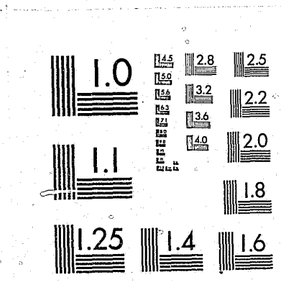
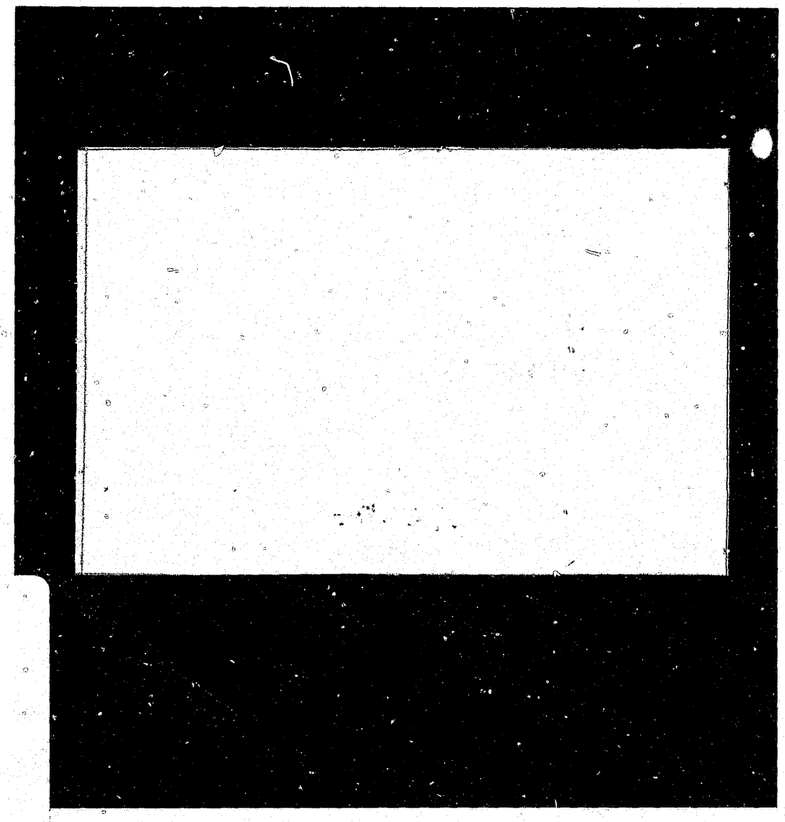


MF1

Northeastern Regional Office



National Center for State Courts

Northeastern Regional Office

THE APPELLATE SYSTEM IN VERMONT

Technical Assistance Report No. 5
in the Appellate Justice Improvement Project

Regional Director: Samuel D. Conti

Project Director: Michael J. Hudson

Technical Assistance Staff
and Co-Authors: Michael J. Hudson
Cynthia L. Easterling

National Center for State Courts
Osgood Hill
723 Osgood St.
North Andover, Massachusetts 01845

This research was conducted under Grants No. 78-DF-AX-0021 and No. 79-DF-AX-0082, awarded to the National Center for State Courts by the Law Enforcement Assistance Administration of the U.S. Department of Justice. Additional funding was supplied by the Charles E. Culpeper Foundation. Points of view or opinions stated in this document are those of the authors and do not necessarily represent the official position or policies of the U.S. Department of Justice, the Charles E. Culpeper Foundation, The National Center for State Courts, or the project advisory board. The Law Enforcement Assistance Administration reserves the right to reproduce, publish, translate, or otherwise use, and to authorize others to publish and use, any or all parts of the copyrighted material contained in this publication.

National Center for State Courts
NORTHEASTERN REGIONAL OFFICE
Osgood Hill
723 Osgood Street
North Andover, Massachusetts 01845
(617) 687-0111

Edward B. McConnell
Director

Samuel D. Conti
Regional Director

December 30, 1980

Mr. Nicholas L. Demos
LEAA - Adjudication Division
Office of Crime Justice Programs
633 Indiana Avenue, N.W.
Washington, D C. 20531

Dear Mr. Demos:

Enclosed for your information is a copy of a technical assistance report prepared for the Vermont Supreme Court by Michael J. Hudson and Cynthia L. Easterling. This and other reports in the technical assistance series are aimed at providing a diagnosis and analysis of the individual appellate systems. It is our intention to distribute this report as a research product of the National Appellate Project. The opportunity to produce such reports is a tribute to the continuing support and confidence shown in the Center by the Law Enforcement Assistance Administration and by the Charles E. Culpeper Foundation.

If we may provide any further information on this report or its preparation, please call upon us.

Very truly yours,

Samuel Domenic Conti

SDC:bjs
Attachment

Preface

This volume is one of a series of technical assistance reports prepared as part of the National Center for State Courts' Appellate Justice Improvement Project. The National Center is grateful for the continuing support and encouragement of the Law Enforcement Assistance Administration and the Charles E. Culpeper Foundation which have made these reports possible.

Other Reports in This Series

No. 1 The Appellate System in Oklahoma

No. 2 The Appellate System in Kansas

No. 3 The Appellate System in the North Carolina Court of Appeals

No. 4 The Appellate System in New Hampshire

No. 6 Case Tracking and Transcript Monitoring in Rhode Island: A Guide

No. 7 Transcript Preparation in New Hampshire

No. 8 A Survey of State Supreme Courts with Intermediate Appellate Courts

THE APPELLATE SYSTEM IN VERMONT

Table of Contents

THE APPELLATE SYSTEM IN VERMONT

On October 7 and 8, 1980, as part of the Appellate Justice Improvement Project of the National Center for State Courts, we met with Chief Justice Barney, Justice Billings, and various support personnel of the Vermont Supreme Court. This memorandum contains our principal conclusions and recommendations resulting from those meetings.

I. The Present Posture of the Court

At present, the Vermont Supreme Court is not confronted with any substantial problem of volume. While it presently has enough appeals ready for oral argument to fill two hearing calendars, and therefore could be said to be backlogged to the extent of one such calendar, this is, in comparison with other appellate courts we have observed, not by any means a serious problem as yet. The court has, however, been quick to note this accumulation of appeals and to investigate possible methods of contending with the problems of volume and delay should the filings, and potentially the backlog, increase further.

The single most vital element in contending with challenges of volume and possible delay in an appellate court is the attitude of the court itself. Courts can no longer wait passively for appeals to be readied for them by

attorneys; rather they must affirmatively assume responsibility for and control over the entire appellate process, from first filing to final disposition. Only by so assuming responsibility and control can the appellate courts protect their processes against delays due to attorney oversight, negligence, or inertia; only in this way can courts reliably establish and maintain clear standards of timeliness and format; and only by making the decision to manage cases, rather than merely waiting for them, can the court best protect the interests of the litigants which are otherwise threatened and often injured by rising volumes of appeals. These observations are held, to the best of our knowledge, unanimously by all authorities in the field of appellate court improvement and reform; they have been verified by our own personal observations in many court systems; and they have even received some empirical statistical support from findings produced by the Appellate Justice Improvement Project.

The Vermont Supreme Court has made the crucial decision to take responsibility for appeals from inception to conclusion. This decision is the most important step in coping with any problems of volume or delay which may arise. Having made this decision, the next step for the court to take is to make certain organizational changes which will enable the court to adapt in an informed, intelligent, and flexible manner to any changes in the number, type, or age of filings, or to any other significant changes in the appellate environment which may arise.

II. Proposed Organizational Changes

A. Streamlining of Appellate Clerical Functions

At present, both the office of Clerk of the Vermont Supreme Court and

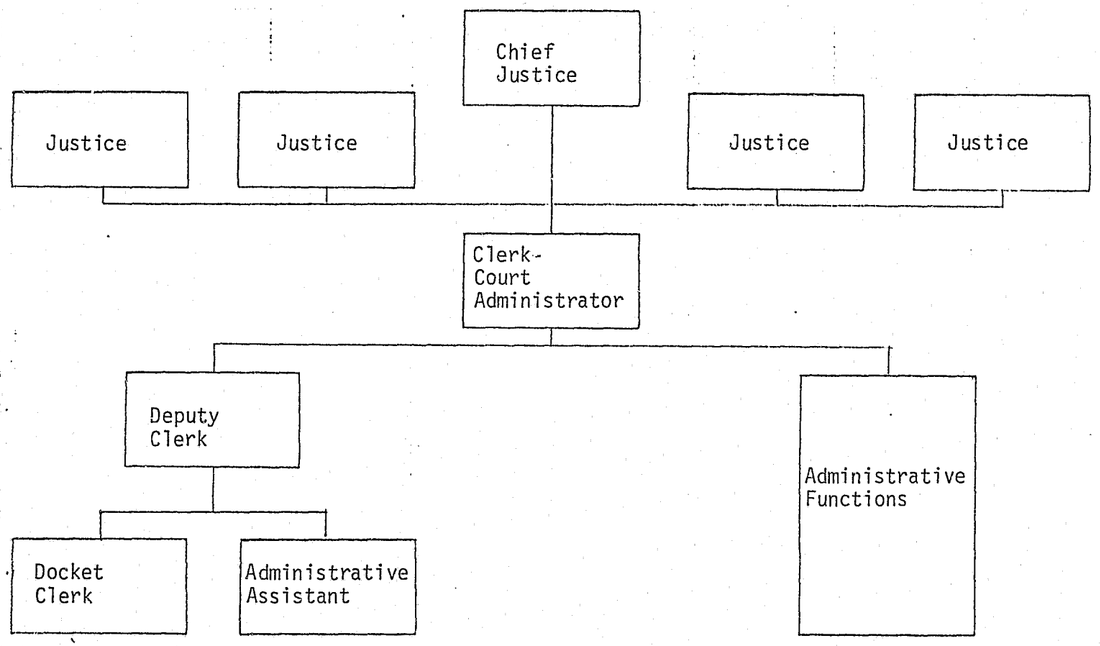
the office of State Court Administrator are held by the same person due, to some extent, to statutory requirement. This arrangement has so far been quite satisfactory to all concerned. With a rising volume of appeals, however, it will become an increasing nuisance to try to route all appellate court management items of any substance through a person already very heavily burdened with administrative matters concerning all the courts in the state; and such an arrangement will become a serious block to installing any appellate court reforms or innovations designed to contend with increasing volume, such as an accelerated docket or a preargument settlement conference. Any innovation of any complexity or effectiveness requires a great deal of fine tuning, which can only be done if the support management personnel can deal regularly and informally with the justices. In order to install any really effective improvements in the Vermont appellate system, it will be necessary to rearrange the lines of communication between the justices of the court and the court's own support staff. This can be done by making two changes. The first involves the clerical functions, the second the judicial management functions.

At present, the organizational arrangement could be diagrammed as in Figure I, Vermont Supreme Court: Current Organizational Structure.

Even with the modest increase in filings which has occurred so far, the in-house clerical functions of the deputy clerk have increased substantially. In order to perform his job properly, the deputy clerk needs to have some regular and continuing communication with the Supreme Court; yet this is made very awkward and difficult by two facts: (a) for the majority of matters, he is required by protocol to go through the court administrator, a very busy

FIGURE I

VERMONT SUPREME COURT: CURRENT ORGANIZATIONAL STRUCTURE*



*In the interest of clarity, law clerk positions are not included on this chart.

man; and (b) there is no one person on the Supreme Court to whom recurring management matters can be brought, since the chief justice is in a position analogous to that of the court administrator, having many other statewide and not merely courtwide responsibilities.

We recommend that the organizational arrangement be changed so that it could be diagrammed as in Figure II, Vermont Supreme Court: Recommended Organizational Structure.

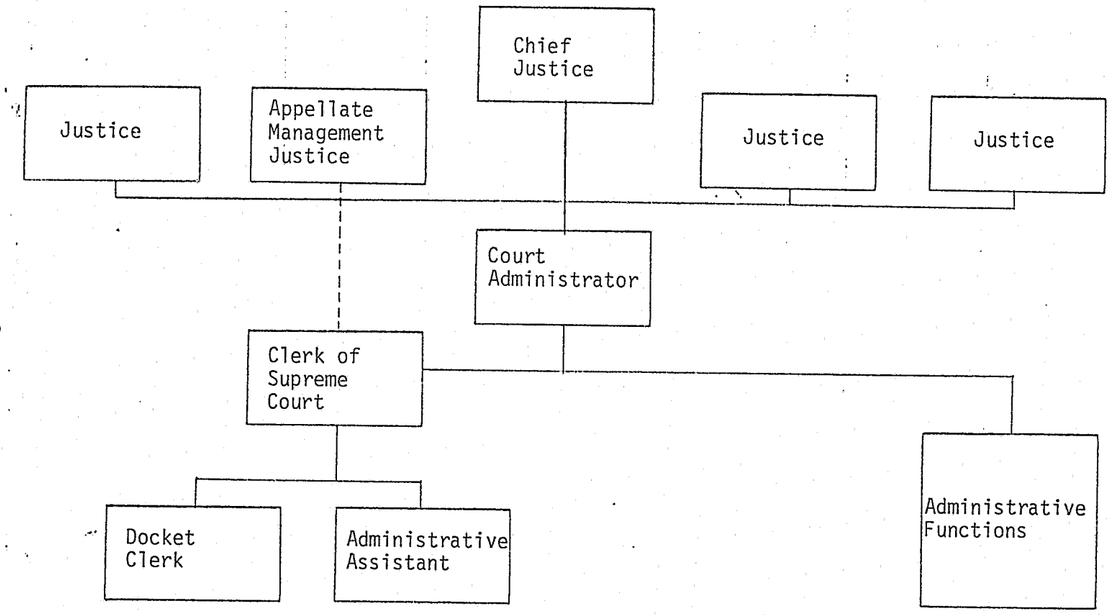
The duties and responsibilities would be simply divided. The court administrator would be responsible for all matters substantially affecting the state's court system as a whole; the deputy clerk--or clerk, if the functions are to be precisely labeled--would be responsible for those matters involving the Supreme Court only. For example, the clerk would report to the Supreme Court regarding daily or weekly modifications of the appellate preargument settlement conference, but he would report to the court administrator on any fiscal matters.

This arrangement would allow the clerk to communicate directly with the court on matters involving rules changes, current statistics, and other housekeeping matters which require authorization by the court or which should for other reasons be brought to the court's attention, and would eliminate the need to employ the court administrator as an intermediary, thus freeing him up for other duties of broader scope; and at the same time, this arrangement would retain the court administrator's authority to manage all matters which affect the court system as a whole, or which affect any court or courts other than the Supreme Court alone.

We recommend that the organizational arrangement diagrammed in Figure II be adopted.

FIGURE II

VERMONT SUPREME COURT: RECOMMENDED ORGANIZATIONAL STRUCTURE*



*In the interest of clarity, law clerk positions are not included on this chart.

KEY:
—— General Court Administration
----- Appellate System Management

B. Creation of an Appellate Management Justice

There should be one person on the Supreme Court to whom the clerk, as that official would be defined in the preceding recommendation, could bring recurring management matters which require the attention and direction of someone who can speak at least provisionally for the court. In many appellate courts, this position has been created, by assigning to one justice the duty of dealing with such matters officially; he makes those decisions which are not appropriate for the clerk to act on and brings to the attention of the full court, or in some cases to the chief justice alone, those matters which require policy decisions. In some jurisdictions, this position has a specific title and in others it has not as yet; but it has proved to work effectively in all jurisdictions we have personally observed. If workload permits, the chief justice may also choose to act as the appellate management justice.

By officially creating such a position, the court would provide the remaining necessary organizational component to enable it to contend with rising numbers of appeals by establishing an organizational framework with which the court could manage the day-to-day problems of installing and maintaining appellate innovations once the court as a whole had made the policy decisions to adopt them. For example, the court in its entirety must make such decisions as whether or not to adopt an appellate preargument settlement conference; once that decision has been made, however, it is not necessary for the court as a whole to deal with all the details of the installation of the procedure, beyond advice and direction in setting procedures. A single justice of the court can be assigned to the task of working with the clerk to see that the procedure is successfully adopted. The same is true for a very wide variety of other court matters.

We recommend that the court create a position of Appellate Management Justice to communicate regularly with the clerk and to work with the clerk regularly on matters involving the Supreme Court, as distinguished from matters involving the state court system generally.

III. Possible Improvements

A. Information Form

Appendix A to this report contains copies of information forms which have been adopted by the Supreme Court of Rhode Island at the recommendation of the National Center for State Courts.[1] Prior to the adoption of these forms, Rhode Island, like Vermont now, received only copies of the first filings; the forms provide additional and immediate information on the appeal to the Supreme Court, and thereby make possible a number of case management functions. First, they enable the court to plan for any sudden fluctuations in filings either in type or number, by informing the court of what is being filed. Second, they enable the court to employ a preargument settlement conference early in the appellate process, by providing the settlement judge with basic information on the appeals at the very beginning. Third, they can provide the court with information on the appeals which can enable the court to screen the appeals for such matters as the possibility of using an abbreviated transcript (if, for example, the form reveals that the only issue on appeal involves voir dire) or putting the appeal on an accelerated docket.

---

[1] Rhode Island is referred to here because it is comparable in court organization and number of filings.

We recommend that the court adopt the use of such information forms as it may design, and that the court require by rule that such forms be completed and filed in the Supreme Court no later than the filing of the notice of appeal is required in the trial court.

B. Preargument Settlement Conference

At the request of Justice Harry Spencer, recently of the Nebraska Supreme Court and currently working in many capacities for the ABA in its various appellate justice programs, we have recently assembled and set forth in a memorandum the most current information on those appellate settlement conferences which have been established and are being monitored by the National Center for State Courts as part of its Appellate Justice Improvement Project. Rather than recap the information in that memorandum, a copy is attached as Appendix B. Settlement conferences are cheap and worthwhile; statistically, they are (so far as the statistics can tell us to date) effective.

We recommend that the court establish a preargument settlement conference. We further recommend that the court approach the legislature for the funding necessary to establish the procedure as a controlled scientific experiment (as described in Appendix B) so that its benefits for Vermont may be clearly identified.

C. Accelerated Docket

At present, oral argument of appeals is the accepted norm. This can result in attorneys traveling long distances, often in bad weather, to argue cases in which they have nothing to say which has not already been said in their briefs. At the same time, it often occurs that the clients want to have oral argument whether or not the attorneys feel it is likely to have any real

impact on the decision; those desires are legitimate and should be respected. Yet if oral argument could be reduced or eliminated in many cases, the productivity of the court would rise as a result of having to spend less time hearing arguments and more time writing more opinions.

Appendix C to this report contains a copy of an article discussing an accelerated docket which has been successfully established in St. Louis, Missouri for the state appellate court there. We do not suggest that Vermont should adopt this procedure directly, but rather that the court proceed to design its own procedure, based on the same concept, which would be appropriate for Vermont. If the court were to screen cases, to identify those cases which seem appropriate for submission without oral argument; to notify counsel--but to leave counsel with the option of insisting on some oral argument if really desired; and to limit such argument in such cases to half that normally allowed, and to schedule arguments accordingly--this procedure could relieve the court, as well as the attorneys, of much needless expenditure of time and effort, and could relieve the clients of the attendant expense. Three principles need to be kept in mind. (1) Many cases do not need oral argument. Usually these are the easiest cases, but not always: for example, a case in which the only issue raised on appeal is one of prejudicial comment may be a very difficult case to decide, but it doesn't need oral argument as a rule. (2) Many cases which do not need oral argument in order to be correctly decided do in fact need oral argument in order for the clients to be convinced that justice has been done. The plain fact is that in many cases where the outcome is a foregone conclusion, the clients need to see the case argued in order for their fears to be quelled, and in order for them to

be genuinely convinced that they lost because the law was against them and not because of corrupt attorneys or judges. Therefore, even in cases which the court determines do not need oral argument in order for it to decide them correctly, there should be a provision by which counsel can insist on at least abbreviated argument. (3) Time which is saved by either eliminating or curtailing the length of oral argument can and should be devoted to producing more opinions. This change in the procedure will not result in a dramatic increase in opinion production, but it will result in some, since justices will spend less time in hearing arguments which are either unnecessary or are unnecessarily long.

We recommend that the court adopt an accelerated docket procedure. We suggest that it be aimed at reducing oral argument.

D. Transcript Preparation

The court is enjoying an upgraded and cooperative court reporting staff due, in part, to new management policies (see Appendix D, Vermont Supreme Court: Description of Case Processing and Transcript Production). If the court reporting staff expands, however, the Office of Trial Court Administration should more strictly define and regulate transcript production standards if management is to maintain a parallel increase in control. The Director of Trial Court Administration should follow through on his idea of bonding reporters to reduce court vulnerability to ex-employees' refusals to transcribe notes; dependable note readers should be recruited for per diem employment as further insurance against the court's potential inability to have notes transcribed.

The court is considering both the expansion of audio recording and the future adoption of computer-aided transcription. The Office of Trial Court Administration should make a cost benefit analysis to determine which court reporting alternative or what mix of alternatives will best satisfy Vermont's anticipated workload and budgetary constraints.

E. Screening

At present, the court maintains a Progress Calendar (see Appendix D, Vermont Supreme Court: Description of Case Processing and Transcript Production, for more detail), which identifies those cases which are delinquent at any stage in the appellate process. At other times, this device has been used to identify those cases which were of greatest importance. We recommend that the court continue to use the Progress Calendar, and that it be used specifically to identify those cases which are delinquent at any stage in the appellate process, with a separate method to be used in the Calendar to identify those cases which are the most delinquent. Our observations in other jurisdictions have led us to conclude that such a procedure is most useful when it identifies delinquency, and not importance; important cases will be watched anyway, and are unlikely to become lost; delinquent cases pose the more serious threat.

F. Change the Sentence Review Procedure

At present, in criminal cases the sentence review is done by the same judge who pronounced the sentence. We suspect that this leads to a substantial number of appeals being filed ostensibly to review customary appellate issues, but in fact merely to review the matter of the severity of the sentence. This might be alleviated if the sentence review procedure were

viewed as more impartial.

We recommend that the Supreme Court take steps to change the current procedure so that the sentence review in criminal cases be performed by someone other than the sentencing judge.

G. In-House Justices' Manual

The Vermont Supreme Court consists of five justices. Whenever a justice leaves, it represents a 20% turnover. This poses difficulties for court continuity of procedures, changes in procedures, and stability generally. Any changes which the court may install could be lost if substantial turnover were to occur.

We recommend that the court write for itself a justices' manual (perhaps only one copy, to be kept in chambers), a totally confidential document, to be used by newly arriving justices to bring them up to date and up to speed regarding the court's procedures and expectations. It could include such matters as the average period in which a justice is expected to produce an opinion in a given case; the deployment of clerks and secretaries; the operation of any court-supported procedures such as an appellate settlement conference; etc. This can provide continuity of development of innovations, and can help insure that the achievements of the Vermont Supreme Court are not lost due to turnover.

APPENDIX A

Rhode Island Supreme Court Information Forms

CIVIL APPEAL INFORMATION STATEMENT

NOTE: For appeals of right only. For certiorari or other writs use the writ information form.

ENTERED BY SUPREME COURT CLERK
DOCKET #

1 CASE TITLE IN FULL:

2 TRIAL COURT OR AGENCY
☐SUPERIOR ☐FAMILY ☐OTHER (SPECIFY):
☐DISTRICT ☐WORKERS COMP.

3 TRIAL COURT CASE NUMBER:

DATE CASE FIRST FILED IN LOWER COURT OR AGENCY:

5 TRIAL COURT JUDGE:

ATTORNEY(S) FOR FILING PARTY
☐ASSIGNED
☐PRIVATE
☐PUBLIC DEFENDER
☐ATTORNEY GENERAL
☐PRO SE
☐OTHER (SPECIFY):
NAME:
ADDRESS:
TELEPHONE NO:

ATTORNEY(S) FOR OTHER PARTY
☐ASSIGNED
☐PRIVATE
☐PUBLIC DEFENDER
☐ATTORNEY GENERAL
☐PRO SE
☐OTHER (SPECIFY):
NAME:
ADDRESS:
TELEPHONE NO:

☐CHECK THIS BOX IF THERE ARE ADDITIONAL PARTIES AND LIST THEIR ATTORNIES ON THE BACK.

8 PARTY FILING APPEAL
☐PLAINTIFF ☐PETITIONER ☐OTHER(SPECIFY):
☐DEFENDANT ☐RESPONDANT

9 DATE OF ORDER/JUDGMENT APPEALED

10 DATE NOTICE OF APPEAL FI

11 TRIAL COURT ACTION APPEALED

INJUNCTION
☐PRELIMINARY ☐DENIED
☐PERMANENT ☐GRANTED

DOMESTIC RELATIONS
☐ORIGINAL PETITION ☐ALIMONY
☐MOTION TO MODIFY ☐SUPPORT
AMOUNT SOUGHT $_____
☐DENIED ☐GRANTED $_____
OTHER(SPECIFY):

GENERAL CIVIL
☐DEFAULT JUDGMENT
☐DISMISSAL/JURISDICTION
☐DISMISSAL MERITS
☐NEW TRIAL MOTION DENIED
☐NEW TRIAL MOTION GRANTED
☐JUDGMENT/JUDGE
☐JUDGMENT/JURY
☐DIRECTED VERDICT
☐SUMMARY JUDGMENT

WORKERS COMPENSATION
☐PETITION FOR BENEFITS
☐PETITION TO MODIFY

12 STAGE OF PROCEEDINGS
☐PRE-TRIAL ☐POST TRIAL
☐DURING TRIAL

13 CIVIL DAMAGES
AMOUNT SOUGHT $_____
☐DENIED ☐GRANTED $_____

14 JUDGMENT/VERDICT FOR
☐PLAINTIFF ☐PETITIONER
☐DEFENDANT ☐RESPONDENT
☐OTHER(SPECIFY):

15 TYPE OF CASE

CONTRACTS
☐ARBITRATION
☐COMMERCIAL
☐INSURANCE
☐NEGOTIABLE INSTRUMENT
☐PERSONAL SERVICES
☐OTHER:

PROBATE
☐TRUSTS
☐WILLS
☐OTHER:

MISCELLANEOUS
☐CIVIL RIGHTS
☐CONSUMER PROTECTION
☐ENVIRONMENTAL
☐PUBLIC UTILITIES
☐OTHER:

DOMESTIC RELATIONS
☐ADOPTIONS
☐CHILD CUSTODY
☐DIVORCE
☐RECIPROCAL ORDERS
☐SUPPORT
☐OTHER:

PROPERTY
☐ADVERSE POSSESSION
☐CONDEMNATION
☐LEASEHOLDS
☐PERSONAL PROPERTY ACTION
☐REAL ESTATE PURCHASE/SALE
☐ZONING/SUBDIVISION
☐OTHER:

OTHER STATUTORY ACTIONS
☐TRESPASS & EJECTMENT
☐WORKERS COMPENSATION
☐EMPLOYEE APPEAL
☐EMPLOYER APPEAL
☐OTHER:

TORTS
☐INTENTIONAL
☐NEGLIGENCE
☐VEHICULAR
☐NON-VEHICULAR
☐PERSONAL INJURY
☐PROPERTY DAMAGE
☐MALPRACTICE
☐LEGAL ☐MEDICAL
☐UNINSURED MOTORISTS
☐PRODUCT LIABILITY
☐PROPERTY-RELATED
☐OTHER:

16 LEGAL ISSUES YOU INTEND TO RAISE (NOTE: You will not be bound by this answer):

17 TRANSCRIPT ORDERED
☐NO ☐YES ESTIMATED COST $ COURT REPORTER:

DATE | FILING ATTORNEY (PLEASE PRINT) | REGISTRATION NO. | SIGNATURE

10/79

WRIT INFORMATION STATEMENT

NOTE: Use this form for certiorari, habeas corpus and other writs.

ENTERED BY SUPREME COURT CLERK
DOCKET #

1 CASE TITLE IN FULL:
PETITIONER: RESPONDENT:
V.

2 TRIAL COURT OR AGENCY
☐SUPERIOR ☐FAMILY ☐OTHER (SPECIFY):
☐DISTRICT ☐WORKERS COMP.

3 TRIAL COURT OR AGENCY CASE NUMBER:

4 DATE CASE FIRST FILED IN LOWER COURT OR AGENCY

5 TRIAL COURT JUDGE:

6 ATTORNEY (S) FOR THE PETITIONER
☐ASSIGNED
☐PRIVATE
☐PUBLIC DEFENDER
☐ATTORNEY GENERAL
☐PRO SE
☐OTHER (SPECIFY):
NAME:
ADDRESS:
TELEPHONE NO:

7 ATTORNEY (S) FOR THE RESPONDENT
☐ASSIGNED
☐PRIVATE
☐PUBLIC DEFENDER
☐ATTORNEY GENERAL
☐PRO SE
☐OTHER (SPECIFY):
NAME:
ADDRESS:
TELEPHONE NO:

8 PARTY FILING PETITION
☐PLAINTIFF ☐PETITIONER ☐OTHER
☐DEFENDANT ☐RESPONDENT

9 DATE OF ORDER/JUDGMENT/ACTION SOUGHT REVIEWED

10 DATE PETITION FILED

11 TRIAL COURT ORDER/JUDGEMENT OR AGENCY ACTION SOUGHT TO BE REVIEWED

12 STAGE OF PROCEEDINGS
☐PRE-TRIAL ☐POST TRIAL
☐DURING TRIAL

13 TYPE OF PETITION
☐CERTIORARI ☐STATUTORY RIGHT ☐HABEAS CORPUS
☐DISCRETIONARY ☐OTHER:
☐COMMON LAW

14 TYPE OF CASE
☐CIVIL ☐AGENCY
☐CRIMINAL ☐OTHER:

15 LEGAL ISSUES YOU INTEND TO RAISE (NOTE: You will not be bound by this answer.)

16 TRANSCRIPT ORDERED
☐NO ☐YES ESTIMATED COST $ COURT REPORTER:

DATE | FILING ATTORNEY (PLEASE PRINT) | REGISTRATION NO. | SIGNATURE

CRIMINAL APPEAL INFORMATION STATEMENT

NOTE: For appeals of right only. For certiorari, habeas corpus or other writs use the writ information form.

ENTERED BY SUPREME COURT CLERK
DOCKET#

1 CASE TITLE IN FULL:

STATE V.

2 TRIAL COURT
☐ SUPERIOR ☐ FAMILY ☐ OTHER

3 TRIAL COURT
CASE NUMBER

4 DATE OF INDICTMENT/INFORMATION/PETITION

5 TRIAL COURT
JUDGE

6 ATTORNEY (S) FOR THE DEFENDANT
☐ ASSIGNED
☐ PRIVATE
☐ PUBLIC DEFENDER
☐ PRO SE
☐ OTHER (SPECIFY)

NAME:
ADDRESS:
TELEPHONE NO:

7 PARTY FILING APPEAL
☐ DEFENDANT ☐ STATE

8 DATE OF JUDGMENT/ORDER APPEALED

9 DATE NOTICE OF APPEAL FILED

10 TRIAL COURT ACTION APPEALED
☐ CONVICTION
☐ DENIAL OF BAIL
☐ PROBATION VIOLATION
☐ GRANT OF PRE-TRIAL MOTION
☐ OTHER (SPECIFY)
☐ GRANT OF JUDGMENT OF AQUITTAL
☐ GRANT OF POST-CONVICTION RELIEF
☐ DENIAL OF POST-CONVICTION RELIEF
☐ DENIAL OF SENTENCE MODIFICATION

11 STAGE OF PROCEEDINGS
☐ PRE-TRIAL
☐ DURING TRIAL
☐ POST TRIAL

12 IF APPEAL FROM CONVICTION
CHARGE (S):
STATUTE:

SENTENCES:
☐ CONFINEMENT ☐ SUSPENDED
☐ SPECIAL PROGRAM ☐ PROBATION
☐ FINE OR RESTITUTION ☐ DEFERED
PERIOD OF TIME: _____ AMOUNT $ _____
☐ OTHER:

BAIL OR RELEASE STATUS:
☐ PERSONAL RECOGNIZANCE ☐ SURETY BOND ☐ CASH BOND ☐ HELD IN LIEU OF BAIL ☐ HELD WITHOUT BAIL ☐ OTHER:

CO-DEFENDANTS:

MOTIONS (CHECK IF MADE & DENIED):
☐ SUPRESS EVIDENCE ☐ SUPRESS CONFESSION ☐ SUPRESS IDENTIFICATION ☐ SEVER ☐ OTHER:

TRIAL TYPE
☐ JUDGE ☐ JURY

13 IF APPEAL FROM DECISION ON POST-CONVICTION RELIEF
WAS THE CONVICTION THE RESULT OF: ☐ TRIAL ☐ PLEA

14 LEGAL ISSUES YOU INTEND TO RAISE (NOTE: You will not be bound by this answer):

15 IF TRANSCRIPT REQUIRED

COURT REPORTER:	DATE OF PROCEEDING:	ESTIMATED COST $	DATE ORDERED:

DATE	FILING ATTORNEY (PLEASE PRINT)	REGISTRATION NO.	SIGNATURE

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

SUPREME COURT
Providence

Re:

Our records indicate that you are counsel of record in the above-entitled appeal. This case was docketed in this court on , 1980.

This court's Provisional Order No. 12 requires that a pre-hearing information sheet be filed in this office within the time allowed for the filing of a notice of appeal. As of this date, however, no information sheet has been filed by you in this matter.

Enclosed is an information sheet to be completed by you and filed with this office as soon as possible. If you have any questions, please do not hesitate to contact me.

Your cooperation in this matter would be appreciated.

Very truly yours,

Walter J. Kane
Clerk

Enclosure

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

SUPREME COURT
Providence

Re:

Our records indicate that you are counsel of record in the above-entitled appeal.

In an effort to expedite the disposition of the appellate docket, the Court has established a pre-hearing conference for civil cases. The primary purpose of the conference is to explore the possibility of settlement. Where settlement cannot be achieved, the conference may assist in defining the issues. We also hope it will be helpful in eliminating some of the more common briefing problems.

Conferences are conducted informally and in the chambers of one of the justices of the court who will be in attendance. Counsel should be prepared to inform the justice fully of the nature of the case and the contentions on appeal. Counsel should also be prepared to recommend or suggest a settlement.

A conference has been scheduled in the above case for on 1980. Each conference is scheduled for one hour, although the parties will be accorded whatever time they truly require. Attendance is mandatory. Please report to the clerk's office.

We solicit your cooperation. If you have any questions concerning conference procedure, please contact me.

Very truly yours,

Walter J. Kane
Clerk

WJK:c

APPENDIX B

Nebraska Supreme Court Memorandum:
Preargument Appellate Settlement Conferences

National Center for State Courts
NORTHEASTERN REGIONAL OFFICE
Osgood Hill
723 Osgood Street
North Andover, Massachusetts 01845
(617) 687-0111

Edward B. McConnell
Director

Samuel D. Conti
Regional Director

October 6, 1980

Hon. Harry Spencer
Supreme Court of Nebraska
State Capitol
Lincoln, NE 68509

Dear Justice Spencer:

In response to your request for information on the preargument appellate settlement conferences established by the Appellate Justice Improvement Project, I offer the following.

The Project has provided assistance to three states in setting up settlement conferences so that they may eventually be empirically evaluated. Two of the states, Rhode Island and Connecticut, established the conferences and the evaluation techniques as specific programs of the appellate Project; in Pennsylvania, the conference was established under a separate grant, but the evaluation techniques were supplied as technical assistance by Project staff.

The Operation of the Programs

The programs currently operate essentially as follows.

Connecticut: The conferences are conducted by a respected retired trial judge who is paid per diem and who holds the conferences approximately three days per week ten months of the year. He is assisted by a deputy clerk in the Supreme Court Clerk's Office who devotes about one-third or less of her time to the program and who has no legal training. No legal research is performed on the cases. The conferences are optional: attorneys receive invitations which they may decline. All cases filed in the Connecticut Supreme Court are

eligible for selection except criminal cases, pro se cases, and juvenile cases.

Rhode Island: The Rhode Island Supreme Court originally intended to have the conferences held by a retired justice of the court, but that person became unavailable shortly before the conferences were to begin; the court then decided that the only alternative at the time was to have the conferences held by sitting justices of the Supreme Court in rotation. They are presently doing so, rotating the conferences among three justices, who do not disqualify themselves from sitting on the cases subsequently, although attorneys may move to disqualify them. (The court consists of five justices who sit en banc.) To date, no motions to disqualify have been filed. The judges account for this by explaining that they avoid discussing the legal issues in the cases and focus instead on other matters which may lead to settlement. All civil appeals except non-attorney pro se's, custody cases, and adoption cases are eligible. The procedure is managed by a law clerk who, however, performs no substantial legal research on the issues. The conferences are mandatory, although cases may be rescheduled in the event of conflicts.

Pennsylvania: The Pennsylvania Superior Court (the state's intermediate appellate court) has established a conference procedure which is presided over by a Senior Judge (an appellate judge who has passed mandatory retirement age of 70 but who has been reappointed to sit on the court and write opinions). The conferences are held in Philadelphia and are mandatory, but only cases involving attorneys and litigants who are not too distant from that city are selected. The only categories excluded other than for geographic reasons are criminal appeals, cases to which the City of Philadelphia is a party, and non-attorney pro se appeals. The judge is assisted part-time by one of his

law clerks (who performs no legal research on the issues) and by his secretary.

The Evaluation Techniques

Generally speaking, the current evaluation techniques operate as follows in all three courts. Eligible appeals are randomly assigned to experimental and control groups. The "control" cases are scrupulously left alone to proceed through the established appellate process; the "experimental" cases receive orders to appear (in Rhode Island and Pennsylvania) or invitations (in Connecticut). Logs are kept on all cases in both sets. If funding can be obtained, rigorous evaluations will eventually be held comparing the two sets after enough cases have closed in both of them. Pending such evaluations, any conclusions are obviously tentative and subject to change; however, I am including some figures as of this date, which indicate that so far the experimental sets are demonstrating a higher rate of pre-opinion disposition than are the control sets, in all three courts.

Regarding the question of whether such a procedure may encourage the filing of more appeals than would otherwise be filed, Rhode Island and Connecticut both keep a separate log of "volunteer" cases--those in which counsel affirmatively ask for conferences; they are granted conferences. To date, the number of such cases has been modest and stable, approximately one every two months in Connecticut and a total of two so far in Rhode Island. In Pennsylvania, no "volunteer" cases are accepted for conferences and no log has been kept of requests.

In Rhode Island, 99 cases have been assigned to the experimental set but conferences have been held in only 50; this makes comparisons with the other

two programs more difficult pending the final evaluations. After Rhode Island had agreed upon the procedure, but before random assignment began, the court held conferences on a set of interrelated workers' compensation cases which, because they were not randomly selected, are not included in the figures. However, those conferences concluded in the settlement of 14 of those cases, plus 18 related cases pending in the trial courts. This bonanza greatly enhanced the court's commitment to the program.

Since the only difference between the two sets, experimental and control, is that the cases in the experimental set are exposed to the preargument conference procedure (or, in Connecticut, at least receive invitations to conferences), any substantial difference between the two sets which becomes apparent over time may be attributed to it. For this reason, we are on the lookout for such developments as increased withdrawals, dismissals, and shorter (or longer) average filing times as well as straightforward settlements.

Note that although the experimental and control sets are meant to be equal in number, they shift with time. This is due primarily to consolidations. It also occurs occasionally that a control case is closely related to an experimental one, which results in its being reclassified as experimental. Operating a conference program in this experimental fashion entails a good deal of "housekeeping" work to add cases to keep the sets as nearly equal as possible. The dividends from such a rigorous evaluation are well worth the effort, however.

The Figures So Far

	PA	CT	RI
Operating since	May 1979	Dec. 1978	Jan. 1979
Total Ex.	274	277	50 conferences held out of 99 cases.
Total C.	271	276	98
Total Settled or Withdrawn			
Ex.	69 (24.5%)	81 (29.2%)	19
C.	21 (7.8%)	51 (18.4%)	3
(difference)	(16.7%)	(10.8%)	
Dismissed prior to Submission			
Ex.	16 (5.6%)	16 (5.7%)	0
C.	25 (9.3%)	10 (3.6%)	1
Other Dispositions			
Ex.	0	0	(2 remands)
C.	0	0	0
Submitted on Merits			
Ex.	2	63	
C.	2	67	
No Disposition yet			
Ex.	187	117	80
C.	223	148	94
Volunteers	---	11	0

General Comments

Having taken care to present the currently available objective information on these three programs, I will now venture to present some subjective observations on settlement conferences, based on my involvement with these three programs and my discussions with these and other judges (and other actors, including attorneys) in settlement conference programs in many jurisdictions.

1. Cast a Wide Net.

It is a good idea to try to include as many different types of appeals in the conference procedure as possible. Everyone has some opinions as to what types of cases are more likely to settle than others, but these opinions tend to be based on personal experience in individual cases. It appears, however, that when cases are involved in a formal conference procedure, as one settlement judge put it, "the damndest cases settle and the damndest cases don't." The best way to approach case selection, in my opinion, is to elicit from the conference judge a list of case types he will not accommodate under any circumstances (usually criminal appeals and pro se appeals) and then randomly assign cases to him from all but the forbidden categories for two or three years. After that time some patterns may emerge as to what case types are more amenable to settlement in the specific jurisdiction - or, perhaps, that no case types are any more likely than any others. These findings can be much more accurately verified, of course, if the assignment procedure is established as part of an overall planned evaluation design and an evaluation is eventually performed.

One argument for liberal and random assignment of cases is to avoid the

charge sometimes leveled against those procedures in which the conference judge selects the cases for the conferences: it simply cannot be proven that he is settling cases that would not otherwise settle; it is possible that in the selection process he is simply exercising a keen instinct for identifying those cases which are going to settle anyway.

2. Avoid Encouraging Appeals.

This is more easily said than done, of course. Still, some measures are available to discourage turning the preargument settlement conference procedure into a "magnet" for dilatory appeals or appeals which are filed only to obtain the conferences.

(a) Exercise random assignment procedures.

(b) Keep track of the rate of "volunteer" cases - those in which the attorneys affirmatively request conferences. If the rate climbs, the court can consider one or both of two alternatives: discouraging attorneys from filing appeals for the sole purpose of obtaining conferences; and making the conferences available immediately after trial - perhaps to be presided over by the trial judge the same day as the entry of the judgment.

(c) Do not allow "volunteer" attorneys to, in effect, force opposing counsel to attend the conferences. "Volunteer" cases should receive conferences only if both counsel are willing to participate.

(d) Keep the meter and the clock running. Payment of costs and fees, as well as deadlines for filings, should not be suspended for conferences except in very rare and exceptional instances.

3. Catch the Appeals Early.

One settlement judge has observed that he is beginning to suspect that the

timing of the conferences is rather important. A case involving large amounts of money, if it will settle, will settle at any point in the appeal, since the costs of the appeal are small in relation to the money at stake in the judgment; but a "small money" appeal, if it will settle, is more likely to settle early on before the cost of the appeal has exceeded the amount otherwise at stake.

But Not Too Early.

Two of the courts, Connecticut and Rhode Island, have observed that they seem to encounter some resistance to holding conferences too soon after the trial judgment: the appellees don't want to participate. The judges feel that the optimum time is from 1-1/2 to 3 months after the judgment in most cases. In order to reconcile this observation (if true) with the need to avoid undue expense for transcripts and such prior to the conferences, perhaps the conference judge could, in a mandatory procedure, permit re-scheduling with a brief suspension of transcript preparation, and in an optional procedure (one in which counsel are invited, not ordered, to attend) follow-up routinely in cases in which the invitations were declined by mailing out subsequent invitations after the cooling-off period has elapsed.

4. Use a Judge.

The conferences should be presided over by a judge - retired trial judge, retired appellate judge, sitting appellate judge - rather than a layman or attorney, for at least three reasons:

(a) It looks better to the clients if a judge is involved: his presence avoids connotations of shadiness and back room "deals" which might otherwise arise in the minds of the clients if no judge were involved.

(b) It puts the stamp of legitimacy on post-judgment settlements in the perception of the attorneys. By lending his name and reputation to the procedure, the judge is reminding the attorneys that it is respectable and professional to discuss settlement after trial, after someone has lost and someone has won. This may in time carry over to those cases in which formal conferences are not held.

(c) A judge, generally speaking, is more likely to be able to exercise restraint in exploring the possibility of settlement than a non-judge, since he will feel less compulsion to justify his paycheck by producing the highest possible number of settlements. It is important that the attorneys and litigants not feel that they have been tricked or railroaded into settling, or their resentment could undermine the program.

5. The Court Must Maintain "Ownership" of the Program.

Preargument settlement conferences by their very nature are heavily dependent for their success on the personalities of the judges who conduct them. This carries with it a danger that the program may become so closely identified with that person that when he or she goes, it goes. To avoid this very real threat, the appellate court needs continually to be aware of and interested in the procedure, even if (as in the majority of programs) the individual conferences are kept confidential. This can be done in at least two ways: (a) The court can include statistics on preargument conferences in its regular statistical reports, much like those presented above; and (b) as judges retire from the appellate court, they can step into the job of settlement judge on a per diem basis.

6. Follow Up the Conference.

In the three settlement conferences being examined, it has developed that the judges conducting them have come increasingly to employ some follow-up procedures - telephoning attorneys, writing letters to remind them, scheduling subsequent conferences. Otherwise, it appears that very promising negotiations can be lost in the subsequent turmoil of law practice. In this as in so many other areas, it is unrealistic to rely too heavily on counsel to pursue efficiently on their own the results desired by the court.

7. Involve the Clients.

It is becoming increasingly apparent that, while it may not be advisable to have the clients present during all negotiations, it is often crucial that they be kept informed and involved. In Connecticut, the settlement judge tries whenever possible to have all the clients present in an anteroom so that they may be consulted when necessary. He reports that on more than one occasion the clients in the anteroom have been able to settle cases that the attorneys in the conference room could not. In all cases, it appears that involving the clients in some degree enhances the likelihood of settlement.

8. Look for Dividends in the Trial Courts.

It is not unusual for a settlement in the appellate court to produce, or to require as a pre-condition, the settlement of one or more cases pending in the trial court. Any evaluation design should be crafted to capture data on this, since such additional settlements are obviously beneficial to both levels of courts and should be taken into account in assessing the value of the program.

9. The Settlement Judge Should Be Wary of Drafting the Settlement Document.

While the settlement judge should of course participate so far as he tactfully can in developing the formula for a given settlement, he should leave the drafting of the final document (usually a stipulation to be filed by all parties in the trial court) to counsel; that way, if the document should later turn out to have unfortunate consequences for anyone involved, the counsel can only blame themselves and not the judge, or by extension the conference program.

10. Evaluation is Extremely Valuable.

The three programs in Connecticut, Rhode Island, and Pennsylvania are being conducted as controlled scientific experiments. They were designed at the very outset to be run in such a way that eventually they could be subjected to a most rigorous empirical evaluation. While the funding for these final evaluations has yet to be obtained and therefore the evaluations are currently in a state of some uncertainty, the developments so far leave no doubt that empirical evaluation is an invaluable asset for any court employing an innovative procedure such as preargument settlement conferences. I have submitted an article to the 1980 issue of the Appellate Court Administration Review which discusses the advantages of empirical evaluation. I will summarize them briefly:

(a) Evaluation tells us whether a program works. Courts must begin to adopt an experimental attitude towards reforms. Evaluations are necessary to inform them of the results of their programs.

(b) Evaluations protect successful programs from legislative budget cuts. An empirical evaluation, performed by an objective professional, which

sets forth the sum total productivity of a successful program, is a powerful defense against a misguided attack of Proposition Thirteen fever.

(c) Evaluations may suggest how reforms can be improved. For example, an evaluation may reveal whether in the jurisdiction in question there is some clearly identifiable category of case which is more susceptible to settlement than others; if so, the program can be modified to include a higher proportion of such cases. Two of the settlement conference programs being conducted as controlled scientific experiments are just now beginning to suggest that there may be a "cooling off" period after trial court judgment that affects the likelihood of settlement in many cases.

(d) Evaluations help provide reforms with the longevity necessary for success. Too many reforms perish for the lack of time to work out the bugs in the original designs. If evaluation techniques are installed at the beginning of a settlement conference and a target number of experimental and control cases is agreed upon at that time, the program is more likely to continue until that number is achieved despite the discouraging difficulties which often beset new approaches. One such difficulty discussed above which an evaluation may surmount, by supplying stamina to the program, is the departure of a settlement judge.

(e) Evaluations may help to provide information and insights regarding the appellate process generally. For example, in a controlled experiment the evaluation may provide new and useful information on the cases in the "control" set.

11. Settlement Conferences Are Not Dishonest.

From time to time I notice that a judge may receive the proposal of an

appellate preargument settlement with inchoate distaste, rather as if it were a suggestion to do something unethical. This response, I have concluded, springs from noble motives. Many judges feel that the only really honest way to dispose of an appeal is to write an opinion on it like an honest person; any other procedure is regarded as somehow cheating or cutting corners. To this I respond that we must all bear in mind the principle of "case or controversy". Litigation that was indeed a genuine case-or-controversy at the trial level may no longer be so at the appellate level; tempers may have cooled, external factors changed - it is even possible that the trial may have resulted in a just verdict. But many appeals are doggedly pursued out of wounded pride, confusion, ignorance, or embarrassment. I maintain that if an appeal can be settled without undue expense, delay, effort or coercion, it should be, and there is no dishonesty in trying to achieve that; indeed, it may be a disservice to all the ends of appellate justice not to try to do so.

I hope this information and these observations are useful.

Sincerely,

Michael J. Hudson
Project Director

MJH:ddm/mwp

cc: Edward McConnell
Sam Conti
John Greacen
Jerry Goldman

APPENDIX C

Article Discussing Accelerated Docket
in St. Louis, Missouri

The St. Louis Method:
A Court's Response to the Flood of Appeals

by Robert D. St. Vrain and Michael Hudson

In November of 1970 the people of the State of Missouri approved a constitutional amendment that restructured the appellate courts of the state. The Supreme Court was given very limited original appellate jurisdiction and the intermediate courts were given general appellate jurisdiction over the state's rapidly growing appellate caseload.[1] The amendment became effective on January 1, 1972, and after seven years of growth, change, and experimentation certain lessons have been learned for the improved operation of an appellate court.

The challenge that confronted the Missouri Court of Appeals, St. Louis District in January 1972 was to adapt from being a seven-judge court with limited civil jurisdiction, no felony criminal jurisdiction, and a manageable, current caseload to being a court of general appellate jurisdiction with a much larger and more complex caseload.[2] The court experienced an immediate 60 percent increase in new filings during 1972 and an additional 37 percent increase during 1973.

As the caseload continued to grow after the implementation of the new amendment the court's initial reaction was fairly typical—a request for more judges and support staff to handle the burgeoning work load and to reduce the ever-longer period cases remained on appeal.[3] By the fall of 1974 the court had grown to 10 judges.[4] In addition to an individual law clerk for each judge, the court had added a small central research staff (four attorneys and a director) to prepare prehearing reports to expedite appeals.

When the court experienced another 31 percent increase in new filings during 1975-76 the judges began to consider alternatives to the "more judges—more staff" approach to handling the appellate crunch. Because of the fortunate confluence of three crucial factors the St. Louis District was able to initiate certain changes in the court's operation that subsequently reduced the time span on appeal and made a more efficient appellate operation.

The three underlying factors that enabled the court to successfully implement changes were 1) a chief judge who was interested in the basic administration of the court and who provided the impetus for change; 2) a majority of the judges who were receptive to and supportive of new techniques and procedures; and 3) professional staff who could manage a revamped operation and, by performing appropriate delegated functions, could minimize the judges' time spent in nonjudicial activity. In retrospect, it is easy to realize why these background conditions aided success. Without a chief judge to provide the necessary leadership and impetus, without a majority of the judges who do not oppose and who are willing to experiment and actively participate in the implementation of new procedures, and without a professional staff to manage the administrative detail and the liaison with the bar when new techniques are adopted, the chances for successfully implementing changes in rules, customs, and procedures will be quite limited.

When Judge Gerald M. Smith became chief judge in 1975 he initiated a comprehensive examination of the entire appellate process in Missouri with particular attention directed to the problems confronting the St. Louis District.[5] He insisted on first analyzing and defining the problems confronting the court before attempting to impose "solutions." Any changes were to be designed to meet specific problems. The other judges also realized that the traditional methods of case processing and disposition were not getting the job done in a timely manner. A majority of the judges were not only willing to experiment with suggested new approaches but many actively participated in the frank discussions that took place. They made numerous suggestions based on topics that had been presented at appellate seminars that they had attended. The initiation of a settlement conference is one example of a new procedure that was developed as a result of Judge Joseph Stewart's participation in the planning of new court procedures during this period.

The basic strategy adopted by the court in 1976 was a joint program of affirmative case management and of case differentiation. The court decided to switch from being a passive entity that allowed the attorneys largely to determine the speed at which a case progressed (or lagged) to a managed operation that actively monitored its caseload and enforced time frames for various appellate actions.[6] The court also expanded its traditional, singular method of case disposition (record, briefs, argument, and full opinion) by establishing three addtional alternative methods for disposition.

The accelerated docket was the first significant attempt at case differentiation and "fast-tracking" of selected cases. With the size and diversity of its caseload the court decided that a substantial portion of the docket could probably be expedited by initiating certain procedural changes in the presubmission process. Existing Missouri Rules of Court limited the scope of the changes that could be implemented, but within the existing framework there was enough flexibility to alter traditional docketing techniques.[7] After the respondent's (appellee's) brief is filed a case is referred to one of the three judges in the Accelerated Division. This one-judge initial screening does not involve any determination of the merits of the case but rather is an assessment of the apparent degree of difficulty that the case poses for resolution. If there are limited issues (three or less), if the case is not factually or legally complex, if no novel questions of law or fact are presented that might have significant precedential value, then the case is placed on the accelerated docket for expedited disposition.[8] The attorneys are notified of the court's screening and placement of the case on the accelerated docket. Condensed oral argument (10 minutes per side) is available if a party requests argument within 10 days after notification. If no request is received the court takes the case under submission on the briefs at its convenience.

Initially the court hoped that 40 to 45 percent of all cases screened might be placed on the accelerated docket. For the past three years 54 percent of all cases screened, which is all fully briefed cases, have been placed on the accelerated docket. The breakdown of these cases has consistently remained 65 to 70 percent criminal and 30 to 35 percent civil.[9] Twenty-two percent of the cases screened have requested oral argument—48 percent of the civil cases and 12 percent of the criminal cases.[10] One division (three judges) handles the accelerated docket. The remaining three divisions of the court concentrate on the regular or nonaccelerated cases that involve more complex issues and frequently have extensive records for review.

The effect of the accelerated docket on disposition time has been to reduce the period on appeal (notice of appeal to opinion) for accelerated cases to 12 months. Regular cases now average approximately 18 months on appeal with a composite average of all cases on appeal presently at 15.4 months. Before the initiation of the accelerated docket the appeal time span exceeded 20 months.

A second innovative procedure, initiated in the fall of 1976, was an appellate settlement conference. Through the efforts of Judge Joseph Stewart the St. Louis

District was the first appellate court in the state and one of the earlier courts in the midwest to try such an alternative method of case disposition.

A great deal has been written, both pro and con, on settlement conferences in the past year. There are many variations on how a settlement conference can or should be run. The hallmarks of the procedure in the St. Louis District: 1) the settlement conference is run by an active judge on the court; 2) the entire procedure is both confidential and totally voluntary; 3) the process is selective but there are no predetermined conditions set by the court; 4) the conferences are held as early in the appellate process as possible;[11] 5) no legal research is done prior to the conference; 6) appellate filing schedules are not automatically delayed pending completion of the negotiations.[12]

Judge Stewart devotes one full day each week to holding conferences. He and his secretary devote a great deal of additional time scheduling conferences, contacting attorneys and court reporters, and followup after a conference has been held until some decision is made by the parties. In two and one-half years he has held more than 400 conferences. He has obtained more than 130 settlements with approximately 40 cases pending. Judge Stewart has consistently achieved a settlement ratio of one-third of the cases in which conferences are held.

The response from the practicing bar has been overwhelmingly supportive and cooperative. This is due largely to the approach that Judge Stewart has followed. Even in cases where settlements are not reached the attorneys have welcomed the opportunity to meet and informally discuss the case and the issues involved. An unmeasured and largely unappreciated result of the settlement conference in cases that do not settle is better issue delineation and more concise and precise briefs.[13]

A third element of the court's approach to managing its work load is a series of new procedures utilizing the staff to monitor each phase of the appellate process. The research staff has been assigned the duty of screening all transcripts and appellants' briefs for minimal compliance with governing court rules. By implementing such screening steps throughout the appellate process the court has been able to "short-circuit" a number of defective cases before submission. In some instances, the defect, such as a poorly drafted brief, can be corrected and the case can proceed to submission. In other instances, the defect is jurisdictional and the appeal must be dismissed.

A fourth device has been the institution of monthly dismissal dockets. A senior staff attorney is responsible for reviewing the status of all pending cases both civil and criminal. Those cases that are seriously delinquent or have some other unresolved problem are placed on the monthly dismissal docket. Attorneys and parties are notified of the impending dismissal. Only a personal appearance with ample assurances that the problem has been or shortly will be corrected will get the case removed from the dismissal docket.

The success of the dismissal dockets depends on accurate monitoring, a consistent policy by the court of enforcing the rules, and the resulting realization by attorneys that letting cases become delinquent is not worth the inconvenience, embarrassment, and possible malpractice claims that may result. "Dead wood" cases are cleared from the docket. Problem cases are pinpointed and an attempt is made to resolve the problem quickly and minimize any further delays in the appellate process. Attorneys soon learn that a case must be timely perfected.[14]

A recent spin off from the criminal dismissal docket has been a monthly appeal and bond docket. In a limited number of criminal cases the defendant is admitted to bail pending appeal. In the past, no supervision or restrictions have been placed on such individuals while their case remained on appeal. Individuals admitted to bail are now required to periodically report to the marshal of the court and verify his or her current address. Failure to report results in a bond forfeiture and may result in the immediate dismissal of the appeal.

While the accelerated docket, settlement conference, screening procedures, and dismissal dockets have all contributed to the reduction of case time on appeal before the Eastern District in Missouri, no one procedure or technique is "The Answer" to meeting the appellate crunch. The solution to the multitude of problems confronting appellate courts today really lies in the process or approach used by the court in handling its caseload.

Appellate courts are frequently referred to as "hot" courts if the judges read the briefs before oral argument or "cold" courts if they do not. A far more important and appropriate terminology might be "open" for those courts that remain flexible, open to valid criticism, and willing to try new approaches to caseload and operational problems, and "closed" for those courts that continue to function in the same way they did before the swelling of appellate work loads and that refuse to adapt to changing circumstances.

FOOTNOTES

[1]The three separate intermediate appellate courts were formally consolidated into one court sitting in as many districts as the legislature created. The state is presently divided into three geographical districts that continue to function independently.

[2]In a subsequent constitutional amendment, which became effective on January 2, 1979, the three districts of the Court of Appeals were renamed the Eastern (formerly St. Louis), Western (formerly Kansas City) and Southern (formerly Springfield) Districts.

[3]In the 1974-1975 the average time a case remained on appeal was 21 months.

[4]Two additional judges were added to the court in 1977. The court presently consists of 12 active judges and one senior judge and is divided into four divisions.

[5]A complete set of new appellate rules that would streamline the appellate process was prepared and submitted to the Missouri Supreme Court in October 1976 by Judge Smith.

[6]The most sensitive time frame in the entire appellate process was addressed by the Supreme Court for the first time in April 1976 when a monthly report on cases under submission by each appellate judge was required. The suggested norm was to issue cases within 120 days of submission.

[7]Appellants are allowed 60 days to file briefs. Respondents are allowed 30 days.

[8]While it may be said that the cases placed on the accelerated docket are those that appear to be *straightforward*, this is not the same thing as saying that they are always *easy*. For example, an appropriate case might be one in which the only issue on appeal is a question of prejudicial comment during trial. Such an appeal may be very hard to decide and at the same time gain nothing from extended oral argument.

[9]A substantial portion of this criminal caseload consists of postconviction remedy appeals that technically are civil actions in Missouri.

[10]The court has encountered no significant resistance to placing criminal as well as civil cases on the accelerated docket.

[11]Conferences are held early in the appellate proceedings for several reasons: 1) it affords the opportunity to obviate preparation of the transcript and briefs, which would save the parties money and the appellate systems time and effort, and may operate to encourage settlement; 2) it increases the likelihood of obtaining participation of all concerned, before counsel have been substituted or parties have moved; 3) it avoids possible distractions by later-discovered points of law. Regarding this last point, Judge Stewart has expressed the opinion that most cases that settle do not settle on the law involved but on other factors.

[12]While Judge Stewart has the authority to suspend preparation of a transcript for a time, care is taken to avoid unduly tempting attorneys to use the conferences to delay.

[13]The national Appellate Justice Improvement Project, funded by LEAA and conducted by the National Center for State Courts, has recently designed and implemented two appellate settlement conferences in Connecticut and Rhode Island that borrowed heavily from the St. Louis procedure. These conferences are being conducted as controlled scientific experiments so that when they are statistically evaluated, sometime within the next two years, it should be possible to determine empirically and with considerable accuracy whether and to what degree the appellate settlement conferences reduce the caseload, and perhaps even whether some types of cases are more likely to benefit from the procedures than others.

[14]A similar dismissal docket has been implemented in Connecticut as a second national Appellate Justice Improvement Project demonstration program in that state; it also will be statistically evaluated.

ROBERT D. ST. VRAIN is an attorney and is the clerk of the Missouri Court of Appeals, Eastern District. He is currently a member of the Executive Committee of the National Conference of Appellate Court Clerks.

MICHAEL HUDSON is a staff attorney for the National Center for State Courts at their Northeastern Regional Office in Boston. Mr. Hudson specializes in appellate courts. Formerly, he was research director and administrative coordinator for the Missouri Court of Appeals, Eastern District.

APPENDIX D

Vermont Supreme Court: Description of
Case Processing and Transcript Production

Vermont Supreme Court: Description of
Case Processing and Transcript Production

Case Processing

Notice of Appeal (NOA) must be filed with the trial court or agency within thirty days of final judgment. Transcripts must be ordered within thirty days of the NOA. When the appellant is informed of the estimated transcript cost, he or she must pay a 50% deposit to the trial court; the trial clerk of court immediately sends this money to the court reporter.

Upon receipt of a completed record (excluding transcript), the Supreme Court Deputy Clerk's Office dockets the case and notifies the attorneys or pro se litigants. The appealing party then has ten days in which to deliver a "printed case" which consists of 12 copies of those portions of the record that he or she considers relevant.

Court reporters deliver transcripts to the trial clerk of court who collects remaining costs from attorneys, pays the reporters and informs the Supreme Court of its completion. The Deputy Clerk's Office notifies all parties that the appellant brief deadline will be determined according to the date of transcript receipt at the trial court (full completion of record).

The appellant's brief is due within thirty days of full record completion. The appellee's brief must be submitted within twenty-one days of receiving the appellant's brief. An optional closing brief is due ten days after service of the appellee's brief. If any brief deadlines are missed, cases are listed on a "progress calendar" which is reviewed by the justices

during the following term. A tardy party is notified that action must be taken within thirty days. Parties may agree by stipulation to continue a case upon an extension granted by the Supreme Court; the majority of such extensions are granted.

Once all briefs are submitted, the case is listed for oral argument during the next term or the one after that. The court hears three cases each day approximately five days a week for five three-week terms per year. Each side is allowed thirty minutes oral argument; parties occasionally exceed that time limit (especially in pro se cases if briefs are poor and justices depend upon hearings for case information).

Vermont has a mixed "hot" and "cold" court; some justices read the briefs before hearing the case while others wait until afterwards. The court holds a private conference immediately following every hearing during which each justice states a tentative decision. Opinion writing is assigned by rotation,[1] unless a justice expresses preference for a case whose issues are his specialty. In general, opinions are expected to be completed by the first day of the next term; however, complex cases often take longer.

The Deputy Clerk's Office informs the attorneys, parties, and press of the date of opinion handown. Slip opinions (copies of original opinions) are sent to Vermont judges and subscribers five or six times a year. Opinions are published under open bid contracts and are also sold to national publishing and automated legal research firms.

---

[1]If a judge is assigned a pro curiam opinion, he also accepts the next full opinion.

Transcript Production

Attorneys must order[2] transcripts within 30 days of Notice of Appeal. While entire transcripts may be requested automatically, partial transcripts must be agreed upon by stipulation between parties and approved by the court. Appellants pay 50% of the estimated cost to the trial clerk of court who forwards the money to the court reporter.

Court reporters are expected to complete transcripts within 60 days of receipt of the 50% deposit. (They are not allowed to do any free lance work while appellate transcripts are due.) The reporters send monthly reports that include the following information to assignment supervisors:

a. dates of transcript orders,
b. dates of deposits,
c. estimated number of folios[3] ordered, and
d. number of folios completed.

If a supervisor decides that a reporter's transcript load is excessive or that transcripts are overdue, she will take the reporter out of court.

When court reporters complete transcripts, they deliver them to the trial court clerk's office where remaining costs are collected. Court reporters charge the appellant 50¢ per original folio (approximately

---

[2]Requests are currently made by letter, however, the court administrator's office is developing an order form.

[3]Two and one-half folios approximately equal one page.

$1.25 per page) and charge other parties 25¢ per copy folio (approximately 63¢ per page. The appellant must submit the original transcript to the Supreme Court at oral argument.

The Vermont courts employ 22 court stenographers who, with one exception, are trained on stenotype. Assignment supervisors occasionally employ free lance stenographers due to absenteeism or transcript overload. The courts have established a series of salary increases which are granted to reporters who pass a parallel series of certification tests conducted by a national association of court reporters.

The two assignment supervisors report to the Director of Trial Court Administration in the court administrator's office. He aids the supervisors in determining excessive workload or valid justification for transcript delay. He may also discuss problems with individual reporters. The administrative office is drafting a court reporter's procedures manual and is also considering the feasibility of renting or purchasing computer-aided transcription equipment.[4]

Six district courts[5] have tape recording equipment; however, only one court employs a trained court monitor. The administrative office hopes to expand the use of audio recording as well as develop court monitor certification and procedures similar to the court stenographer policies. The court reporters have not expressed any united opposition to the introduction of sound recording.

---

[4]Current state workload is approximately 2,500 pages per month.

[5]Hearing rooms at the state hospital and a special needs school are also equipped with tape recorders.

Since the court reporter staff has been upgraded by certification incentives, the administrative office has experienced little difficulty in maintaining timely transcript production or resolving specific problems. The Director of Trial Court Administration attributes this success to a small, competent, and cooperative staff. Conflicts have occurred, however, when reporters who have moved out of state refuse to transcribe notes that are several years old. The administrative office is considering bonding reporters and also is promoting a note reading course at a local stenographer school to alleviate such problems.

END