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Illinois Supreme Court Rule 352(a): An Attempted Revival of the Appellate Oral Argument

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Though long considered a bedrock of the American legal system, oral argument has steadily lost popularity in appellate courts across the country. Due in large part to ever-increasing caseloads and limited judicial resources, most jurisdictions now favor the expediency of written briefs over oral argument to decide appeals. While written briefs have their place, oral argument offers an inimitable opportunity for lawyers and judges to directly converse. As such, the practice of oral argument at the appellate level should be preserved.

The Illinois Supreme Court took a step towards revitalizing appellate oral argument with its revised Rule 352(a). However, the current rule does not go far enough in its attempt to encourage appellate oral argument while also maximizing judicial efficiency. The Illinois Supreme Court should consider adopting more aggressive protections in order to truly revive appellate oral argument in Illinois.

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INTRODUCTION

As both the population and access to the legal system continue to rise in the United States, the frequency of oral argument held at the appellate level continues to drop.[1] Though currently on the wane, oral argument in the United States has traditionally been considered a crucial aspect of the appellate process.[2] However, the skyrocketing caseload of appellate courts is not the only reason for oral argument's decline. A growing number of legal practitioners and scholars believe that oral argument is no longer necessary to the appellate process and is "but a vestigial formality."[3]

Courts across the country are currently struggling to reconcile the equally valid arguments supporting and criticizing appellate oral argument. As a result, many courts find themselves stuck in an awkward in-between, not wholly convinced of oral argument's necessity, but yet unwilling to completely abandon such an iconic aspect of the appellate process. Illinois,

1. Robert J. Martineau, *Appellate Process in Civil Cases: A Proposed Model*, 63 MARQ. L. REV. 163, 164 (1979).

2. David Luther Woodward, *The Argument for Oral Argument*, 52 OKLA. B.J. 1767 (1981).

3. Leonard M. Ring, *The Pros of Oral Argument*, 16 THE FORUM 451, 452 (1981).

in particular, embodies this hesitancy to definitively decide the fate of oral argument through the recently revised Illinois Supreme Court Rule 352(a), Conduct of Oral Arguments.[4] While deciding the future of appellate oral argument is by no means an easy task, it is essential to forging a more functional and fair appellate process. Therefore, Illinois, along with other state and federal courts around the country, must carefully consider a number of questions, including: whether oral argument is ever truly necessary; whether certain types of cases benefit from oral argument more than others; whether judges or parties in a particular case should decide if an oral argument is necessary; and, most importantly, how to weigh the often competing interests of efficiency and justice.

This Note will explore the current state of appellate oral argument in the United States, focusing specifically on Illinois, and offer insight into improvements for the future. This Note begins by tracing the history and evolution of appellate practice and oral argument in the United States in Part I. Next, Part II explores the most commonly cited arguments both in favor of and against appellate oral argument. In Part III, this Note focuses on Illinois's treatment of oral argument and the effects of revised Illinois Supreme Court Rule 352(a). Part IV then examines how other jurisdictions around the country approach appellate oral argument. Finally, Part V considers the strengths and weaknesses of oral argument and suggests how Illinois and other similarly situated jurisdictions could better handle oral argument in the appellate context.

I. THE EVOLUTION OF APPELLATE ORAL ARGUMENT IN THE UNITED STATES

A. ENGLISH ROOTS OF AMERICAN APPELLATE LAW

Like most of its legal system, the United States inherited the idea of an appellate process and the practice of oral argument from English courts.[5] The appellate process was born when English lawyers in the 1200s were inspired by the structure of the Roman Catholic ecclesiastical courts.[6] The religious hierarchy of "archdeacon, bishop, archbishop, [and] pope . . . gave English lawyers their first sight of appeals being carried from court to court" for the purpose of review.[7] From those early days, English appellate practice has evolved and been gradually refined into its present state.

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4. ILL. SUP. CT. R. 352(a).

5. Ring, *supra* note 3, at 451.

6. THEODORE F. T. PLUCKNETT, A CONCISE HISTORY OF THE COMMON LAW 387 (5th ed. 1956) (ebook).

7. *Id.*

The one constant through the centuries, however, is the massive importance placed on oral advocacy by courts of review in England.[8] In fact, "[t]he practice in England has always been, and continues to be today, to 'hear' appeals only on oral argument . . . without written briefs."[9] Notably, on a British government webpage intended to give potential appellants information about the appellate process, the phrase "written brief" is never mentioned.[10] The only written documents submitted to the court are the forms necessary to ask for leave to appeal in the first place.[11] Once the appeal has been granted, the court relies only on the oral argument presented by the parties to reach its decision.[12]

Another key distinction between the English and American appellate systems, despite their common ancestry, is the amount of time judges spend in court interacting with attorneys.[13] Because of the emphasis placed on oral rather than written advocacy, appellate judges in the United Kingdom spend significantly more time on the bench than their American counterparts.[14] Under the American system, judges on courts of review typically hear oral arguments a few days out of the month, then spend several weeks in chambers writing and reviewing opinions to be published for public consumption.[15] As such, the American appellate judge spends relatively little time in court hearing from attorneys in person.[16] In stark contrast, English appellate judges generally "sit on the bench five days a week . . . week in and week out."[17] Though the American appellate system used to place greater importance on oral advocacy than it does presently, American courts have always relied on written briefs more than English courts.[18]

One reason English appellate courts have never found need for the written briefs upon which their American counterparts so heavily rely is the differing role played by the appellate court in each country.[19] American courts of appeal are generally geared towards "the production of written

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8. *Id.*
9. Ring, *supra* note 3, at 451.
10. *Appeal a Sentence or Conviction*, GOV.UK, https://www.gov.uk/appeal-against-sentence-conviction/crown-court-verdict [https://perma.cc/9UJJ-836S] (advising potential appellants that, if granted leave to appeal, their case will be decided after an oral hearing before the court).
11. *Id.*
12. *Id.*
13. William H. Rehnquist, *Oral Advocacy: A Disappearing Art*, 35 MERCER L. REV. 1015, 1020 (1984).
14. *Id.*
15. *Id.*
16. *Id.*
17. *Id.*
18. Ring, *supra* note 3, at 451.
19. Rehnquist, *supra* note 13, at 1021.

opinions which will refine or develop the substantive law."[20] In other words, American appellate courts are concerned with the precedential impact their decisions will have on the common law of their jurisdiction.[21] English appellate courts, on the other hand, see themselves not as law-making or law-shaping bodies, but rather as a corrective safeguard against errors at the trial level.[22] Because they are unconcerned about producing written opinions that alter the existing law, English courts are free to rely on oral as opposed to written arguments from the parties.[23] Thus, even though the United States owes the existence of its appellate system, and all legal systems really, to England, there are notable differences between the two countries' appellate proceedings.

B. APPELLATE ORAL ARGUMENT IN THE UNITED STATES

In the early days of the United States, intermediate appellate courts did not exist.[24] If a case was appealed, it went directly to the Supreme Court of the United States.[25] This system worked well for the United States of the 1800s—the population and number of cases being appealed each year was low enough for the Supreme Court to handle on its own. Judges had plenty of time to both consider written briefs and conduct extensive oral arguments. This was the era of epic cases like *Trustees of Dartmouth College v. Woodward*,[26] *Gibbons v. Ogden*,[27] and *McCulloch v. Maryland*.[28] Such Supreme Court cases are famous not only for their groundbreaking holdings, but also for their oral arguments.[29] In *Trustees of Dartmouth College v. Woodward*, for example, oral argument began at 11:00 a.m. on May 10, 1818.[30] Daniel Webster, attorney for Dartmouth College, spent over four hours that day reciting just the facts of the case for the court.[31] Webster's argument lasted the entire day of May 10.[32] The opposing counsel then ar-

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20. *Id.*
21. *Id.*
22. *Id.*
23. *Id.*
24. *The U.S. Courts of Appeals and the Federal Judiciary*, FED. J. CTR., https://www.fjc.gov/history/courts/u.s.-courts-appeals-and-federal-judiciary [https://perma.cc/5679-WLPX] (explaining that the Circuit Courts of Appeal were created by Congress through the Judiciary Act of 1891).
25. *Id.*
26. Trustees of Dartmouth Coll. v. Woodward, 17 U.S. 518 (1819).
27. Gibbons v. Ogden, 22 U.S. 1 (1824).
28. McCulloch v. Maryland, 17 U.S. 316 (1819).
29. Ring, *supra* note 3, at 452.
30. Woodward, *supra* note 2.
31. *Id.*
32. *Id.*

gued for most of May 11, and the matter was concluded on May 12.[33] That is more than two full days in court dedicated exclusively to hearing arguments on one case.[34]

And *Trustees of Dartmouth College v. Woodward* was not the most extreme example: in *Gibbons v. Ogden*, the Supreme Court heard an even longer oral argument.[35] Commencing on February 4, 1824, argument in *Gibbons* did not end until February 8.[36] In total, the hearing lasted approximately twenty hours on this single case.[37] While twenty hours of argument is clearly a significant amount of time, it is by no means the most time the Supreme Court has ever taken to hear oral argument.

In 1819, in the landmark *McCulloch v. Maryland*, the Supreme Court heard nine days of oral argument.[38] Because courts during this period had a relatively light caseload, judges were not short on time.[39] Extensive oral arguments did not lead to judicial backlog.[40] Such long oral arguments gave the Court and the attorneys an opportunity to fully discuss all relevant aspects of the case before them in as much detail as they felt necessary without having to adhere to a rigid time requirement.[41]

The Supreme Court of the United States was able to make this arrangement work due, in large part, to the size of the young country. In 1820, the population of the United States was about 9,600,000 people.[42] That year, the Supreme Court issued thirty-six opinions.[43] However, as the population of the United States grew, along with access to the legal system, court dockets became inundated with an immense number of cases.[44] To accommodate their burgeoning caseloads, appellate courts had to choose between oral and written advocacy; they simply did not have time for both.[45] And, for better or for worse, oral argument was relegated to the background of the appellate process in favor of the expediency of written briefs.[46]

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33. *Id.*
34. *Id.*
35. Rehnquist, *supra* note 13, at 1016.
36. *Id.*
37. *Id.*
38. McCulloch v. Maryland *(1819): John Marshall and the Bank Case*, CONST. RTS. FOUND., www.crf-usa.org/images/pdf/mcculloch.pdf [https://perma.cc/NV9U-2SB7].
39. Rehnquist, *supra* note 13, at 1018.
40. *Id.*
41. *Id.*
42. *Pop Culture: 1820*, U.S. CENSUS BUREAU, https://www.census.gov/history/www/through_the_decades/fast_facts/1820_fast_facts.html [https://perma.cc/Q5L8-4PZP].
43. Rehnquist, *supra* note 13, at 1018.
44. *Id.*
45. *Id.*
46. *Id.*

To put the population shift of the United States into perspective, the population of the state of Illinois in 2017 was estimated to be about 12,000,000 people.[47] That means that there are almost 2,500,000 more people living in Illinois today than there were in the entire United States during the era of the lengthy appellate oral argument. And it is not just the population that has grown since 1820; the number of cases being appealed has "been doubling about every decade since World War II."[48] Evidence of the caseload boom for courts of review in particular since the founding of the United States can be found by examining the number of petitions to and opinions issued by the Supreme Court each year. In the modern era, the Supreme Court receives between 7,000 and 8,000 applications seeking review every year.[49] With numbers so massive, it is no wonder that appellate courts have been forced to compromise and limit or even eliminate oral argument strictly for time reasons.

During a lecture in 1983, Supreme Court Justice William Rehnquist highlighted just how abridged the appellate oral argument process has become by comparing two landmark cases: *Gibbons v. Ogden* and *Dames & Moore v. Regan*.[50] *Gibbons* was a revolutionary decision in that it established the principle that states cannot interfere with the power of Congress to regulate commerce under the Commerce Clause.[51] Equally groundbreaking, *Dames* established, among other things, the broad powers of the executive branch of government.[52] As discussed above, the Supreme Court heard over twenty hours of oral argument before deciding *Gibbons* in 1824.[53] In contrast, the *Dames* court heard only two hours of argument prior to issuing its decision in 1981.[54] So, in the 157 years[55] separating *Gibbons* and *Dame*, the amount of time spent hearing oral argument on extremely important cases by the Supreme Court dropped tenfold.[56] Justice Rehnquist declines to directly criticize this decline in oral argument length, but the rest of his lecture makes clear his commitment to and support of the institution of appel-

47. *QuickFacts Illinois*, U.S. CENSUS BUREAU, https://www.census.gov/quickfacts/il [https://perma.cc/XV27-6GYC].

48. Thomas B. Marvell, *State Appellate Court Responses to Caseload Growth*, 72 JUDICATURE 282, 282 (1989).

49. *The Justice's Caseload*, SUPREME CT. U.S., https://www.supremecourt.gov/about/justicecaseload.aspx [https://perma.cc/Y29H-XMTS].

50. Rehnquist, *supra* note 13, at 1016.

51. Gibbons v. Ogden, 22 U.S. 1 (1824).

52. Dames v. Regan, 453 U.S. 654 (1981).

53. *See* Trustees of Dartmouth Coll. v. Woodward, 17 U.S. 518 (1819).

54. Rehnquist, *supra* note 13, at 1016.

55. One hundred fifty-seven years may seem like a long time, but when considered in the context of all of world history, it is really the blink of an eye.

56. Rehnquist, *supra* note 13, at 1016.

late oral argument.[57] Not all jurists feel the same as Justice Rehnquist, however. The arguments in favor of and against appellate oral argument are discussed below in Part II.

II. PROS AND CONS OF APPELLATE ORAL ARGUMENT

A. IN DEFENSE OF APPELLATE ORAL ARGUMENT

Oral argument, though not without its faults, has many benefits and advantages over written briefs which help to explain why it has endured in the United States for so long and why many jurists are loath to see it disappear.

One of the most often cited reasons in support of appellate oral argument is the opportunity it grants for personal, face-to-face interaction between the judges and attorneys involved.[58] This interaction is beneficial to the disposition of the case in a number of ways. First, it allows attorneys to directly address any concerns or questions the judges may have.[59] When judges read written briefs, they cannot ask questions; they are limited to what is on the page.[60] But, in oral argument, judges can directly ask the attorney any questions that arise.[61]

For the attorneys, this presents an invaluable chance to see what the judges are thinking and to tailor their arguments to best address the judge's concerns. Because the attorney cannot know which of his arguments will be most problematic to the court, he may expend significant time and effort briefing an issue on which the judges are ready to agree with little convincing. Conversely, the attorney may not realize that one of his arguments is not as self-explanatory as he believed and may therefore leave the judges unsatisfied with a cursory explanation of his reasoning. Addressing the issue of oral argument, Supreme Court Justice Robert Jackson expressed his support for the practice, saying:

> When I was at the bar, it seemed to me that I could make no better use of my time than to answer any doubt which a judge would do me the favor to disclose. Experience in the Court teaches that a lawyer's best points are sometimes made by answers to pertinent and penetrating questions. A lively dialogue may be a swifter and surer vehicle to truth than a dismal monologue. The wise advocate will eagerly

57. *Id.*
58. Ring, *supra* note 3, at 454.
59. *Id.*
60. *Id.*
61. *Id.*

> embrace the opportunity to put at rest any misconception or doubt which, if the judge wanted to raise it in the conference room, counsel would have no chance and perhaps no one present would have information to answer.[62]

With the above statement, Justice Jackson captures the profound advantage oral argument offers to attorneys—they are able to mold their arguments to address the items of greatest concern or contention among the judges who will ultimately decide the case. A written brief offers no such advantage.

Beyond simply allowing the lawyers to attempt to persuade the judges, oral argument also creates an opportunity for justices to begin convincing each other.[63] Supreme Court Justice Antonin Scalia explains:

> It isn't just an interchange between counsel and each of the individual Justices. What is going on is also to some extent an exchange of information among the Justices themselves. You hear the questions of the others and see how their minds are working, and that stimulates your own thinking. I use it . . . to give counsel his or her best shot at meeting my major difficulty with that side of the case. "Here's what's preventing me from going along with you. If you can explain why that's wrong, you have me."[64]

Justice Scalia gets at the multiple levels of interaction taking place during an oral argument.[65] Judges may be inspired not only by what the parties say, but also by questions asked by other judges on the panel.[66] A judge may ask a particular question for his own edification or to make a point to his colleagues.[67] Thus, while it may appear on the surface that the attorney is conversing with the justice who asked a question, there is actually a wider conversation happening between the judges themselves, as well as the attorneys.[68] Seeing how other people approach an issue can help to refine one's own perspective, and oral argument is uniquely suited to allow for such exchange of ideas.

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62. *Id.*
63. Ring, *supra* note 3, at 454.
64. Stephen M. Shapiro, *Questions, Answers, and Prepared Remarks*, 15 LITIG., no. 3, 1989, at 33, 33 (citing *This Honorable Court* (WETA television broadcast 1988)).
65. *Id.*
66. *Id.*
67. *Id.*
68. *Id.*

Another related benefit of oral argument at the appellate level is its ability to humanize the case for the justices and attorneys involved.[69] From the very beginning of law school, attorneys are trained to home in on the facts of a case insofar as they are relevant to the ultimate disposition. While such laser-like focus is useful to determine legal principles and how they may be applied to a given situation, it also has the unfortunate side effect of reducing real people in the real world with real issues in their real lives down to a sterile fact pattern. Appellate justices are especially susceptible to this problem, given that most of their professional lives are spent in chambers, reading and writing about the law.[70] The appellate justices interact most heavily with their own law clerks and the other justices on the bench.[71] There is little, if any, contact between the actual parties to the cases and the justices.[72] Thus, "[o]ral argument is important as a means of giving judges a continuing awareness of their relationship" to the world outside the legal community and the impact their decisions will have on real lives.[73]

Written briefs certainly can convey a certain amount of humanity, but sitting alone in an office reading a document is a much different experience than sitting in a courtroom full of other people listening to a live person tell his story. As one appellate judge in Connecticut put it, "[o]ne who would doubt the efficacy of oral argument in an appellate court may not know the difference between reading 'I love you' in a letter and hearing it told at first hand."[74] It is only human nature to engage more fully in an active, face-to-face conversation with another human than in passively reading, and so oral argument has an innate ability to convey the human context surrounding a case in front of the court.

Similarly, the public nature of oral argument can help parties feel as though they have had their day in court and received a fair hearing.[75] Because much of the appellate process happens behind closed doors, it may seem like a mysterious process to members of the public.[76] Lawyers brief the case with little input from the client, justices read the briefs and discuss the merits of the case with other justices and law clerks, and then the justices draft a written opinion.[77] So much of the appellate process, by virtue of

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69. Stephen L. Wasby, *The Functions and Importance of Appellate Oral Argument: Some Views of Lawyers and Federal Judges*, 65 JUDICATURE 340, 345 (1982).

70. Ring, *supra* note 3, at 457.

71. *Id.*

72. *Id.*

73. *Id.*

74. Clark T. Hull, *Thoughts on Oral Argument*, INTER ALIA, Nov.-Dec. 1984, at F1, F1.

75. PAUL D. CARRINGTON ET AL., JUSTICE ON APPEAL 17 (1976).

76. *Id.*

77. Wasby, *supra* note 69, at 344-45.

necessity, takes place in private that the public is often left to wonder what actually transpires.[78] The transparency offered by holding an oral argument, which is completely open to the public, is therefore invaluable. Moreover, "[c]urrent doubts about the integrity of government at all levels make the public visibility of appellate processes more important than in earlier generations."[79]

Oral argument also gives judges the opportunity to assimilate information in multiple ways.[80] Some people absorb information best while reading, others while listening. And judges are no different; "[t]here are some judges who listen better than they read, and who are more receptive to the spoken than the written word."[81] Even if judges prefer written to spoken communication to learn new things, oral argument is still a valuable tool for reinforcing key arguments.[82]

Similarly, some lawyers speak better than they write. Perhaps, due to innate writing ability or any number of other reasons, an attorney submits a brief that is less than brilliant. The oral argument gives the attorney a chance to refine and clarify points that may have been lost or muddled in the brief.[83] In short, the power of oral argument as a clarification tool cannot be overstated.

B. ARGUMENTS AGAINST APPELLATE ORAL ARGUMENT

Critics of appellate oral argument generally focus their attacks around two main themes: the impossibility of keeping up with ever increasing caseloads and the lack of tangible effect oral arguments have on the outcome of an appeal.[84]

As discussed above, courts of all levels across the country are currently inundated with far more cases than in the past.[85] Illinois appellate courts, for example, disposed of 6,300 cases in 2017 alone.[86] When that figure is compared to the thirty-six cases disposed of by the Supreme Court of the

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78. *Id.*

79. ROBERT LEFLAR, INTERNAL OPERATING PROCEDURES OF APPELLATE COURTS 32 (1976).

80. Ring, *supra* note 3, at 454.

81. *Id.* at 455.

82. *Id.*

83. *Id.*

84. Warren D. Wolfson, *Oral Argument: Does It Matter?*, 35 IND. L. REV. 451 (2002).

85. *See infra* Part II (B), discussing the rise in the number of cases decided by the Supreme Court of the United States in recent years.

86. *Total All Districts of Appellate Court Criminal and Civil Caseload Statistics*, ILL. CTS., http://www.illinoiscourts.gov/AppellateCourt/CaseStats/Caseload_AC.asp [https://perma.cc/8Y8A-Z5HV].

United States in 1820,[87] it is easy to see why judges have far less time today than they did 150 years ago.

While listening to oral argument may not seem like a time-consuming activity, one must consider all the work that goes into preparing for an oral argument and disposing of a case. All jurisdictions are different, but generally, judges have to read the entire record of the case on appeal; read all the briefs submitted by the parties in support of their case; conduct independent research into what the law actually is; draft a pre-trial memorandum; hear up to four oral arguments back-to-back in a day (while somehow remembering all the details of each case and keeping them straight); confer with their colleagues on the panel as to how the case should be decided; and finally draft an opinion to be published with the ruling.[88] Now multiply that process by 6,300.

That is a substantial amount of work to accomplish in a single year, and, as critics of oral argument point out, there are simply not enough hours in the day to do all that and hear arguments on each and every case that gets appealed.[89] As such, advocates of eliminating or lessening the frequency of oral argument highlight the impossibility of hearing arguments in a system that must dispose of as many cases as it currently must.[90] Something has to give in order to keep appellate courts functional and relatively efficient.[91]

In addition to (or perhaps because of) the increasingly demanding caseloads appellate courts face, lack of judicial preparation can render oral argument minimally effective.[92] Though some appellate courts are known for reading all the material submitted on appeal and being thoroughly prepared for the argument, other courts are not.[93] Due to any number of factors, including a demanding caseload, some judges walk into oral arguments having no familiarity with the facts of the case at hand or of the relevant points of law.[94]

Despite his staunch advocacy of oral argument in general, Justice Rehnquist readily admitted that arguments heard by judges who have not read the briefs beforehand are of little value, explaining "[t]o me this is almost a waste of the time set aside for oral argument, which at its best should be a refinement and a polishing of the issues in the case, not an in-

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87. *See* Rehnquist, *supra* note 13, at 1018.

88. J. Edward Lumbard, *Current Problems of the Federal Courts of Appeals*, 54 CORNELL L. REV. 29, 39-41 (1968).

89. *Id.*

90. *Id.*

91. *Id.*

92. LESTER BERNHARDT ORFIELD, CRIMINAL APPEALS IN AMERICA 161 (1939).

93. Rehnquist, *supra* note 13, at 1023.

94. *Id.*

troduction to the facts out of which the litigation arose."[95] As Rehnquist points out, if a lawyer must spend his time explaining the facts of the case to the court, there is little opportunity for the kind of lively, thought-provoking exchange endorsed by Justices Scalia and Jackson above.[96] If such discussion of the pertinent issues does not occur, the judges gain little from the oral argument that they would not have learned from simply reading the briefs.

Relatedly, some opponents of oral argument at the appellate level maintain that the rigid time limits imposed by courts today eliminate the possibility of a truly worthwhile exchange.[97] At the time of writing, the Supreme Court of the United States grants each side half an hour to argue its case.[98] In the Court of Appeals of the State of Georgia, each side has fifteen minutes to argue.[99] The appellate division of Superior Courts of California allows each side ten minutes for argument.[100] Obviously, the current time limits for oral arguments offer attorneys significantly less time to convince the judges than in the past where argument could go on for nine days.[101]

The key distinction here is not simply that oral arguments used to be longer. Rather, that the oral arguments of the past were allowed to carry on as long as the court felt it necessary to fully grasp all relevant aspects of the case.[102] Not even oral argument's most fanatical supporters propose a return to week-long arguments, but it is difficult to see what value a ten-minute argument can offer.

In the case of a ten-minute argument, there are only two possibilities. Perhaps the case was simple and well-briefed enough that the ten minutes is sufficient. If that is the case, it seems exceedingly likely that the case could have been disposed of without any argument time, given its simplicity and thorough briefing. Alternatively, the case was complex and/or poorly briefed and the ten minutes is not nearly enough time to dive into all the issues facing the court on appeal. In either event, the short oral argument has not truly helped the court resolve the case. Thus, some critics argue that oral argument has become merely a "pro forma exercise which, because of

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95. *Id.*

96. *See* Rehnquist, *supra* note 13, at 1018; *See QuickFacts Illinois, supra* note 47.

97. ORFIELD, *supra* note 92, at 162.

98. SUP. CT. R. 28(3).

99. GA. CT. APP. R. 28(c).

100. *Oral Argument*, CAL. CTS., https://www.courts.ca.gov/12421.htm [https://perma.cc/6P67-DVMY].

101. *See supra* notes 21-27 for discussion of lengthy oral arguments held by Supreme Court of the United States in the 1800s.

102. *Id.*

tradition or because of the insistence of his client, a lawyer has to go through."[103]

Another concern with regards to oral argument is the possibility for "'one-man' decisions."[104] Appellate judges are meant to work as a unit and decide among themselves what the proper ruling in the case at bar ought to be; the system is not designed to give one judge the power to decide how a case will turn out.[105] However, in an effort to alleviate the immense caseloads appellate judges must manage, some jurisdictions assign one judge on the panel to read the briefs and relevant caselaw.[106] While the lead judge will then prepare a pre-argument memorandum relating his findings for the other judges, the other judges are still at a disadvantage.[107]

Realistically, "[j]udges who have not read the record and briefs are slow to oppose the views of a member who has read them. The result is that the court is disposed to accept the views of the judge who has studied and reported on the case."[108] The primary issue with such "'one-man' decisions" is that policy-making power is placed in the hands of a single person.[109] Because judges who have not read the record for themselves hesitate to contradict those who have, a single judge's misconception can become the law in that jurisdiction.[110] Such errors and oversights are clearly miscarriages of justice that could be avoided if oral argument was dispensed with, thus freeing up more time for all judges on the panel to read all the briefs and relevant material for each case they are tasked with deciding.[111]

Perhaps the most widely cited argument against holding appellate oral argument is the (real or perceived) lack of effect arguments have on a court's final decision.[112] A common adage in the legal community states that if a case is well-briefed, there should be no need for an oral argument. Obviously, if the judges receive no new information from an oral argument, it is much more efficient, in terms of both time and money, to do away with oral arguments. While it is impossible to know exactly what percentage of the time judges change their opinions of a case based on oral argument, informal studies are sometimes attempted.

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103. Joseph W. Hatchett & Robert J. Telfer, III, *The Importance of Appellate Oral Argument*, 33 STETSON L. REV. 139, 151 (2003).
104. ORFIELD, *supra* note 92, at 159.
105. *Id.* at 160.
106. *Id.*
107. *Id.*
108. *Id.*
109. ORFIELD, *supra* note 92, at 160.
110. *Id.*
111. *Id.*
112. Hatchett & Telfer, *supra* note 103, at 140-41.

> For example, in the 1980s, Judge Myron H. Bright of the United States Court of Appeals for the Eighth Circuit and two of his colleagues on the Eighth Circuit tracked the number of cases in which oral argument changed the judges' minds. In all of these cases, the judges had reviewed the briefs before oral argument and formed a tentative conclusion. The judges then noted at the conclusion of oral argument whether their vote on the case at conference was consistent with the opinion they held before oral argument. The result was that Judge Bright changed his mind thirty-one percent of the time, with the other two colleagues changing their minds seventeen and thirteen percent of the time, respectively.[113]

As stated above, this study was far from scientific and should not be considered dispositive or applicable to all appellate courts. However, looking at the figures generated by Judge Myron, oral arguments did not change the judge's mind sixty-nine to eighty-seven percent of the time.[114] Well over half the cases heard by the panel could have been decided without the time and monetary expense of oral argument with the same result.[115]

Finally, there is the potential for abuse of oral argument by parties who know their opponent has limited funds. If a jurisdiction were to adopt a rule that oral argument is mandatory if one party demands it, oral argument could potentially be weaponized against poorer parties. The wealthier party might demand an oral argument not because they feel it necessary to fully explain their case, but rather because they know the adverse party either cannot afford or will be otherwise disadvantaged by the additional legal fees associated with oral argument.

III. ILLINOIS'S APPROACH TO ORAL ARGUMENT

Prior to July 1, 2018, Illinois Supreme Court Rule 352(a), dealing with the conduct of oral arguments, stated the following:

> Request; Waiver; Dispensing With Oral Argument. A party shall request oral argument by stating at the bottom of the cover page of his or her brief that oral argument is requested. If the party has elected to allow a petition for leave to appeal or answer to stand as the party's brief, the party may file a request for oral argument, with proof of service upon

113. *Id.* at 141.
114. *Id.*
115. *Id.*

> opposing parties. This request shall be filed within the time that the party could have filed a further brief. If any party so requests, all other parties may argue without an additional request.
>
> No party may argue unless that party has filed a brief as required by the rules and paid any fee required by law. A party who has requested oral argument and who thereafter determines to waive oral argument shall promptly notify the clerk and all other parties. Any other party who has filed a brief without requesting oral argument may then request oral argument upon prompt notice to the clerk and all other parties.
>
> After the briefs have been filed, the court may dispose of any case without oral argument if no substantial question is presented, but this power should be exercised sparingly.[116]

The Illinois Supreme Court decided to amend portions of Rule 352(a), and on July 1, 2018, the revised rule went into effect. While substantially similar to the old rule, the amended version of Rule 352(a) does reflect a significant change to appellate oral argument procedure in Illinois.[117] The first two paragraphs of Rule 352(a) remain unchanged in the revision.[118] However, the third paragraph has been expanded.[119] The changes between the original and new versions on Rule 352(a) are noted below, with text deleted from the original appearing with a strike through it and text added in the new version that did not appear in the original underlined:

> After the briefs have been filed, the court may dispose of any case without oral argument if no substantial question is presented, but this power shall ~~should~~ be exercised sparingly and only upon the entry of a written order stating with specificity why such power is being exercised in the affected case. Notwithstanding the foregoing, oral argument shall

116. ILL. SUP. CT. R. 352(a), M.R. 3140 (amended July 1, 2018).

117. Though exactly how the new rule will affect appellate practice remains unclear due to the novelty of the revision.

118. ILL. SUP. CT. R. 352(a), M.R. 3140 (amended July 1, 2018).

119. *Id.*

> be held in any case in which at least one member of the panel assigned to the case requests it.[120]

While the Illinois Supreme Court did not explicitly state the reason behind the update of Rule 352(a), the change is no doubt meant to encourage appellate courts to hear more oral arguments. In a monthly newsletter published by the Illinois Supreme Court, Chief Justice Lloyd A. Karmeier lamented that "oral argument in our appellate court[s] has become the exception rather than the rule."[121] Attached to his newsletter, Justice Karmeier included a chart comparing the proportion of oral arguments to dispositions in each appellate district from 1996 to 2016. The results are surprising: in 1996, all five appellate districts disposed of a total of 5,519 cases by an opinion or Rule 23 order[122] and heard 1,608 oral arguments.[123] So, in 1996, Illinois appellate courts heard oral argument 29.1% of the time.[124] In con-

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120. Order Amending Rule 352, M.R. 3140 (2018), www.illinoiscourts.gov/SupremeCourt/Rules/Amend/2018/052518-4.pdf [https://perma.cc/59FA-F4PT].

121. Lloyd A. Karmeier, *The Importance of Dialogue: Preserving the Right to Oral Argument*, ILL. CTS. CONNECT (June 23, 2017), http://illinoiscourts.gov/Media/enews/2017/062317chief_justicejune.asp [https://perma.cc/HX9M-9FH9].

122. *See* ILL. SUP. CT. R. 23 (allowing courts to dispose of a case with a written order instead of an opinion. Rule 23 orders are nonprecedential and cannot be cited to. Rule 23 states, in relevant part:

> The decision of the Appellate Court may be expressed in one of the following forms: a full opinion, a concise written order, or a summary order conforming to the provisions of this rule. All dispositive opinions and orders shall contain the names of the judges who rendered the opinion or order.
> (a) Opinions. A case may be disposed of by an opinion only when a majority of the panel deciding the case determines that at least one of the following criteria is satisfied:
> (1) the decision establishes a new rule of law or modifies, explains or criticizes an existing rule of law; or
> (2) the decision resolves, creates, or avoids an apparent conflict of authority within the Appellate Court.
> (b) Written Order. Cases which do not qualify for disposition by opinion may be disposed of by a concise written order which shall succinctly state:
> (1) in a separate introductory paragraph, a concise syllabus of the court's holding(s) in the case;
> (2) the germane facts;
> (3) the issues and contentions of the parties when appropriate;
> (4) the reasons for the decision; and
> (5) the judgment of the court).

123. Karmeier, *supra* note 121.

124. *Id.*

trast, 3,783 cases were disposed of by opinion or Rule 23 and 735 oral arguments were heard by the appellate courts in 2016.[125] In 2016, the rate of oral argument sank to 19.4%.[126] Justice Karmeier's concern is well founded: despite the fact that the appellate courts disposed of 1,736 fewer cases in 2016 than in 1996, they heard 9.7% fewer oral arguments.[127]

As Justice Karmeier further points out, "[t]he statistics may be even more stark depending on where an appeal is heard."[128] In 2016, oral argument was held in 52.6% of cases in the Fifth Appellate District; 28.6% of cases in the Fourth Appellate District; 26.5% of cases in the Third Appellate District; 19.5% of cases in the Second Appellate District; and 9.7% of cases in the First Appellate District.[129]

Given that Rule 352(a)[130] states that the power to dispose of cases without oral argument is to be used "sparingly," appellate courts seem to be in violation of the Illinois Supreme Court's edict. Though it is not immediately clear what exactly the amended Rule 352(a) means for the appellate process, it is evident that the Supreme Court of Illinois is resolutely committed to ensuring that oral argument holds an important place in appellate practice in the future.

IV. OTHER JURISDICTIONS' TREATMENT OF APPELLATE ORAL ARGUMENT

Though other jurisdictions around the United States grapple with the same issues with appellate oral argument as the Illinois Supreme Court,[131] the solutions they have crafted are different than Illinois's, sometimes drastically so. Each jurisdiction has its own unique way in which it attempts to strike a balance between the benefits of oral arguments and the costs. By exploring the strengths and weaknesses of different approaches, Illinois may gain insight into how to better its own system. The following examination of other jurisdictions' treatment of appellate oral argument is by no means exhaustive and is intended only to show a sampling of the variety of ways courts in the United States treat oral argument.

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125. *Id.*
126. *Id.*
127. *Id.*
128. Karmeier, *supra* note 121.
129. *Id.*
130. Both pre and post revision, see *supra* notes 116 and 120.
131. *See supra* Part II for a detailed analysis of the Illinois Supreme Court's handling of appellate oral argument and its evolution.

A. IOWA

Iowa's take on appellate oral argument is unique in that it allows the appellate court itself to have complete discretion over which cases shall have an oral argument. The Iowa Rules of Appellate Procedure state:

> 6.908(1) *Requests for oral argument.* A party desiring to present an oral argument shall request it in their brief as provided in rule 6.903(2)(*i*). Oral argument will not be granted if it is not requested in the brief, except by order of the appropriate appellate court.
>
> 6.908(2) *Denial of oral argument.* The appropriate appellate court will deny a request for oral argument if oral argument is unlikely to be of assistance to the court.
>
> 6.908(3) *Grant of oral argument.* If oral argument is granted, the court shall fix the time allotted for oral argument and notify the parties.[132]

The appellate courts in Iowa have wide latitude to reject a request for an oral argument.[133] The Rules of Appellate Procedure allow a court to refuse an oral argument "if oral argument is unlikely to be of assistance to the court."[134] The Rules provide no guidance as to what factors the court should consider when determining whether an oral argument is likely to assist the court in a given case.[135]

Moreover, the appellate court is not required to explain its reasoning when a request for oral argument is denied.[136] Given the minimal guidance offered by the Rules of Appellate Procedure, Iowan appellate courts have a unique amount of discretion in accepting or denying requests for oral arguments. While such discretion may save the court time and alleviate crushing caseloads, it does not encourage transparency or help parties feel as though they have been heard and understand the appellate process behind the treatment of their case.

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132. IOWA R. APP. P. 6.908.
133. *Id.*
134. *Id.*
135. *Id.*
136. *Id.*

B. MISSOURI

In the Western District of Missouri, the local rules for appellate courts describe the process by which courts are to assign how much time, if any, parties are given for oral arguments. The rules outline the following procedure for courts to follow:

> The published oral argument docket will indicate whether the Court has designated a particular case either:
>
> (1) for a maximum argument time of fifteen (15) minutes each for appellant and respondent with five (5) additional minutes for rebuttal by appellant; or
>
> (2) for a maximum argument time of ten (10) minutes each for appellant and respondent with three (3) additional minutes for rebuttal by appellant. No additional argument time shall be allowed unless the Court for cause shown before the commencement of the argument in any particular case shall order otherwise . . .
>
> In cases in which it is the opinion of the court that oral argument would not benefit the appeal, a letter shall be sent by the court to the parties or parties' attorneys advising them of this fact. The parties can request oral argument in writing within ten days of date of the letter.[137]

The Western District of Missouri's approach to oral argument is advantageous in several ways. First, the rule prescribes two different options for how to divide time among the parties during an oral argument.[138] Notably, the rules also provide that it is up to the court to determine if additional time shall be granted to the parties to argue their case.[139] The fact that the court may decide how much time to give the parties in a specific case, rather than adhering to rigid time standards, neutralizes critics' fear that inflexible time limits render oral argument ineffective.[140]

Second, the Western District's rule allows parties to "force" the court to hear oral argument in their case even if the court initially thinks oral argument is unnecessary.[141] The ability to essentially override the court's

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137. W.D. MO. R. LOCAL RULE 1.

138. *Id.*

139. *Id.*

140. See *supra* Part II (B) for a discussion of arguments against appellate oral argument.

141. W.D. MO. R. LOCAL RULE 1.

denial of oral argument helps parties feel like they have been heard and treated fairly by the court. While the Western District's rule helps public relations and the transparency of the court, it may negatively affect the court's efficiency. Parties may abuse this power and force the court to hear frivolous arguments.

C. OKLAHOMA

In Oklahoma, oral argument in criminal cases is regulated by the Rules of the Criminal Court of Appeals of Oklahoma. The oral argument requirements under the Rules are as follows:

> All cases shall be submitted for decision without oral argument upon the order of the Presiding Judge; PROVIDED HOWEVER, that oral argument shall be set in all capital cases. Oral argument shall not be granted in any other case except on application of either party, filed at the time the brief is filed, except for those cases assigned to the Accelerated Docket in accordance with Section XI.
>
> The request for oral argument will be approved or denied by the Presiding Judge, or a judge acting in his absence; PROVIDED HOWEVER, that the case may be set for a hearing by an order of this Court if, in the opinion of the judges, oral argument is beneficial or necessary for a determination of the issues presented.
>
> Notice will be given to all interested parties by an order setting the time, date and place for oral argument or by any other form of communication as the Court deems proper. Oral arguments may be heard by a majority of this Court or any number of the judges thereof.[142]

Under Oklahoma's rules for criminal appeals, the default position is not to have an oral argument, except in capital cases.[143] If a party desires an oral argument in a non-capital case, he must submit a petition requesting oral argument from the court.[144] Then, the presiding judge will determine if an oral argument is necessary in that particular case.[145] In terms of efficiency, Oklahoma's approach cannot be beat—hearing few oral arguments allows the court to dispose of each case much faster than if it was forced to

142. OKLA. R. CRIM. APP. 3.8.
143. *Id.*
144. *Id.*
145. *Id.*

hear oral arguments on most cases. It also saves the parties and attorneys time and money.

Nevertheless, Oklahoma's approach does not help parties understand how the appellate process works or how their case was decided. The presiding judge has the exclusive power to determine whether to grant or deny a request for oral argument.[146] Rule 3.8 offers parties no insight into how the judges determine whether their case merits an oral argument—what exactly makes oral argument "beneficial or necessary" to deciding the case?[147]

D. CALIFORNIA

The rules for appellate oral argument in California are outlined in the California Appellate Rules. Rule 8.256(b) provides:

> The clerk/executive officer of the Court of Appeal must send a notice of the time and place of oral argument to all parties at least 20 days before the argument date. The presiding justice may shorten the notice period for good cause; in that event, the clerk/executive officer must immediately notify the parties by telephone or other expeditious method.[148]

Rule 8.256 goes on to explain that "[a] cause is submitted when the court has heard oral argument or approved its waiver and the time has expired to file all briefs and papers, including any supplemental brief permitted by the court."[149]

Unlike Oklahoma, California's default position is to hear an oral argument in every case.[150] Once the briefs have been submitted, the court will send the relevant parties a notice with a date and time for the oral argument.[151] A party may waive their right to oral argument by returning a waiver form to the court or by simply not responding to the notice.[152] But, if a party affirmatively responds to the notice sent by the court, there will be an oral argument.[153]

While this rule certainly gives parties a sense of transparency and control over the appellate process, it may not be the most economical use of the court's resources. Some litigants may feel compelled to have an oral argu-

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146. *See supra* notes 105-112 regarding criticism of one-man opinions.
147. OKLA. R. CRIM. APP. 3.8.
148. CAL. R. CT. 8.256(b).
149. CAL. R. CT. 8.256(d)(1).
150. *Id.*
151. *Id.*
152. *Id.*
153. *Id.*

ment not because it will help their case, but because the court sent them a notice with a date and time. In the same vein, employing staff to schedule oral arguments that very well may never happen and sending notices to all parties involved in each case before the court seems like a resource drain that could be avoided by making parties responsible for requesting oral argument should they so choose.

E. NEW YORK

In New York, appellate oral arguments are governed by the New York Court of Appeals Rules of Practice. Rule 500.18(a) says:

> Argument time. Maximum argument time is 30 minutes per party, unless otherwise directed or permitted by the Court upon advance request by letter addressed to the Clerk of the Court with proof of service of one copy on each other party. In requesting argument time, counsel shall presume the Court's familiarity with the facts, procedural history and legal issues the appeal presents. The Court may assign time for argument that varies from a party's request and may determine that the appeal be submitted by any party or all parties without oral argument (see subsection 500.13(b) of this Part).[154]

New York Court of Appeals Rules of Practice Rule 500.13(b), as referenced by Rule 500.18(a) above, states in relevant part:

> . . . In the upper right corner, the brief cover shall indicate whether the party proposes to submit the brief without oral argument or, if argument time is requested, the amount of time requested and the name of the person who will present oral argument (see section 500.18 of this Part). If a time request does not appear on the brief, generally no more than 10 minutes will be assigned. The Court will determine the argument time, if any, to be assigned to each party.[155]

New York has one of the most lenient rules regarding when the appellate court may dispense with oral argument. The rules simply state that "[t]he Court will determine the argument time, if any, to be assigned to each party."[156] There is no guidance as to when a court may or may not

154. N.Y. CT. APP. R. 500.18(a).
155. N.Y. CT. APP. R. 500.13(b).
156. *Id.*

choose to have an oral argument; it is left completely up to the court to decide.[157]

Similarly, the court does not have to justify its decision to not have an oral argument.[158] Like other rules that grant the court broad discretion to decide whether an oral argument is necessary, New York's rule allows the court to save judicial resources which are often spread thin. The downside of such discretion is that litigants may be left feeling frustrated and confused about how their case was decided by the court. Even if oral argument is granted in a case, litigants have no way to know how much time they will be granted or even how the court went about determining the time allowed for argument in a particular case.

F. SEVENTH FEDERAL CIRCUIT

The Seventh Circuit Federal Court, of which Illinois is a part, follows the Circuit Rules of the United States Court of Appeals for the Seventh Circuit. The rule concerning oral argument in the appellate court states:

> (e) *Waiver or Postponement*. Any request for waiver or postponement of a scheduled oral argument must be made by formal motion, with proof of service on all other counsel or parties. Postponements will be granted only in extraordinary circumstances.
>
> (f) *Statement Concerning Oral Argument*. A party may include, as part of a principal brief, a short statement explaining why oral argument is (or is not) appropriate under the criteria of Fed. R. App. P. 34(a).[159]

Federal Rule of Appellate Practice 34(a)(2), referenced immediately above, provides:

> *Standards*. Oral argument must be allowed in every case unless a panel of three judges who have examined the briefs and record unanimously agrees that oral argument is unnecessary for any of the following reasons:
>
> (A) the appeal is frivolous;
>
> (B) the dispositive issue or issues have been authoritatively decided; or

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157. *Id.*
158. *Id.*
159. 7TH CIR. R. 34.

> (C) the facts and legal arguments are adequately presented in the briefs and record, and the decisional process would not be significantly aided by oral argument.[160]

As subsection (B) of Rule 34(a)(2) makes clear, federal appellate courts are given some discretion to decide if a case does not merit an oral argument.[161] The rule is uniquely useful as compared to other jurisdictions in that it sets out explicit and specific criteria for the appellate court to follow to determine if an oral argument is necessary.[162]

There are only three instances in which the court can dispense with an oral argument: if the appeal itself is frivolous, if there has been a recent case decided in the court of appeals on point, or if the case is so well-briefed that the court feels an oral argument is not necessary for its understanding of the case.[163] So, the Seventh Circuit Court of Appeals is not obligated to hear an argument simply because it is requested, but it may not decline to hear an oral argument except in three limited circumstances.

Such a rule allows the court to deny oral argument in cases where it would make little difference to the ultimate disposition of the case, while also encouraging the court to hear oral argument in most circumstances. This promotes efficiency as well as transparency because parties know why their requests for oral argument were denied (and whether the denial fits one of the three proscribed categories and was proper under the rule).[164]

V. THE FUTURE OF APPELLATE ORAL ARGUMENT IN ILLINOIS

There are, undoubtedly, many cases before appellate courts across the United States where oral argument will not make a difference in the ultimate disposition of the case. Courts could alleviate judicial backlog and save time and money if oral argument was eliminated or significantly reduced. Such economic efficiency is a valid concern, especially for a state like Illinois currently operating at a deficit.[165] However, blind focus on judicial efficiency fails to recognize the value in taking the time to convince the public that they have been heard and treated fairly by the legal system. Oral argument gives the public that reassurance while also reminding judges of the real people and real lives impacted by their decisions. As evi-

160. FED. R. APP. P. 34(a).
161. *Id.*
162. *Id.*
163. *Id.*
164. *Id.*
165. *Pritzker Says Illinois' Budget Deficit is Higher Than Estimated*, NBC 5 CHI. NEWS (Feb. 8, 2019), https://www.nbcchicago.com/blogs/ward-room/pritzker-illinois-budget-deficit-worse-than-previously-revealed-505581331.html [https://perma.cc/E95Q-8TJT].

denced by the variety of ways courts have dealt with oral argument, it is not easy to strike the right balance between competing interests like those implicated by oral argument.

The practical realities of modern caseloads and demands on judges' time mean that the court does need discretion to decide not to hear oral argument in some cases, which Illinois's revised Rule 352(a) does grant.[166] The new rule also makes clear the Illinois Supreme Court's dedication to increasing the number of oral arguments heard at the appellate level, but the rule could go farther to assuage parties' concerns.

Specifically, the current Rule 352(a) instructs appellate courts to deny oral argument "sparingly and only upon the entry of a written order stating with specificity why such power is being exercised in the affected case."[167] The appellate process would seem more comprehensible to litigants if Rule 352(a) provided them with a list of when exactly oral argument can be denied by the court. Such specific guidelines could also benefit the appellate courts by providing guidance to the relatively unsettled body of law surrounding oral argument.

The Seventh Circuit's approach is a good model to follow in that respect: it specifies for the court and litigants the only three instances in which oral argument may be denied.[168] Under such a rule, the court still has discretion to forgo oral argument.[169] And, by telling parties ahead of time why their request for oral argument may not be granted, the rule makes the denial seem less arbitrary than an order entered after the fact.

The Illinois Supreme Court could simply adopt the language used by the Seventh Circuit to make the current rule more effective. While the Illinois Supreme Court has not adopted the Seventh Circuit's approach, a recent case out of the Fourth Appellate District indicates that Illinois may be heading in that direction. In *Enbridge Pipeline, LLC v. Hoke*,[170] the Fourth District Court noted that revised Rule 352(a) "does not define 'substantial question' or give further guidance on when to deny oral argument."[171] As such, the court looked to the Federal Rules of Appellate Procedure[172] for guidance, which are referenced by and incorporated into the Seventh Circuit's Rule. The Illinois Supreme Court may eventually overrule the Fourth District's holding in *Enbridge*, but, for now, it is the only existing precedent applying revised Rule 352(a).

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166. ILL. SUP. CT. R. 352(a).
167. *Id.*
168. *See supra* note 160.
169. *Id.*
170. Enbridge Pipeline, LLC v. Hoke, 2019 IL App (4th) 150544-B, 123 N.E.3d 1271.
171. *Id.* ¶ 67, 123 N.E.3d at 1284.
172. FED. R. APP. P. 34(a)(2).

Another provision the Illinois Supreme Court should consider adding to Rule 352(a) is a way to override an appellate court's decision to deny oral argument when a party feels strongly that it would help, like in the Western District of Missouri.[173] A rule to that effect would further allow parties to feel as though the court is listening to them and is truly committed to seeing justice carried out in their case. Though there is potential for parties to abuse this power to force the court to hear an oral argument after an initial denial, the risk seems minimal. For one, lawyers and parties alike will be wary of annoying or angering the people who will ultimately decide their case. As such, people are unlikely to abuse this rule and force the court to hear frivolous arguments.

No one, least of all this Note, is advocating a return to the glory days of oral argument like in *Gibbons v. Ogden*.[174] Limitless oral argument would be highly impractical and, with well-written briefs, superfluous. Still, there is no denying that oral argument is the bedrock of appellate practice in the United States.[175] If appellate courts allow oral argument to disappear, an important connection to this country's legal roots will be lost. That is why a hybrid rule, combining the best elements of the Seventh Circuit's[176] and the Western District of Missouri's rules,[177] seems like the best way to preserve the vital role oral argument has always played in the appellate process while also granting courts enough discretion to prevent judicial backlog and wasted resources.

The Illinois Supreme Court has certainly taken a step in the right direction with the revision of Rule 352(a).[178] Only time will tell how the current Rule 352(a) actually impacts oral argument. Maybe the Rule will revitalize appellate oral argument in Illinois as the Illinois Supreme Court intended. Or, maybe in the future the court will look to other jurisdictions and attempt a further revival of appellate oral argument.

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173. *See supra* note 137.

174. See *supra* Part I (B) for discussion of lengthy oral arguments of the past.

175. Ring, *supra* note 3, at 451.

176. *See supra* Part IV (F).

177. *See supra* Part IV (B).

178. Order Amending Rule 352, M.R. 3140 (2018), www.illinoiscourts.gov/SupremeCourt/Rules/Amend/2018/052518-4.pdf [https://perma.cc/E9P7-2VEF].