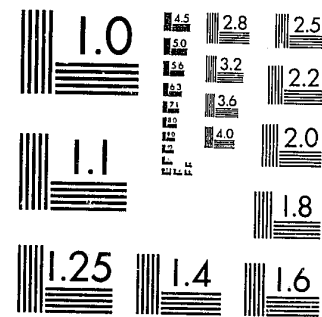


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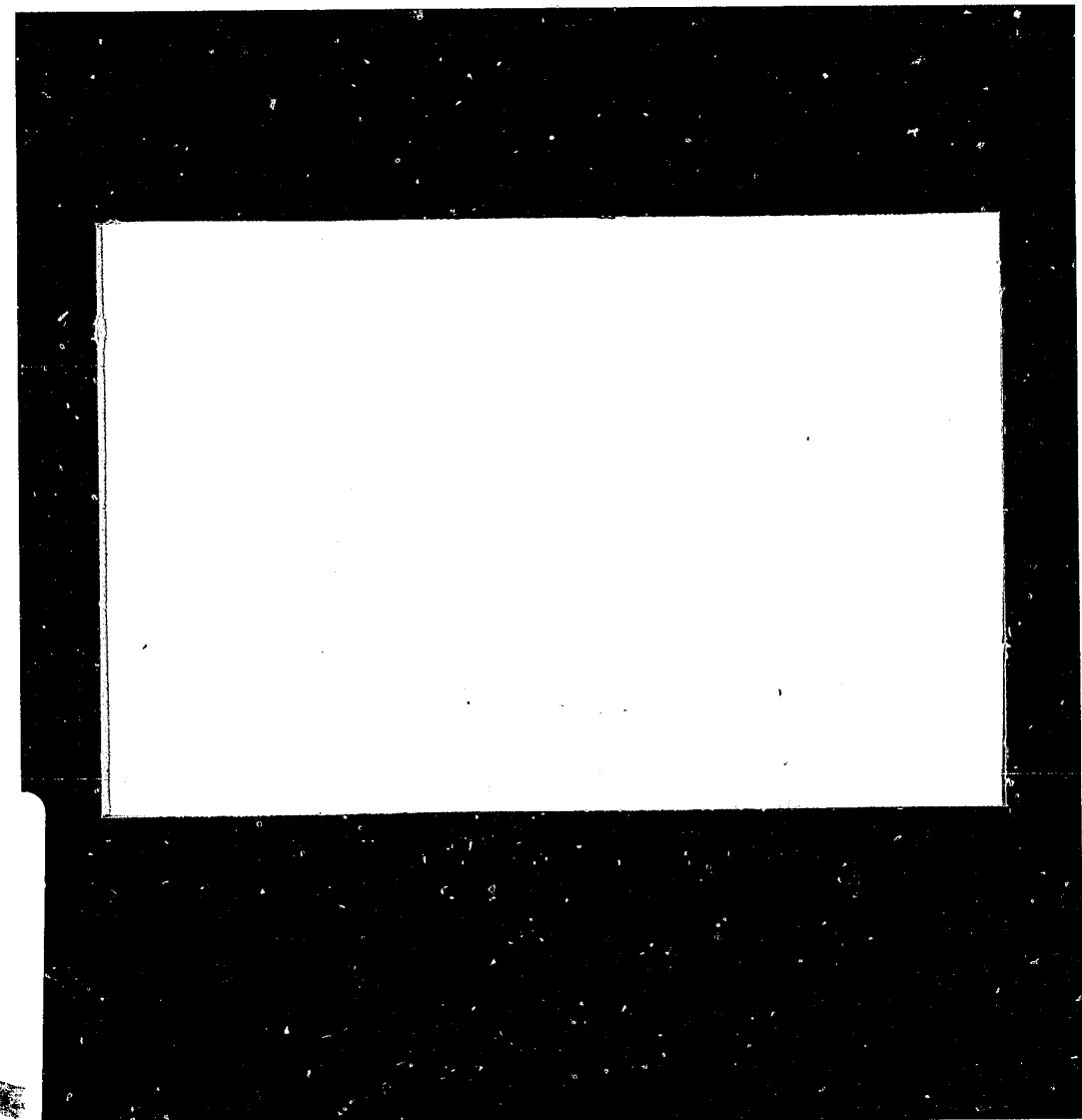
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VOLUME AND DELAY IN THE  
INDIANA COURT OF APPEALS

A Staff Study

by

John A. Martin

and

Elizabeth A. Prescott

A Publication of

Appellate Justice Improvement Project  
Northeastern Regional Office  
NATIONAL CENTER FOR STATE COURTS

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December 1980

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

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

The authors wish to acknowledge the following persons, who provided assistance and contributed generously of their expertise during both the data collection effort and the writing of this report:

We would also like to thank the members of the Advisory Board, who reviewed the draft reports and offered guidance and direction; Dr. Jerry Goldman, who contributed substantially to the design and focus of the report; Mr. Nick Demos, for his support and encouragement of the research effort; and Mr. Sam Conti, for his supervision and advice during the writing of this report. We wish to thank Drs. Barry Mahoney and Steven Weller, former directors of this project, whose work in Phase I determined in large part the scope of the project and this report. Our special thanks to Glora Colson, who typed the numerous drafts of this report cheerfully and diligently.

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## STAFF STUDY: THE INDIANA COURT OF APPEALS

### PREFACE

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

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

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

<sup>2</sup>Bibliography: State Appellate Court Workload and Delay, by Thomas B. Marvell (National Center for State Courts, April 1979).

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

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

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

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<sup>3</sup> California First District Court of Appeal; Colorado Court of Appeals; Connecticut Supreme Court (two demonstrations); Rhode Island Supreme Court.

<sup>4</sup> Colorado Court of Appeals; Florida Court of Appeal, First District; Florida Supreme Court; Illinois Appellate Court, First District; Montana Supreme Court; Nebraska Supreme Court; New Jersey Superior Court, Appellate Division; Ohio Court of Appeals, Eighth District; Oregon Court of Appeals; and Virginia Supreme Court.

## INTRODUCTION

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

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

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

alone or in conjunction with a technical assistance effort, tailored to the specific needs and wishes of the Court by the staff of the Appellate Justice Project.

In this report two types of information have been used as a basis for conclusions. The first type of information is descriptive information concerning court rules and procedures, acquired through site visits to the Court. The second type of information is quantitative data which describe the Court's caseload in terms both of case characteristics and time lapse information on case processing in the Indiana court. ("Case characteristics" include case subject matter, type and number of parties, attorneys, and type of judgment or order appealed from.) The quantitative data were derived from a systematic sample drawn from the court records of 432 cases from the years 1975 and 1976. The years 1975 and 1976 were selected to insure that most of the cases included in the sample would have been disposed of, and hence would include complete time lapse data, at the time of the data collection in 1978.

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

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

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



SECTION 1  
ASSESSING APPELLATE COURT DELAY

A Summary of the Literature

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

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

- 1) Caseload; i.e., appellate courts simply do not have the personnel or resources to keep up with increasing case volumes;<sup>5</sup>
- 2) Inefficiency; i.e., judges and other appellate court personnel do not use their time effectively. Courts are poorly organized and inadequately administered. Even if appellate court resources were increased, litigants would still encounter

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

substantial case processing time delays;<sup>6</sup> and

- 3) A combination of both groups 1 and 2 above. There are too many cases, courts lack sufficient resources and are poorly organized and administered.<sup>7</sup>

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

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

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

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

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

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

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

#### Appellate Court Delay: A Definition and Perspective

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

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

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

Once a determination has been made that delay exists, the next step is to identify the causes of delay. In approaching this problem the project staff have recognized that case processing time is a function of a large number of interactions among the organizational aspects of a court, the cases filed in it, and the activities of the persons in that court. To organize the analysis of these various factors and their effects on case processing time, the staff have developed a general conceptual framework of the appeals process.<sup>9</sup> This framework has been applied in producing the description of the Indiana appellate court system which is presented in Sections 2 and 3.

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

<sup>9</sup> A detailed description of this framework is presented in Appendix A.

## SECTION 2

### THE APPELLATE COURT SYSTEM: AN OVERVIEW OF THE INDIANA COURT OF APPEALS

This section presents a brief overview of the structure, resources, caseload, and procedures of the Indiana Court of Appeals, with special focus on specific rules and procedures adopted by the court in response to the demands of the legal environment within which the court operates. The relation of case characteristics to case processing time is also discussed in this section.

The Court of Appeals is an intermediate appellate court of statewide jurisdiction. Though the Court operates as a single court for administrative purposes, it is essentially three courts, each identified with one of three geographic districts into which the state is divided. Appeals in each district are decided by a permanent panel of three judges. In August 1978, a fourth panel of three judges was added to the court. It operates as an at-large panel whose jurisdiction does not conform to any of the geographic districts. The geographic identification of the other three panels of the Court was not changed when the fourth panel was added.

#### THE PRE-DECISION PHASE

##### Procedure

To take an appeal in Indiana, one must first file a motion to correct errors in the trial court, within sixty days after

the entry of judgment. The trial court judge then has thirty days to rule on this motion, which is usually summarily denied. Thirty days after the denial of this motion, appellant's attorney files a praecipe (which acts as notice of the appeal) in the trial court, designating the record to be sent to the Indiana Court of Appeals, due ninety days after the filing of the praecipe. Extensions for time to file the record can be granted by the trial court up to a total of ninety days, then must be obtained from the Court of Appeals. However, the Court of Appeals does not officially take notice of the appeal until the record is received.

The appellant's brief is due thirty days after the filing of the record. The respondent's brief is due thirty days after the appellant's brief, and the reply brief, if any, is due fifteen days later.

#### Case Flow Management

The clerk's office does not actively monitor cases until the record is received. Primary responsibility for monitoring preparation of the record is with the appellant's attorney. The clerk's office is responsible for tracking the filing of briefs and identifying cases in which briefs are overdue. This tracking is done by hand.

If an appellant's brief is late, the clerk can dismiss the case without further reference to the Court. The clerk's office usually follows the procedure of first calling the

attorney to advise him that his brief is late, that he will have to petition to file a late brief or be dismissed, and that failure to file such a petition will result in the dismissal of the case by the clerk's office.

If an appellee's brief is late, the clerk's office will also advise him by phone that the time for filing the brief has passed. The clerk's office can receive a late brief from an appellee and transmit it to the Court, but it cannot officially file the brief.

Once briefing is completed, the case file is sent to the court administrator for assignment to panels and judges. The clerk's office does not participate in the assignment of cases.

Prior to the completion of briefing, all motions, e.g., motions to correct the transcript or motions to file late briefs, are routed through the office of the commissioner. The Commissioner is responsible for preparing orders on such motions. These orders are then sent to the presiding judge for approval. Since the assignment of cases to judges is confidential, the commissioner also handles all correspondence between the Court and individual attorneys. Some of the law clerks are also supervised through that office.

#### Problems with the Pre-Decision Phase

The court has experienced substantial problems in the timely preparation and filing of transcripts. Court reporters in Indiana are county employees who are usually political appointees. They

thus have considerable independence from the court. Transcript preparation, a profitable business for the reporters, is officially outside their duties. At least one judge suggested that there may sometimes be collusion between some lawyers and court reporters to delay transcripts.

The Court has also experienced a problem with the timely filing of briefs. This appears to be in large part due to the Court's backlog of ready cases awaiting decision. With this backlog, there has been little incentive for the Court to enforce its rules on the filing of briefs, and the Court has granted time extensions rather liberally.

#### THE DECISION PHASE

##### Case Assignment

Cases are assigned a docket number by the clerk's office according to the district from which they are filed. Once briefing is complete, cases are assigned to individual judges on the relevant geographic panel by the court administrator, who uses a system of strict rotation among the judges. The fourth panel, which, as mentioned previously, does not have a geographic definition, is used as an overflow panel. The initial caseload assigned to that panel was taken from the pending caseload of the judges with the largest backlogs. New cases are assigned to the fourth panel on a systematic basis (every Nth case) from filings in the district whose panel possesses

the largest backlog. The practice of assigning docket numbers by geographic district was not changed when the fourth panel began operation. The fourth panel thus does not have a defined caseload of its own.

The assigned judge is responsible for making the initial recommendation as to whether oral argument should be granted. If oral argument is not granted, the assigned judge is then responsible for preparing the majority opinion. If that opinion is not accepted by the other judges on the panel, the opinion responsibility is reassigned by the members of the panel. In oral argument cases, the assigned judge will be responsible for writing the opinion unless he is in the minority after oral argument.

##### Oral Argument

Oral arguments are quite rare in the Indiana Court of Appeals. The decision to grant oral argument rests solely with the discretion of the judges on the panel to which the case is assigned. The attorneys can request oral argument but this request is not binding on the Court. Oral arguments are held in only a few cases each year, and the judges reported that they are held primarily for ceremonial purposes when the judges travel to their districts. (The judges regularly sit in Indianapolis.) Some of the judges expressed the opinion that lack of oral arguments tended to isolate the Court from the bar. However, they saw no immediate solution to the problem

given the large backlog in the court. This problem particularly concerned judges facing retention elections.

#### Opinions

The assigned judge is responsible for preparing a draft opinion in the cases to which he is assigned. He then circulates his opinion to the other members of the panel. All panels reported that panel conferences are rare and that discussions on opinions are informal. For cases in which no oral argument is held, the assigned judge usually keeps the briefs in the case until the opinion is completed and then circulates them with it. Thus, the other judges on the panel see the briefs for the first time when they receive the draft opinion. Once an opinion is approved by a panel, it is circulated to the whole Court for comment. The other judges on the Court are given five days to respond. Regardless of the response of the remainder of the Court, the decision of the panel is final. There is no provision for an en banc procedure to reverse the decision of a panel.

Memorandum opinions are permitted by the rules of the Court. These are designated "not for publication." The rules also provide that an opinion affirming the lower court decision must treat all substantive issues raised on appeal. Some of the judges view this requirement as a nuisance in some cases. Reversal of a lower court opinion can be on one issue alone, in which event the Court freely ignores other issues raised on appeal.

The writing of concurring or dissenting opinions varied greatly from panel to panel. One panel reported that they rarely have any concurring or dissenting opinions. In the other panels such opinions were apparently more common.

The Court has no rule on the time within which an opinion or a dissent must be prepared. In fact, there was great disparity between judges in the length of time they took to prepare opinions.

#### Use of Law Clerks

Each judge on the Court has at least three law clerks; several have four. This is by far the largest number of law clerks per judge of any court in the sample. Ten of these clerks, though assigned to individual judges, are located in the commissioner's office and are unofficially supervised by her.

#### Alternative Disposition Techniques

Other than the provision for memorandum opinions, the Court possesses no formal mechanism for alternative disposition of cases.

#### Problems with the Decision Phase

Most of the problems in the Decision Phase in the Indiana Court of Appeals appear to stem from two problems: 1) a substantial disparity in the speed with which individual judges prepare opinions; and 2) personality conflicts among judges on some of the panels. There is no formal mechanism through which the Court can require individual judges to produce opinions

within a reasonable length of time. Further, opinion production in at least one of the panels was severely hampered by the inability of the judges to accept each other's work. Rotating judges among panels might be a solution to this problem.

The panel structure caused other problems as well. The panels operate as independent courts, and there is no mechanism for resolving differences between panels on the interpretation of legal doctrine. Further, each panel follows a slightly different interpretation of the rules of procedure, and this has on occasion been a source of confusion for attorneys.

#### Characteristics of the Indiana Court of Appeal's Caseload

During the first phase of the Appellate Justice Improvement Project, the relationships between case characteristics and case processing time were examined in depth.<sup>10</sup> The results of this analysis revealed that, for the most part, there were no significant relationships between case characteristics and case processing time--cases did not systematically vary in case processing time on the basis of particular categories which describe case characteristics. Specifically, we found no significant variation between case processing time in the different categories which described the type of appellants

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

and appellees involved in the case, the type of attorneys, the subject matter, the issues raised as grounds for appeal, or the source of the appeal. These findings led us to the general conclusion that differences in case processing time are attributable more to differences in the general court environment, procedures, and how the procedures are followed, rather than to identifiable differences in the nature of the cases themselves.

The bulk of the court's caseload--as indicated in Table 2-1--is appeals from trial court judgments. Thirty-nine percent of these trial judgments were jury trials.

Fifty-five percent of the total caseload were civil appeals, the remaining 45% criminal appeals. The most common civil appeals were commercial and property cases. Robbery, burglary, theft and narcotics cases made up the bulk of the criminal caseload. Murder and manslaughter cases, representing only 2% of the total criminal caseload, are appealed less frequently in the Indiana system than in other courts included in the study.<sup>11</sup>

Private attorneys represented over one-half of all the litigants in the Indiana Court of Appeals. The public defender's office, represented 32% of all the appellants, and the attorney general's office represented 46% of all appellees, making those offices significant forces in the Indiana Appellate system.<sup>12</sup>

<sup>11</sup> See Appendix B for a detailed breakdown of the subject matter of cases in the sample.

<sup>12</sup> See Appendix C for a detailed breakdown of the types of attorneys in the Indiana court.

TABLE 2-1  
SOURCE OF APPEALS

Appeal Source:

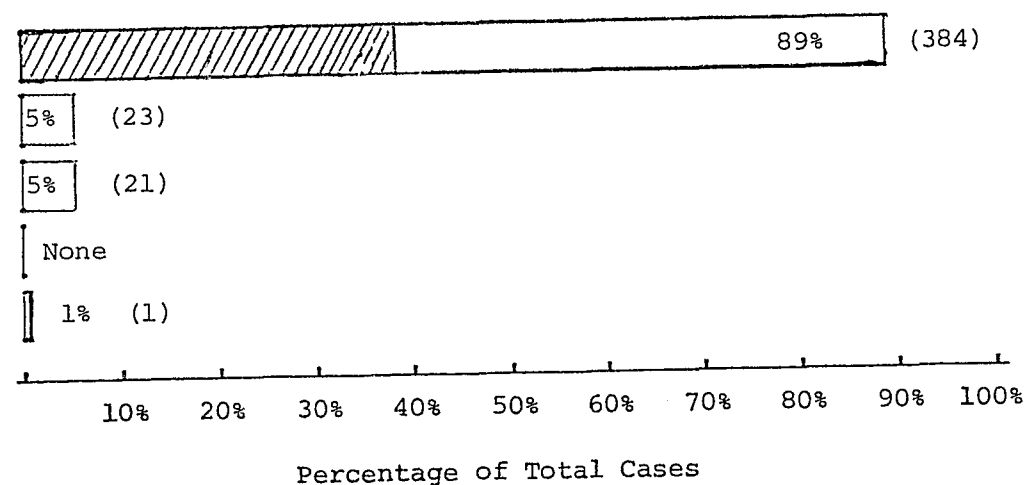
Trial Judgment

Interlocutory Trial

Administrative Agency

Original Jurisdiction

Other



Source: 429 cases out of 432 cases in which source of appeals data were available.

Table 2-2, which presents information on the frequency of cases which involve procedural complications, reveals that very few cross-appeals, intervenors or amicus curiae briefs appeared on the court's docket.

In addition, Table 2-2 shows that only 2% of the cases in the court were consolidated. This 2% consolidation figure seems especially low in view of the court's relatively high number of case filings.

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



TABLE 2-2  
CASE IRREGULARITIES

<u>Irregularity Type:</u>	<u>Percent</u>	<u>N</u>	<u>Total N</u>
Cross Appeal	1 %	3	430
Intervenors	1 %	5	430
Amicus Curiae	1 %	4	430
Consolidated Cases	2 %	9	430

### SECTION 3

#### CASE PROCESSING TIME IN THE INDIANA COURT OF APPEALS

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

Table 3-1 and Figure 3-1 present a summary of the number of days required to process cases through the entire appellate system from lower court judgment to mandate in the Court of Appeals. The data reveal that an average total of 641 days required to process cases.<sup>13</sup> In addition, the figures presented in Table 3-1 reveal that oral argument cases took slightly longer than cases which did not have oral arguments-- a 738 day average versus a 634 day average.<sup>14</sup> There is also

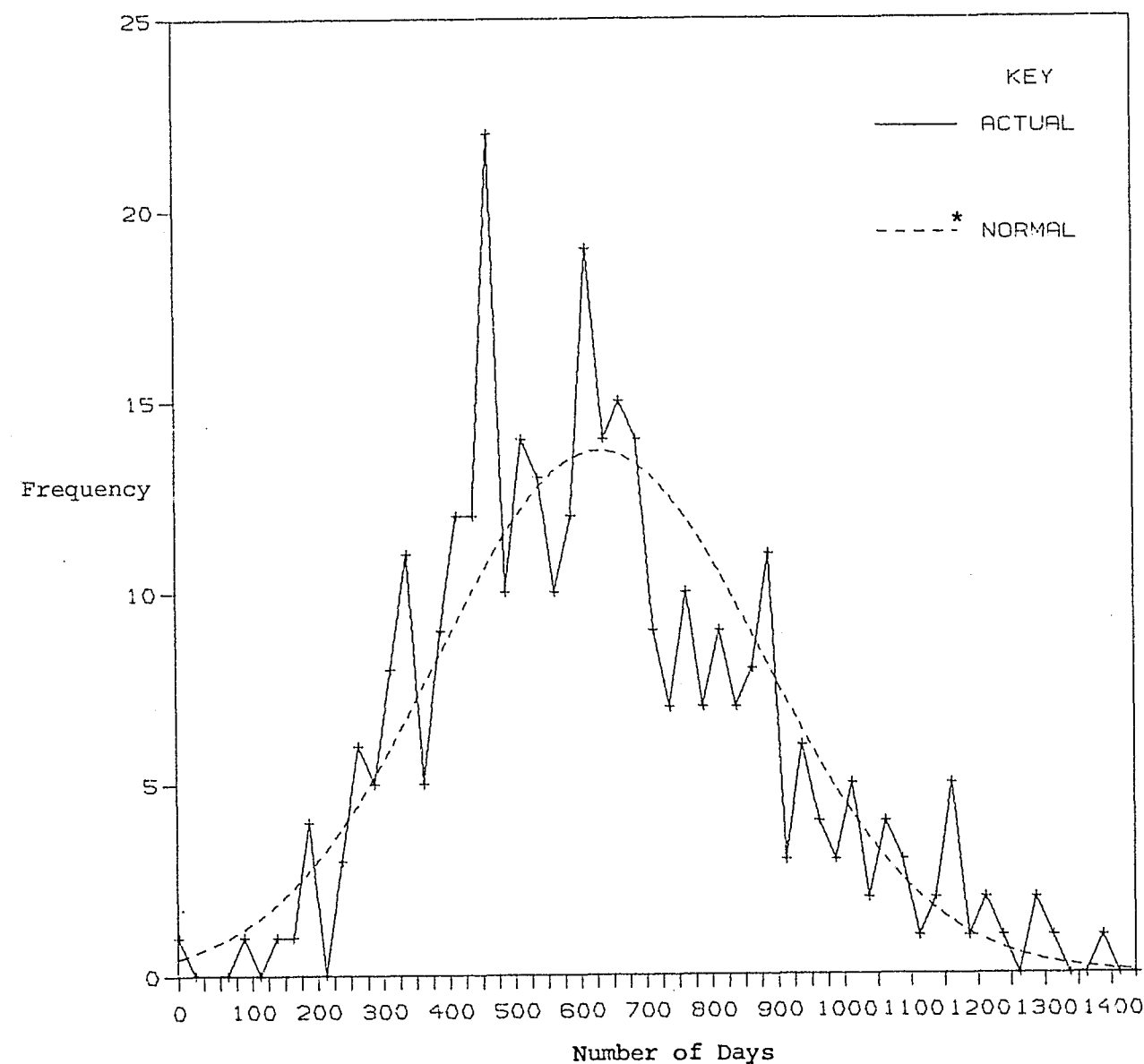
TABLE 3-1  
TOTAL AVERAGE CASE PROCESSING TIME

<u>Total Processing Time:</u>	<u>Mean</u>	<u>Median</u>	<u>Standard Deviation</u>	<u>N</u>
All Cases	641 days	609 days	273	338
Oral Argument Cases	738 days	days	535	23
Non-Oral Argument Cases	634 days	days	243	315

<sup>13</sup>Complete statistical descriptions of the total time interval and all other intervals, are located in Appendix D.

<sup>14</sup>Although the Indiana Oral argument case sample is small (23 total cases), it nonetheless accurately reflects the entire oral argument case population during 1975-1976. The Indiana court simply did not hear many oral arguments.

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



Descriptive Statistics

Valid Cases: 338

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

considerable total case processing time variability in the Indiana appellate process, as indicated by the large 273 day standard deviation. For example, 25% of all the cases eventually completed by the Court exhibited total processing times of between 84 and 459 days. The second 25% were processed in 462 to 607 days, while the third 25% took between 607 and 787 days from lower court judgment to appellate court mandate. The remaining 25% of the cases exhibited total processing times of between 787 and 2,500 days. Ten percent of the cases included in the sample took more than 970 total case processing days.

The total case processing time measure is useful because it can be viewed as a composite indicator of the appellate system's performance. The Indiana appellate system apparently does have some serious case bottlenecks and case processing time probably can be improved.

Table 3-2 compares average case processing times for the different steps in the appeals process with the time requirements specified in the court rules and the standards established by the American Bar Association. The data reveal that the problems associated with the preparation and transmittal of documents to the Court of Appeals have resulted in substantial disparity between actual processing times and these standards. In addition, problems with deciding cases and preparing opinions have apparently led to substantial delays.

TABLE 3-2  
COMPARISON OF STEPS IN CASE PROCESSING TIME WITH  
COURT RULES AND ABA STANDARDS, IN DAYS

ALL CASES	Mean	Median	Court Rule	% Cases above Court Rule	ABA Standards	% Above ABA Standards	N
Step 1: Trial Judgment to Materials Received	280	259	195	75%	100 civil/ 80 criminal	96% 94%	386
Step 1A: Record Received to Appellant Brief	49	30	30	45%	30 civil/ 20 criminal	53% 89%	372
Step 1B: Appellant Brief to Appellee Brief	53	35	30	67%	30 civil/ 20 criminal	77% 96%	341
Step 1C: Lower Court Judgment to Transcript	196	170	Not Specified	-	Not Given	-	385
Step 1D: Lower Court Judgment to Appellant Brief	253	220	150	82%	Not Given	-	371
ORAL ARGUMENT CASES							
Step 2: Materials Received to Argument	200	117	Not Specified	-	Not Given	-	27
Step 3: Oral Argument to Decision	103	55	Not Specified	-	30 average/ 60 maximum	93% 78%	26
NON-ORAL ARGUMENT CASES							
Steps 2 & 3: Materials Received to Decision	267	211	Not Specified	-	30 average/ 60 maximum	99% 92%	313
ALL CASES							
Step 4: Decision to Mandate	85	32	Not Specified	-	Not Given	-	328

Specifically, 75% of all the cases processed by the Court exceeded the maximum time prescribed by the court rules of 195 days from lower court judgment to the filing of the last brief and/or the lower court record and transcript. Approximately 95% of the cases exceeded the ABA standard. Over 39% of all the cases took longer than 295 days for materials preparation and filings, or 100 or more days beyond the maximum time allowed by the court rules. In addition, 82% of the cases took longer than the 150 day court limit for filing of the appellant's brief after lower court judgment, and 67% of the appellee's briefs took longer than the 30 days specified by court rule.

Major identifiable problems at the predecision stage of the Indiana appellate process include excessive transcript, record, and brief preparation time. Eighty-seven percent of all transcripts were filed in excess of 100 days after lower court judgment, while 36% were filed 200 or more days after lower court judgment. Judges in the Indiana system have indicated that timely transcript preparation was a major source of concern. Delay in preparing the transcripts and the lower court records undoubtedly accounted for some of the time between judgment and the filing of the appellant's brief. Clearly, attorneys would have difficulty trying to prepare briefs without having full information available concerning proceedings in the lower court. Excessive brief preparation time is probably attributable, at least in

part, to the fact that attorneys prepare generally long briefs. As shown in Table 3-3, briefs filed with the Court are rather long, and exceed the page limits specified in the court rules about 10% of the time. Because the Court generally does not hear oral arguments, and consequently limits the opportunities for presenting case information exclusively to briefs, the presence of noticeably long briefs is not too surprising. Excessive brief preparation time is probably not a consequence of a significant number of briefs taking extraordinarily long and thereby dramatically skewing the average: Figures 3-2 and 3-3 show considerable consistency in brief filing time.

Data presented in Table 3-2 and Figure 3-4 reveal that, on the average, 200 days elapsed between the date when all materials necessary to hear a case--briefs, transcripts, and records--were filed with the Court, and the date of oral argument. Step 2 is a waiting period: cases are ready and waiting to be heard. Compared to other courts included in this study, the average waiting time in the Court is relatively long. The specific reasons for this longer waiting period are no doubt numerous, but much of the elapsed time may be due to the Court's scheduling procedure and substantial backlog of "ready" cases. However, since the Court hears so few oral arguments, the generally long wait between materials filing and oral argument does not necessarily constitute a serious problem. If both

TABLE 3-3

BRIEF PAGE LENGTHS AND COMPARISON WITH COURT PAGE LIMITATIONS

24	Appellant's Brief			Appellee's Brief			Appellant's Reply		
	Page Length	%	Number	Page Length	%	Number	Page Length	%	Number
	1-10	10 %	36	1-10	32 %	111	1-10	66 %	103
	11-20	33 %	124	11-20	37 %	128	11-20	25 %	40
	21-30	27 %	102	21-30	11 %	39	21-30	5 %	8
	31 & over	30 %	112	31 & over	19 %	67	31 & over	4 %	6
	TOTALS	100 %	374	TOTALS	100 %	345	TOTALS	100 %	157
	Missing Cases		57	Missing Cases		86	Missing Cases		274

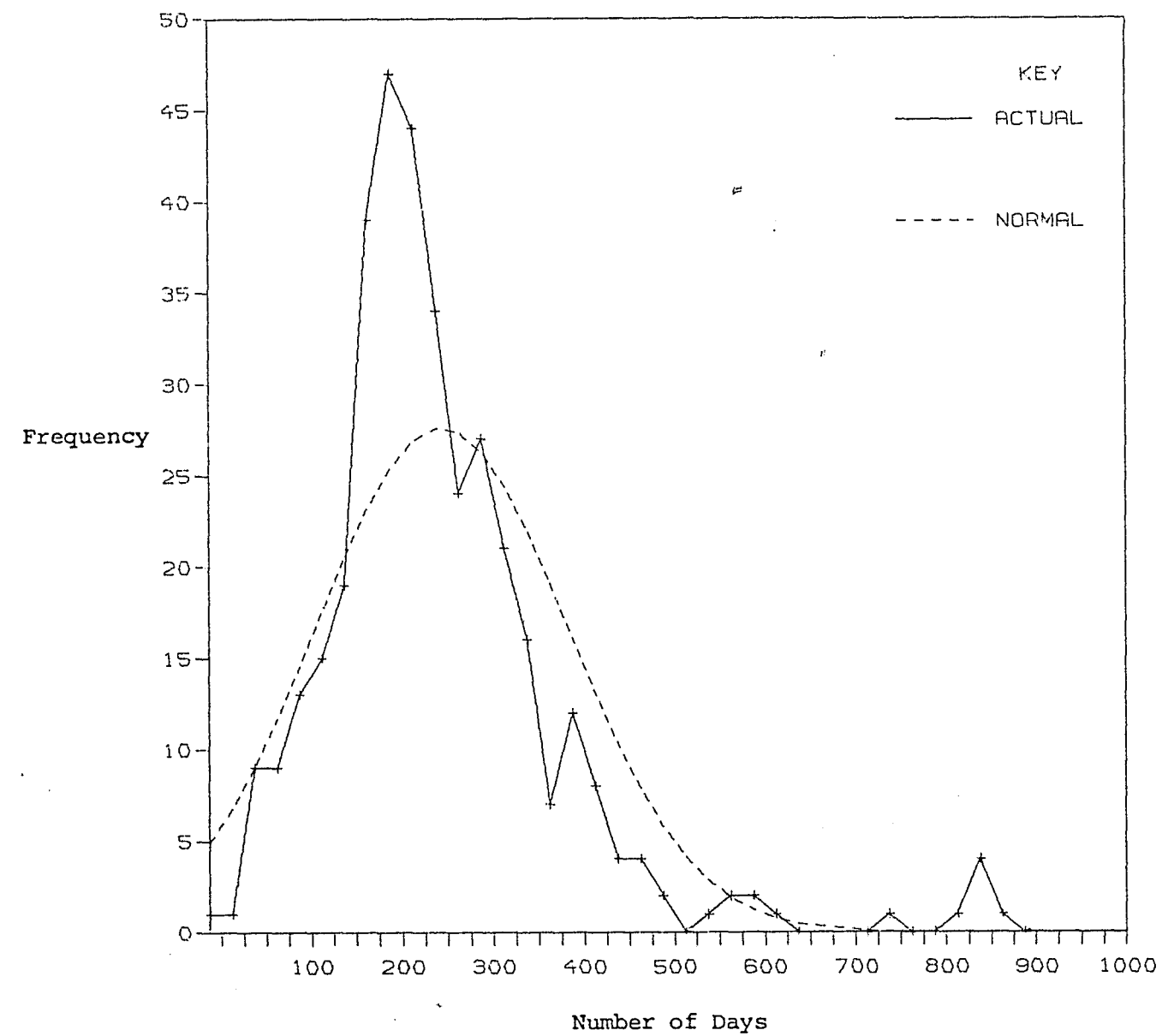
Average Number of Pages	29.5	Average Number of Pages	20.5	Average Number of Pages	10.5
Court Limit on Page Length	50 P/T*	Court Limit, Page Length	50 P/T	Court Limit, Page Length	20 P/T
% of Briefs over Court Limit	11 %	% Briefs over Court Limit	6 %	% Briefs over Court Limit	9 %

\* P = Printed  
T = Typed

Source: 374 cases out of 432 cases in which brief page lengths and comparison with court page limitations data were available.

Figure 3-2 (STEP 1D)

Lower Court Judgment to Filing of Appellant's Brief



Descriptive Statistics

Valid Cases: 371

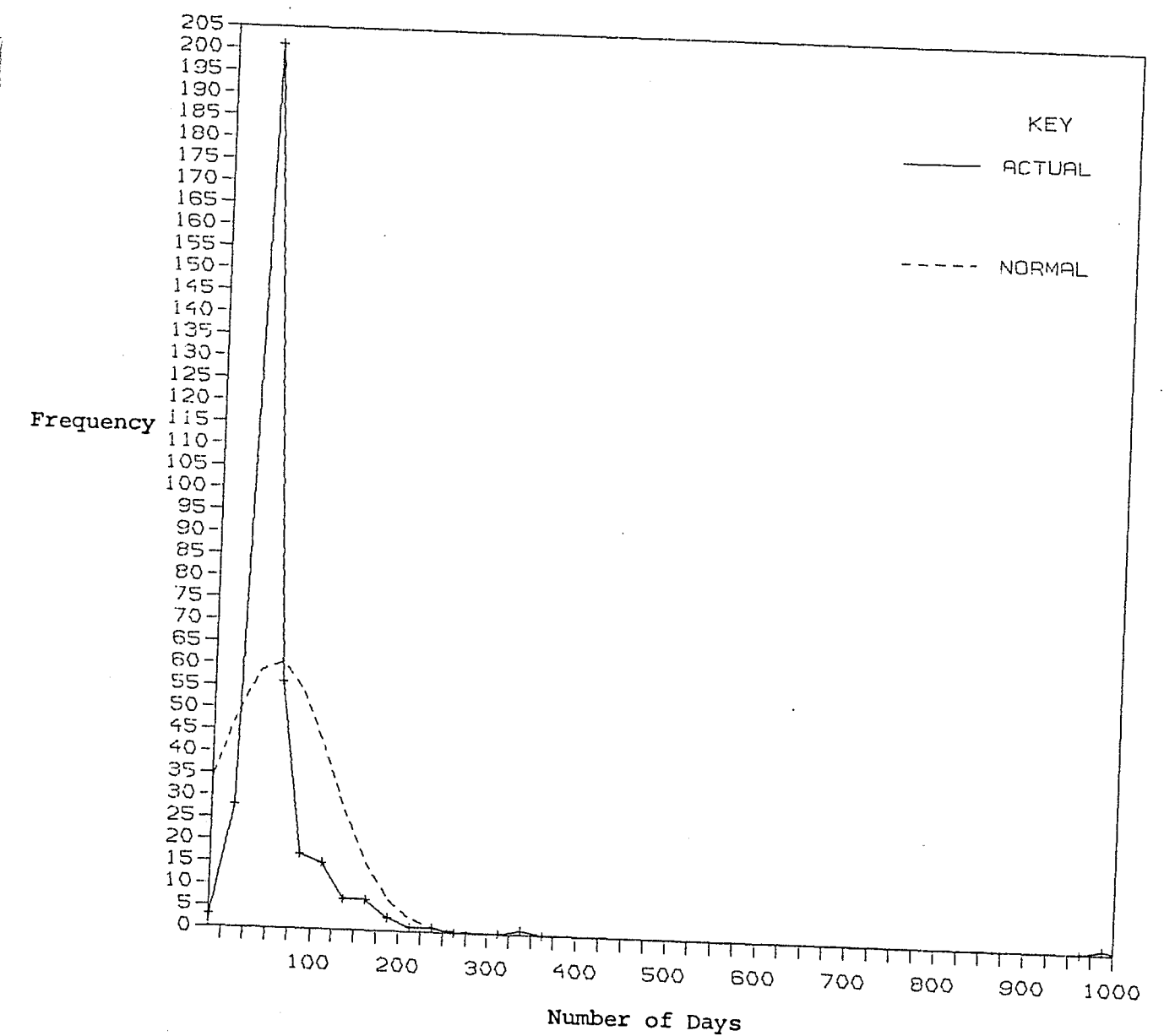
Mean 253

Median 220

Standard Deviation 212

Figure 3-3 (STEP 1B)

Appellant's Brief to Appellee's Brief



Descriptive Statistics

Valid Cases: 341

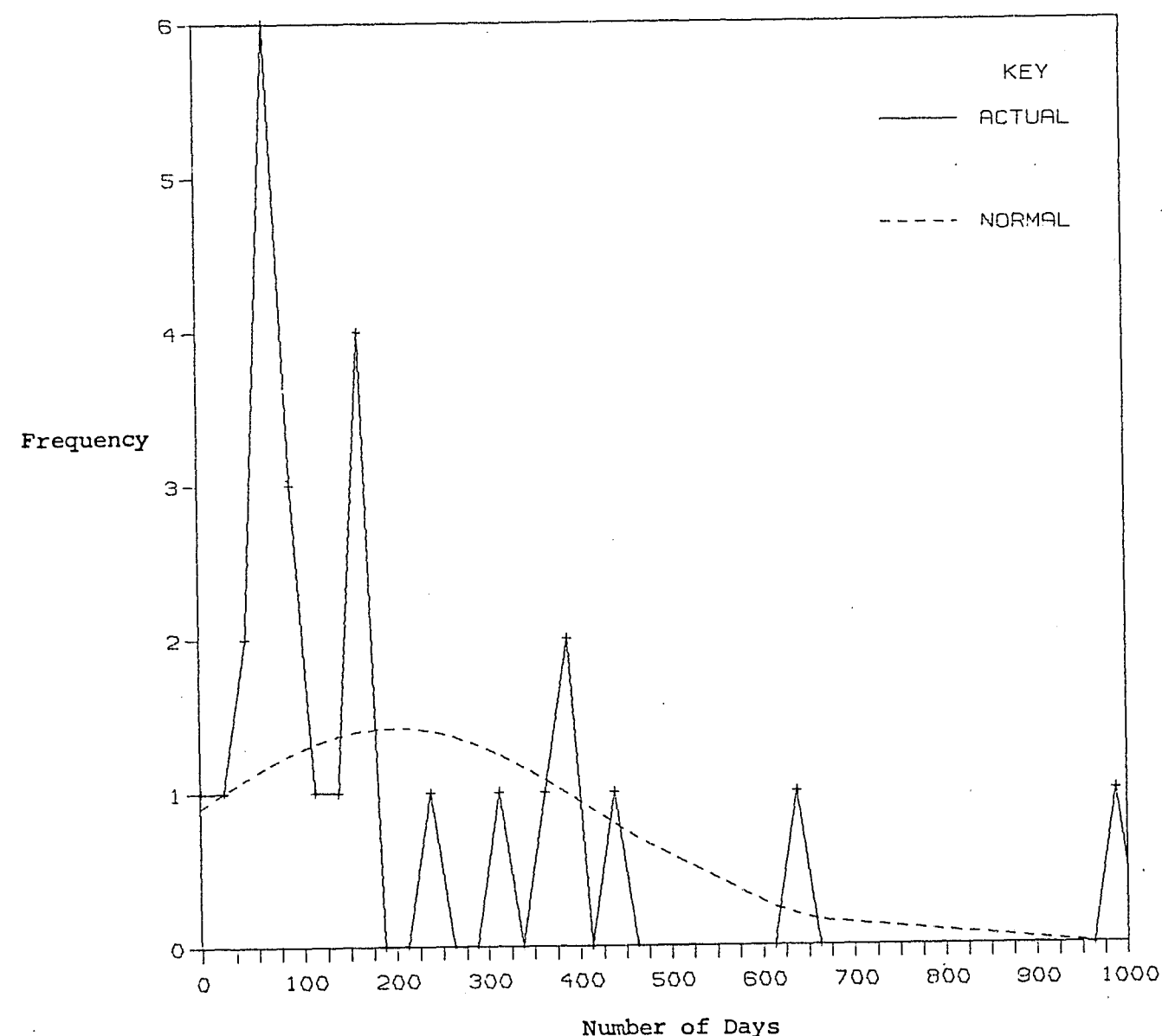
Mean 53

Median 35

Standard Deviation 65

Figure 3-4 (STEP 2)

Materials to Oral Argument



Descriptive Statistics

Valid Cases: 27

Mean 200

Median 117

Standard Deviation 220

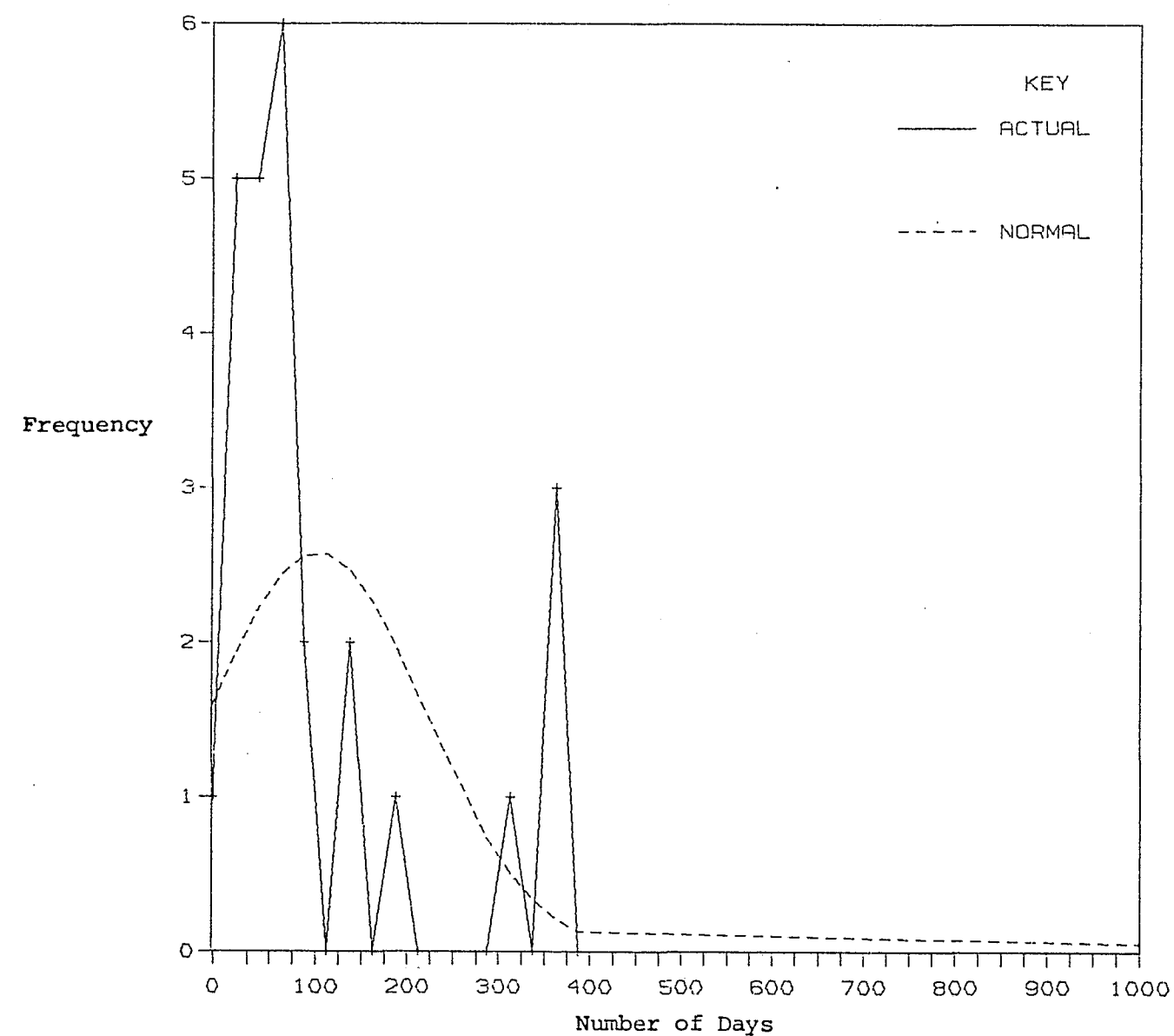
oral argument and non-oral argument cases were expeditiously decided, the presence of a few oral argument cases with long waiting times would not dramatically affect the appellate process. However, cases are not quickly disposed of by the Indiana Court of Appeals. On the contrary, the court generally spends considerable time deciding cases and writing opinions in both oral and non-oral argument cases.

As indicated in Table 3-2 and Figure 3-5, an average of 104 days elapses between the date when oral argument is heard and the date when the court announces its decision. Although the Indiana Court of Appeals has no guidelines specifying how fast cases should be decided after oral argument, the ABA standards do provide some guidance. Data presented in Table 3-2 and Figure 3-5 for the decision phase (Step 3) reveal that only 7% of all oral argument cases have decisions announced by the Court in a period of thirty days or less after oral argument. Only 22% were completed within the sixty day maximum time established in the ABA standards.

For non-oral argument cases, the available data did not permit dividing decision making time into two separate steps. Decision time in such cases therefore measures elapsed time between the date when all materials necessary to hear a case were filed with the Court, and the date when the Court announced a decision. Table 3-2 and Figure 3-6 present data concerning decision time for non-oral argument cases decided by the Indiana Court of Appeals. The information provided in the tables reveals that an average of 267 days elapsed between

Figure 3-5 (STEP 3)

Oral Argument to Decision Announced



Descriptive Statistics

Valid Cases: 26

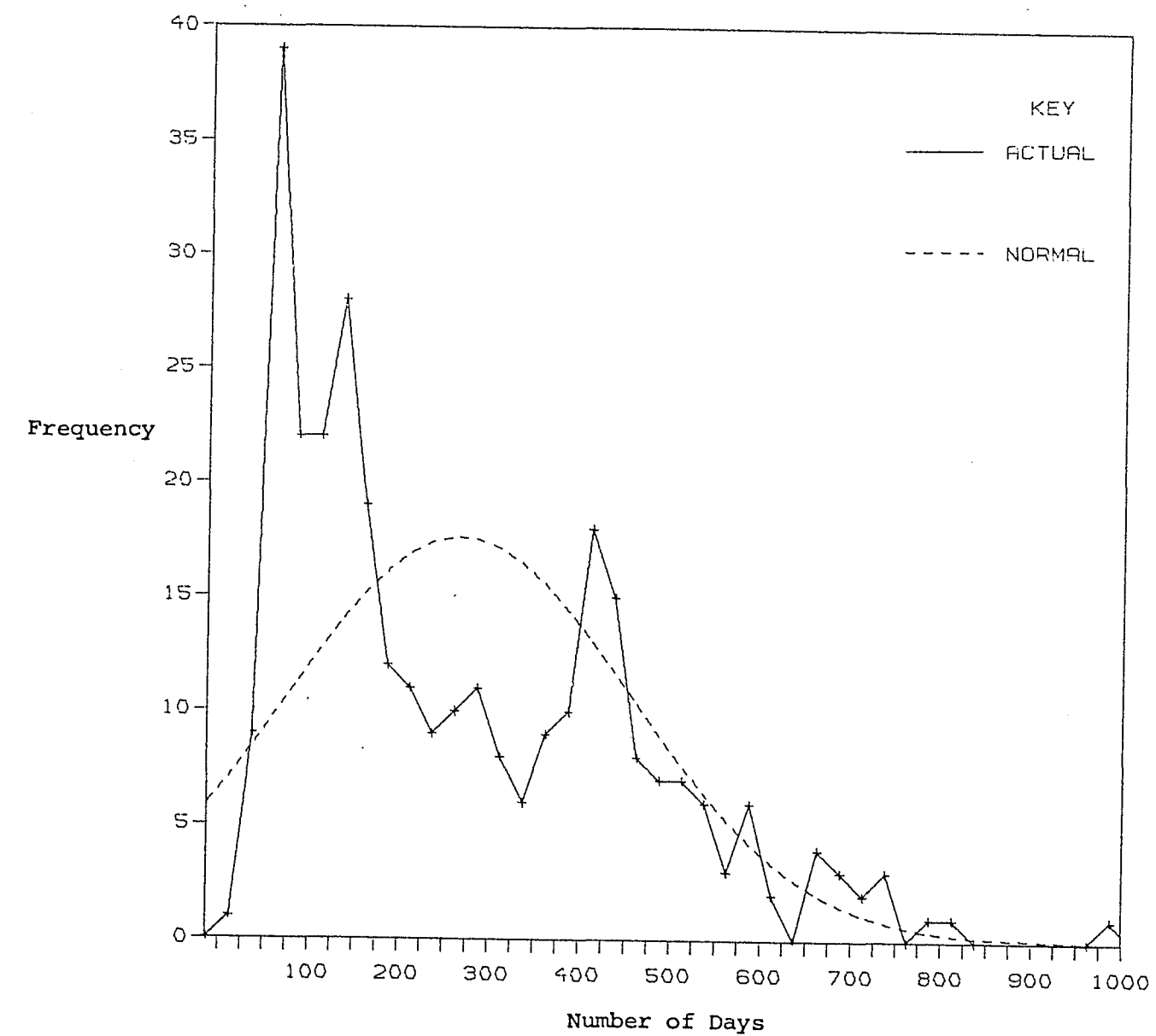
Mean 104

Median 55

Standard Deviation 118

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

Materials to Date Decision Announced



Descriptive Statistics

Valid Cases: 313

Mean 267

Median 211

Standard Deviation 189



the date when all materials necessary to hear a case were filed and the date when the Court announced its decision. In addition, specific times involved varied considerably from case to case. The figures indicate that 1% of the non-oral argument cases involved decision processing times of less than the thirty day average recommended in the ABA rules, while 8% of the cases fall below the sixty day ABA maximum standard. Moreover, 28% of the non-oral argument cases were processed in under 120 days, or double the ABA maximum, while 46% were processed in under 180 days, three times the ABA maximum. The high degree of uncertainty regarding when non-oral argument cases will actually be disposed of by the Court is clearly illustrated when decision making times for cases which took over 180 days are examined in detail. Twelve percent of the non-oral argument cases showed decision times of between 180 and 260 days, 6% between 261 and 299 days, 10% between 300 and 399 days, 14% between 400 and 499 days, and 7% between 500 and 599 days, with the remaining 5% taking more than 600 days.

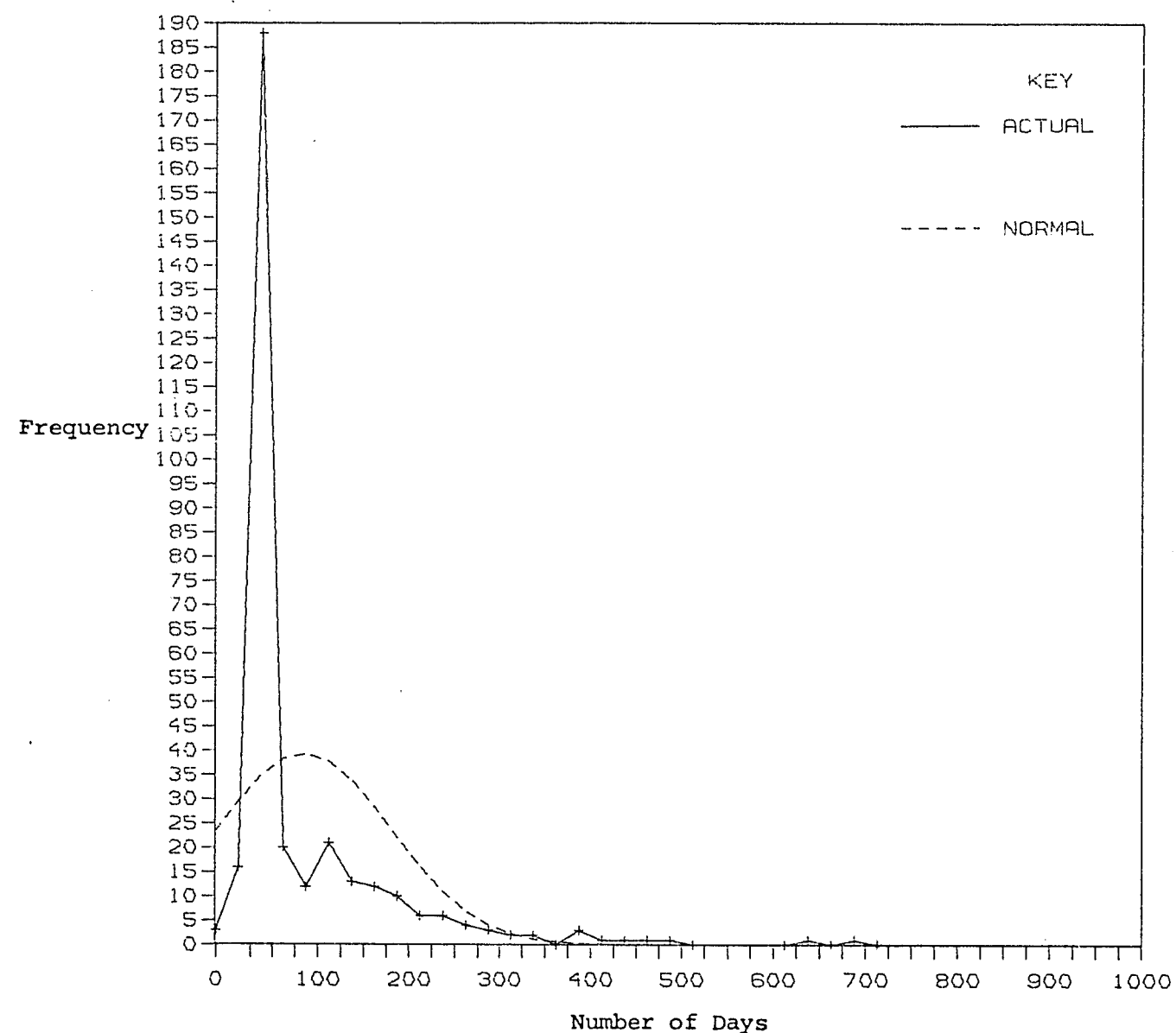
The potential sources of substantial variability during the decision making phase are numerous. As noted in Section 2, the Court's panels do not necessarily use the same procedures or similar decision-making strategies. In addition, according to statistics compiled by the Court, the four panels differ considerably in productivity. The most productive panel often decides and prepares opinions for three times as many cases in a given time period as the least productive panel.

This long wait between materials filing and decision by the Indiana Court of Appeals probably has serious secondary effects. For example, delay at the decision stage of the appellate process may indirectly account for a sizable portion of the excessive materials preparation time noted previously. Attorneys, court reporters and clerks may be reluctant promptly to prepare and file necessary papers. Their reluctance may be due to a perception that, even if all materials were promptly prepared and filed, the Court would still not consider the case immediately because of the substantial case backlog. In turn, non-compliance with filing requirements would make scheduling and monitoring even more difficult for the Court.

Finally, Table 3-2 and Figure 3-7 reveal that the average time between announcing decisions and issuing mandates (Step 4) is comparatively short: 85 days. This average is perhaps misleading because it has been inflated by a few cases which took an extraordinarily long period of time. The 32 day median more accurately reflects post-decision time for the majority of cases. In fact, 46% of all the cases decided by the Indiana Court of Appeals exhibited elapsed time between decision and mandate of less than 30 days, while 72% took less than 90 days. The remaining 28%, cases which took over 90 days, were almost exclusively those in which petitions for transfer were filed with the Indiana Supreme Court.

Figure 3-7 (STEP 4)

Appellate Court Decision to Mandate



Descriptive Statistics

Valid Cases: 328

Mean 85

Median 32

Standard Deviation 123

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

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

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

An understanding of the importance of each step in the appellate process as a potential point of delay requires an understanding of the related concepts of proportion and variance. The proportion is the fraction of total time attributable to each step in the appeals process, expressed as a percentage,

when the summation of all steps equals 100% of total time.<sup>15</sup> As noted previously, variance is a measure of the spread or variability of scores. In this study, the scores are the number of days in a particular time interval. Thus variance describes the extent to which processing days for cases within a particular time interval differ from one another. There are a number of statistics, often called measures of dispersion, available for summarizing this variability. The two measures used in this study are the variance and the standard deviation. Both measures tell us how closely the number of processing days for cases cluster around the average number of days for all cases. Variance will be small when there is a great deal of homogeneity in case processing time--when most cases cluster closely around each other. The standard deviation is simply the square root of the variance, and is much easier to interpret than the variance, primarily because it is based on the same units (days) as the original variable. For example, total case processing time averaged 641 days in the Indiana Court

<sup>15</sup> For example, hypothetical Case A took a total of 300 days to process from lower court judgment to mandate. One hundred percent of total time would thus be 300 days. Of this 300 day total, 150 days were attributable to time between the date of lower court judgment and the filing of materials with the supreme court (Step 1). Eighty days were attributable to time waiting in the oral argument queue (Step 2), 50 days elapsed between the date of the oral argument and the announcing of the decision (Step 3), while 20 days elapsed between the date the decision was announced and a mandate issued. Converting the processing time for each step into a percentage of total time would thus reveal that for hypothetical Case A, Step 1 equals 50% (Step 1 =  $150 \div 300$ ), Step 2 26.66% ( $80 \div 300$ ), Step 3 16.66% ( $50 \div 300$ ), and finally Step 4 6.66% ( $20 \div 300$ ), of the total case processing time. The 100% total time is thus a simple summation of each part,  $50\% + 26.66\% + 16.66\% + 6.66\% = 99.98\%$  or rounded to a whole number 100%.

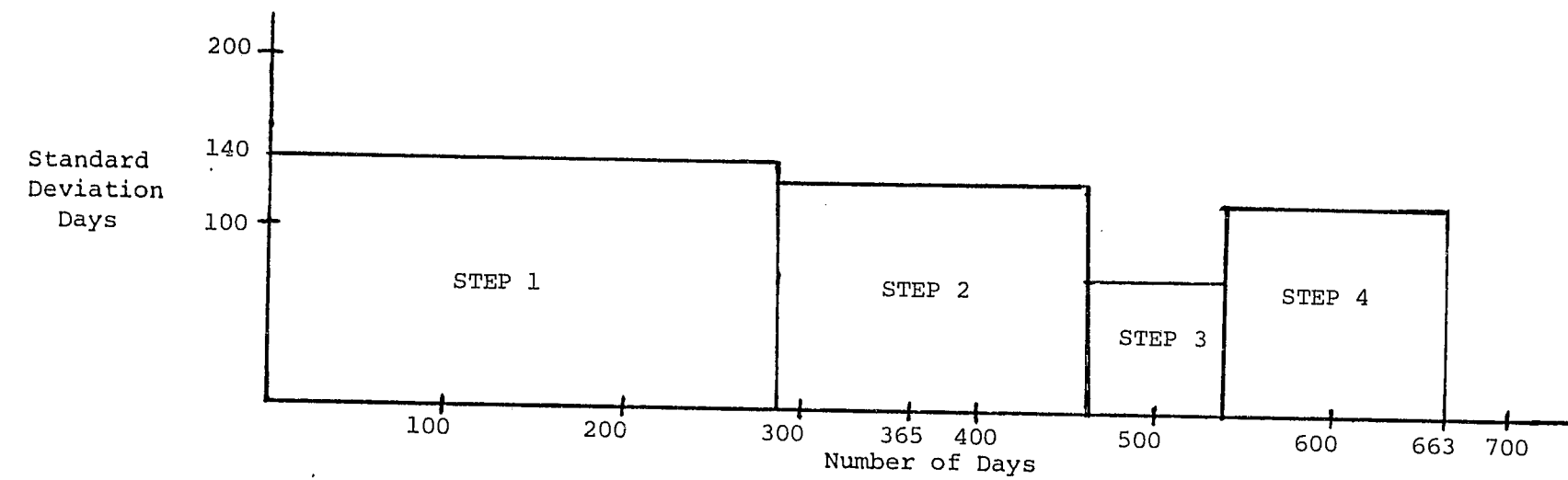
of Appeals. The variance for this total time interval equals 74343 units. A total variance of 74343 units or a standard deviation of 273 days when viewed in conjunction with the average of 641 days, indicates that cases in the Indiana Court of Appeals are relatively heterogeneous. In other words, total case processing time varied substantially between cases. Consequently, an identification of the contribution of each step in the appellate process variability to the total time variability is important. It is useful to identify the points at which case processing times differ and determine the sources and impact of these differences.

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

Table 3-4 applies the principles of proportion and variability to time-lapse data for oral argument cases from the Indiana Court of Appeals. The diagram in Table 3-4 charts the average number of days for each step in the appellate process along the horizontal X axis, while the vertical Y axis, which charts standard deviations, presents the variability of cases at each step. The mean number of days, the standard deviation, the percentage of total time, and percentage of total variance for each step in the process are presented below the diagram.

Information presented in Table 3-4 indicates that Step 1 and Step 2 are areas of concern in the Indiana process.

TABLE 3-4  
COMPONENTS OF TOTAL CASE PROCESSING TIME  
ORAL ARGUMENT CASES



Actual Time:	Mean	S..D.	% Total Time	% Total Variance	N
STEP 1: Trial Judgment to Material Received	285 days	141	43 %	49 %	20
STEP 2: Materials to Oral Argument	175 days	131	26 %	35 %	20
STEP 3: Oral Argument to Decision	74 days	74	11 %	7 %	20
STEP 4: Decision to Mandate	130 days	118	20 %	9 %	20
TOTAL TIME	663 days	328	100 %	100 %	20

Specifically, for oral argument cases the materials preparation and filing stage represents an average of 285 days or 43% of the total case processing time. Materials received to oral argument (Step 2), the waiting period, on the average takes 175 days or 26% of the total time, while Step 3, oral argument to decision, accounts for 11% of the total. Step 4, the period from decision to mandate, on the average takes 130 days or represents about 20% of the total time. The variance figures for each step indicate that variance in Step 1, which accounts for 49% of the total variance, is proportional to the percentage of total case processing time. Thirty-five percent of the total variance is attributable to variability during the oral argument waiting period, Step 2, and only 7% is accounted for by variance in the decision making stage of the process, Step 3. Viewed together the total time and total variance percentages indicate that time elapsed during the materials preparation and waiting stages of the process is excessive. Consequently, one can conclude that material preparation and the oral argument waiting period are major problems in the Indiana Court of Appeals.

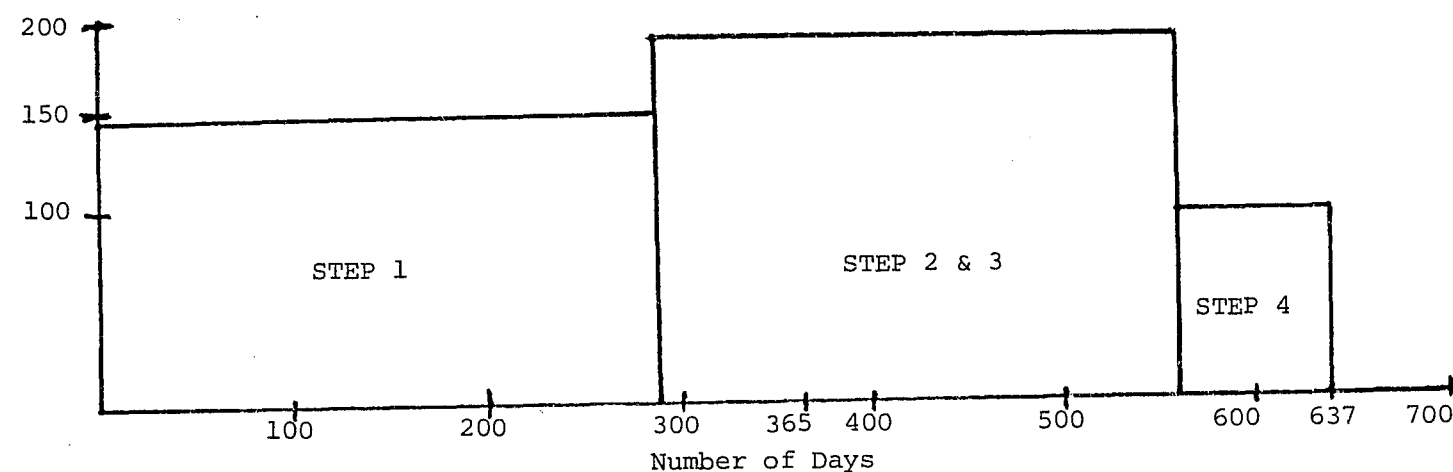
In addition, the 7% of total variance attributable to case variability at the decision phase of the process, when examined in relation to the 11% total time average, indicates that a proportionate percentage of the total time variance is attributable to variability at the decision phase of the process.

Finally, for oral argument cases, Table 3-4 indicates that the decision to mandate stage of the appellate process accounts for relatively small percentages of both total case processing time and total processing time variability. The 9% total variance attributable to this final stage of the process is explained, for the most part, by whether or not petitions for rehearing to the Indiana Supreme Court were filed. Cases where petitions were filed generally took substantially longer than cases where petitions were not filed.

Table 3-5 indicates that the pattern of case variability for non-oral argument cases differs somewhat from the pattern for oral argument cases. Specifically, on the average, in non-oral argument cases 49% of total case processing time is attributable to Step 1, the predecision phase of the appellate process. Steps 2 and 3, the waiting and decision stages, account for 42% of the total time, and Step 4, the post-decision phase represents 8% of the total processing time. Perhaps more important, the standard deviations and percentages of total variance for each step indicate that the bulk of total case variability (59%) is attributable to variability during the waiting and decision phase of the process. Case variability during the material preparation stage (Step 1) accounts for 25% of the total variance, while the post-decision stage (Step 4) accounts for 16% of the total.

Viewed as a composite indicator, the information presented in Table 3-5 indicates that the speed at which non-oral argument

TABLE 3-5  
COMPONENTS OF CASE PROCESSING TIME  
NON-ORAL ARGUMENT CASES



Actual Time	Mean	S.D.	% Total Time	% Total Time Variance	N
STEP 1: Trial Judgment to Materials Received	292 days	147	46 %	25 %	299
STEP 2 & 3: Materials to Decision	267 days	189	42 %	59 %	299
STEP 4: Decision to Mandate	78 days	96	12 %	16 %	299
TOTAL TIME	637 days	241	100 %	100 %	299

cases are processed in the Indiana system varies substantially. The major sources of this substantial variability occur during the decision stage of the appellate process. Although this study did not include sufficient data to support a specific conclusion, it seems likely that much of the differences in case processing time during the decision phase of the process is due to differences in panel productivity.

Breaking down total case processing time by steps indicates that, in both oral and non-oral argument cases, excessive time is occurring frequently during the material preparation and filing stage of the appellate process. In addition, the data analysis indicates that deciding cases is a problem area. Cases in which briefs, transcripts and other materials have been filed are generally not being decided until after a substantial waiting period has elapsed. Consequently, the final sections of this report focus on the potential sources of delay at the apparently crucial pre-decision and decision phases of the appellate process in the Indiana Court of Appeals.<sup>16</sup>

#### SUMMARY

Information presented previously revealed that the pre-decision phases of the appellate process present problems for the Indiana Court of Appeals. Cases often exceed the court's maximum time limits for filing briefs, records and transcripts.

<sup>16</sup> Appendix E presents a brief analysis of the relationships between case features and processing time. For the most part the information presented in Appendix E indicates that differences in case processing time do not systematically relate to differences in case features.

Attorneys and trial court clerks appear to be primary sources of delay at this materials preparation and filing stage. Apparently, attorneys and lower court clerks often are not preparing, and promptly filing or monitoring, the flow of necessary appeals case documents. Trial and appellate court judges might be contributing to the problem. It appears that they are not consistently following established policies governing the granting of extensions for filing notices of appeal, records, and transcripts. In addition, it appears that trial court judges are not uniformly monitoring the performance of attorneys, court clerks, and reporters during the initial stages of the appellate process.

The data analysis revealed that often litigants must wait a substantial length of time for their cases to be decided and opinions prepared by the Court. The sources of waiting delay, as noted previously, may be the Court's work habits which limit the number of cases which can be decided. In addition, inconsistency between panels may contribute to a general climate of uncertainty concerning when cases will be decided.

The final section of this report presents specific conclusions concerning how the Indiana Court of Appeals may begin to eliminate the identified sources of delay.

#### SECTION 4

#### CONCLUSIONS

- Case backlog was a serious problem in the Indiana Court of Appeals during the period from which case record data for this study were collected (cases filed in 1975 and 1976).

The Court could not effectively meet the demands imposed by a relatively large case volume. The direct effect of the large backlog on case processing time was substantial. "Ready" cases, those in which all materials had been filed, often waited more than eight months before being considered by the appellate court. In addition, the substantial case backlog probably had other indirect but serious effects on the Indiana appellate process. The large case backlog and correspondingly long waiting period probably contributed to the often excessive materials preparation time by eliminating incentives for attorneys and lower court personnel to prepare and promptly file necessary appeals documents.

Finally, and perhaps most importantly, the presence of a substantial case backlog and generally long waiting period currently makes it difficult for the Indiana Court of Appeals to implement badly need reforms to stem abuse during the pre-decision phases of the appellate process. It is doubtful that the court could realistically push for the implementation of reforms designed to speed up the materials preparation and filing phases of the appellate process without first implementing

reforms designed to reduce the case backlog and substantially reduce the length of time cases wait for consideration by the court after all materials have been filed.

Consequently, the Indiana Court of Appeals is urged to give top priority to the development and implementation of techniques and procedures for disposing of more cases. These techniques could include:

- developing mechanisms which grant the appellate court commissioner and law clerks authority to screen cases and prepare suggested memorandum opinions,
- implementing procedures for assigning cases to individual judges on the basis of their case backlog,
- implementing court rules specifying that written opinions must be submitted within sixty days after decision,
- implementing procedures for case reassignment in instances where judges are consistently behind in their case backlog,
- developing appropriate court-wide "fast track" alternative procedures,
- implementing sanctions which can be imposed against judges who are consistently delinquent in completing assigned cases.

Assessing the impact of new policies would require further analysis of time-lapse information from cases filed after the policies went into effect. The Appellate Justice Improvement Project could provide technical assistance to the Indiana Court of Appeals for this additional analysis.

- During the period when data for this study were collected, the Indiana Court of Appeals consisted of three panels, each of

which operated as a separate court for a single geographical district. The panels do not function as a single state-wide appellate court. While supposedly operating under the same court rules and procedures, the three panels differed noticeably in respect to the interpretation of them. The Court is urged to develop mechanisms for reinforcing its role as a single court of appeals for the entire State of Indiana. Mechanisms for unifying the Court could include: a panel rotation system which breaks up the three district-based panels; holding regular all-court conferences to bring the full bench together to consider policy matters and resolve panel conflicts; and establishing pre-opinion conferences to elicit the views of panel members prior to the preparation of draft opinions.

A panel rotation system cutting across the three geographic districts, and periodic all-court conferences, would reinforce the Court's role as a single court by increasing interaction between all members of the court. Panel rotation would also facilitate case assignment on the basis of existing backlog.

Periodic all-court conferences would provide a forum for examining how the court rules could be uniformly implemented. During the all-court conference, panel conflicts also could be considered by the Court as a whole. The all-court conference could be empowered to return opinions to panels for rewriting, and reverse panel decisions when appropriate.



As noted previously, all three members of a panel do not review cases until after a single judge has prepared a draft opinion. If the other two judges disagree with the writing judge, their comments and criticisms usually are expressed through memos to him. This procedure contributes significantly to the length of decision making time. Consequently, the court is urged to adopt periodic pre-opinion conferences which would elicit the thinking of all panel members prior to drafting opinions.

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

The Indiana Court of Appeals should consider implementing rules which specify that all extensions for filing records and transcripts must be granted only by it. Implementation and enforcement of these rules would do more than eliminate potential sources of delay. It would also directly benefit the court by providing consistent and more readily accessible case tracking information.

- Although the Indiana Court of Appeals had rules specifying when materials under the control of lower court clerks, reporters, and attorneys must be filed, the analysis presented previously indicated that these rules were not being consistently followed in the cases examined.

The Court must gain control over its caseload during the crucial pre-decision phases of the appellate process, including the transcript preparation phase. Our examination of other appellate courts included in this study generally revealed that courts which had formal control of their caseload at all phases exhibited substantially faster case processing time averages. Consequently, the Court is urged to consider the feasibility of implementing policies which stipulate that it can impose sanctions against court reporters, trial court clerks, and attorneys.

All these suggestions for speeding up case processing during the pre-decision phases of the appellate process assume that the Court can justify its use of sanctions. As noted previously, to be in a position reasonably and effectively to impose sanctions against court reporters and attorneys, the Court would have to reduce substantially case backlog and waiting time from the levels apparent during the period that data for this study were collected.

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

An effective case tracking system would enable the Court to identify rapidly cases which are overdue in some respect. It would also provide general information which could be used to evaluate periodically the system's effectiveness. The information which would need to be collected on each case considered by the Court would include:

- the date of the lower court judgment,
- the date the notice of appeal was filed,
- the dates when records and transcripts were filed, both in the trial court and appellate court,
- the dates when appellant and appellee filed briefs,
- the date of oral argument (when applicable),
- the date the case decision was announced,
- the dates relevant to petitions for rehearing (when applicable),
- the date the mandate was issued,
- the dates of any motions,
- the method of case disposition,
- the effect of the disposition, and
- the types and number of opinions prepared by the Court.

## APPENDIX A

## APPENDIX A

### A Framework for Examining Delay in Appellate Court Systems

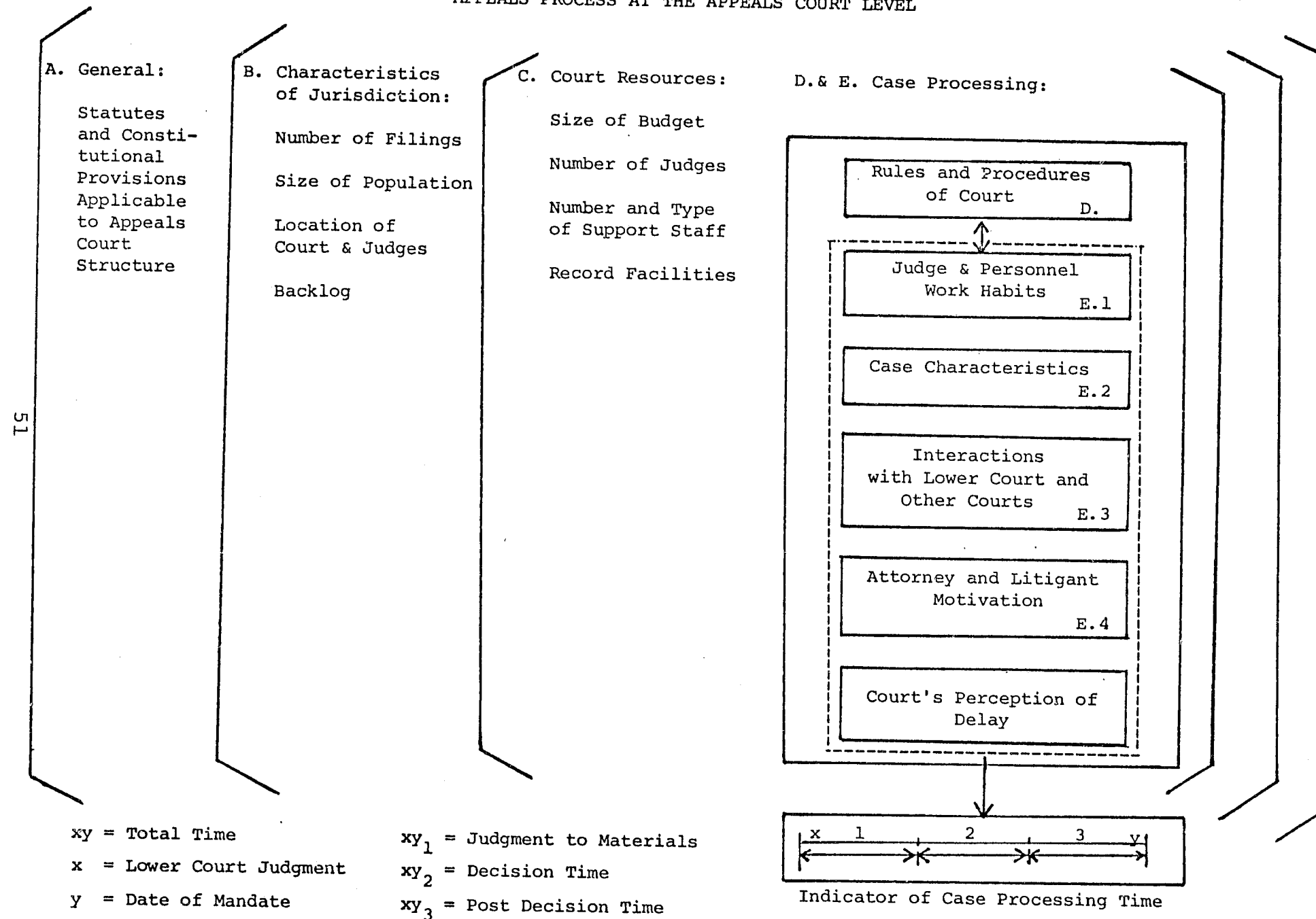
This framework reflects the assumptions that delay is determined subjectively but that any attempt to measure it must begin with measuring case processing time, and that case processing time is a function of the interactions among cases filed, the organizational aspects of a court, and the actions of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

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

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

Figure A-1

APPEALS PROCESS AT THE APPEALS COURT LEVEL



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

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

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

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

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

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

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

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

#### Using the Framework

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

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

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

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

APPENDIX B

APPENDIX B  
CASE SUBJECT MATTER

Criminal Cases			Civil Cases		Total	
44% (190)			55% (237)		100% (427)	
Criminal Case Type:	%	#	Civil Case Type:	%	#	
Murder One	- %	-	Liquor Laws	1 %	2	
Murder Two	- %	-	Motor Vehicle	- %	-	
Manslaughter	2 %	4	Workman's Compensation	5 %	12	
Rape or Sexual Assault	8 %	16	Elections	1 %	3	
Robbery	23 %	43	Taxes	4 %	9	
Burglary	18 %	35	Zoning	1 %	2	
Theft	15 %	29	Other Administrative Law	13 %	30	
Assault	5 %	9	Commercial	19 %	42	
Battery	1 %	1	Landlord/Tenant	1 %	3	
Fraud	2 %	4	Other Property	10 %	22	
Arson	1 %	2	Trust & Estates	1 %	1	
Criminal Trespass	- %	-	Child Custody & Support	8 %	18	
Narcotics	13 %	24	Juvenile	1 %	2	
Drunkenness	- %	-	Other Domestic Relations	8 %	17	
Traffic	3 %	5	Auto Personal Injury	12 %	26	
Juvenile Delinquency	1 %	2	Other Injury	7 %	15	
Morals	- %	-	Labor	3 %	6	
Weapons Charges	- %	-	Other Non-Administrative	6 %	13	
Disorderly Conduct	- %	-				
Other	8 %	16				
TOTAL	100 %	190		100 %	223	

Source: 427 cases out of 432 cases in which case subject matter data were available.

# APPENDIX C

## APPENDIX C TYPE OF ATTORNEY INVOLVED IN APPEAL

<u>Attorney Type</u>	<u>Appellant</u>		<u>Appellee</u>	
	<u>Percent</u>	<u>Number</u>	<u>Percent</u>	<u>Number</u>
Private Counsel	59 %	252	52 %	218
Attorney General	6 %	26	46 %	192
District Attorney	- %	-	- %	-
Municipal Corp. Counsel	1 %	4	1 %	3
Public Defender	32 %	134	1 %	3
Legal Aid	0 %	2	0 %	1
Pro Se	1 %	5	1 %	2
Other	- %	-	1 %	2
TOTAL	100 %	423	100 %	421

Source: 423 cases out of 432 cases in which type of attorney involved in appeal data were available.



## APPENDIX D

## APPENDIX D

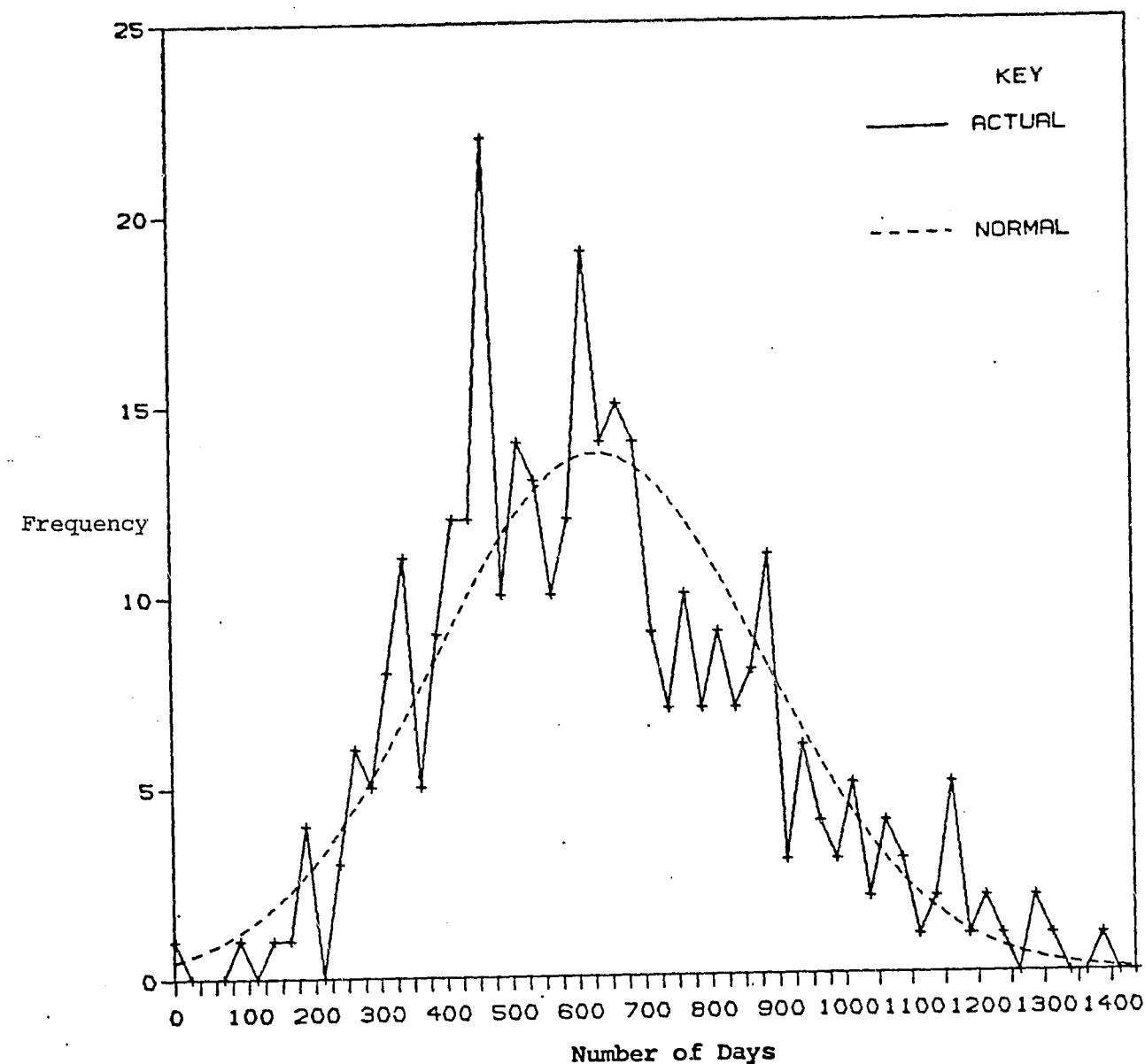
### Time Interval Graphs

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

Figure D-1, which summarizes the distribution of total case processing time data for all cases in the Indiana Court of Appeals included in the study sample, illustrates the format used to describe time-lapse information. The horizontal, or X, axis of the graph, which ranges from 1 to 1,400 days, refers to the total number of case processing days, while the vertical, or Y, axis represents the absolute frequency of cases. The intersections of axis X and Y are represented by + and were used as coordinates for drawing the actual curves for each time interval. A second symmetrical curve, represented by a sequence of dotted lines, has also been included in each figure. The symmetrical curves are provided in order to aid the reader when interpreting the actual case distributions illustrated by the solid line curves. All of the symmetrical curves included in this appendix are normal. The dimensions for each of the symmetrical curves are based on the actual mean and standard deviation for each time interval. Thus differences in their peakedness are due only to differences in their standard deviations.

Figure D-1 Total Time:

Lower Court Judgment to Appellate Court Mandate



Descriptive Statistics

Valid Cases: 338

Mean	641.12	Standard Error	14.83	Kurtosis	8.10
Median	609.50	Standard Deviation	272.66	Skewness	1.54
Mode	422.00	Variance	74,343.78		
		.95 Confidence Interval	611.95 to 670.29		

The actual case distribution curves and the symmetrical curves presented by themselves are useful devices for describing data. For example, by merely looking at the curves presented in Figure D-1, one can see that the actual distribution of cases in the Indiana Court of Appeals differs dramatically from the normal case distributions. The actual case distribution curve shows that there are numerous extreme cases in the Indiana sample--cases which take anywhere from 700 to 1,400 total case processing days.

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

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

of the distribution--the point or case where 1/2 of all the cases fall below and 1/2 above. Finally, the mode is simply the value that occurs most often in a distribution pattern.

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

distribution presented in Figure D-1, the statistics accompanying the graph indicate that cases do not cluster closely around the 641 day average but rather are subject to considerable variation as evidenced by the relatively large 273 day standard deviation.

The third set of statistics presented at the bottom of each graph, the confidence interval and standard errors, are measures which help determine how accurately the data from the sample of appellate cases reflect or represent the total caseload. Using Figure D-1 once again as an example, the .95 confidence interval statistic indicates that there is a 95% probability that the actual mean for all cases (not just the sample) in Indiana will fall within a range of 612 and 670 days. In other words, if all the cases in the Indiana court during the sample years had been included in our data set, there is a 95% probability that the total case processing time mean would fall within this narrow range of 612 to 670 days. As an added check on the statistical reliability of the results, a measure called the standard error has been included in the statistics accompanying the time interval graphs. The calculation of this measure is extremely difficult to explain and not necessary for this presentation. The interpretation of the standard error, however, is important. It essentially indicates how much fluctuation within a sample of cases can be expected. The standard error of 14.83 for the total time interval illustrated in Figure D-1, indicates that the mean of 641 days can fluctuate approximately 14.83 days

higher or lower. The relatively low standard error thus once again confirms the high reliability of the sample. Figure D-3, which illustrates waiting time in oral argument cases, demonstrates how these statistics can be used to identify a poor sample. Specifically the .95% confidence interval indicates a large range of between 113 to 287 days and a relatively large standard error of 43 days. Clearly, unqualified generalizations made from this sample would be dangerous and misleading.

The fourth and final set of statistics accompanying the time interval graphs, the kurtosis and skewness, describe the shape of a graph or curve relative to the ideal bell-shaped curve. Both statistics indicate how closely the actual curve approximates a normal bell-shaped curve, i.e., the skewness indicates whether cases generally cluster to the right or left of the mean, while the kurtosis indicates the "peakness" of the curve. The skewness statistics has a value of zero when the distribution of cases approximates a normal bell-shaped curve, while a positive value means that cases cluster to the left of the mean and a negative value indicates clustering to the right of the mean. A zero value for the kurtosis statistics indicates a normal distribution, a positive value a more "peaked" than normal curve, and a negative value, a flatter than normal curve. For example, the skewness and kurtosis statistics accompanying the curve presented in Figure D-1

indicate that cases in the Indiana court fall to the left of the mean (or take generally less processing time than would be expected given a normal distribution) and that the curve is slightly more peaked than normal.

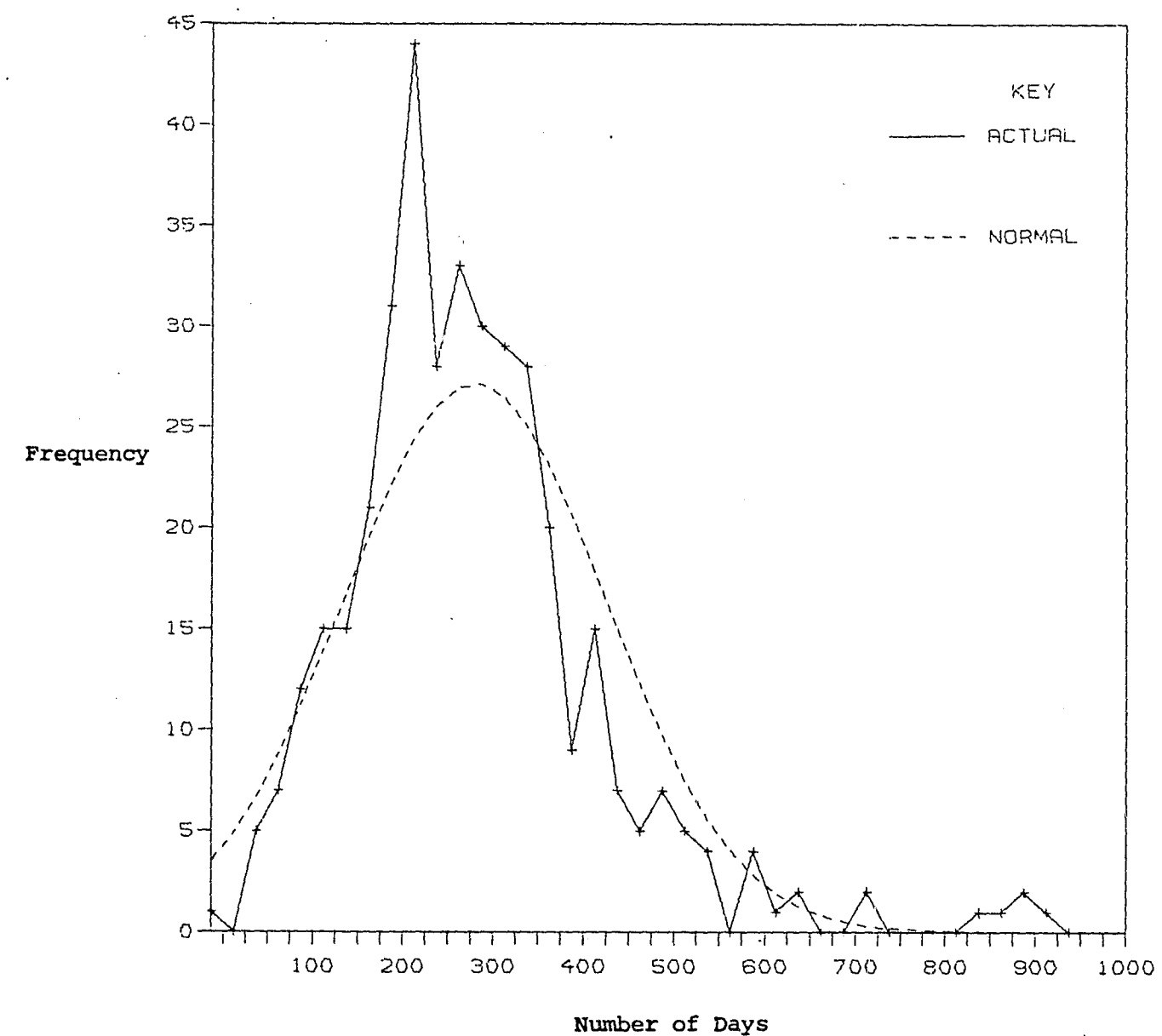
The statistics appearing in Table D-1 amplify the relative percentage of total variance figures presented in Table 3-4. The Multiple r statistic is a summary multiple correlation which indicates the cumulative amount of total variation explained as each variable is added to the overall variance equation. An examination of the Multiple r statistics presented in Table D-1 indicates that when the last step in the appellate process variable, Step 4, is added to the equation, all of the total time variation has been explained by the cumulative effects of the four steps in the process. If the final Multiple r did not equal 1.00 or 100%, one would know that a portion of the total time variance is due to error and/or the effect of other variables not included in the equation.

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

variation accounted for by each step when the effects of other steps are controlled for. The  $r^2$  change is thus the figure used for determining the percentages of total variance explained by each step.

Figure D-2 STEP 1

Lower Court Judgment to Materials Received

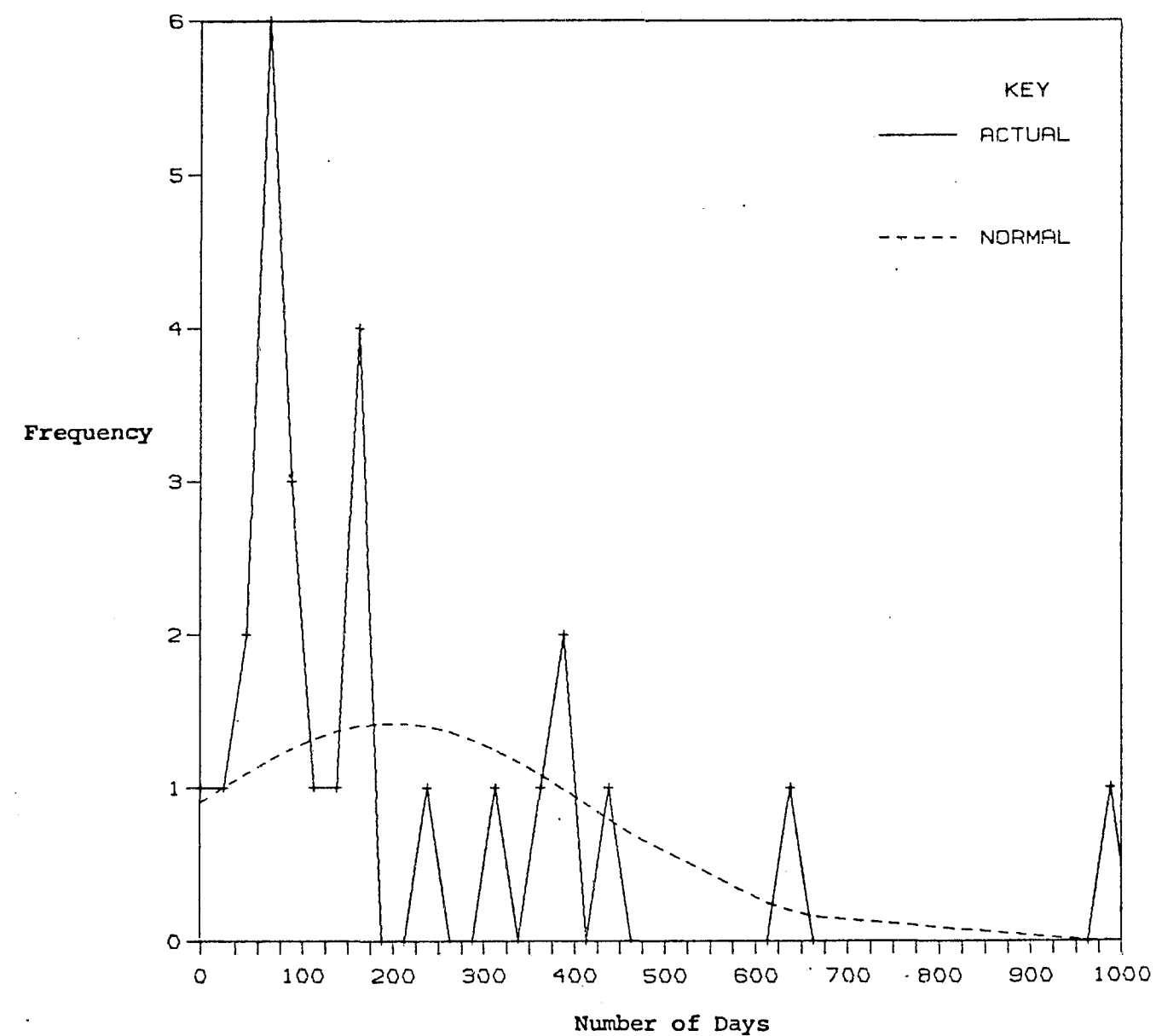


Descriptive Statistics

Valid Cases: 386

Mean	280.16	Standard Error	7.37	Kurtosis	5.17
Median	258.83	Standard Deviation	144.81	Skewness	1.62
Mode	211.00	Variance	20968.97		
		.95 Confidence Interval	265.67 to 294.65		

Figure D-3 STEP 2  
Materials to Oral Argument

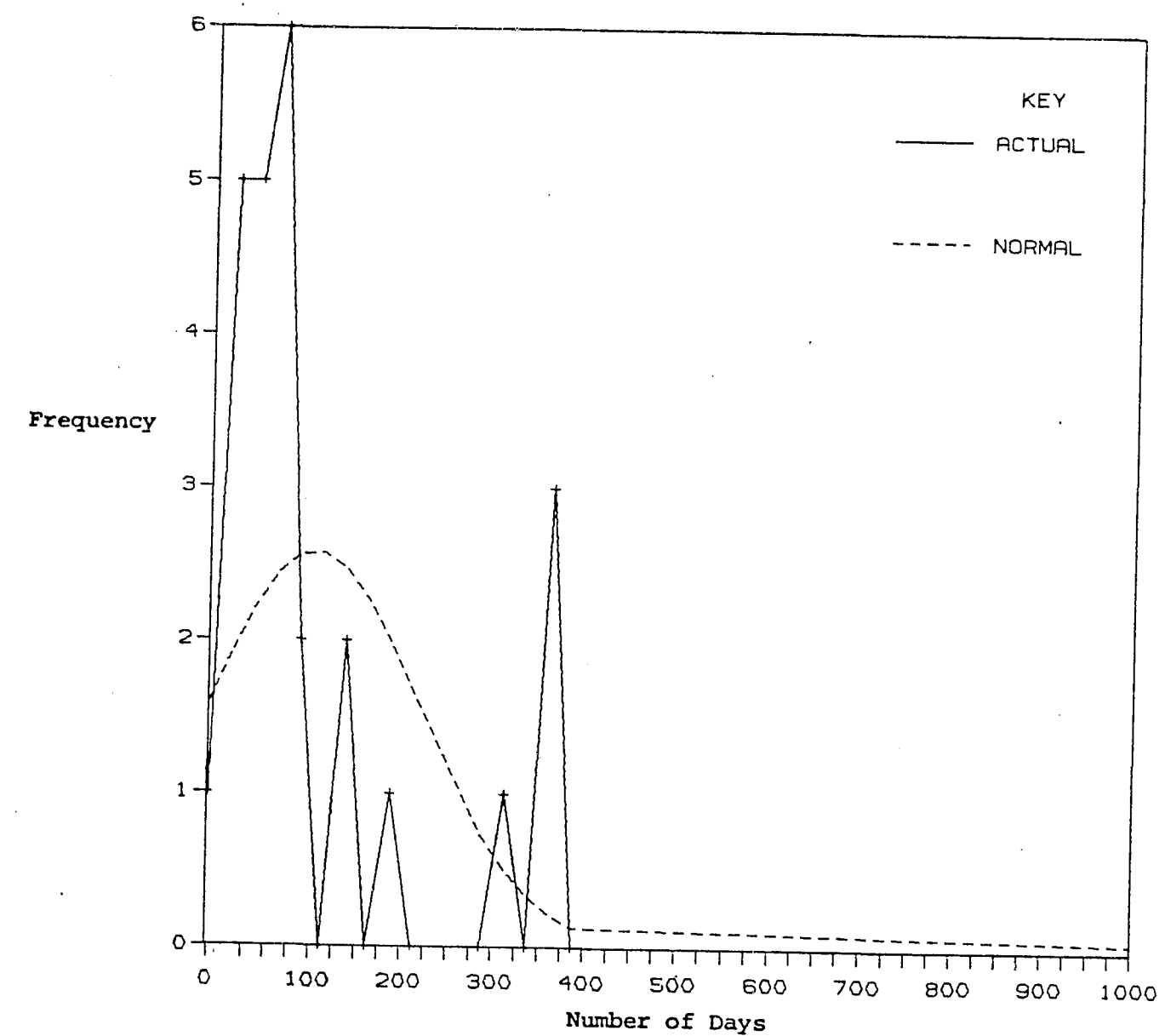


Descriptive Statistics

Valid Cases: 27

Mean	200.11	Standard Error	42.92	Kurtosis	5.48
Median	117.00	Standard Deviation	219.76	Skewness	2.18
Mode	60.00	Variance	48292.87		
		.95 Confidence Interval	113.18 to 287.04		

Figure D-4 STEP 3  
Oral Argument to Decision Announced



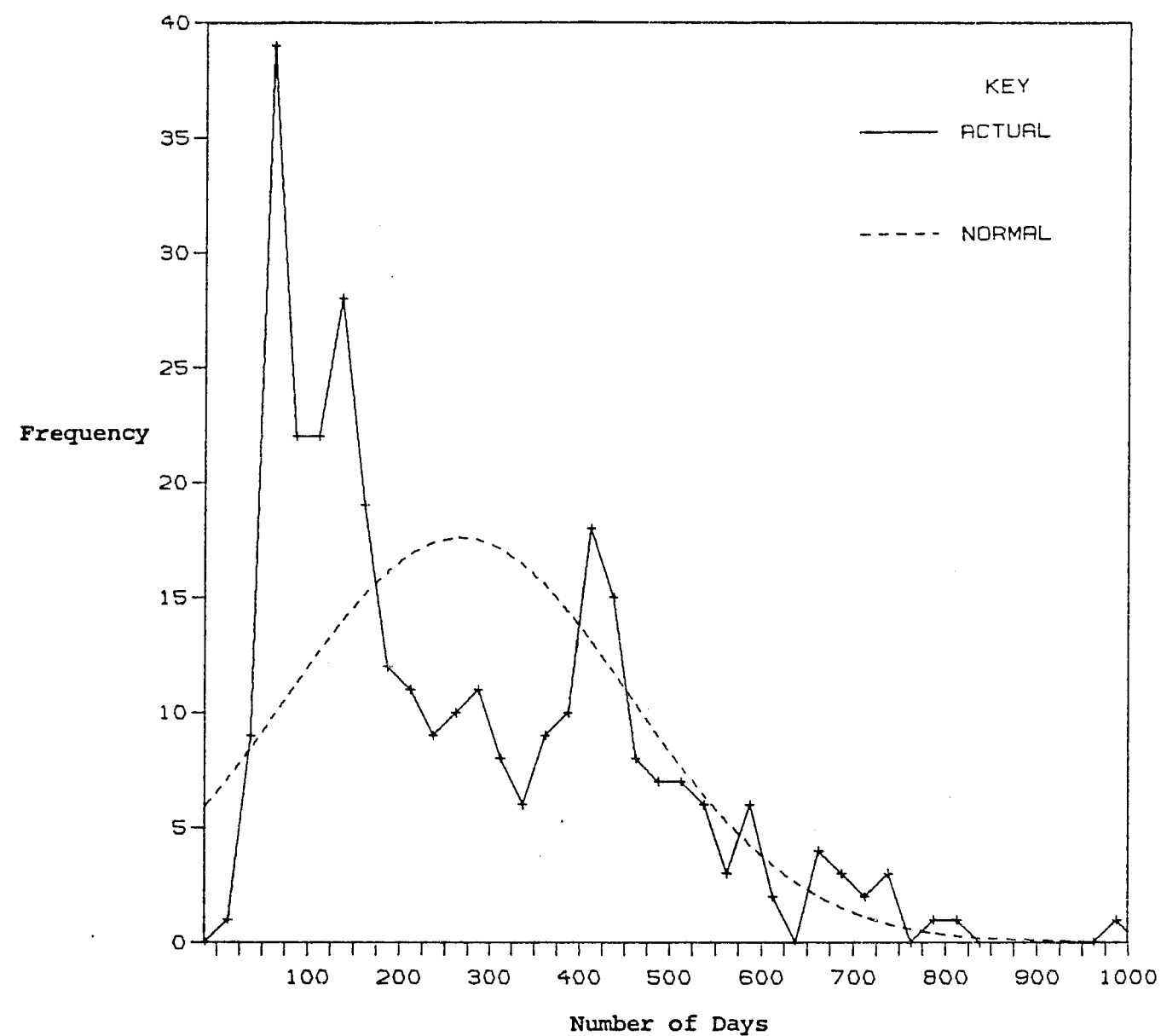
Descriptive Statistics

Valid Cases: 26

Mean	103.54	Standard Error	23.06	Kurtosis	1.16
Median	55.50	Standard Deviation	117.59	Skewness	1.55
Mode	15.00	Variance	13828.50		
		.95 Confidence Interval	56.04 to 151.04		

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

Materials to Date Decision Announced



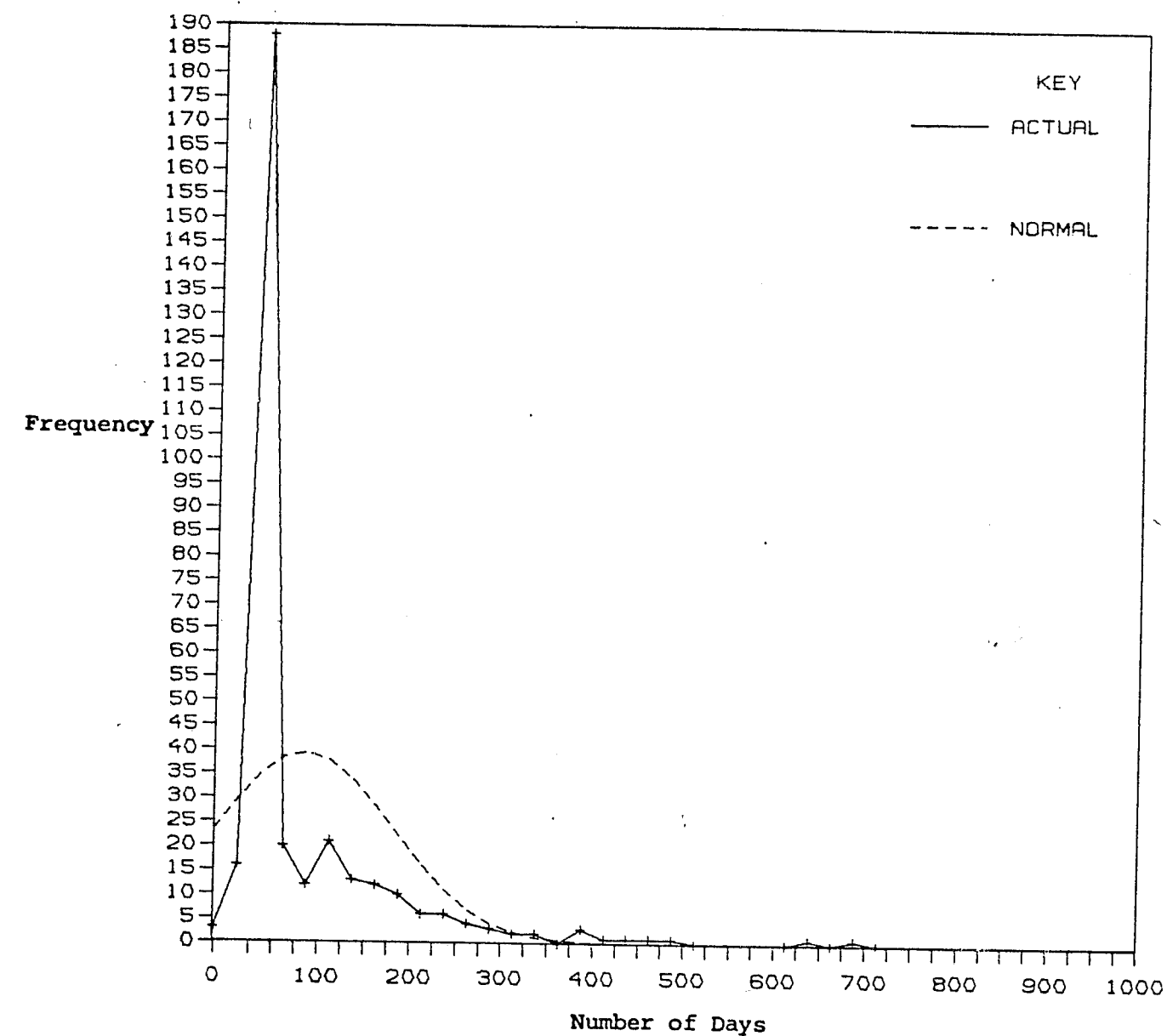
Descriptive Statistics

Valid Cases: 313

Mean	266.63	Standard Error	10.69	Kurtosis	.051
Median	211.00	Standard Deviation	189.18	Skewness	.831
Mode	63.00	Variance	35789.99		
		.95 Confidence Interval	245.59 to 287.67		

Figure D-6 STEP 4

Appellate Court Decision to Mandate



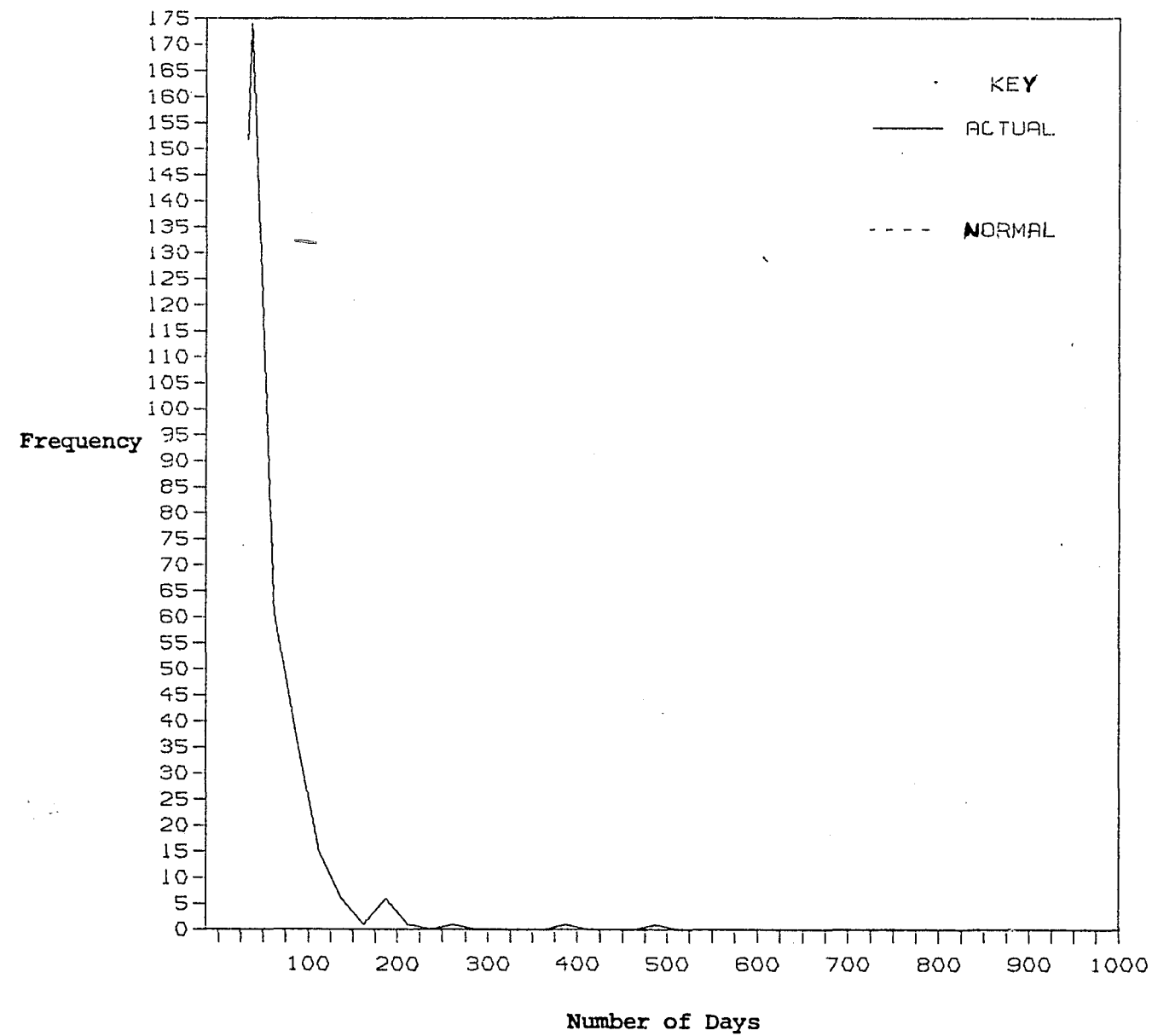
Descriptive Statistics

Valid Cases: 328

Mean	85.33	Standard Error	6.79	Kurtosis	45.36
Median	32.03	Standard Deviation	123.03	Skewness	5.29
Mode	27.00	Variance	15137.10		
		.95 Confidence Interval	71.97 to 98.70		

Figure D-7 STEP 1A

Filing of Transcript to Appellant Brief



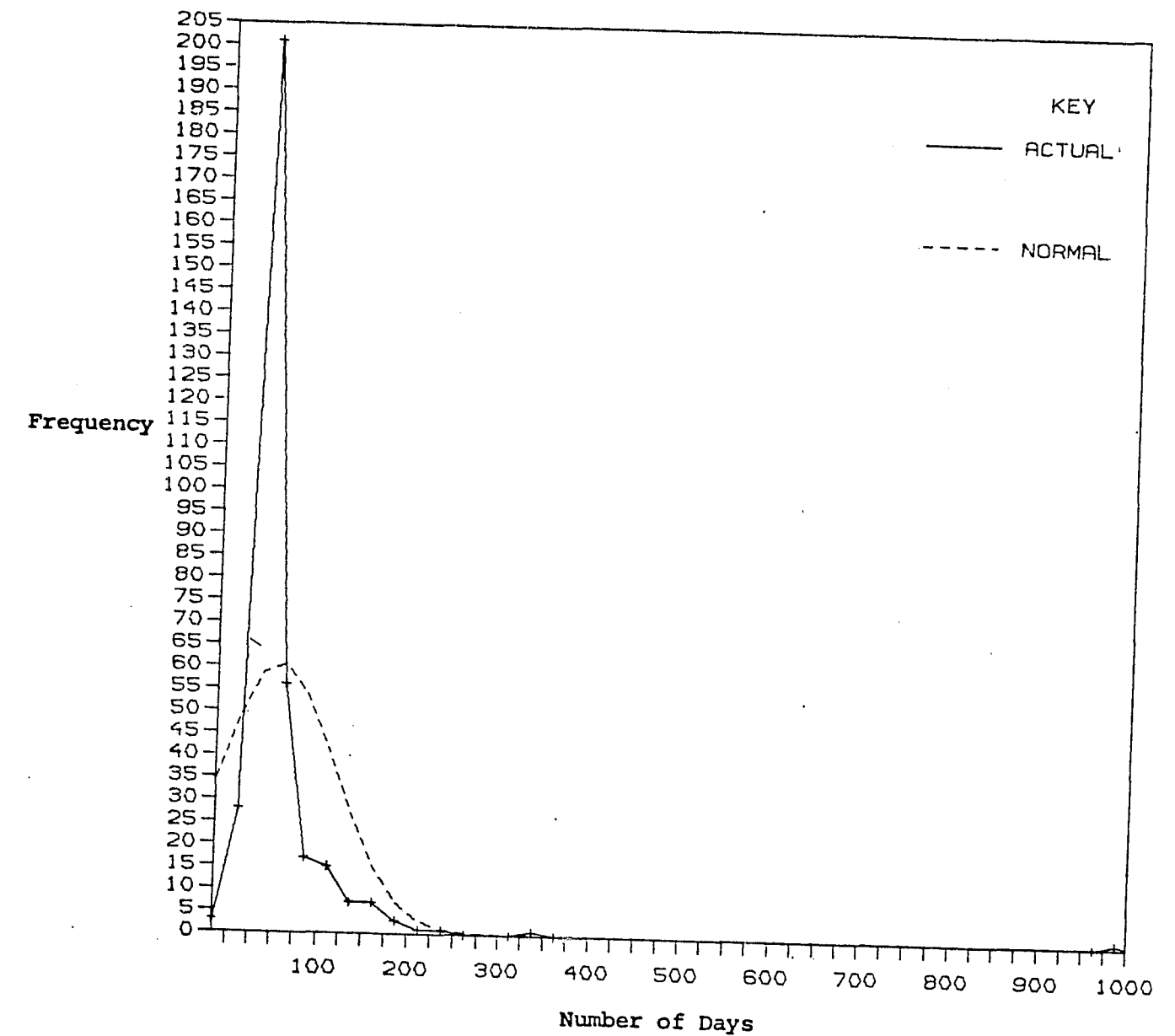
Descriptive Statistics

Valid Cases: 372

Mean	49.41	Standard Error	2.49	Kurtosis	26.24
Median	30.14	Standard Deviation	48.06	Skewness	3.96
Mode	30.00	Variance	2310.06		
		.95 Confidence Interval	44.51 to 54.31		

Figure D-8 STEP 1B

Appellant's Brief to Appellee's Brief



Descriptive Statistics

Valid Cases: 341

Mean	53.08	Standard Error	3.52	Kurtosis	134.21
Median	34.61	Standard Deviation	64.93	Skewness	9.75
Mode	35.00	Variance	4215.55		
		.95 Confidence Interval	46.16 to 59.99		

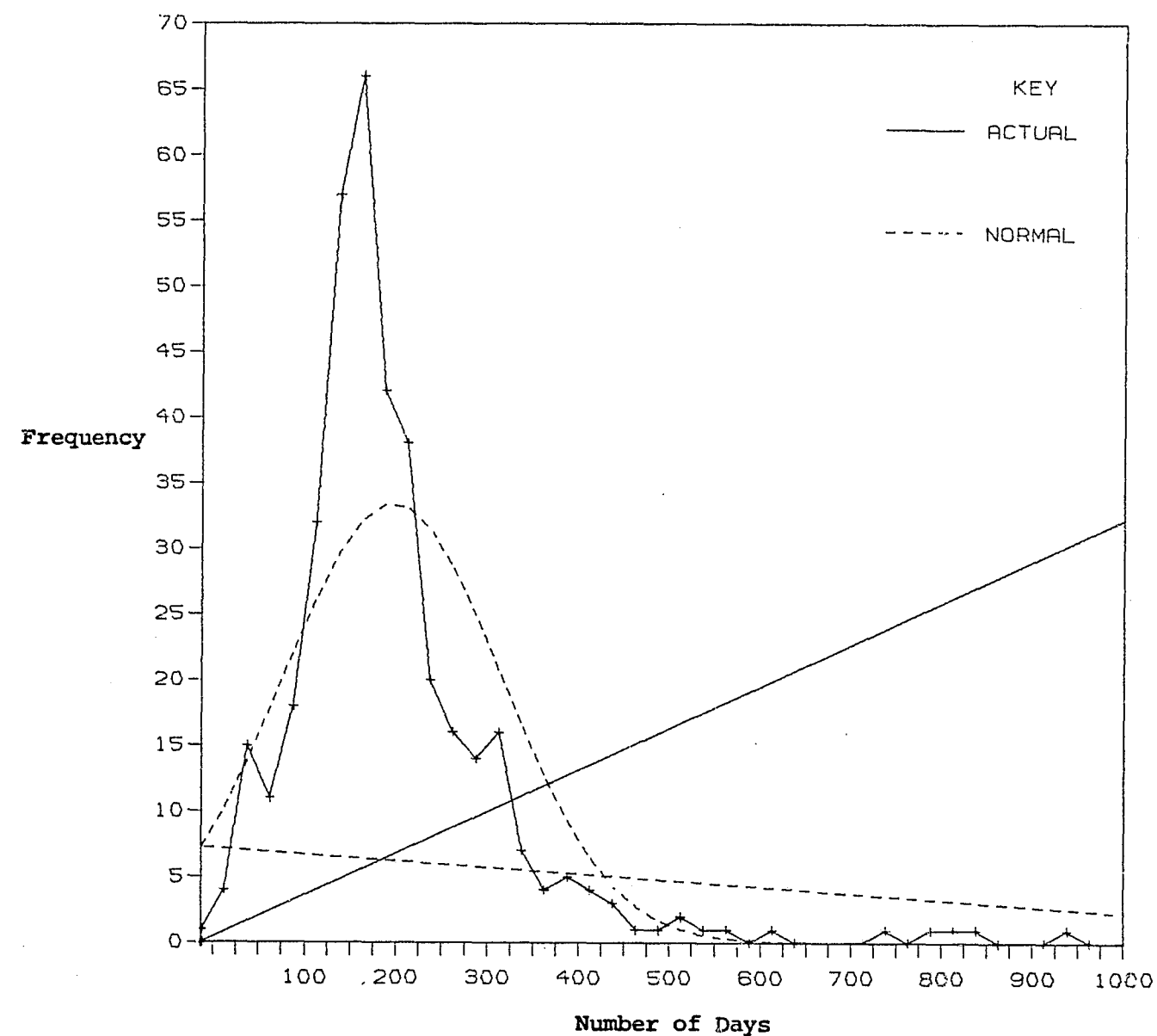


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**1 OF 2**

Figure D-9 STEP 1C

Lower Court Judgment to Transcript Filing



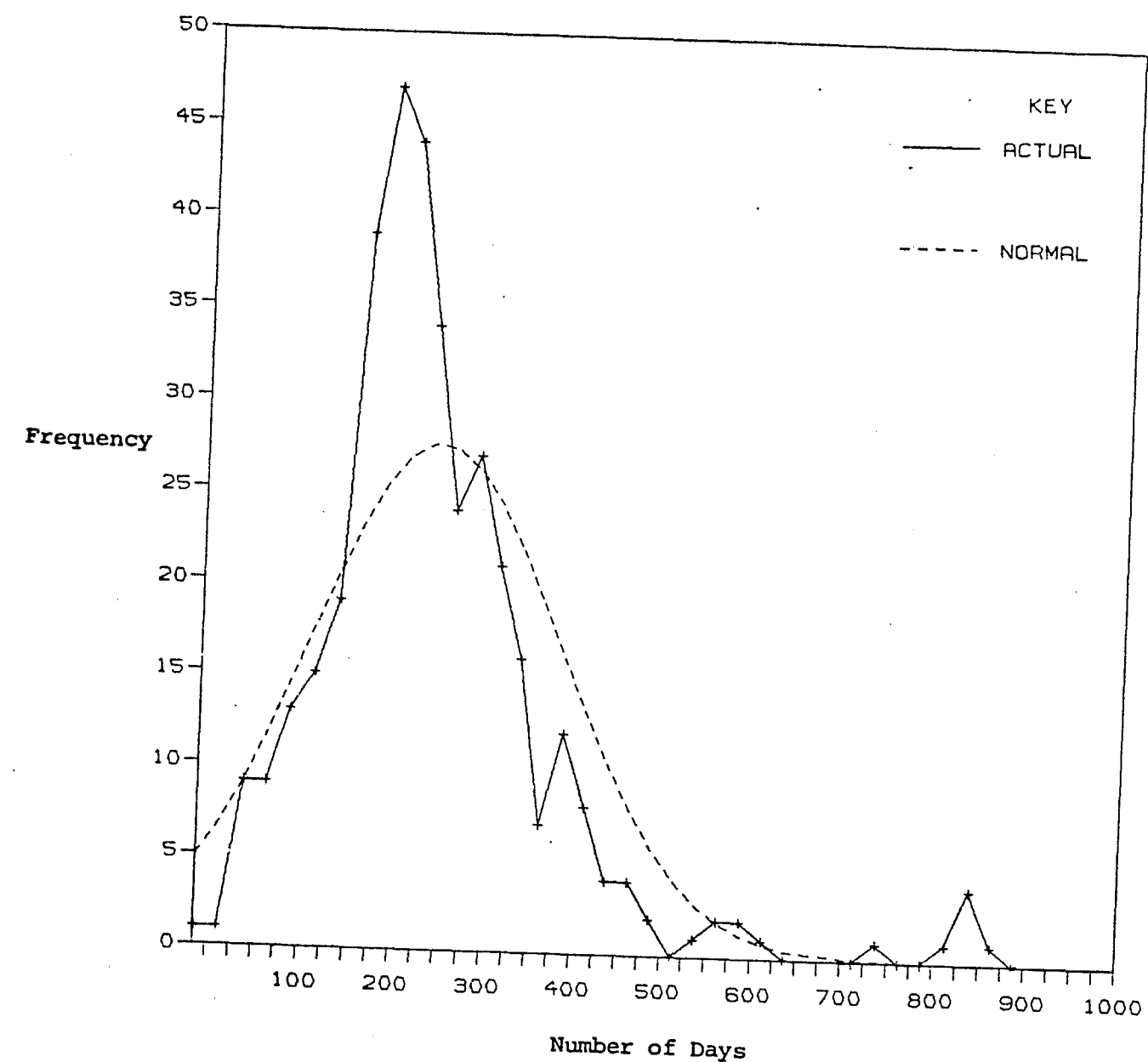
Descriptive Statistics

Valid Cases: 385

Mean	195.91	Standard Error	6.09	Kurtosis	9.53
Median	170.25	Standard Deviation	119.41	Skewness	2.37
Mode	147.00	Variance	14258.15		
		.95 Confidence Interval	183.94 to 207.88		

Figure D-10 STEP 1D

Lower Court Judgment to Filing of Appellant's Brief



Descriptive Statistics

Valid Cases: 371

Mean	253.05	Standard Error	11.01	Kurtosis	124.65
Median	219.67	Standard Deviation	212.13	Skewness	9.03
Mode	171.00	Variance	44998.83		
		.95 Confidence Interval	231.40 to 274.71		

TABLE D-1

## SUMMARY FIGURES OF VARIANCE BY STEPS IN APPEALS PROCESS

	<u>Multiple r</u>	<u>r</u>	<u>r<sup>2</sup> Change</u>	<u>r</u>
<u>ALL CASES</u>				
STEP 1 Lower Court Judgment to Materials Received by Appeals Court	.464	.215	.215	.464
STEP 2 & 3 Materials Received to Court Decision	.892	.796	.580	.710
STEP 4 Decision to Mandate	1.000	1.000	.204	.535
			(N = 320)	
<u>ORAL ARGUMENT CASES</u>				
STEP 1 Lower Court Judgment to Materials Received by Appeals Court	.703	.494	.494	.703
STEP 2 Date Materials Received to Date Oral Argument	.918	.843	.349	.671
STEP 3 Oral Argument to Decision	.956	.914	.070	.686
STEP 4 Decision to Mandate	1.000	1.000	.085	.759
			(N = 20)	
<u>NON-ORAL ARGUMENT CASES</u>				
STEP 1 Lower Court Judgment to Materials Received by Appeals Court	.504	.254	.254	.504
STEPS 2 & 3 Materials Received to Court Decision	.917	.842	.587	.701
STEP 4 Decision to Mandate	1.000	1.000	.157	.352
			(N = 299)	

APPENDIX E

APPENDIX E

Correlates of Case Processing Time

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

Turning to specific correlations, Table E-1 indicates no significant relationships between Step 1 and features which define the content of cases--the number of issues raised and subject matter of the appeal, the amount of information provided by attorneys to the Indiana Court of Appeals.

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

TABLE E-1

## CORRELATES OF CASE PROCESSING TIME

Independent Variable	STEP 1 (Lower Court Judgment to Materials)			Oral Argument Cases STEP 2 (Materials to Oral Argument)			STEP 3 (Oral Argument to Decision)			Non oral Cases STEP 2 & 3 (Materials to Decision)			STEP 4 (Decision to Mandate)		
	r	sig	N	r	sig	N	r	sig	N	r	sig	N	r	sig	N
Number of Civil Subject Matters	.029	.338	(204)	Too Few Cases			Too Few Cases			.076	.178	(150)	Not Applicable		
Number of Criminal Subject Matters	-.014	.424	(183)	Too Few Cases			Too Few Cases			.088	.131	(164)	Not Applicable		
Number of Issues Raised by Appellant	.166	.001	(366)	Too Few Cases			.080	.356	( 24)	.132	.012	(299)	Not Applicable		
Number of Issues Raised by Appellee	.102	.023	(383)	Too Few Cases			Too Few Cases			.085	.068	(311)	Not Applicable		
Length of Appellant's Brief	.213	.001	(368)	Too Few Cases			.129	.270	( 25)	.028	.313	(313)	Not Applicable		
Length of Appellee's Brief	.124	.01	(339)	Too Few Cases			.180	.200	( 24)	.100	.042	(304)	Not Applicable		
Length of Appellant's Reply	.237	.002	(156)	Too Few Cases			.353	.099	( 15)	-.005	.479	(136)	Not Applicable		
Length of Trial Court Record	.351	.001	(381)	Too Few Cases			.096	.325	( 25)	.044	.218	(311)	Not Applicable		
Total Number of Motions	.447	.001	(386)	Too Few Cases			.523	.004	( 25)	.037	.257	(313)	Not Applicable		
Length of Majority Opinion	Not Applicable			Not Applicable			.109	.307	( 24)	.126	.015	(301)	Not Applicable		
Concurring vs. No Concurring Opinions	Not Applicable			Not Applicable			Too Few Cases			-.017	.384	(312)	.009	.435	(325)
Dissenting vs. No Dissenting Opinions	Not Applicable			Not Applicable			.213	.154	( 25)	-.102	.036	(312)	-.061	.135	(327)
Petition for Rehearing vs. No Petition	Not Applicable			Not Applicable			Not Applicable			Not Applicable			.744	.001	(328)

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

Correlations between oral argument case features and Steps 2 and 3 of the appellate process could not be computed because of the small sample size. Consequently, statements concerning oral argument features and their relationship to the decision phases of the appellate process can not be made.

The correlations between non-oral argument case features and Step 2 and 3, the decision phase, reveal no meaningful relationships. Differences in elapsed case processing time during this phase of the appellate process probably are attributable to differences in judges' work habits and the effects of the Court's substantial case backlog. Consequently, the lack of positive relationships between case features and decision time is predictable. Any differences in processing time during the decision period attributable to case features would be secondary in importance to greater differences attributable to work habits and case backlog, and hence would

not stand out in the statistical correlations.

Finally, Table E-1 documents a strong relationship between whether or not a petition for rehearing was filed in a case, a time elapsed during the post-decision phase of the appellate process. Cases in which petitions for rehearing were filed generally took substantially longer at the post-decision phase than cases in which petitions were not filed.

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Associate Justice, Supreme Court

Virginia  
Albertis S. Harrison, Jr.  
Justice, Supreme Court

Washington  
Charles T. Wright  
Justice, Supreme Court

West Virginia  
Fred H. Caplan  
Chief Justice, Supreme Court  
of Appeals

Wisconsin  
Nathan S. Heffernan  
Justice, Supreme Court

Wyoming  
A. G. McClintock  
Justice, Supreme Court

American Samoa  
Richard I. Miyamoto  
Chief Justice, High Court

Guam  
Paul J. Abbate  
Presiding Judge, Superior  
Court

Puerto Rico  
Jose Trias-Monge  
Chief Justice, Tribunal  
General de Justicia

Virgin Islands  
Eileen R. Petersen  
Judge, Territorial Court

#### SECTION 4

#### CONCLUSIONS

- Case backlog was a serious problem in the Indiana Court of Appeals during the period from which case record data for this study were collected (cases filed in 1975 and 1976).

The Court could not effectively meet the demands imposed by a relatively large case volume. The direct effect of the large backlog on case processing time was substantial. "Ready" cases, those in which all materials had been filed, often waited more than eight months before being considered by the appellate court. In addition, the substantial case backlog probably had other indirect but serious effects on the Indiana appellate process. The large case backlog and correspondingly long waiting period probably contributed to the often excessive materials preparation time by eliminating incentives for attorneys and lower court personnel to prepare and promptly file necessary appeals documents.

Finally, and perhaps most importantly, the presence of a substantial case backlog and generally long waiting period currently makes it difficult for the Indiana Court of Appeals to implement badly needed reforms to stem abuse during the pre-decision phases of the appellate process.<sup>17</sup> It is doubtful

<sup>17</sup>Backlog statistics compiled by the Court indicate that case backlog has decreased appreciably subsequent to the years of our data collection, 1975-76.



that the court could realistically push for the implementation of reforms designed to speed up the materials preparation and filing phases of the appellate process without first implementing reforms designed to reduce the case backlog and substantially reduce the length of time cases wait for consideration by the court after all materials have been filed.

Consequently, the Indiana Court of Appeals is urged to give top priority to the development and implementation of techniques and procedures for disposing of more cases. These techniques could include:

- developing mechanisms which grant the appellate court commissioner and law clerks authority to screen cases and prepare suggested memorandum opinions,
- implementing procedures for assigning cases to individual judges on the basis of their case backlog,<sup>18</sup>
- implementing court rules specifying that written opinions must be completed within sixty days after decision,
- implementing procedures for case reassignment in instances where judges are consistently behind in their case backlog,<sup>19</sup>
- developing appropriate court-wide "fast track" alternative procedures,
- implementing sanctions which can be imposed against judges who are consistently delinquent in completing assigned cases.

<sup>18</sup>In August 1978 the court implemented policies for reassigning cases on the basis of individual judge backlog.

<sup>19</sup>Between August 1978 and Sept. 1980, 240 cases have been transferred among the court's judges.

Assessing the impact of new policies would require further analysis of time-lapse information from cases filed after the policies went into effect. The Appellate Justice Improvement Project could provide technical assistance to the Indiana Court of Appeals for this additional analysis.

- During the period when data for this study were collected, the Indiana Court of Appeals consisted of three panels, each of which operated as a separate court for a single geographical district. The panels do not function as a single state-wide appellate court. While supposedly operating under the same court rules and procedures, the three panels differed noticeably in respect to the interpretation of them. The Court is urged to develop mechanisms for reinforcing its role as a single court of appeals for the entire State of Indiana. Mechanisms for unifying the Court could include: a panel rotation system which breaks up the three district-based panels;

and establishing pre-opinion conferences to elicit the views of panel members prior to the preparation of draft opinions.

A panel rotation system cutting across the three geographic districts, and periodic all-court conferences, would reinforce the Court's role as a single court by increasing

interaction between all members of the court.<sup>20</sup> Panel rotation would also facilitate case assignment on the basis of existing backlog.

Periodic all-court conferences would provide a forum for examining how the court rules could be uniformly implemented. During the all-court conference, panel conflicts also could be considered by the Court as a whole. The all-court conference could be empowered to return opinions to panels for rewriting, and reverse panel decisions when appropriate.

As noted previously, all three members of a panel do not review cases until after a single judge has prepared a draft opinion. If the other two judges disagree with the writing judge, their comments and criticisms usually are expressed through memos to him. This procedure contributes significantly to the length of decision making time. Consequently, the court is urged to adopt periodic pre-opinion conferences which would elicit the thinking of all panel members prior to drafting opinions.

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<sup>20</sup> In August 1978 the Court implemented policies for assigning cases to any of its four panels regardless of case geographic origin.

- Although the Indiana Court of Appeals had rules specifying when materials under the control of lower court clerks, reporters, and attorneys must be filed, the analysis presented previously indicated that these rules were not being consistently followed in the cases examined.

The Court must gain control over its caseload during the crucial pre-decision phases of the appellate process, including the transcript preparation phase. Our examination of other appellate courts included in this study generally revealed that courts which had formal control of their caseload at all phases exhibited substantially faster case processing time averages. Consequently, the Court is urged to consider the feasibility of implementing policies which stipulate that it can impose sanctions against court reporters, trial court clerks, and attorneys.

All these suggestions for speeding up case processing during the pre-decision phases of the appellate process assume that the Court can justify its use of sanctions. As noted previously, to be in a position reasonably and effectively to impose sanctions against court reporters and attorneys, the Court would have to reduce substantially case backlog and waiting time from the levels apparent during the period that data for this study were collected.

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

An effective case tracking system would enable the Court to identify rapidly cases which are overdue in some respect. It would also provide general information which could be used to evaluate periodically the system's effectiveness. The information which would need to be collected on each case considered by the Court would include:

- the date of the lower court judgment,
- the date the notice of appeal was filed,
- the dates when records and transcripts were filed, both in the trial court and appellate court,
- the dates when appellant and appellee filed briefs,
- the date of oral argument (when applicable),
- the date the case decision was announced,
- the dates relevant to petitions for rehearing (when applicable),
- the date the mandate was issued,
- the dates of any motions,
- the method of case disposition,
- the effect of the disposition, and
- the types and number of opinions prepared by the Court.

**END**