Many courts consider making changes, often at length, but fail to act on any proposal. Others enter into experiments which never become institutionalized. This irregular pattern of innovation and diffusion means that while some courts accomplish their desired goals, parallel gains prove difficult to achieve on a widespread basis.[2]

Yet, despite the critical importance of knowing that reform requires more than a good idea, there is uncertainty concerning what the incentive structure surrounding it looks like. It is one thing to identify the absence of incentives after the fact as the antecedent of policy failure; it is another to anticipate the factors that are sufficiently attractive and compelling to encourage people to behave in desired ways. Hence, although

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[1] This history is not unique to the courts. The mixed degree of success and failure is observed in virtually every area of policy implementation. See, e.g., Ingram and Mann, 1980.

[2] Prescriptions for successful implementation in a single jurisdiction often presume that the key participants have adopted new goals and have made a commitment to monitor the implementation process and to motivate others (e.g., Ryan et al., 1981). However, because these prescriptions do not identify how and why these goals are adopted, information necessary to address the problem of transferability is incomplete.

the literature has identified the centrality of incentives to the change process, basic information on the kinds of available rewards and inducements remains unknown. This is not only a serious gap in our theoretical knowledge; this void also makes it difficult to develop effective strategies for improving the management of courts and the litigation process.

The complex nature of incentives is demonstrated by the failure of a commonly thought-of incentive, i.e., financial remuneration, to induce desired delay-reduction behavior. As recently reported by Church and Heumann (1987), the offering of substantial sums of public monies to prosecutors in each of the five boroughs of New York, if they contributed to the reduction of criminal case disposition time, met with mixed reactions. Some prosecutors substantially speeded up their processing of cases in order to receive promised rewards, while others made modest efforts, and yet others simply rejected the entire offering. The limited allure of increases in available resources is underscored by the fact that prosecutors were free to choose the method by which they impacted the processing of cases. Hence, there are many basic questions that remain unanswered concerning this crucial element of court reform.[3]

What is it about the context of courts that gives rise to a particular set of incentives? How does the nature of the court work influence incentives? Are there different incentives across courts and for each of the participants?

The objective of this paper is to present some preliminary evidence on court-reform related incentives, based on a comparative examination of alternative approaches to handling criminal appeals in three selected courts with mandatory jurisdiction:[4] case management in the Illinois Appellate Court Fourth District in Springfield, submission without argument in the California Court of Appeal Third District in Sacramento, and a

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[3] Certainly the theoretical importance of incentives has been established, but in a different context (See, e.g., Wilson, 1973). Our work will not operate at that level of abstraction, nor will our categories be the same. Our notion of incentives is closer to the ideas outlined by Church (1982) in which incentives are articulated on a more operational level (See also Burstein, 1980). We consider incentives to be expectations as to what sort of work is rewarding, the kind of control over work that is satisfying, and the sort of performance standards that can be meaningfully related to individual job responsibilities and work demands.

[4] Although much of the discussion concerning incentives has taken place in the trial court context, the basic conclusions in the literature apply as well to appellate courts. Similarly, while our generalizations are grounded in the criminal appeals process, they have a relevance beyond appellate courts.

fast-track procedure in the Rhode Island Supreme Court.[5] Each of these courts has accomplished the delay-reduction goals that it set out to accomplish (Chapper and Hanson, 1987b). In addition, a clear majority of the participants surveyed in each jurisdiction believe that the same quality of justice is provided to all cases including those handled under a modified procedure (Chapper and Hanson, 1987a).

Through interviews with most of the key participants -- judges, government attorneys, defense counsel, and court staff, a total of 127 respondents -- we have explored a broad range of theoretical and policy issues (See Chapper and Hanson, 1987a, 1987b) including the factors associated with the successful institutionalization of each approach. This paper draws on these systematic interviews, quantitative analyses of each court's caseload, and observations at each location.

The basic working hypothesis of our investigation is that key aspects of the appellate court context give rise to certain incentives. Those incentives, which we classify as professional, managerial, and street-level, in turn account for why proposed changes in procedure ultimately became matters of settled policy. The remaining portion of this paper is devoted to describing aspects of the court context, to identifying the proposed incentive structure, and to discussing the implications of this structure for future court research and reform.

Appellate Court Context

Context is very important in shaping how individuals view the world and what they believe is important.[6] We found this general notion to be certainly true in the appellate court setting where several key contextual factors appear to be the basis for incentives. These factors are the role of appeals courts, the mandatory jurisdiction of first-level appeals courts and the nature of their caseloads, and selected characteristics of appellate

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[5] For a brief description of the three basic approaches and the versions used in each of the three courts, see Appendix 1.

[6] The importance of context as an organizing concept in the modern study of law enjoys a rich tradition since the theories of Durkheim (See, e.g. Turkel, 1979). Recently it has become a focal point of discussion in major debates over the meaning of disputes (Felstiner, et. al., 1980-81; Kidder, 1980-81; and Trubek, 1980-81) and the meaning of legal rules (Weissbrourd and Mertz, 1985), as well as efforts to identify the determinants of court dispositions (Heydebrand, 1977). Our use of the term, context, is intended to achieve a more modest purpose. We view incentives as arising from a context rather than flowing independently from the participants' minds, although the participants' outlooks interact and influence how they see their context.

courts that resemble what Michael Lipsky (1976, 1980) calls a street-level public organization.

Role of Appellate Courts. The dominant function of the appellate process is to review a lower court proceeding (for an empirical confirmation of this, see Beiser, 1974; Wold, 1978).[7] This function, which is performed virtually out of public view (Carrington et al., 1976), is one very important step removed from the hurly-burly trial court processing of evidence and highly substantive meaning of justice.[8] There is very limited personal contact between and among the participants, and in criminal appeals there is very little of the informal negotiation observed on the civil side.[9] In this context, the defendant is, even more than in the trial context, an irregular participant.

Following from their function, appellate courts deal primarily with issues requiring careful research and analysis, rather than calculating strategies and tactics normally associated with adjudication in the trial court. The basic subject matter of appellate courts is communicated primarily in terms of the written word, i.e., a record and briefs, with the issues usually stated in a relatively tidy fashion if not in the form of a single issue. In addition, as Judith Resnik (1982) observes, the appellate process consists of few stages which are not subject to the same type of manipulation and maneuvering by the parties seen in the trial process.

Jurisdiction and Caseload. Courts hearing first-level mandatory criminal appeals, whether intermediate appellate courts or supreme courts in jurisdictions without an intermediate appeals court, are the workhorses of the state appellate court system. State supreme courts in jurisdictions with an intermediate appellate court exercise a discretionary jurisdiction and accept very few criminal appeals. As a result, courts with a mandatory jurisdiction must handle the overwhelming bulk of the growing volume of

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[7] The participants' views in our survey rated error correction as the defining function of the criminal appeals process in contrast to four other possible functions: (a) confirming the imposition of sanctions by the lower court; (b) assuring uniformity in how cases are handled at the trial level; (c) protecting constitutional rights; and (d) clarifying the meaning of laws (Chapper and Hanson, 1987a).

[8] For an extensive discussion of the trial court's emphasis on the substantive nature of justice, see Feeley (1979).

[9] Goldman (1977) saw extensive informal negotiation among counsel in civil appeals as critically influencing the rate of settlements.

criminal appeals, which has been doubling every ten years (Marvell and Lindgren, 1985).[10]

Not only is the volume of appeals growing, but a large segment of the caseload raises issues which are routine in character. Routineness generally refers to the novelty of the issues being raised by the appellant. In routine cases, the issues raised represent a well-traveled road, although cases with a single issue, non-controverted facts, and sentencing questions are also key characteristics of routine cases.

Despite wide differences in jurisdiction and caseload composition among the courts we examined (Chapper and Hanson, 1976b), the judges and attorneys were in substantial agreement concerning the nature of the caseload. From our interviews, the typical estimate of routine cases was over 50% in each of the three jurisdictions. Furthermore, the participants believe that cases can be differentiated for practical purposes and they agree that routine cases can be appropriately handled under modified procedures.[11]

Appeals Courts as Organizations. Leading scholars have urged the application of organizational theories as useful tools for understanding more fully the processing of court cases and the behavior of individual participants. A critical argument made on behalf of the organizational approach is that these theories focus attention on the role of incentives.[12] From our perspective, one of the most fruitful and perhaps most provocative theories of public organizations, including courts, correctional agencies, and welfare departments, is the basic notion that public organizations are

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[10] The history from 1870 to 1970 of how state supreme courts adapted to caseload pressures by increasing their discretionary authority and through the creation of intermediate appellate courts is well established elsewhere. (See Kagan et al, 1978). A companion account of parallel trends in first-level appellate courts with mandatory jurisdictions awaits future historians.

[11] Each of the approaches involves some type of case differentiation. Rhode Island screens early and subsequently places some cases on a show cause calendar and others on the regular calendar. Sacramento screens after the briefs are filed and then places some cases on a no-argument calendar and others on the regular calendar. Springfield's criminal case management system sets uniform time deadlines but incorporates a no-argument option for cases in which counsel do not request argument. See Appendix 1.

[12] For a review of these theories and their potential, see Burstein, 1980; Boyum and Mather, 1983, and for particular applications in the appellate court context, see Davies, 1981, 1982.

street-level bureaucracies. The leading proponent of this theory is Michael Lipsky (1976, 1980), although others have contributed to this school of thought (e.g., Yates, 1974; Yin and Yates, 1975).

The participants in a public organization, according to the street level theory, see their responsibilities almost solely in terms of their immediate work environment rather than lofty policy goals or standards imposed by top management. Most find it difficult to rise above the demands of cases and clients and connect system-level measures of performance with their own situation. Their work environment produces a strong incentive for them to want to employ criteria they can relate to their individual caseloads and to resist such systemic standards as efficiency and productivity, which may be of great importance to the organization's leaders. Lipsky contends that the street-level participants generally succeed in satisfying their incentives to define organizational objectives because of their inherent and considerable discretion (they are expected to treat cases individually) and their autonomy from management control (much of their behavior is not observable by top management).

In our opinion, the criminal appeals process may be viewed fruitfully from a street-level perspective although it lacks some of the characteristics associated with managers and subordinates operating within a single organization.[13] Nonetheless, it seems reasonable to consider the participants in the appellate court context -- judges, government attorneys, defense counsel, and court staff -- as focusing primarily on their respective caseloads rather than on system-level ideas in defining their responsibilities and standards of performance. To the extent that the street level theory is a model of the appellate court context, then, the participants are expected to define standards of performance in terms of factors that they can relate to their own caseloads and not only to systemic considerations.

A Typology of Appellate Court Incentives

Our inquiry into three alternative appellate court procedures provides us with the opportunity to identify incentives which appear to account for why new procedures are institutionalized. Because our analysis does not focus on the change of attitudes before and after the adoption of new procedures, we cannot describe the interactive dynamics of how incentives shape procedures and how procedures in turn affect incentives. Nevertheless, given the limited knowledge of how new approaches become

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[13] Other analysts have used Lipsky's theory as a model to interpret how courts react to caseload pressures. (See, e.g. Emerson, 1983). While that research complements the current study, it does not use the model to discuss how incentives arise and affect the selection of criteria by which procedures are assessed.

settled policy, the focus on institutionalization is a reasonable starting point.[14]

We believe that there are three key categories of incentives, each of which is linked to a particular aspect of the appellate court context. First of all, there are the professional incentives emerging from the role of appellate courts. These incentives relate to the rewards that individuals receive from the nature of their work. They concern what individuals find most satisfying about their required tasks.

The second type of incentive is managerial in nature and arises from the routine nature of the caseload. It relates to the degree or kind of control that individuals wish to have over their work and the structure in which they prefer to operate.

Finally, the third type of incentive relates to the kind of performance standard that participants deem appropriate in assessing their jurisdiction's approach in handling criminal appeals. The street-level theory of public organizations suggests that the participants have a strong incentive to assess the approach in terms of their own individual caseloads rather than in terms of efficiency, productivity, or case processing time.

Professional Incentives. In the appellate court context, the professional incentive is a desire for intellectual activity. An indication of this incentive is revealed by the participants' responses to the question: "What is the most satisfying part of the criminal appeals process from your perspective?" Judges, government attorneys, defense counsel, and court staff indicated they find it most rewarding to engage in the resolution of cases where the outcome is uncertain but their own research and analysis can have an appreciable impact. For judges, the collegial interaction in clarifying the meaning of law and its applications was the most satisfying aspect of their jobs. A sample of their responses illustrate this point.

The most satisfying part of the criminal appeals process is. . .

- o "interest in the law, its nature and significance. My biggest frustration is with people who do not share my vision."
- o "Intellectual stimulation of law"
- o "Solving tough, complex questions"
- o "Getting a novel question and writing a clean slate"

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[14] Previous discussions of incentives in the court context have been conducted primarily in conceptual terms with limited operationalization of theoretical definitions. The current research attempts to move beyond conceptualization by linking categories with measurable attitudes. It is hoped that this effort will lead others to develop more precise and valid indicators of incentive-related views and behavior in future research.

A parallel pattern can be seen in the views of attorneys -- government attorneys, public defenders, appointed counsel, and retained counsel. A catalogue of their views is found in Table 1.

Many of the government attorneys said that they found the writing of briefs in cases which resulted in published opinions most stimulating. (These sorts of responses are classified as academic/intellectual in Table 1). Defense counsel, although they certainly wanted to win, found those cases which required extra effort most attractive. For all of the participants, then, the opportunity to engage in activities where intellectual effort is rewarded is a key incentive.[15]

Managerial Incentives. These incentives refer to the kind of control individuals wish to exert over their work place. Here a court's jurisdiction and caseload play a role. Most of the participants believe it is possible to make a working distinction between routine and complex cases and they prefer the procedures for handling cases that are consistent with that belief. Hence, they have an incentive to want to work in situations where they have more time to spend on complex cases.

An indication that this sort of incentive is operating in the appellate court setting is seen by observing the factors that predict the degree of satisfaction that individual participants have with the procedures under which they labor. A striking finding from our empirical research is that despite the differences in the approaches used in the three courts, a key criterion on which the participants gauged the adequacy of the approaches was the extent to which the court was permitted to spend more time on complex cases. As seen in Table 2, the overall pattern of correlations indicates that in all three jurisdictions, the more that the participants believed that the approach permitted more time for complex cases, the more they were satisfied that the same quality of justice was rendered to

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15 As Carrington (1980) has observed, the professional incentive may become disruptive if the participants demand complete fulfillment in order to be satisfied. If every aspect of appellate court life must be responsive to this incentive, then the participants develop unrealistic expectations and may exhibit dysfunctional practices, e.g., writing long briefs or opinions in cases where they are not warranted.

Table 1

Most Satisfying Aspect of the Criminal Appeals Process for Attorneys [1]

	Government Attorneys N=32	Public Defenders N=24	Appointed Counsel N=30	Retained Counsel N=13
Academic/Intellectual Nature of Work (e.g. "building the argument")	14	4	15	2
Variety of Work	3	1	1	0
Affect Development of Law (e.g. "helping make good law," "affecting the course of how criminal law is practiced").	4	3	0	5
Oral Argument	2	4	2	3
Participation in the Process (e.g. "providing representation to those who need it," "seeing the process at work").	3	7	8	1
Winning/Obtaining Relief for Client (e.g. "winning when client deserves to win," "seeing the process at work").	4	5	1	1
Other	2	0	3	1

[1] What is the most satisfying part of the criminal appeals process from your perspective?

Table 2

Correlations Between the Extent to Which an Approach Allows More Time to Be Spent on Complex Cases[1] and the Approach's Effects on Quality[2] (Gamma Coefficients)

By Jurisdiction

Rhode Island	Sacramento	Springfield
N=18	N=63	N=45
.79	.46	.64

By Role

Judges and Court Staff	Government Attorneys	Defense Counsel
N=21	N=35	N=60
.72	.13	.61

By Type of Defense Counsel

Public Defenders	Appointed Counsel	Retained Counsel
N=20	N=29	N=11
.57	.35	.61

1 Please indicate the extent to which you agree or disagree that the procedure in your court allows the Court to spend more time on complex cases.

2 Based on your experience, how satisfied are you that cases (handled under the show-cause procedures/submitted without argument) received the same quality of justice as cases on the regular calendar that are argued?

all cases.[16] Conversely, the more they believed that the approach did not permit this allocation of time, the more they were dissatisfied.

From our perspective, this finding is of vital importance because it suggests that approaches with different delay-reduction goals and different procedures for handling cases must satisfy a common incentive. Although approaches may take different routes in the resolution of cases, they ultimately must provide the participants with a sense that they have more time to spend in areas where it is warranted.

The assessments of judges and attorneys toward approaches used in other courts reinforce the proposition that they are concerned about the management of their time. We asked the participants to evaluate the approaches in the other two courts in terms of their advantages and disadvantages in relation to their court's existing procedures. Their responses indicated that they tended to judge the approaches in terms of their effects on their own work time; they did not evaluate them in terms of abstract, philosophical standards.

Street-Level Incentives. Street-level incentives concern the participants' desire to employ standards of performance that they can relate to their individual caseloads. The participants, acting as if they were members of a street-level organization, incorporate concepts such as equality and fairness into their standards, but in a way that is meaningful to them. They are not oriented by notions of efficiency, productivity, and case processing time, which all require a system-level understanding. Instead, the pressing demands of their work gives them an incentive to use criteria that incorporate issues such as whether a case's conclusion is forgone when it is expedited under a modified procedure. They know from their own experience whether an approach involving a summary calendar is creating an affirmance track for some cases.

For our test of the street-level theory, we used the following question as our dependent variable: "Based on your experience, how satisfied are you that cases (handled under the show-cause procedures/submitted without argument) received the same quality of justice as cases (on the regular calendar/that are argued)?" We ran a battery of items against this question including the participants' views of the impact of the approach

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[16] The results presented in Table 2 are gamma coefficients. They indicate strength of association between the question measuring the approach's impact on the time available for complex cases and the question measuring quality of justice. A gamma can range from -1.0 to 0.0 to +1.0, with the higher values indicating stronger associations. A negative gamma suggests that the relationship is inverse. Our benchmark criterion is that values from .0 to .3 indicate weak associations, .31 to .6 indicate moderate associations, and .61 to 1.0 indicate strong associations.

used in their court on efficiency, productivity, and case processing time. If these items are strongly and positively associated with the measure of participant satisfaction, this falsifies the street-level proposition that the participants have an incentive to eschew systemic criteria. On the other hand, if the street-level theory is true, (i.e. participants have incentives to rely on measures they can relate to their own caseload) the issue of affirmance tracks will be strongly and negatively correlated with quality.

As seen in Table 3, the prediction that the street-level aspect of the appellate court context produces incentives toward certain standards of performance and not others is strongly confirmed. None of the participants' views on case processing time, efficiency, or productivity have strong, positive associations with quality. That is, if the participants agree that a given approach reduces the elapsed processing time for all cases, they do not necessarily agree that the same quality of justice is rendered to all cases. In fact, the direction of some of the correlations is opposite of what is predicted. For example, the inverse relationship between the views of Rhode Island's participants concerning overall case processing time and their views toward quality (-.11) suggests that delay reduction may have a slight negative impact. More generally, the correlations are either very weak, or only in the moderate range.

In contrast, each of the four questions relating to whether the procedure is seen as an affirmance track is inversely related to quality, although this relationship is stronger in Rhode Island and Sacramento than in Springfield. The results indicate, for example, that the more strongly participants disagree with the proposition that the alternative procedure in their court makes it more difficult to uncover reversible error, the more they are satisfied that cases under both calendars receive the same quality of justice. Similarly, if they disagree with the assertion that the alternative makes the case outcome a forgone conclusion, they are more inclined to be satisfied that the quality of justice is the same.

Looking Ahead

This first effort at sorting out and measuring incentives has explored how the appellate court context gives rise to incentives, which, in turn are linked to the successful institutionalization of court reform. This snapshot of reality has tried to connect the role of appellate courts, the routineness of the court caseload, and the court as a street-level organization to three corresponding categories of incentives -- professional, managerial, and street-level. While our information is tentative it suggests some non-obvious relationships that have implications not only for present research and policy, but also for future study and reflection.

Contrary to what might be expected, the findings suggest that many of the ostensible goals of delay reduction and perhaps similar sorts of reforms are simply not responsive to the rewards associated with

Table 3

Correlates of the Participants' Satisfaction That All Cases Receive the Same Quality of Justice[3]
(Gamma Coefficients)

	Rhode Island N=18	Sacramento N=63	Springfield N=45
Systemic Criteria The approach in your court. . .			
Case Processing Time[1]			
- Reduces case processing time for all cases	-.11	.39	.40
- Reduces case processing time for show cause cases/cases submitted without oral argument	.16	.29	.21
- Reduces case processing time for regular calendar/ argued cases	-.11	.42	.23
Efficiency[2]			
- Reduces time judges are required to devote to individual cases	-.36	.05	.16
- Reduces time attorneys are required to devote to individual cases	.44	.20	.01
Productivity[2]			
- Allows attorney to handle more cases in the same amount of time	.03	.35	.08
- Allows the Court to handle more cases in the same amount of time	.51	.10	.29

Table 3 (cont.)

	Rhode Island N=18	Sacramento N=63	Springfield N=45
Non-Systemic Criteria[1] The approach in your court...			
- Creates the appearance of second class justice	-.91	-.84	-.30
- Makes it more difficult to uncover reversible errors	-.70	-.78	-.21
- Causes the Court's decisions to be decided without sufficient information	-.86	-.70	-.36
- Makes the outcome a foregone conclusion	-.70	-.61	-.64

1 (For Rhode Island and Sacramento) Procedures in most appellate courts involve some differentiation among criminal cases. In your court, for example, some cases are (directed to summary disposition procedures/decided without oral argument)...

(For the Appellate Court of Illinois) Illinois is one of the few appellate courts to enter a scheduling order in every appeal...

One possible impact of this procedure is on case processing time- the time from NOA to decision .. please indicate the extent you agree or disagree that the procedure in your court affects case processing time in each of the following ways.

2 Obviously, case processing time is not the only aspect of the appellate process affected by a given procedure... Please indicate the extent to which you agree or disagree that the procedure in your Court produces the following effects.

3 Based on your experience, how satisfied are you that cases (handled under the show-cause procedures/submitted without argument) received the same quality of justice as cases on the regular calendar that are argued?

institutionalized programs. The reality of the appellate court context is a growing caseload with a wide diversity of cases, with different requirements and demands on the judges and attorneys. This context gives rise to a particular combination of intellectual desires, managerial expectations, and standards of quality that emphasizes the importance of permitting the participants to allocate their time among these cases in a way that allows them to devote the time they believe appropriate to each. The agenda for future research and reform, therefore, might profitably take these findings into account in developing designs and strategies. Researchers should acknowledge that the frequently stated goals and objective results of policy reforms are not always salient to those affected by the reforms.[17] Reformers should acknowledge that the goals to which they aspire are not necessarily shared by the people who have to make those goals a reality.

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[17] For a parallel discussion of this same type of phenomenon in another policy arena, see the discussion by Mazmanian and Sabatier concerning citizens' evaluations of the California Coastal Commission (1980).

Appendix 1

Appeals Procedures in Three Courts

The three basic approaches we examined vary in terms of how they treat essential components of the appeals process, their points of intervention, the role assigned to staff, and their objectives. Furthermore, each court has customized its approach so that even those courts using an approach similar to one of the three research sites will not look exactly the same.

Case management. Management procedure are directed at reducing case processing time by setting achievable time frames for the appeal. This is typically accomplished by a scheduling order which sets the dates on which events are to occur. A court may choose time frames for the entire period from notice of appeal to disposition or only between certain stages of the appeal (e.g., notice of appeal through briefing).

Case management procedures were adopted in 1977 for both criminal and civil appeals by the five-judge Appellate Court in Springfield. Based on information provided in a form docketing statement filed by appellant shortly after an appeal is filed, the court enters a scheduling order indicating the due dates for the record, the parties' briefs, and the expected date for oral argument. In criminal appeals the time permitted for record preparation and briefing is the time provided by court rules. Time deadlines are strictly enforced. The court's affirmative case management operates in a context in which oral argument is available upon request of counsel (usually made in the brief). Decisions on the merits are either by published opinions or unpublished orders; the decision to publish is made independently of whether the appeal was argued.

Submission without oral argument. Approximately 35 state appeals courts submit at least some of their appeals without oral argument. The effect of "no-argument" calendars is to reduce the time judges have to spend on non-argued appeals. Case processing time may also be reduced by advancing the submission of no-argument cases. However, the time consumed prior to the completion of briefing is not affected. Although there is great variation in the specific procedures used, a common practice involves screening to identify these cases and their subsequent preparation by central staff attorneys rather than by the judges' individual law clerks.

In the seven-judge Sacramento court, one of the six regional districts of the state's intermediate appellate court, the current "routine disposition appeal" procedure dates from the early 1970s. Each appeal is reviewed after briefing. The initial screening is done by the principal staff attorney who assigns appeals he believes will not require oral argument to staff attorneys for research. These appeals are presented to a three-judge panel. If, after discussion, the panel concludes that oral argument is not necessary, counsel are asked to waive argument. Appeals which do are submitted for decision to the panel which requested the waiver. All

other appeals are scheduled for oral argument. Decisions on the merits are by either published or unpublished opinion, a determination made independently of the argument/no-argument decision.

Fast-Track procedures. Unlike case management procedures and the no-argument calendar, fast tracks focus on appeals that do not require full briefing. By differentiating appeals early, cases susceptible to acceleration can be placed on a separate track calling for modified preparation and abbreviated time frames. This permits a court to direct its resources to cases in which full appellate treatment is considered necessary; for the other cases, shortened time frames can sharply reduce case processing time and the time required to be spent on an appeal by the court and counsel.

The five-member Rhode Island Supreme Court adopted its show-cause calendar for criminal appeals in 1981. The distinctive feature of court practice is a prebriefing procedure triggered by the filing of the lower court record. Appellant subsequently files a statement of up to five pages summarizing the issues presented in the appeal; filing by appellee is optional. A justice then holds a conference in each appeal, the outcome of which is an order directing its subsequent handling. Cases the justice concludes do not warrant full briefing are set for hearing on a show cause calendar and are argued before the full court. Each side may file a supplemental statement of up to ten pages. Show cause dispositions, which require unanimity, generally result in a one-page order. The remaining appeals proceed to briefing and argument to the entire bench. Decisions in the briefed appeals are by published opinions.

Administering Justice in Criminal Appeals: The View from the Well

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ABSTRACT

The purpose of this paper is to contribute to the literature on state appellate courts through an analysis of judges' and attorneys' attitudes toward three approaches to handling criminal appeals: case management, submission without argument, and fast tracks. All of these approaches differentiate cases in some way and expedite the processing of some cases under particular modified procedures.

The central finding concerns the factors associated with the participants' degree of satisfaction that cases handled under a modified procedure receive the same quality of justice as cases handled on a regular calendar. We find that the more participants believe that a modified procedure allows the court to spend greater time on complex cases and avoids being an affirmance track, the more they are satisfied. The perceived consequences of a procedure on case processing time, efficiency, or productivity are unrelated to views of quality. We believe that these results are consistent with Lipsky's (1980) general theory of public organizations and have important implications for efforts to change appellate courts.

INTRODUCTION

Planned change in American appellate court systems exhibits a pattern common to contemporary domestic reform efforts. Various solutions have been developed to respond to increases in caseload volume (Flango and Elsner, 1982) and delay (Martin and Prescott, 1981). These range from the allocation of more resources, the adoption of technological innovations, and the creation of intermediate courts of appeal, to the modification of traditional procedures. While most of these proposals have been introduced in at least one court, with reported success, few procedural reforms have been tested rigorously. Many courts, confronting volume and delay problems have failed either to adopt or institutionalize any significant change in procedure.

This pattern of reform raises the central research issue of the role that the participants' values and beliefs play in grounding the legal process. Leading judges and legal scholars have offered strong normative arguments in favor of traditional procedures. For example, Bazelon (1971) sees traditional criminal appellate procedures as essential to the maintenance of quality and efficiency-oriented changes as threats to that ultimate value. Llewellyn (1960) argues specifically on behalf of oral argument, which he sees as the only way attorneys can highlight the essential aspects of the case to the bench. Given these arguments against the introduction of new approaches to managing the appellate process, information concerning participants' attitudes is most relevant.

The objective of this paper is to contribute to the debate over appellate court approaches through a comparative analysis of participants' attitudes toward the handling of criminal appeals under regular and modified procedures in three selected state courts: (1) the Rhode Island Supreme Court, (2) the California Court of Appeal Third District in Sacramento, and (3) the Appellate Court of Illinois Fourth District in Springfield. Rhode Island introduced a fast track, show cause procedure in 1981; Springfield adopted a case management program in 1977; and Sacramento has relied on a staff-processed routine disposition calendar since 1971.

The remaining portion of this paper outlines the three approaches and describes the participants' perceptions of the court's caseload. As Davies (1981, 1982) and Neubauer (1985) contend, perceptions of the court's caseload affects the sorts of procedures the participants believe are necessary and appropriate. We then probe the participants' degree of satisfaction that cases receive the same quality of justice regardless of how they are handled. Using the street level theory of public organizations as an analytical framework (Lipsky, 1980), we offer working hypotheses for the observed levels of satisfaction.

RESEARCH CONTEXT

The approaches we chose to examine represent alternatives to handling criminal appeals. They treat essential components of the legal appeals process -- transcript preparation, briefing, oral argument, and the court's decision -- differently and assign different responsibilities, schedules, and options to judges, court staff, government attorneys, and defense counsel.

Case Management. Management procedures primarily are directed at reducing total elapsed case processing time by setting achievable time frames for the completion of each stage of the appeal. This is typically accomplished by placing each appeal on a schedule: An order entered shortly after an appeal is filed will set the dates on which subsequent events are to occur. A court may choose to fix time frames for the period either from notice of appeal to disposition or between certain stages of the appeal (e.g., notice of appeal through briefing).

Case management, however, while placing each stage of an appeal under time limits, generally does not differentiate among cases according to complexity. Management procedures may thus have little effect on the amount of time judges and attorneys have to spend on an individual case. Case management may be combined, however, with other procedures based on case differentiation. Fairly well institutionalized in the federal system, appellate case management has not achieved the same level of acceptance among state appeals courts. However, Illinois, Minnesota and Ohio are places where some form of case management is used by state intermediate courts of appeal.

Submission without argument. A much more common procedure in state systems is the use of separate calendars of cases submitted without oral argument. This usually involves screening to identify these cases and their subsequent preparation by central staff attorneys rather than by law clerks assigned to individual judges. Screening after briefing is completed, the way most of these calendars operate, does not address the bulk of appeal time (typically 50% or more) that occurs prior to the completion of briefing, although it can reduce the time from the close of briefing to decision. The primary effect of "no-argument" calendars is to reduce the time that judges have to spend on some (non-argued) cases with the ultimate objective of making more time available for the remaining (argued) cases. Judge and attorney time devoted to the argument and preparation for it is also avoided. A second opportunity for delay reduction is to advance the submission of no-argument cases; this is, however, not a necessary feature of their operation. Courts with mandatory criminal jurisdiction in at least 35 states submit some of their cases without oral argument, although staff screening is not involved in every procedure (Roper, et al., 1985).

"Fast tracks". Neither case management nor a no-argument calendar differentiates cases that might not require full briefing. In addition, neither directly responds to the need for accelerated handling in particular kinds of cases. These are the foci of so-called fast tracks. Under such procedures cases are differentiated early in order to affect case preparation and presentation. Cases susceptible to acceleration can be placed on a separate track calling for modified preparation (generally shorter brief limits) and abbreviated time frames. A fast track initiated early in an appeal permits a court to direct its resources to the cases in which the full appellate treatment is considered necessary. For the other cases, abbreviated time frames can sharply reduce overall appeal time. Modifications in case preparation can also reduce the time required to be spent on an appeal by the court and the attorneys. Rhode Island, New Hampshire, and New Mexico each employ a fast track with at least some of the features outlined above.

These three approaches are illustrated by our research sites. Details of their specific procedures are contained in Appendix 1.

THEORY AND METHOD

The idea that what courts do is grounded in participants' attitudes is prominent in studies of trial court litigation, even among competing theories. For example, the use of role theory by Neubauer (1978) and Boyum (1979) and the concept of local legal culture developed by Church et al., (1978) and others (e.g., Sherwood and Clarke, 1981), both demonstrate that participants' attitudes have independent effects on how cases are treated and, ultimately, on the length of time taken to resolve them.

The current research follows in that basic tradition but with the ultimate goal of explaining how and why judges, court staff, government attorneys, and defense counsel are satisfied (or dissatisfied) with the quality of justice rendered by their jurisdictions' criminal appellate approach. Because each approach differentiates cases and handles some of them under modified procedures, a central research question is: what set of attitudes best explains the participants' degree of satisfaction that cases handled under a modified procedure receive the same quality of justice as cases under a regular calendar?[1]

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[1] The difference between the regular calendar and the modified procedures varies from court to court. In Rhode Island, the distinction is between the cases set for full briefs, oral argument, and a published opinion versus those on the show cause calendar. In Sacramento, the distinction is between those argued orally versus those submitted without argument. The argued/submitted without argument dichotomy is used to

To address this questions we interviewed a total of 127 individuals in early 1987. This includes most of the judges, court staff, public defenders, appointed counsel, retained counsel, and attorneys representing the government in criminal appeals in the three jurisdictions. The structure for reporting our initial findings takes each of the three jurisdictions as the appropriate level of analysis and paints a family portrait of the individual participant's attitudes in each jurisdiction. The views of judges, court staff, government attorneys, and defense counsel are combined into a composite picture because we first want to know, at the most general level, what the differences and similarities are in the orientations surrounding each approach.

Finally, we have organized our data around three competing propositions as to why participants are satisfied or dissatisfied with the quality of justice rendered to all cases including those handled under modified procedures: (1) the routineness proposition developed by Beiser (1974) and Wold (1978), (2) the socialization proposition associated with Drury et al. (1974) and Goldman (1975), and (3) the street level theory proposition adapted from the ideas of Lipsky (1976, 1978). Although there is some support for all the propositions, the third one is most noteworthy because of its generality and connection to broader explanations of domestic public policy change.

FINDINGS

We anticipated possible differences among the three communities' attitudes because of the variations in the courts' jurisdictions. The Rhode Island Supreme Court, for example, is the only appeals court in the state, while the decisions of the other two courts are reviewable by their respective state supreme courts. In addition, by virtue of differences in the jurisdiction of the trial courts from which appeals could be taken,[2] there are differences in the relative seriousness of the cases brought to each court.[3]

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differentiate the regular calendar from the modified procedure in Springfield as well.

[2] See Appendix 2 for a summary description of the courts' respective jurisdictions.

[3] In Appendix 3, we offer a look at the composition of the criminal appeals caseload in the three courts during 1983. Information based on our review of all of the cases decided on the merits indicates there is considerable diversity in the characteristics of the cases coming to the three courts along the basic dimensions of defense representation, basis

NATURE OF THE CASELOAD

Whatever structural differences there may be among the three jurisdictions, there is a very strong consensus on the nature of the criminal caseload. Judges and attorneys across and within all three jurisdictions believe that a majority of cases are routine. This finding, which is consistent with earlier reports, has important implications. As Beiser (1974) and Wold (1978) concluded, the perceived routine nature of many cases facilitates agreement among the judges. However, this general observation has other critical implications because procedural differentiation typically is predicated on the possibility of making working distinctions between two broad types of cases, commonly referred to as "routine" and "complex."

We sought to flesh out these two categories by asking the participants first to identify the observable characteristics which distinguished routine and complex cases and then to estimate the percentage of each type in the criminal caseload of their court. A small number of respondents in each court was not able to respond using the routine/complex dichotomy; some of these created an intermediate level between routine and complex. Yet, in all three jurisdictions, the most frequent distinction made by respondents centers on the novelty of the issue being raised, although other characteristics, including specific issues (e.g., sufficiency of the evidence, jury instructions) and size of the appeal (in terms of number of issues, length of transcript or record, etc.) are seen as distinguishing the two categories of cases. Using these categories the participants characterized their court's criminal caseload in substantially the same terms: the typical estimate is that routine cases comprise over half of the caseload (from a low of 54% in Rhode Island to a high of 59% in Sacramento; complex cases range from 35% to 41%).

This cross-jurisdiction agreement on case differentiation parallels the actual application of the different approaches. Table 1 summarizes the relative frequencies of the different types of cases handled under the regular calendar in each court. Despite the interjurisdictional diversity in caseload composition, the percentage of each type of case handled on the regular calendar is very similar in Rhode Island, Sacramento, and Springfield. Overall, the respective percentages are 40%, 32%, and 30%. A similar pattern holds true for specific types of cases. For example, the percentage of appeals from jury trial convictions on the regular calendar is similar (44%, 36%, and 32%) although this type of an appeal varies substantially across the three jurisdictions. (See Appendix 3).

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of the appeal, offense, nature of the issues, and sentence. The one point of similarity is in the distribution of cases according to the number of issues (for Rhode Island, cases filed in 1983 and 1984 were examined because of the court's smaller caseload).

TABLE I

Relative Frequency of Types of Criminal Appeals that are Handled on the Regular Calendar
(Percent of cases)

Types of Cases	Jurisdiction: Rhode Island (n=127)	Sacramento (n=501)	Springfield (n=275)
Party Appeal			
Government Appeals	40*	64	53
Defendant Appeals	40	31	29
Basis of Appeal			
Jury Trials	44	36	32
Court Trials	0	32	32
Pleas	0	23	4
Post Convictions	21	25	22
Other	38	43	52
Offenses			
Homicide	80	62	46
Other Crimes against Persons	36	27	30
Property	50	29	22
Driving	0	33	32
Drugs	0	42	24
Probation Revocation	15	25	23
Negligent Homicide	100	0	0
Other	9	31	45
Issues			
Evidence	33	38	42
Instructions	54	40	49
Procedure	33	39	38
Statutory Construction	20	29	56
Constitutional	59	41	38
Sentence	27	34	32
Defective Plea	0	43	18
Other	67	40	52
Anders	0	0	0

* For example, 40% of all government appeals are on the regular calendar.

TABLE I (cont.)

Relative Frequency of Types of Criminal Appeals that are Handled on the Regular Calendar
(Percent of cases)

Characteristics	Jurisdiction		
	Rhode Island (n=127)	Sacramento (n=501)	Springfield (n=275)
Sentence			
Fine, Probation, Incarceration (less than 2 years)	30	30	25
Incarceration (2-10 years)	50	21	28
Incarceration (more than 10 years)	55	51	33
Number of Issues Raised			
One issue	31	19	21
Two issues	53	32	25
Three issues	37	50	48
Four or more issues	100	63	65

Looking at the attitudinal and case data leads us to paraphrase Justice Potter Stewart; although routineness may be difficult to define, judges and lawyers know it when they see it. This implies that brief length may be associated with the need for oral argument, which is usually part of the regular calendar. The reason is that brief length is one measure of the attorney's attempt to communicate what he or she wants to have the court decide on the merits.

We used the Sacramento and Springfield appeals to explore this possibility.[4] Using a variety of case data, we ran separate regression analyses for each court using argued/submitted without argument as the dichotomous dependent variable and the following eight independent variables, including brief length, as possible predictors: transcript length (not applicable in Springfield); elapsed time from NOA to receipt of the record; number of issues; length of appellant's brief; length of respondent's brief; severity of the offense;[5] length of the sentence;[6] and type of conviction.[7]

The purpose of the regression analysis is to determine the relative importance of the length of briefs compared to other possible determinants (e.g., offense, sentence) of whether a case is argued or submitted. Our expectation is that the length of the briefs will be better predictors than other variables. The best predictors for each court along with the cumulative contribution they make in accounting for the likelihood of oral argument are listed in Table II. Variables not listed in the table make no significant independent contribution to whether a case is argued or submitted without oral argument in that court.

As we proposed, brief length appears to be an important predictor of oral argument with other variables showing much less of an impact. For Sacramento, the data indicate that a case is more likely to be argued as (1) the length of the appellant's brief increases, (2) the length of the

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[4] We omitted Rhode Island because only regular calendar cases have briefs.

[5] We used a six-point scale to measure the severity of the offense: 1=homicide, 2=robbery, 3=sex, 4=drug cases, 5=theft, burglary, and trespass, and 6=all other offenses.

[6] We used a nine-point scale to measure sentence length: 1=fine only, 2=probation but no incarceration, 3=probation with some incarceration, 4=prison under 2 years, 5=prison 2-5 years, 6=prison 5-10 years, 7=prison 10-20 years, 8=prison over 20 years, and 9=life imprisonment.

[7] We coded convictions dichotomously with 1=trial and 2=plea.

TABLE II

BEST PREDICTORS OF THE LIKELIHOOD THAT A CASE WILL BE ARGUED OR SUBMITTED WITHOUT ORAL ARGUMENT

Court	Dependent Variable	Independent Variables	Beta Weights	R^2 (equation)
Sacramento (n=436)	Argued/ Submitted	Length of Appellant Brief	- .51	.26
		Length of Respondent Brief	- .27	.30
		Type of Conviction	- .11	.31
Springfield (n=239)	Argued/ Submitted	Number of Issues	- .37	.14
		Length of Appellant Brief	- .20	.16

Cases were deleted from the analyses if information was missing for any of the independent or dependent variables.

respondent's brief increases, and (3) the offender pleads guilty. For Springfield, a case is more likely to be argued as (1) the number of issues increases and (2) the length of the appellant's brief increases.

The results of the regression analyses are encouraging despite the blunt measures. However, the type of conviction, which emerges as a modest predictor in Sacramento, deserves some explanation. Why do cases involving guilty pleas tend to be argued in Sacramento? One reason is that California law permits guilty pleas to be appealed under a relatively broad range of circumstances. The result is that approximately 40 of the appeals in our case data arose where the defendant pled guilty (See Appendix 3). Looking at our data, it appears that this measure is a proxy for issues being raised in such cases (e.g., suppression or non-suppression of statements and tangible evidence and voluntariness of the plea).

As evidenced in Table II, the R^2 is modest, with approximately 31 percent and 16 percent of variation in the dependent variable explained in Sacramento and Springfield respectively.[8] Although the data tend to support our hunch about why cases are treated one way or another, we believe they also tend to disconfirm Neubauer's (1985) notion that case severity is the best predictor of why some cases are handled under a modified procedure. This expectation, which is generally shared by Davies (1982), finds little support in our data.

In summary, there is a striking similarity in outlooks and practices across jurisdictions which use quite different approaches in handling criminal appeals. The pattern is that the perceived and actual business

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[8] R^2 is a measure of the explanatory power of the independent variables. The theoretical value, which ranges from 0.0 to 1.0, measures the percentage of variation in the dependent variable, in this analysis whether a case is argued or submitted. Thus, the R^2 of .31 in Table V indicates that three factors explain 31 percent of the variation in Sacramento and that none of the remaining possible predictors significantly improves this figure.

The beta weights are rough measures of the relative importance of the independent variables in explaining changes in the dependent variable (i.e. whether a case is argued or submitted). Therefore, the beta weight of -.51 indicates that as the appellant's brief length increases, the case is more likely to be argued. (The value of the beta weight is negative because argued is coded as '1' and submitted is coded as '2'. That is, the increasing values in the independent variables are inversely associated with the values of the dependent variable. Hence, if increases in brief length made a case more likely to be submitted without oral argument, the beta weight would be a positive value.)

of handling appeals is much the same despite variations in jurisdiction, caseload composition, and other contextual factors.

SATISFACTION WITH APPROACHES

We attempted to compare the quality of justice afforded to cases handled through different procedures in each jurisdiction (i.e., regular calendar versus modified procedures). In Rhode Island, the distinction is between cases fully-briefed and argued and those heard on the show-cause calendar. In Sacramento, the distinction is between argued appeals and those submitted without oral argument. In Springfield, where management procedures contain no differentiation, we directed the question at the distinction between argued appeals and those submitted without argument.[9]

In each court, a large majority of participants is satisfied that all cases receive the same quality of justice (65% in Rhode Island, 84% in Sacramento and 71% in Springfield). There are, however, differences among the three courts, as shown in Table III. The greatest level of satisfaction is in Sacramento, where just over a majority (51%) are "very satisfied" and an additional third (33%) are "satisfied" that cases submitted without oral argument receive the same quality of justice as argued cases. The negative assessment (i.e., those who are "very dissatisfied) is under 5%. The responses are more mixed in the other jurisdictions. A higher percentage of the respondents in Rhode Island than in Springfield are "very satisfied" (45% and 31% respectively) but the overall satisfaction

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[9] There are many difficulties in measuring the quality of justice in the context of criminal appeals. Some observers prefer objective measures such as the comparative reversal rates of intermediate appeals courts by states' supreme courts. Others prefer to assess a court's reasoning in individual cases.

Despite the imperfections of attitudinal measurement, we believe there is merit in directly asking participants who regularly handle criminal appeals whether cases handled under one procedure receive the same quality of justice as those handled under another (e.g., cases argued versus those submitted without argument). No doubt individuals may interpret the words "quality of justice" differently. As a result, two individuals can hold different beliefs even though they both say they are "very satisfied". However, it seems clear that if individuals say they are dissatisfied this is strong grounds for inferring that the modified procedure is impairing justice in some way. That is, given this negative reaction, measurement problems are not likely to be taken as a reason for the result; the result would be considered to be capturing reality unless the measurement deficiencies are blatant and egregious.

TABLE III

SATISFACTION THAT (SHOW CAUSE/NOT ARGUED) CASES RECEIVE THE SAME QUALITY OF JUSTICE AS (REGULAR CALENDAR/ARGUED) CASES[1]

(Percent of Respondents)

Level of Satisfaction	Jurisdiction			
	Rhode Island (n=20)	Sacramento (n=67)	Springfield (n=35)	Total (n=122)
Very satisfied	45	51	31	44
Satisfied	20	33	40	33
Satisfied in part, dissatisfied in part	15	12	17	14
Dissatisfied	15	2	6	5
Very dissatisfied	5	3	6	4

[1] Based on your experience, how satisfied are you that cases (handled under the show cause procedures/submitted without argument) receive the same quality of justice as cases (on the regular calendar/that are argued)?

rate is higher in Springfield (71% versus 65%). In addition, the negative assessment is 20% in Rhode Island, almost double that of Springfield.

Certain aspects of the approaches may account for the views held by those who are satisfied. In Sacramento, the court seeks waiver of argument after the briefs are in and the attorneys have had their opportunity to present the issues as they see them. As some defense counsel remarked, their advocacy role is not threatened. They must give every case its due because they do not know the cases in which the Court is going to ask for waiver of oral argument. To a great extent, the same situation exists in Springfield where attorneys must request argument in their briefs.

Sacramento has another feature which the judges regard as crucial to quality: the judges meet to discuss the staff attorney's overall recommendation for submission without argument. This provides an opportunity, usually lacking in appeals that are not argued, for the judges to confer in person on the appeal.

In Rhode Island, the aspect which may contribute to satisfaction is that the court provides "two looks" in every case -- the prebriefing conference and oral argument on either the show-cause calendar or the regular calendar. This also makes the appeals process more visible than it is in many other courts. Interestingly, the Rhode Island emphasis on increasing the visibility of the appellate process in order to improve the quality of justice is consistent with Lipsky's theory of public organizations (1980:169).

Approaches are not forced upon a jurisdiction, but are put into place because they meet the aspirations of active, reform-oriented judges and attorneys. These then become institutionalized because they meet the participants' working criteria of how cases are best handled. Some observers believe that courts new procedures may create new problems. For example, modified procedures may limit the court's ability to discover error or limit the appellant's ability to overcome the presumption of trial court correctness (Baum, 1977; see also Wasby, 1981). However, these assumptions should be subjected to empirical testing.

There are at least two ways to test whether a particular procedure affects the quality of justice. The most rigorous method is by experimentation through the use of a controlled design to determine if a particular desired objective is achieved by the introduction of planned change. The second method is to determine the extent to which individuals perceive a given procedure to render quality justice. We have chosen the latter

method because of the importance the perceived impact of a procedure has in its acceptance.[10]

Our test is based on three basic propositions drawn from different bodies of literature that suggest what attitudinal factors are related to participants' views that cases handled by regular procedures and those handled by modified procedures receive the same quality of justice. The propositions are as follows:

> The Routineness Proposition developed by Beiser (1974) and Wold (1978) states: the participants' views of the basic functions of the criminal appeals process are not related to quality because the routine nature of most cases does not allow philosophical orientations to play much of a role.

> The Socialization Proposition developed by Drury et al. (1974) and Goldman (1975) states: the participants' willingness to forego aspects of the regular appellate process coincides with their actual experience working in a system where those aspects have been modified. As a result, the more strongly participants believe that some aspect with which they are familiar is not required, the greater their degree of satisfaction that cases on the summary calendar receive the same quality of justice as those on the regular calendar.

An extension of the Socialization Proposition is that, in Sacramento and Springfield, the alleged virtues of oral argument will also be inversely related to quality. That is, the more likely participants in those two jurisdictions are to reject some posited merit of oral argument, the more likely they are to believe that the quality of justice is the same under both calendars.

> The Street Level Proposition[11] developed by Lipsky (1976, 1980) states: that the participants consider quality in terms of their individual caseloads. Most find it difficult to rise above their cases and clients and connect system level measures of performance with their own immediate work environment. Most

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[10] Neither method, of course, is adequate to disproving irrefutable normative propositions. If it is believed that the quality of justice is necessarily dependent on the application of regular procedures in all cases, then no amount of empirical evidence can call this type of proposition into question.

[11] The Street Level Proposition comes from Lipsky's comparative examination of public organizations such as prisons, jails, welfare agencies, schools, and courts, which he calls street-level organizations.

participants cannot relate efficiency, productivity, and delay reduction, which all require a system level understanding, with their cases. On the other hand, they can relate to quality such issues as whether the outcome is a foregone conclusion when a case is expedited, and the extent to which their procedure allows more time to be spent on complex cases. They know from their own experience whether summary calendar is an affirmance track.

Test results are presented in Table IV in the form of gamma coefficients, which indicate the degree of association between the question measuring quality and each of the attitudinal factors included in our survey. Our benchmark criterion is that a gamma of $\pm$ 0.6 or greater indicates a strong association. (A gamma can range from -1.0 to 0.0 to +1.0, with the higher the value, the stronger the association.) As a result, we report coefficients only for the factors that satisfy the criterion of a strong association in at least one jurisdiction.[12]

Generally speaking, all three propositions are strongly confirmed. That is, the factors that are predicted to be related do, in fact, emerge and those factors that are not predicted to emerge fail to exhibit strong associations.

Concerning the Routineness Proposition, it is the case that the broad functions of appeals are not good predictors of quality. The one exception is item 1 -- the protection of constitutional rights -- which is inversely related (gamma equals -.36 in Rhode Island, -.55 in Sacramento, and -.74 in Springfield). This means the less weight participants give to this function, the more they are satisfied that both calendars render the same quality of justice. Our interpretation is that those participants who are satisfied with the quality of justice do not see the relevance of this function in their work environment. Most cases which come before them simply lack constitutional import. Participants are not depreciating the function of protecting constitutional rights because of some abstract ideology, because they do not know what constitutional rights are, or because they do not like criminal defense rights. This function is not highly pertinent in most cases.

The Socialization Proposition, which everyone might consider true as a matter of common sense, is nevertheless the source of some interesting patterns. As predicted, satisfaction with the quality of justice is related

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12 The strong predictors of quality cited in Table IV are part of a broader survey including five questions concerning the functions of appeals, five questions on the requirements of the appellate process, thirteen questions on the merits and limitations of oral argument, and eight questions concerning the impact of the approaches on case processing.

TABLE IV

ASSOCIATION BETWEEN PERCEPTIONS OF QUALITY OF JUSTICE AND SELECTED ATTITUDINAL QUESTIONS

(Gamma coefficients)

Question	Jurisdiction		
	Rhode Island	Sacra-mento	Spring-field
1 The function of appeals is to protect constitutional rights.	-.36 (n=20)	-.55 (n=66)	-.74 (n=35)
2 Parties are required to file full written briefs.	-.67 (n=19)	-.26 (n=64)	-.43 (n=35)
3 Oral argument is required.	-.50 (n=20)	-.63 (n=66)	-.27 (n=35)
4 The procedure in your court enables the Court to monitor the progress of cases so that none inadvertently takes an excessive amount of time to resolve.	.68 (n=19)	.08 (n=59)	-.18 (n=35)
5 The procedure in your court allows the Court to spend more time on complex cases.	.79 (n=18)	.46 (n=63)	.64 (n=35)
6 The procedure in your court creates the appearance of second class justice.	-.91 (n=20)	-.84 (n=67)	-.30 (n=35)
7 The procedure in your court makes it more difficult to uncover reversible errors.	-.70 (n=20)	-.78 (n=66)	-.21 (n=34)
8 The procedure in your court causes the Court's decisions to be decided without sufficient information.	-.86 (n=19)	-.70 (n=66)	-.36 (n=35)
9 The procedure in your court makes the outcome a foregone conclusion once the case is (handled on a summary calendar/ submitted without oral argument).	-.70 (n=20)	-.61 (n=67)	-.64 (n=35)
10 Oral argument permits the attorney to address those issues which the judges believe are curcial to the case.	.19 (n=20)	-.62 (n=66)	-.49 (n=35)

TABLE IV (cont.)

ASSOCIATION BETWEEN PERCEPTIONS OF QUALITY OF JUSTICE AND SELECTED ATTITUDINAL QUESTIONS
(Gamma coefficients)

Question	Jurisdiction		
	Rhode Island	Sacra-mento	Spring-field
11 After reading the briefs, the Court is in the best position to determine whether or not oral argument will be valuable in a particular case.	.36 (n=19)	.69 (n=66)	.56 (n=35)
12 The use of court-supervised parajudicial personnel in screening cases for oral argument is a satisfactory technique for dealing with increased caseloads.	.56 (n=20)	.39 (n=66)	.60 (n=34)
13 Oral argument is often the only way in which the judges are effectively informed of the facts and issues in the case.	-.41 (n=20)	-.65 (n=66)	-.57 (n=35)
14 The views of the attorneys as to the necessity for oral argument in their case should be given substantial weight by the Court.	-.39 (n=19)	-.66 (n=66)	-.51 (n=35)
15 The saving of time and money for clients, and lawyers, is a valid consid-eration in the limitation of oral argument.	.47 (n=20)	.63 (n=66)	.36 (n=35)

to the participants' views regarding those aspects of the process that the jurisdictions' procedure modifies. In Rhode Island, for example, views with respect to the necessity of briefs and written decisions are inversely related to quality (gamma equals -.67 for full written briefs and -.50 for oral argument). The less one believes that briefs and written decisions are required in every case, the higher one's assessment of the Rhode Island procedures. In Sacramento, there is a parallel, inverse relationship between quality and oral argument (gamma equals -.63). This means the less participants believe that oral argument is required in every case, the more they are satisfied that the quality of justice is the same under the regular and modified procedures.

What is not obvious are the rejected virtues of oral argument. Whatever the merits of oral argument in enhancing the quality of justice, for example, that it permits attorneys to address crucial issues (item 10) or that it is the only way judges are informed (item 13), they are not virtues in the minds of the participants. Item 13 has negative correlations in all three jurisdictions with quality (gamma equals -.41 in Rhode Island, -.65 in Sacramento, and -.57 in Springfield). In addition, item 10 is negatively related in Sacramento (-.62) and Springfield (-.49) and only weakly related in a positive way in Rhodes Island (.19), where oral argument is generally valued. Hence, a strong inference is that participants who do not consider these factors to be positive values underlying oral argument tend to be more satisfied with the quality of justice under their court's modified procedure.

The Street Level Proposition calls into question the emphasis placed on system-level measures of performance often stressed by reformers. Participants' views on the extent to which the procedures achieve case processing time reductions have little effect on their assessment of quality. The productivity and efficiency impacts of a procedure also fail to show consistently significant relationships. Their failure to satisfy our benchmark criterion of a strong association is evidenced by their omission from the table.

Instead, as the Street Level Proposition predicts, the items which relate to the impact of the modified procedure, which have generally significant relationships with satisfaction, are questions relating to whether the procedure is seen as an affirmance track. Each of the four potential effects along these lines (6, 7, 8, 9) is inversely related to quality, although this relationship is stronger in Rhode Island and Sacramento than in Springfield. The results indicate, for example, that the more strongly participants disagree with the proposition that the modified procedure in their court makes it more difficult to uncover reversible error, the more they are satisfied that cases under both calendars receive the same quality of justice. Similarly, if they disagree with the assertion that the modified procedure makes the case outcome a foregone conclusion, they are more inclined to be satisfied that the quality of justice is the same.

Again, as predicted, the only workload related item positively related to quality concerns a modified procedure's impact on time available for complex cases (item 5). The more the participants agree that their procedure increases the court's time for complex cases, the more they are satisfied with the quality of justice, more so in Rhode Island and Springfield than in Sacramento (gamma equals .79 in Rhode Island, .64 in Springfield, and .46 in Sacramento). This suggests that court reformers take this value into account in trying to spread the adoption of innovations. That is, the participants may not be moved to implement and to institutionalize procedures simply because the procedures reduce case processing time, or to increase efficiency or to increase productivity. The possibility of being able to spend more time where it is needed makes a procedure attractive.

The utility of the street level view is not only in its predictive power, but in its ability to interpret problems of volume and delay in a meaningful way. Attorneys and judges confronted with their own crushing workloads find it difficult to relate the systemic notion of efficiency or delay reduction to their own situation. Conceptualization of efficiency involves calculations which go well beyond an individual's workload. Yet, it is only that workload which the participants know well. On the other hand, questions about whether a procedure is an affirmance track are actually more understandable than efficiency, productivity, and delay reduction and linked more easily with their own workload. Attorneys and judges know from executing their daily responsibilities whether a show-cause calendar is an affirmance track. Likewise, they know, based on their own experience, if submitted cases that they handle are given second-class treatment.

CONCLUSION

We believe that this set of empirical findings contributes to prior research on criminal appeals. Our comparative results confirm single court studies such as those of Beiser (1974) and Wold (1978), although we find little support for the views of Davies (1981, 1982) as to why cases are treated under modified procedures. He claims modified procedures are a convenient way for judges to minimize the likelihood of overturning convictions in cases involving serious offenses. Our data indicate that cases are argued or submitted without argument because attorneys effectively communicate in their briefs when a case is complex and warranting argument.

The application of the theory of street level public organizations raises some new ideas about appellate courts. Our evidence suggests that the factors associated with the successful institutionalization of management approaches have very little to do with delay reduction, efficiency, or

productivity, as far as the participants' views are concerned. These system level objectives are beyond the perspectives of most participants whose main concerns are the specific sets of cases to which they are assigned. Instead, the participants appear to be attracted to a given approach if there is the prospect of the court spending more time on complex cases and if it avoids being an affirmance track. These findings are among the best predictors of how satisfied the participants are that cases under regular and modified procedures receive the same quality of justice.

There are important implications in these data for practitioners as well. From our perspective, the landscape of appellate court reform contains abandoned experiments, half-starts, and a great deal of inertia. Perhaps a reason for much of the nonmovement toward innovations or the lack of institutionalization lies in the inability to offer prospective jurisdictions what they need to hear. Speed alone appears to be a message without an audience. It would appear necessary to consider questions of the appearance of justice more systematically, for individuals may be dissatisfied with an approach despite its likely improvement in the pace of litigation. If participants believe a modified procedure makes reversible errors more difficult to uncover, they may be dissatisfied despite the fact that a new procedure might mean that cases do not languish. Consequently, exclusive attention on speed may be short sighted.

Reformers also need to be able to show that a new approach will result ultimately in allowing the court to spend more time on complex cases. Because there is widespread agreement that there are routine and complex cases, procedures must be shown to allocate time and attention accordingly.

Finally, despite our note of caution against overemphasizing speed, we believe that efforts to experiment with procedures do not necessarily run afoul of the quality of justice as Bazelon (1971) and others conclude. Contrary to Bazelon, the current research suggests that no aspect of regular procedures -- full briefs, oral argument, written decision -- is indispensable to the quality of justice.

APPENDIX 1

Appeals Procedures in Three Courts

The three approaches we examined vary in terms of how they treat essential components of the appeals process, their points of intervention, and their objectives. Furthermore, each court has customized its approach so that even those courts using an approach similar to one of the three research sites will not look exactly the same.

Case Management in Springfield

Case management procedures were adopted for both criminal and civil appeals by the Illinois Appellate Court in Springfield in 1977. Based on information provided in a form docketing statement filed by appellant shortly after an appeal is filed, the court enters a scheduling order indicating the due dates for the record, the briefs, and the expected date for oral argument (available upon request of counsel). In criminal appeals the time permitted for record preparation and briefing is the time provided by court rules; time deadlines are strictly enforced.

Submission Without Oral Argument in Sacramento

In the California Court of Appeals Third District in Sacramento, the current "routine disposition appeal" procedure dates from the early 1970s. Each appeal is reviewed after briefing by the principal staff attorney who assigns to his staff for research appeals he believes will not require oral argument. These appeals are presented to a three-judge panel. If, after discussion, the panel concludes that oral argument is not necessary, counsel are asked to waive argument. If argument is waived, the appeal is promptly submitted for decision to the panel that requested the waiver. All other appeals are scheduled for oral argument.

Fast Track Procedures in Rhode Island

The Rhode Island Supreme Court adopted its show-cause calendar for criminal appeals in 1981. Under these procedures, shortly after the lower court record and transcript are filed appellant must file a statement of not more than five pages summarizing the issues presented in the appeal; filing by appellee is optional. A justice then meets with counsel in each case; the outcome of the conference is an order directing the subsequent handling of the appeal. Cases the justice concludes do not warrant full briefing are set for hearing on a show cause calendar and are argued before the full court. Each side may file a supplemental statement of up to ten pages. Show cause disposition, which require unanimity, generally result in a one-page order. The remaining appeals proceed to briefing and argument to the entire bench.

APPENDIX 2

Jurisdiction of Rhode Island, Springfield, and Sacramento

Although the Rhode Island Supreme Court's criminal jurisdiction is mandatory, aspects of court system organization reduce the range of cases that it is likely to receive. The Court hears direct, mandatory appeals from the Superior Court, which itself has jurisdiction over felonies only. Misdemeanors and infractions are heard in the limited jurisdiction District Court. Judgments of the District Court are appealed de novo to the Superior Court. The result is that few of these less serious cases are appealed further to the Supreme Court.

State substantive law also affects the kinds of cases the court may be expected to hear. Indeterminate sentencing vests broad discretion in the trial judge in selecting a sentence within statutory limits. As a result, appeals raising sentencing issues are infrequent. Similarly, no direct appeal is permitted from a conviction based upon a plea of guilty. A challenge must be pursued first in the trial court as a collateral proceeding; an appeal can then be filed from the trial court's denial of collateral relief.

The Illinois Appellate Court has only appellate jurisdiction. Although it has some discretionary jurisdiction with respect to civil appeals, its criminal jurisdiction is mandatory -- appeals filed as a matter of right from trial court judgments. The trial court in Illinois is a unified trial court, hearing misdemeanors and infractions as well as felonies; all have a right of appeal to the Appellate Court. Death penalty cases bypass the appeals court and are heard directly by the state supreme court.

Aspects of Illinois substantive law affect the frequency of different types of appeals. The state has a determinate sentencing scheme under which a defendant is permitted to contest the trial court's computation of the sentence. Mandatory prison terms and restrictions on plea bargaining for certain offenses are thought to encourage appeals.

The California Court of Appeal's appellate jurisdiction is entirely mandatory. Superior Court jurisdiction is limited to felonies; misdemeanors and infractions are heard in the Municipal Court. Appeals in these cases are heard in the appellate division of the Superior Court.

The Court of Appeal's caseload is affected by certain aspects of the state's substantive law. The state's Determinate Sentencing Law permits defendants to contest the trial court's computation of the sentence. The sentencing structure generates considerable challenges regarding the computation of enhancements and credits. The imposition of enhancements is itself thought to be an encouragement to appeal. State law also permits defendants to appeal directly a conviction based upon a plea of guilty if certain preconditions are met.

APPENDIX 3

Composition of Criminal Appeals
(Percent of cases)

Characteristics	Jurisdiction: Rhode Island (n=127)	Sacramento (n=501)	Springfield (n=275)
Defense Counsel			
Public Defender	53	15	81
Retained	39	9	18
Appointed	7	76	*
Pro se	1	*	1
Basis of Appeal			
Jury Trials	74	51	58
Court Trials	0	4	12
Pleas	0	40	8
Post Convictions	19	2	13
Other	6	3	8
Offenses			
Homicide	12	10	9
Other Crimes against Persons	45	50	26
Property	15	22	29
Driving	3	1	10
Drugs	2	10	6
Probation Revocation	11	2	8
Negligent Homicide	4	*	0
Other	9	6	11
Issues			
Evidence	59	32	71
Instructions	20	14	23
Sentence	9	42	53
Procedure	17	12	25
Statutory Construction	4	2	4
Constitutional	26	21	34
Defective Plea	0	3	4
Other	7	3	15
Anders	0	11	3

APPENDIX 3 (cont.)

Composition of Criminal Appeals
(Percent of cases)

Characteristics	Jurisdiction		
	Rhode Island (n=127)	Sacra-mento (n=501)	Spring-field (n=275)
Sentence			
Fine, Probation, Incarceration (less than 2 years)	21	18	26
Incarceration (2-10 years)	27	54	43
Incarceration (more than 10 years)	30	24	22
Incarceration (term unknown)	2	1	1
Other	3	2	2
Not applicable (pretrial/interl.)	0	2	7
Missing	16	0	0
Number of Issues Raised			
One issue	53	53	50
Two issues	30	27	26
Three issues	16	12	15
Four or more issues	2	8	10

* Less than 0.5 percent

Organizing the Criminal Appeals Process: The Views of Judges, Government Attorneys and Defense Counsel

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ABSTRACT

Ideas for changing the administration of justice are frequently stymied because it is assumed that an alternative approach would not be acceptable to one or more sets of participants -- judges, prosecutors, or defense counsel. This supposition is grounded in the conventional wisdom that the participants' attitudes vary by position.

The objective of this paper is to assess that assumption in light of systematic evidence from a comparative examination of three first-level criminal appellate courts. Based on interviews with virtually all of the key participants -- judges, court staff, government attorneys, public defenders, retained counsel and appointed counsel -- we find few significant differences between the opinions of different groups. Contrary to the conventional wisdom, the participants do not maintain significantly different outlooks toward such broad issues as the function of appeals or the requirements of the appellate process. Moreover, the participants in different positions share common criteria in assessing the impact of the basic management approach used in their court to handle criminal appeals on the quality of justice. This paper discusses implications of this evidence for court reform.

INTRODUCTION

Courts are looking for ways out of the problems associated with the high volume of case filings thrust on them. As Wasby (1981) has documented, first-level appellate courts -- intermediate appeals courts and supreme courts in states without intermediate appeals courts -- have considered a wide range of alternatives to the traditional way of conducting business. Yet, despite the concerns raised by increasing workloads, potential changes in the administration of appellate justice are more often stymied than implemented.

This situation is especially acute among state appellate courts with a mandatory criminal jurisdiction, where the rate of increase in appeals exceeds those of crime, arrests, and trials (Marvell and Lindgren).[1] New approaches typically are introduced less frequently there, even on an experimental basis, because it is believed that an alternative approach would not be acceptable to a set of participants, particularly defense attorneys. That is, alternatives to traditional procedures often fail to get beyond the initial discussion stage because reform planners assume that one or more of the professional participants will deem the proposed changes unfeasible, a source of more work with no compensatory benefits, a threat to the quality of proceedings, a sacrifice of defendants' rights, or some combination thereof.

The Conventional Wisdom. Differences in the participants' functions in the criminal court -- judge, prosecutor, defense attorney -- have given rise to the conventional wisdom that seeks to explain the justice process, at least in the trial court, in terms of differences in position.[2] The criminal court process is usually discussed at the trial court level in

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[1] The establishment of first-level appeals courts is one of the two basic ways that state supreme courts have responded to their problems of caseload volume. The other solution is an expansion of their discretionary authority (See Kagan, et al, 1978). Those solutions, of course, have made first-level courts the real workhorses of state appellate systems.

[2] Certainly there are differences in the values that individual participants maintain toward the appropriate methods of managing the court and managing litigation. Any doubt that approaches to court management are not seen by everyone as either neutral in impact or value free, has long since been eliminated. In a now-famous essay, Judge Bazelon (1971) argued in strong terms that even the concept of efficiency, much less its application, was contrary to what he saw as the proper goals of adjudication. More recent commentators have tried to demonstrate that applications of procedures to increase appellate court efficiency do, in fact, subvert the fundamental principle of due process (See Davies, 1981, 1982).

terms of the perspectives of each participant. To understand how the process operates, the conventional wisdom maintains that one must understand the substantive goals pursued by each set of participants. Prosecutors seek convictions, defense counsel seek to avoid the imposition of punishment on their clients, and judges seek to resolve cases expeditiously and fairly.[3]

Given this received tradition of attributing causal significance to position, it is understandable why it is assumed frequently that one set of participants (with a particular substantive goal) will not be amenable to experimentation in how the process is organized. Yet, the conventional outlook is challenged by an argument that propounds the notion that participants often operate with inaccurate, and perhaps, stereotyped images of the attitudes held by other participants.

Contemporary Theory and Evidence. Differences in attitudes toward the administration of justice may not be as many or as sharp as participants may think. Participants actually may use common criteria in assessing the status quo and proposed departures from it. This counter argument, rooted in a general theory of public organizations such as courts, jails, prisons, welfare agencies, and schools, posits that the participants (or workers) behave in accordance with their immediate work environment rather than systemic policy goals and objectives (Lipsky, 1976, 1980). This environment is one where the participants are expected to offer their clients and cases individualized treatment. Because of the large volume of work all participants are expected to handle, they can rarely see beyond their own caseloads and, instead, view their responsibilities in terms of what they must do to process their own cases.

Applied to the appellate court, this theory suggests that similar types of workload pressures placed on judges, prosecutors, and defense counsel cause the participants to submerge substantive goals thought to be uniquely associated with their respective positions.[4] In fact, evidence from leading empirical studies is consistent with the theory of public organizations. A generalization drawn from the work of Church (1985), Eisenstein and Jacob (1977), and Feeley (1979) is that judges, prosecutors and defense attorneys agree on how cases generally should be handled despite the fact that they occupy different positions in the system. Simply stated, these

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[3] Textbooks on the criminal justice system in general, and the criminal courts in particular, devote considerable space to describing the function and substantive goals associated with different positions. One implication of this delineation is that these different substantive orientations account for variation in how the participants prefer to see cases handled.

[4] For other applications of this theory of public organizations see, Emerson, 1983; Prottas, 1978; and Weatherly and Lipsky, 1977.

scholars observe that judges, prosecutors, and defense counsel come together as a courtroom work group because unbridled adherence to conflicting substantive goals will produce a mutually disadvantageous process -- protracted litigation -- which none have the resources to afford. The relatively small number of regular participants further fosters mutual adjustment.

Statement of the Problem. Although the conventional proposition and the contrary empirical generalization have centered on the trial process, both outlooks presumably carry over to criminal appeals, where the same small group of participants is found and differences in their function and substantive goals are deemed significant. However, it is an open question whether either the conventional wisdom or systematic evidence, both of which reflect on trial court experiences, provides a complete and correct account of the appellate process. It is uncertain what the conventional outlook is at the appellate level because these court positions are not in one-to-one correspondence with those in the trial court. As an illustration, prosecutors, key figures in the trial court because they control the decision to charge, are rarely the initiators in the appeals court, and thus do not control their workload to the extent prosecutors do at the lower level. Their clout comes from entering the appellate process as the trial court winner, with the presumption of correctness attached to the outcome they represent. In contrast, defense counsel do come to the appellate process with a burden that they do not have at the trial level. They come to the appeals court challenging a lower court outcome, the correctness of which is presumed.

A void in systematic knowledge concerning the attitudes of participants at first-level state appellate courts makes it impossible to know precisely what the results of trial court research imply as to how participants look at the appellate process. Consequently, the views of appellate participants remain largely unknown. The objective of this paper is to assess one essential aspect of the contention between the conventional wisdom and its counter argument. Information is drawn from a larger comparative examination of the criminal appeals process.[5] That study examined the procedures, case processing time, and underlying caseload, jurisdiction, and organization associated with three distinct approaches to handling criminal appeals: (1) case management, (2) decision without oral argument, and (3) fast-tracking. Although the main study explored a range of attitudes held by the participants toward the various approaches, previous publications described the attitudes in the aggregate, by jurisdiction (Chapper and Hanson, 1987a, 1987b; Hanson and Chapper,

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[5] This research, funded by the National Institute of Justice, was carried out by Justice Resources with the assistance of the ABA Criminal Justice Section.

1987a). This paper extends that work by presenting the respondents' views by position.[6]

Specifically, we are interested in the extent to which judges, prosecutors, and defense attorneys' attitudes toward the question of how cases should be handled vary by position. Do certain combinations of participants tend to cluster together? Are there common criteria on how cases should be handled? Or does each position rely on its own standards in assessing the quality of justice?

The practical significance of questioning assumptions about what other participants deem an acceptable or appropriate method of handling cases is highlighted in the context of research on the concept of local legal culture and efforts to reduce trial court delay. As Sherwood and Clarke (1981) discovered in a survey of judges and attorneys, the respondents seriously misperceived the opinions of others, thus manufacturing obstacles to the reform process and inhibiting "the court's ability to exercise leadership" (1981: 200). Although the current research is not a replication of Sherwood and Clarke's research, it follows in their spirit of gathering empirical evidence on attitudes instead of simply relying on conjecture.

RESEARCH CONTEXT

The research presented here is based on a larger study of alternative approaches to handling cases in three courts with a mandatory jurisdiction. They are the Appellate Court of Illinois Fourth District in Springfield, the California Court of Appeal Third District in Sacramento, and the Rhode Island Supreme Court. These courts span the spectrum of ways of handling state criminal appeals. Springfield employs case management and

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[6] Research on the attitudes of appellate court participants toward innovations is, of course, central to the quest for systematic knowledge of how the criminal appeals process works and evolves (See, Wasby, 1987). Although the intellectual heritage of scholarship on state appellate court systems has focused almost exclusively on state supreme courts, a line of research is emerging that is characterized by an interest in the approaches by which courts with mandatory jurisdiction cope with the demands of higher and higher volume (See, e.g., Baum, 1977; Beiser, 1974; Davies, 1981, 1982; Douglas, 1985; Kanner and Ulman, 1984; Neubauer, 1985; Olson and Chapper, 1983; E. Thompson, 1980; Wold and Calderia, 1980; Wold, 1978). Moreover, it is interesting that individuals with experience on the state appellate bench have noted this growing literature and have commented on it (R. Thompson, 1986, 1987). Hence, it will be intriguing to watch the extent to which basic research and policy concerns enhance one another in the future.

affirmatively monitors compliance with its scheduling orders. Sacramento has a no-argument calendar that relies on an experienced court staff to screen cases it believes do not require oral argument. Rhode Island uses a fast-track procedure to differentiate cases requiring full briefing, oral argument, and a published opinion from those that do not.[7]

There are also marked differences in the configuration of the participants. In Rhode Island, the five-member court sits en banc; in the other two courts the judges sit in rotating three-judge panels. Unlike the other two courts, Sacramento relies extensively on appointed counsel, with the public defender's office handling less than 20% of indigency appeals. Again unlike the other public defenders, Sacramento staff attorneys do trial as well as appellate work. The frequency of retained counsel also varies from a low of 9% in Sacramento to a high of almost 40% in Rhode Island. The Attorney General's Office represents the government in Sacramento and Rhode Island. In Springfield, however, government representation is handled by an office created by the county-based states attorneys.

Although success is difficult to define, these three courts report considerable satisfaction with the approach that they have put in place. Each court has accomplished the delay-reduction goals that it set out to accomplish (Chapper and Hanson, 1987b). In addition, a clear majority of the judges, prosecutors and defense attorneys surveyed in each jurisdiction believe that the same quality of justice is provided to all cases, including those handled under a modified procedure (Chapper and Hanson, 1987a).

In organizing the responses, court staff, including clerks of court and staff attorneys, are combined with the judges because of their close affinity to what approach the judges have put in place. Defense counsel are separated into public defenders, retained counsel, and appointed counsel because of their possibly different outlooks.[8]

In this paper, we report and analyze the participants' views concerning three areas of the administration of appellate justice: (1) the function of appeals, (2) aspects of the appellate process required in every case, and

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[7] A brief description of the three basic approaches and the versions in each of the courts is contained in Appendix 1.

[8] We interviewed virtually all of those participants with experience in handling criminal appeals including judges, court staff, and attorneys representing the government. Interviews were conducted in early 1987 on a face-to-face basis except where telephone interviews were required to overcome problems of scheduling and distance. The sessions generally lasted 30-45 minutes to complete a structured survey.

(3) the criteria participants use in assessing the approach in their jurisdiction.

ATTITUDES TOWARD THE ADMINISTRATION OF CRIMINAL APPEALS

Function of Criminal Appeals. Appeals perform a number of functions in the criminal justice process, although commentators disagree over what the primary function of appeals should be and the relative importance of alternative functions. For example, Carrington et al. (1976) stress the value of the appeals process in fulfilling the need to confirm the imposition of sanctions. In contrast, Davies (1981) contends that the concept of due process and the need to correct lower court errors should guide appellate work.

The normative debate among legal scholars on this question mirrors that of Carrington et al. and Davies. Defense counsel are thought to place greater importance on the protection of constitutional rights than judges and prosecutors, who are expected to value the institutional function of appeals more highly.

Yet, the survey disconfirms these expectations and suggests the debate may be limited to academic circles. As seen in Table I, there is only modest variation between positions on the importance of each of five possible functions. For example, all of the participants agree that correction of lower court errors is very important; there is no statistically significant difference between the average or typical responses of judges, government attorneys, public defenders, retained counsel, and appointed counsel (item 1c). In fact, judges, government attorneys, and defense counsel place virtually the same importance on assuring uniformity in how cases are handled in the lower court, confirming the imposition of sanctions by the trial court, protecting constitutional rights, and clarifying the meaning of laws. The only pair of attitudes that is significantly different in statistical terms is the greater importance that appointed counsel attach to the protection of constitutional rights than do government attorneys (1d). The practical significance of this one area of disagreement may be minor, however, because the typical government attorney still agrees that this is an important function.[9]

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[9] Having treated the respondents' answers as scores, we tested for position differences using one-way analysis of variance with the position as the classification variable and the respective scores as the dependent variable. The term 'statistical significance' refers to observed differences in the scores at the .05 level or better, meaning that such differences could only happen by chance alone five times out of 100. The absence of significant differences reflects two facts about the participants' attitudes: (1) the typical attitudes of different positions are close together in their average scores and (2) each position has considerable variation of opinion

TABLE I

PARTICIPANTS' VIEWS ON THE IMPORTANCE OF SELECTED FUNCTIONS OF THE CRIMINAL APPEALS PROCESS[1]
(Mean Scores)[2]

The function of appeals is to ...	Position: Judges n=21	Government Attorneys n=35	Public Defenders n=22	Retained Counsel n=13	Appointed Counsel n=31
1a. Assure uniformity in how cases are handled at the trial level.	1.8	2.4	1.9	2.1	1.8
1b. Confirm the imposition of sanctions by the lower court.	2.4	3.1	2.9	3.3	3.7
1c. Correct lower court errors.	1.2	2.0	1.2	1.2	1.5
1d. Protect constitutional rights.	1.9	1.6	1.2	1.1	1.2
1e. Clarify the meaning of laws.	1.5	1.8	1.6	1.9	1.8

[1] Q.1 Appeals fulfill a number of functions in the criminal justice process. I am going to list several potential functions of appeals. Please indicate the importance of each function on a scale from 1 to 5 where 1 means very important and 5 means very unimportant.

[2] Mean scores are calculated using a 1 to 5 scale where 1 = very important and 5 = very unimportant. Thus, the lower the score, the greater the importance respondents attached to the function. (Averages exclude all "don't know" responses.)

The fact that position does not make a difference in the importance respondents attach to these goals is, perhaps, understandable in light of prior research (Beiser (1974), Wold (1978), and Wold and Calderia (1980)). Although each focused exclusively on appellate court judges, their common results appear to extend to the other positions. These studies concluded that the potentially diverse attitudes among judges based on conflicting views of legal doctrine, political philosophy, and the appropriate degree of judicial activism are submerged. All judges are confronted with an enormous volume of routine cases. Because a large portion of the caseload presents issues involving settled matters, the opportunity for judges to create new law and public policy is severely constrained. That opportunity rests with state supreme courts which select the criminal cases they will review.

Our data indicate that this characterization of appellate judges does, in fact, extend to government attorneys and defense counsel. We asked all the participants (1) if it were possible to establish a working distinction between routine and complex cases, (2) to list the observable characteristics of each type of case, and (3) to estimate the percentage of routine and complex cases in the court's caseload.

Interestingly, the responses to these probes are essentially the same by position. That is, judges, government attorneys, and defense counsel view the nature of the court's caseload similarly. Virtually all of the participants agreed that a working distinction is possible, a distinction largely based on the novelty of the issues being raised. In routine cases, the issues raised represent a well-traveled road, although cases with a single issue, non-controverted facts, and sentencing issues also tend to fall into the routine category.

Despite wide differences in jurisdiction and caseload composition among the courts, the judges, government attorneys, and defense counsel are in substantial agreement concerning the routine nature of the court's caseload. The jurisdiction-wide estimate of routine cases was over 50% in each of the three sites. Controlling for position, the estimated percentages remain close together, with the public defenders' estimate the lowest and judges the highest (judges, 66%; government attorneys, 57%; public defenders, 51%; appointed counsel, 54%; and retained counsel, 60%;). Furthermore, the respondents believe that cases can be differentiated and agree that routine cases can be handled under modified procedures.

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within it, i.e., the attitudes of different positions overlap rather than form separate groups.

The fact that there are no significant differences by position toward the function of the criminal appeals process and the fact that there is a shared view of the routine nature of the court's caseload suggest that the substantive goals attributed to different positions may not affect participants as the conventional wisdom suggests. Daily work demands may be a more critical source of attitudinal patterns. It is important, therefore, to see if position is associated with attitudes toward the administration of justice in ways that go beyond the predicted pattern of conventional wisdom.

Requirements of the Appellate Process. The appellate court process consists of a few identifiable components such as briefing, argument, and opinion writing. One of the premises of court management is that case complexity should guide the administration of these components. Cases that are complex warrant a more elaborate set of procedures. Less complex cases are appropriately handled under more summary procedures.[10] In each of the three courts, the approach used in handling criminal appeals affects the components differently.

In Springfield and Sacramento, briefing is unaffected. In Rhode Island, however, no briefs are filed in appeals directed to the show-cause calendar. Instead, the parties are limited to five-page prebriefing statements submitted in advance of the screening conference and optional supplemental statements of no more than ten pages.

In Rhode Island, some opportunity for oral argument is assured in every appeal -- a "full" argument for regular calendar cases (40% of the total calendar) and a motions presentation for show-cause appeals. In the other courts, although parties have a right to oral argument, about 70% of the fully-briefed cases are submitted without argument. In Springfield, the court does not solicit waiver of argument; argument is scheduled if it is requested by any party. In Sacramento, the court screens fully briefed appeals to identify those it does not believe need argument. Overwhelmingly argument is waived where waiver is suggested by the court (many more cases waive argument after being scheduled than request argument after a suggestion of waiver).

Traditionally, judges hearing a case hold a conference after oral argument to discuss the case and to reach a tentative decision. There is no change in Rhode Island as virtually all appeals are argued. In Springfield, the judges do not meet in person to discuss an appeal submitted without argument; a draft opinion is circulated for approvals. In Sacramento, the judges do meet to discuss appeals submitted without oral

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[10] It is interesting that some trenchant critics of court management believe that the appellate process is more amenable to greater judicial coordination and control than trial courts. (See Resnik, 1982).

argument, but they do so in advance of submission as a "cold" panel to discuss with the staff attorney each appeal recommended for waiver of argument.

In Springfield and Sacramento, the court sets forth reasons for its decision in writing. In Rhode Island, however, in show-cause cases, the decision document is a one-page order reciting that the disposition is in accordance with the show-cause order.

All three courts rely on unpublished opinions. In Rhode Island, decisions in regular calendar are published; show-cause disposition orders are not. In the other two courts, the decision to publish is made independently of whether the appeal was argued, argued appeals have a higher rate of opinion publication.

We asked the participants to indicate the extent to which they agreed that a full-blown set of procedures is required in every case. The conventional outlook suggests that there will be major differences in their views. Defense attorneys are expected to agree more strongly than judges and government attorneys that full treatment is essential. However, the data presented in Table II, do not support this supposition in a systematic and consistent manner.

There are only a few, scattered, statistically significant differences among all the possible pairs of positions. Public defenders are more likely than either government attorneys or judges to agree that full briefs are required in every case. This may reflect the passive position of government attorneys and the greater burden placed on defense counsel (item 2a). Appointed counsel are more likely than government attorneys or public defenders to agree that oral argument is required in every case, possibly reflecting their concern in justifying expenses to the court (item 2c). Finally, public defenders are more likely than government attorneys to believe that publishable opinions are required in every case (item 2e). Hence, the general lack of differences between positions, especially the finding that defense counsel are not consistently different from judges and government attorneys calls the conventional wisdom into question.

A striking relationship in Table II is the relative importance all attorneys attach to receiving a written explanation of the court's reasoning in every appeal (item 2d). As might be expected, defense attorneys, particularly public defenders, are more likely than government attorneys to agree that the questioned components of the appellate process are required in every appeal. For all attorneys, however, the court's written decision is by far the least dispensable aspect of the appeal. This elevated status for the decision implicitly confirms that attorneys, regardless of position, accept the principle of case differentiation. Full briefing and oral argument are components of the appeal which they believe may be appropriately modified, depending on case complexity, without impairing

TABLE II

PARTICIPANTS' AGREEMENT THAT CERTAIN COMPONENTS OF THE APPELLATE PROCESS ARE REQUIRED IN EVERY CASE[1]

(Mean scores)[2]

Components	Position				
	Judges n=21	Govern Attnys n=35	Public Defenders n=22	Retained Counsel n=13	Appted Counsel n=31
2a. Parties are required to file full written briefs.	3.7	3.2	1.8	2.5	2.2
2b. Judges are required to meet in person to discuss a case before reaching a decision.	1.9	3.2	2.2	2.4	2.6
2c. Oral argument is required.	3.5	4.0	3.3	2.6	4.2
2d. A written decision outlining the Court's reasons for the decision reached is required.	3.0	2.7	1.2	1.9	1.5
2e. A written decision that is publishable and citable as case precedent is required.	4.1	4.3	3.1	3.2	4.1

[1] The increasing volume of appeals over the last two decades has led many courts to reexamine aspects of the appellate process. I would like to know your views on the importance of certain parts of the appeals process. Specifically, could you please tell me the extent to which you agree or disagree that each of the following is required in every case on a scale from 1 to 5 where 1 means strongly agree and 5 means strongly disagree.

[2] Mean scores are calculated using a 1 to 5 scale where 1 = strongly agree and 5 = strongly disagree. Thus, the lower the score, the more strongly respondents agreed that the aspect should be required in every case. (Averages exclude all "don't know" responses.)

their effective functioning as advocates in an adversarial system. A written explanation of the court's decision is a considerably less modifiable aspect of an appeal.[11]

The judges' perspective on the process is somewhat different. What the judges consider as least dispensable is collegial decision-making (item 2b). The experience of doing this in every case is associated with the judges' views on the subject. The judges in Rhode Island and Sacramento, where there is an in-person meeting of judges in every on-the-merits decision, rated the conference more highly than did the judges in Springfield, where appeals submitted for decision without oral argument are not regularly conferenced. For judges, this gets to the heart of the appeals process.

Criteria Used in Assessing Approaches. If, as the conventional wisdom indicates, the substantive goals of each position influence how participants see appellate court administration, it should be most evident on the issue of quality. Quality of justice is a topic that should accentuate the positions' respective consciousnesses and color the participants' judgments accordingly.

We have some evidence concerning quality, although this complex phenomenon defies universal definition and common measurement. As part of our larger study, we asked participants to indicate their agreement or disagreement with the proposition that the same quality of justice is rendered to cases given full treatment and those given modified treatment.[12]

Using this question as a dependent variable,[13] we can test the

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[11] The agreement among defense counsel and the government attorneys that written opinions are required are both significantly stronger than the judges' views.

[12] In Rhode Island, the distinction between full and modified treatment concerns fully-briefed and argued appeals and those heard on the show-cause calendar. In Sacramento, the distinction is between argued appeals and those submitted without oral argument. In Springfield, where management procedures contain no differentiation, the questions is directed at the distinction between argued appeals and those decided without oral argument.

[13] The exact question is: "Based on your experience, how satisfied are you that cases (handled under the show cause procedures/submitted without argument) receive the same quality of justice as cases (on the regular calendar/that are argued)?" Agreement is a positive assessment and disagreement is a negative assessment.

conventional wisdom, at least indirectly. If the conventional wisdom is correct, there will be no sharing of the criteria the participants follow in assessing the approach used in their court. In the context of our survey data, this means that there will be no common set of factors that predict whether the assessment of a group of participants is positive or negative.

We began testing this expectation by first reviewing those factors that had been strong predictors of the extent of satisfaction (or dissatisfaction) for each of the jurisdictions. In prior research, we found a cluster of attitudes to correlate highly with the jurisdiction-wide degree of satisfaction (Chapper and Hanson, 1986a). From that set of attitudes, we recalculated correlations for each position.

Contrary to the conventional wisdom, there is an identifiable body of attitudes that is highly correlated with views on quality when controlling for position. As indicated in Table III, there are four measures strongly associated with quality, although some are more closely tied for more positions than others.[14] For example, the more judges, public defenders, retained counsel, and appointed counsel disagree with the claim that the approach in their court makes the outcome of a case placed on summary track a foregone conclusion, the more they are satisfied that all cases receive the same quality of justice (item 3c). The connection for each of these positions is a strong one (-1.0, -.68, -.73, respectively) and the correlation is almost as strong for the government attorneys (-.59) and appointed counsel (-.55).

Because the correlations are in the same direction and are strong, this information indicates that participants in different positions are employing the same criterion. The greater degree to which an individual occupying any position considers this standard to be met, the greater is his or her satisfaction that all cases receive the same quality of justice. Not all judges, government attorneys, or defense counsel agree that this criterion is fulfilled, nor are all participants satisfied on the quality issue. However, good performance or poor performance on this criterion influences a judge's thoughts about quality in the same way as it influences a government attorney's thoughts or defense counsel's thoughts. For all

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[14] The gamma correlation is a measure of association between rankings such as agree strongly to disagree strongly or very satisfied to very dissatisfied. It generates a coefficient that can range from +1.0 to -1.0, with the larger the coefficient, the stronger the association between rankings. Our benchmark criteria are that .0 to $\pm$.30 is a weak association, $\pm$.31 to $\pm$.60 is a moderate association, and $\pm$.61 and above is a strong association. A positive coefficient means that if an individual is in agreement on one question, he or she agrees on a second one. A negative coefficient means that if an individual agrees on one question, he or she disagrees on a second one.

TABLE III

FACTORS ASSOCIATED WITH PARTICIPANTS' PERCEPTIONS OF QUALITY OF JUSTICE
(Gamma coefficients)

Question[1]	Position: Judges n=21	Government Attorneys n=35	Public Defenders n=22	Retained Counsel n=13	Appointed Counsel n=31
3a. The procedure in your court allows the Court to spend more time on complex cases.	.72	.13	.57	.69	.35
3b. The procedure in your court creates the appearance of second class justice.	-.65	-.75	-.47	-.63	-.65
3c. The procedure in your court makes the outcome a foregone conclusion once the case is (handled on a summary calendar/ submitted without oral argument).	-1.0	-.34	-.68	-.73	-.55
3d. Oral argument is often the only way in which the judges are effectively informed of the facts and issues in the case.	-.46	-.72	-.67	-.14	-.66

[1] Individuals were asked the extent to which they agreed or disagreed with each of the following propositions.

positions, knowing the extent to which a participant agrees or disagrees with the proposition allows us to predict with considerable accuracy how that judge, government attorneys, or defense counsel views the approach's impact on quality.

The broader dimension being tapped by the question concerning whether case outcomes are foregone conclusions, is the issue of whether the approach is creating an affirmance track. In this regard, item 3c is related to the issue whether the modified procedure creates the appearance of second-class justice (item 3b). The similar pattern of responses to these two items suggests that participants in all of the positions consider it crucial that an approach to handling appeals not be seen as establishing an affirmance track. Moreover, they concur that the approach in their court does not have this problem, and therefore, they are satisfied that the approach does not impair the quality of justice.

Whereas the issue of avoiding the establishment of an affirmative track is a negative standard, a positive criterion is the ability to spend more time on complex cases (item 3a). The more participants agree that the approach allows the court to spend more time on complex cases, the more they are satisfied that the quality of justice is the same for all cases. This is especially true for judges (.72), retained counsel (.69), and public defenders (.57). The relationship is less strong for appointed counsel (.35) and almost non-existent for government attorneys (.13). As we have pointed out elsewhere (Hanson and Chapper, 1987a), appellate court participants, in general, have strong professional and managerial incentives to allocate their time among cases in a way that allows them to devote the time they believe appropriate to each. The evidence presented in this paper suggests that this incentive structure applies more specifically to each of the various positions.

The fourth factor again states the participants' criteria in somewhat negative terms. Whatever the virtues of oral argument, each of the positions rejects the idea that it is the only way for judges to be effectively informed about a case (item 3d). A strong pattern of rejection is voiced by government attorneys (-.72), public defenders (-.67), and appointed counsel (-.66), and to a lesser extent by judges (.46) and retained counsel (-.14). These results do not square with earlier findings by Goldman (1975) that attorneys object much more than judges to the curtailment of oral argument. However, Goldman's observation, which is widely accepted in the literature (See, for example, Wasby, 1987: 129), deserves some qualification. We believe that the picture of first-level state appellate criminal court participants in our study is more complex than a conflict between judges and attorneys over the value of oral argument at the federal level in Goldman's study.

Goldman's basic conclusion that attorneys are more resistant than judges to limiting oral argument is based on a comparison of federal

court judges and attorneys practicing in the courts. He used the same set of questions that Drury et al. (1974) had developed for a mail survey of federal court litigators, and sent them to federal circuit and district judges. Of the thirteen items concerning the value, role, and appropriate circumstances of oral argument, Goldman claims that judges and attorneys split on six. Because relatively little is known concerning appellate participant attitudes, we replicated these earlier studies by administering a gender-neutral version of the thirteen items.

An expository statement of our findings may be summarized as follows:

- o Judges do not hold views that are significantly different from government attorneys on any of the questions about oral argument.
- o Judges, when they hold views that are different from defense counsel, disagree more frequently with public defenders than retained or appointed counsel.
- o Government attorneys hold views that are different from defense counsel; more frequently with public defenders than appointed or retained counsel.
- o Public defenders are more likely to object to limiting oral argument than the other participants, although their views are not always shared by other defense counsel.

Hence, the question of limiting (or expanding) oral argument may not be divisive as the simple disagreement between attorneys and judges suggests.[15]

Thus, we believe that these four common criteria suggest that there are not sharp differences in the participants' attitudes, as conventionally supposed. Participants in different positions share standards of performance and tend to form similar patterns in linking those judgments to

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[15] There are several reasons why the earlier results might not be identical to ours. One is that Drury et al. and Goldman focused on federal appeals courts and their corresponding participants while we have focused on the state appellate process. Another reason is that they did not distinguish between civil and criminal cases in posing their questions, whereas our questions addressed only direct criminal appeals. Additionally, the scope of the prior work was not limited to lawyers with criminal appellate experience whereas our work tries to include only those lawyers with criminal appeals experience. Similarly, Drury et al. and Goldman did not differentiate prosecutors from defense counsel in analyzing responses whereas we categorize participants into several distinct subgroups in order to determine if position has an impact on attitudes. Finally, whereas Goldman draws comparisons between his findings on judicial attitudes with Drury et al.'s findings on attorneys, the relationship is not subject to statistical testing.

quality. There is not complete unanimity in any position, but the participants appear to have a working consensus on how to assess how well the process is organized.

WHITHER APPELLATE COURT REFORM?

In a recent review of the literature on appellate court administration, Wasby (1987) notes the scarcity of systematic studies of innovations, although he points out that more are emerging. One reason he gives is that scholars have other research agendas. However, Wasby offers an additional reason: "[T]here is a problem in studying innovations: if no or few courts have them, and if judges resist their adoption, we are precluded from examining them." (1987: 131).

Based on our experiences over the past decade of court research (See, e.g., Chapper and Hanson, 1983), we think that limited experimentation partially results from an assumption that some participants will consider a proposed change to be a high-risk, low-yield venture and reject it as unworthy of implementation.

In our opinion, this common assumption vastly overstates differences in attitudes among participants who occupy different positions. Based on our research, the variation in attitudes is minimal, with overlapping patterns the general rule. Judges, government attorneys, and defense counsel do not maintain significantly different views toward such broad issues as the function of appeals or the requirements of the appellate process.

Moreover, different position-holders share common criteria in assessing the impact on the quality of justice of the basic approach to handling criminal appeals used in their court. Although all participants may not agree on the extent to which an approach meets the criteria, judges, governments attorneys, and defense counsel know from their experience a satisfactory approach when they see it. Thus, the organizing concept of the courtroom work group appears to have considerable validity in the appellate setting despite the differences between the trial and appellate court contexts.

There are several important policy implications that flow from these findings. One implication is that when appellate courts consider making adjustments in their procedures, none of the participants should automatically assume that some changes are unacceptable to others without at least some exploratory evidence. Testable assumptions should be tested whenever possible.

Another implication is that the consensus in attitudes means that judges should not begin by assuming that they are in inevitable conflict with all attorneys. There are some areas where judges have their own

particular predispositions. However, the potential differences of opinion that exist also reflect the variety of positions among attorneys -- government attorneys, public defenders, retained counsel, and appointed counsel. The complex differentiation in positions mitigates against the likelihood of war between the bench and the bar.

A final implication relates to the fact that judges are in the position of initiating discussions concerning reforms and communicating their ideas to the attorneys. Although the heads of the institutional offices (prosecution and public defenders) may also have a view of the big picture, judges have the ultimate responsibility of drawing attention to problems of volume and delay and the search for possible solutions.

Evidence from three appellate courts suggests that judges should be sensitive to certain criteria in their discussions and communication. Rather than emphasizing the potential impact of a new approach on productivity, efficiency, or case processing time, they should be able to demonstrate that the approach will not establish an affirmance track for routine cases and that will allow the court and counsel to spend more time on complex cases. Additionally, judges should be aware that all attorneys are concerned about avoiding affirmance tracks. This means that in order for reforms to be institutionalized, wide acceptance is necessary. Thus, it is more important that judges communicate with and seek the support of as many practitioners as possible rather than restrict their messages to bar leaders.[16]

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16 One explanation why some courts have been more successful in coping with problems of volume and delay may be because judges insightfully realize the criteria essential to reform. By ensuring that delay-reduction efforts meet these criteria, they gain widespread support. Hence, they manage to put procedures in place that achieve delay-reduction goals, but they do so by meeting the participants' ultimate concerns regarding quality. If this sort of thinking is in fact taking place, it would appear to be an illustration of what Gallas (1987) calls judicial leadership.

Appendix 1

Appeals Procedures in Three Courts

The three basic approaches we examined vary in terms of how they treat essential components of the appeals process, their points of intervention, the role assigned to staff, and their objectives. Furthermore, each court has customized its approach so that even those courts using an approach similar to one of the three research sites will not look exactly the same.

Case management. Management procedure are directed at reducing case processing time by setting achievable time frames for the appeal. This is typically accomplished by a scheduling order which sets the dates on which events are to occur. A court may choose time frames for the entire period from notice of appeal to disposition or only between certain stages of the appeal (e.g., notice of appeal through briefing).

Case management procedures were adopted in 1977 for both criminal and civil appeals by the five-judge Appellate Court in Springfield. Based on information provided in a form docketing statement filed by appellant shortly after an appeal is filed, the court enters a scheduling order indicating the due dates for the record, the parties' briefs, and the expected date for oral argument. In criminal appeals the time permitted for record preparation and briefing is the time provided by court rules. Time deadlines are strictly enforced. The court's affirmative case management operates in a context in which oral argument is available upon request of counsel (usually made in the brief). Decisions on the merits are either by published opinions or unpublished orders; the decision to publish is made independently of whether the appeal was argued.

Submission without oral argument. Approximately 35 state appeals courts submit at least some of their appeals without oral argument. The effect of "no-argument" calendars is to reduce the time judges have to spend on non-argued appeals. Case processing time may also be reduced by advancing the submission of no-argument cases. However, the time consumed prior to the completion of briefing is not affected. Although there is great variation in the specific procedures used, a common practice involves screening to identify these cases and their subsequent preparation by central staff attorneys rather than by the judges' individual law clerks.

In the seven-judge Sacramento court, one of the six regional districts of the state's intermediate appellate court, the current "routine disposition appeal" procedure dates from the early 1970s. Each appeal is reviewed after briefing. The initial screening is done by the principal staff attorney who assigns appeals he believes will not require oral argument to staff attorneys for research. These appeals are presented to a three-judge panel. If, after discussion, the panel concludes that oral argument is not

necessary, counsel are asked to waive argument. Appeals which do are submitted for decision to the panel which requested the waiver. All other appeals are scheduled for oral argument. Decisions on the merits are by either published or unpublished opinion, a determination made independently of the argument/no-argument decision.

Fast-Track procedures. Unlike case management procedures and the no-argument calendar, fast tracks focus on appeals that do not require full briefing. By differentiating appeals early, cases susceptible to acceleration can be placed on a separate track calling for modified preparation and abbreviated time frames. This permits a court to direct its resources to cases in which full appellate treatment is considered necessary; for the other cases, shortened time frames can sharply reduce case processing time and the time required to be spent on an appeal by the court and counsel.

The five-member Rhode Island Supreme Court adopted its show-cause calendar for criminal appeals in 1981. The distinctive feature of court practice is a prebriefing procedure triggered by the filing of the lower court record. Appellant subsequently files a statement of up to five pages summarizing the issues presented in the appeal; filing by appellee is optional. A justice then holds a conference in each appeal, the outcome of which is an order directing its subsequent handling. Cases the justice concludes do not warrant full briefing are set for hearing on a show cause calendar and are argued before the full court. Each side may file a supplemental statement of up to ten pages. Show cause dispositions, which require unanimity, generally result in a one-page order. The remaining appeals proceed to briefing and argument to the entire bench. Decisions in the briefed appeals are by published opinions.

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