JURISDICTION, CASELOAD, AND TIMELINESS OF STATE SUPREME COURTS

A Report Prepared by

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EXECUTIVE SUMMARY

This report is on the timeliness of state supreme courts. According to the *Appellate Court Performance Standards*, expedition is one of the three primary goals state appellate courts should strive to achieve. The other values are fairness and consistency.

What is the actual time taken to resolve cases? How do state supreme courts stand in relation to the numerical time frames proposed by the American Bar Association (ABA)? What are the problems of and prospects for comparing state supreme courts with one another? These are the organizing questions addressed in this report.

Five courts are the objects of study. They include the Supreme Courts of Florida, Georgia, Minnesota, Ohio and Virginia. All of these courts are seven member bodies.

What emerges from an inquiry of cases resolved by these courts in 1996 and 1997 is an interesting tale. There are three key propositions based on analysis of the jurisdiction, caseload mixture, and timeliness of the five courts. They include the following:

First, contrary to both popular and established scholarly views of state supreme courts in two-tiered appellate systems, state supreme courts have substantial numbers of several kinds of cases to resolve. According to the received tradition, a state supreme court has the dual responsibility of first deciding which of many filed petitions to hear and then preparing opinions in cases that are granted full appellate review. However, an examination of the work before the five courts indicates that there are at least five distinct kinds of cases, and not all of them, or even most of them, are granted discretionary petitions.

A more complete catalogue of the kinds of cases before state supreme courts includes discretionary petitions, including granted and denied petitions; mandatory appeals; bar and

judicial disciplinary cases; applications for writs; and death penalty related cases, including direct reviews and post-conviction challenges.

The second pattern is the courts exhibit timeliness only if all discretionary petitions are combined, including granted and denied petitions, into a single category for measurement purposes. Because many more petitions are denied than granted, and the decisions to deny petitions are made very quickly, combining granted and denied petitions produces an overall picture of expeditiousness.

The third pattern is all of the courts have difficulty in meeting the ABA time frames when all five kinds of cases are considered, and granted discretionary petitions are separated from denied petitions. The exception is the Supreme Court of Virginia, although its jurisdiction is considerably more discretionary than the other courts.

On the basis of these three patterns, recommendations are put forth to improve the measurement, comparability and understanding of timeliness of state supreme courts. They call on state supreme courts, the National Center for State Courts, the ABA and others to develop more refined case categories and the relative weight of each category. The promised benefits of such efforts are a firmer foundation on which to draw conclusions concerning a key performance area of state supreme courts.

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CHAPTER I. INTRODUCTION

State Supreme Courts and Performance

Every state in the United States has established a supreme court. This body has been given the authority to be a final arbiter of disputes over the meaning and application of state constitutional and statutory provisions.[1] A state supreme court discharges these responsibilities by reviewing the decisions and actions of trial courts, administrative agencies, and intermediate appellate courts in the 39 states that have first-level appellate courts.[2]

Nationally, the judicial branch of every state government, including state supreme courts, has been called on by a wide variety of public and private organizations to demonstrate accountability to litigants, legal practitioners, and taxpayers. Accountability has been translated into a call for a performance review of courts and judges. Historically, thoughtful and conscientious judges have been concerned over their performance as jurists. There is little evidence to suggest that individual judges have taken less pride and care in their work than other public officials.

However, the contemporary movement of performance assessment has shifted attention away from individual judges to courts as a whole and from purely subjective self-assessments by either judges or courts to more explicit, objective, and standardized indicators. This approach is still in the early stages of development. Even the most unabashed advocates of systematic

[1] In the American system of checks and balances among co-equal branches of government, which is part of a larger democratic framework, the authority of courts is not unbridled. For example, legislatures can modify a court's jurisdiction. All governors (or legislatures) appoint individuals to fill unexpired terms, and in some states, full terms. Voters can enact requirements on courts through the adoption of constitutional or statutory provisions by referenda.

[2] There are eleven states (Delaware, Maine, Montana, New Hampshire, Nevada, North Dakota, Rhode Island, South Dakota, Vermont, West Virginia, and Wyoming) and the District of Columbia without an intermediate appellate court. Because the 39 larger sized states have intermediate appellate courts, supreme courts in two-tiered appellate systems substantially shape both academic and popular images of what a state supreme court is, looks like, and does.

evaluations of courts, including state supreme courts, would concur that a lot of work remains to be done before any complete and correct performance system is available. Yet, progress has been made rather quickly in articulating the direction that the examination of courts should pursue and progress has been made in taking steps on the paths of action that have been charted.

A relevant expression of ideas concerning performance pertinent to state supreme courts is the work of the recent Appellate Court Standards Commission. This twelve-member commission suggested three main values that appellate court systems, defined as a combination of a state's supreme court and its intermediate appellate court, should be expected to strive to attain. These values are fairness, timeliness, and consistency. Appellate courts are expected to render their decisions in a fair, timely, and consistent manner (Appellate Court Performance Standards, 1999: vii-viii).

Time Standards and Previous Research

Concerning the core values that the Appellate Court Performance Standards Commission identified, expedition and timeliness have received the most attention and more work has been undertaken to measure these values than has been undertaken to measure either fairness or consistency. The American Bar Association (ABA) has taken the lead in this area and tried to promulgate reasonable and justifiable criteria against which data can be gathered and used to judge an appellate court's, including a state supreme court's, degree of positive performance.

The chronological development of what has come to be known as "time standards" emerged first with ABA standards for civil and criminal trial courts (American Bar Association, 1987). Next, the ABA moved into the appellate arena and attempted to develop standards specifically for intermediate appellate courts (Appellate Delay Reduction Committee, 1988). Finally, after the initial standards for intermediate appellate courts went under a subsequent

revision by the ABA, the notion of standards was replaced with, perhaps, a less stringent label of "reference models." Reference models are numerical time frames, but they seem to be offered as friendly suggestions to appellate courts in search of their own methods of performance assessment (American Bar Association, 1994).[3]

Reference models were developed for both intermediate appellate courts and state supreme courts. The models for the two sets of courts share the idea that timeliness should be measured in terms of percentiles (e.g., a particular percentage of cases should be resolved within a particular number of days). However, both the percentiles and the number of days are different for the two sets of appellate courts. According to the ABA, fifty percent of a state supreme court's caseload should be resolved in 290 days or fewer after the date of filing the notice of appeal (or petition for review), and 90 percent should be resolved in 365 days or fewer. Concerning intermediate appellate courts, 75 percent of the cases should be resolved in 290 days or fewer after the filing of the notice of appeal. Ninety-five percent should be resolved in 365 days or fewer after the filing of the notice of appeal (American Bar Association, 1994).

Despite the insight and perspicacity of the seasoned court officials who spearheaded the ABA time performance initiative for appellate courts, they lacked a rich bounty of data on how

[3] Prior to the setting of time standards for intermediate appellate courts, there was an attempt to formulate time standards in 1977 (American Bar Association, Judicial Administration Division, 1977). However, the ABA has abandoned the approach taken in 1977 to the extent that it does not provide a firm foundation for the current ABA policy of Reference Models. The 1977 time frames were aimed more at specific steps in the appellate process than the overall elapsed time from a case's filing to resolution. Record preparation was to take no more than 30 days, briefing no more than 70 days in civil cases, and no more than 50 days in criminal cases. The time from submission to resolution was to take no more than 30, 60, or 90 days depending on case complexity and the number of judges deciding a case. These times applied to all court cases. The 1988 ABA work rejected the earlier effort to set a standard for all cases in favor of percentiles less than 100 percent. Moreover, in 1988, no distinction was made between civil and criminal cases or between routine and complex cases. Finally, the work of the ABA in 1994 did not attempt to set time standards for different steps in the appellate process. The reference models consider only overall elapsed time from filing to resolution. In the 1994 publication, there is a discussion of time frames for the basic steps in the appellate process, but the discussion makes little sense. The total time of all of the separate steps is either 300 or 270 days depending on whether a case is argued (American Bar Association, Judicial Administration Division, 1994: 105-13). Because those times are not consistent with the percentiles in the reference models for either intermediate appellate courts or state supreme courts, they offer very little guidance to the current research.

long it took appellate courts, including state supreme courts, to resolve cases. The history of basic research on state supreme courts is spotty.

A pioneering study of forty-four state supreme courts was completed in 1947. That investigation looked at the elapsed number of days from the filing of the record to decision and the elapsed time between steps in the appellate process for civil cases with opinions published during the last quarter of 1946. If there were fewer than 25 cases in that quarter, clerks of court augmented the database with cases from 1946 or 1947. The median overall processing time was calculated for each court under study. The Council of the Judicial Administration Section of the ABA authorized the collection of these data because they thought the topic of timeliness to be both "interesting and important" (Shafroth, 1947:117).

The words of the Council apparently were neither inspiring nor received by a receptive audience because the next inquiry on the topic of timeliness was not completed until 1981. Thirty-four years after the Council's publication, the National Center for State Courts introduced the notion of appellate court delay in a study of ten appellate courts, including the Supreme Courts in Nebraska, Montana, and Virginia. All of the other seven courts were intermediate appellate courts.

This study produced several important observations. One observed pattern was that the step in the appellate process that consistently takes the longest amount of time to complete is from the date of judgment to at issue (or perfection). Additionally, it was seen that the greatest variation in timeliness among the courts occurs from the date a case is at issue to oral argument or submission on the briefs alone. An overall conclusion was "the structures and procedures of appellate courts appear to have a greater impact on the time it takes them to process their cases than do the number or type of cases filed" (Martin and Prescott, 1981:x). On that basis, the

authors of the study saw the keys to unlocking the doors to delay reduction to be available and accessible to courts. They wrote:

> This is an optimistic conclusion. Structure and procedure, unlike case volume or type, may be controlled by the courts themselves, and may therefore be modified or altered by court personnel (Martin and Prescott, 1981: XX).

Despite the centrality of this conclusion to Martin and Prescott's work, little support for their observations was seen in data gathered by subsequent studies. Specifically, Chapper and Hanson (1990) observed in a four intermediate appellate court study that jurisdiction shapes caseload composition and case characteristics influence how long it takes criminal and civil appeals to be resolved (Chapper and Hanson, 1990:4-11, 26-41). In another examination, variation in the timeliness of 31 intermediate appellate courts was deemed to be attributable primarily to resources, as measured by the number of cases per judge, and negligible influence was deemed attributable to the presence or absence of managerial procedures (Hanson, 1998).

Another important aspect of the Martin and Prescott investigation is that the study does not include any supreme courts with an intermediate appellate court. All three of the supreme courts in the study operated, in the study period, without an intermediate appellate court, although both Nebraska and Virginia have since created intermediate appellate courts. Conventional thinking is that supreme courts without an intermediate appellate court are more like intermediate appellate courts than they are like supreme courts in two-tiered appellate court systems. They tend to have primarily mandatory jurisdiction, and even if they have primarily discretionary jurisdiction (e.g., West Virginia), they are confronted with the problems of a large increasing caseload each year and the need to sort out routine from complex cases, which are the basic challenges facing intermediate appellate courts. Martin and Prescott's study and others (Chapper and Hanson, 1988), which combine supreme courts without intermediate appellate courts with intermediate appellate courts are really studies of first-level appellate courts.

Consequently, findings from these studies have less relevance for the 39 state supreme courts in today's two-tiered appellate systems than they do for intermediate appellate courts. (For an explicit statement of this view of first-level state supreme courts, see Chapper and Hanson, 1988:4).

A study more closely related to the substance of the 1947 inquiry is *Time on Appeal* (Hanson, 1996). That investigation gathered, analyzed and presented data on the expeditiousness of eight state supreme courts without an intermediate appellate court, including Puerto Rico, and fifteen state supreme courts in two-tiered systems, in addition to 35 intermediate appellate courts. The data focused on mandatory appeals and discretionary petitions resolved in 1993. Despite the variety of case resolution times in both sets of supreme courts, efforts to explain variation among each separate set proved unsuccessful. A lack of success was attributed to the blunt nature of available data on possible explanatory variables, not the inherent complexity of the courts.

The Current Research

In response to the continuing expectation that state supreme courts be timely in their decision making, and to improve on previous research, the National Center for State Courts, with the support of the State Justice Institute, undertook the current research on five state supreme courts in two-tiered systems. Three of them were selected from the courts that had participated in the *Time on Appeal* project to maximize the chances of data availability and to gain the benefits of a baseline. They included the Supreme Courts of Georgia, Minnesota, and Virginia. They all had been found to be relatively expeditious in the earlier inquiry. Two others were selected to include some representation of the nation's largest supreme courts in caseload size. This led to the inclusion of the Supreme Courts of Florida and Ohio.

Three questions guided the current research's proposal and were expected to orient the field research: (1) Approximately how long does it take each court to resolve cases? (2) Why do some cases take longer than others? and (3) Why do some courts take longer than others to resolve cases? The working assumptions behind these questions were that a closer examination of five courts would be able to gather data on better (more powerful) explanatory variables and that other courts might learn from the expected positive performance by the five courts. (A previous technical assistance project by the National Center for State Courts of four state supreme courts included Florida and Ohio. They were found to be relatively expeditious compared to Georgia, and to Alabama, the prime subject of the investigation (Daley and Hanson, 1994)).

The current project was successful in gaining a finely grained sense of the timeliness in each of the five courts on the basis of individual case-level data on a combination of all appellate cases resolved in 1996 and those resolved in 1997.[4] Substantively, on a general level, all five courts were found to be relatively expeditious when compared to either the ABA reference models or to the past performance of state supreme courts in the *Time on Appeal* study. Additionally, the Supreme Courts of Florida and Ohio look quite remarkable when the number of appellate cases that each of them handles is considered. They are almost as timely as the three most expeditious courts, even though they seemingly have a lot more work to do. These

[4] Each of the five courts provided the current research project with a diskette that contained several variables on each individual case resolved in 1996 and each individual case resolved in 1997. The diskettes contained data that court staff extracted from their automated record-keeping systems. The individual cases were classified into categories by the current research project staff according to the two criteria. First, a category of cases had to comport with the particular ways in which cases come to a court (e.g., from a trial versus an intermediate appellate court), and how it was resolved (e.g., granted versus denied discretionary petition). Second, each category was defined in a way to make it comparable to cases in other courts along one or more dimensions (e.g., mandatory versus discretionary; civil versus criminal; appeal versus petition versus bar disciplinary matter versus application of a writ).

observations do not speak to the variety of the different kinds of cases that each court has on its docket and correspondingly different degrees of timeliness for each kind of case.

There are several observable dimensions on which each of the five courts has a distinctively different characteristic from at least three of the other courts. Those dimensions include the scope of mandatory versus discretionary jurisdiction, the routes that even discretionary cases take to arrive at a supreme court (directly from a trial court versus an intermediate appellate court) and whether an intermediate appellate court must certify cases. Additional dimensions are the severity of the most serious underlying offense of criminal cases on appeal, the presence or absence of death penalty review, and whether death penalty cases are appealed directly to a supreme court. Finally, there are the dimensions of the number of applications for writs and the number of bar disciplinary cases. For all of these reasons, the courts were considered to have quite different mixtures of cases. The lack of similarities in the caseloads led to adjustments in the focus of the inquiry and to a reformulation of the basic research questions to be addressed. The modified questions that are addressed in this report are as follows:

> First, how long does it take each court to resolve the different kinds of cases, such as discretionary petitions for review, mandatory appeals, applications for writs, bar disciplinary cases, and death penalty cases that it is expected to handle?
>
> Second, what are the similarities and differences in the resolution times among the courts? Are the differences understandable?
>
> Third, assuming that cases can be compared across courts, are there substantial differences in the number of cases per judge? If so, do these differences bear any relationship to the relative timeliness of the courts?

The essential modification represented by these questions is that they are appropriately addressed in side-by-side comparisons of the five courts. A more quantitative attempt to pool all of the cases from the five courts and to look for the effects of court characteristics is not feasible. The reason is that the mixture of cases from court to court is sufficiently different to render

cross-court comparisons problematic. There is no way to know if the caseloads are sufficiently equivalent to permit measurement along a common yardstick.

However, the lessons to be gained from the current project and its results are a greater understanding and appreciation for the complexities of state supreme courts. The current research also offers guidelines that every state supreme court can follow to describe its case resolution times to achieve maximum comparability with other courts. Specific breakdowns of different kinds of cases on appeal will permit all courts to look at other courts, to see what cases are most comparable to theirs, and validly and fairly to see how they stand in relation to the performance of other courts. Finally, this study lays the groundwork for more specific caseload and workload measurement in the future. This activity will involve the development of "case weights" on the average amount of judge and staff time required to resolve a particular kind of case. Courts can use the case weights to permit valid comparisons with other courts with different caseload mixtures. The remainder of this report is devoted to describing the data, methodology, findings, and conclusions reached from the study of five state supreme courts.

Chapter II provides a review of past pertinent literature on state supreme courts. The most relevant studies on the subject of state supreme courts are a series of essays by a group of scholars based on their examination of state supreme courts from 1870 to 1970. These studies, which are called the Kagan model after the lead author of the studies, are shown to provide a view of the structure of supreme courts that flows into the work by the ABA on time standards. Because of the confluence of these two streams of thought, Chapter III provides a critical examination of the Kagan model in light of the data from the five courts under study. A lack of support for the model from the five courts telegraphs problems likely to arise in measuring the timeliness of different supreme courts with the same yardstick. Problems of and prospects for

measuring timeliness are the subjects of Chapter IV. That chapter uses the ABA reference models and looks at each court's degree of timeliness for its particular mixture of cases and suggests what cross-court comparisons can be made with some degree of confidence. Chapter V summarizes the results from the current research and suggests concrete strategies and actions that state supreme courts should take to strengthen performance assessment in the future.

CHAPTER II. THE IMAGE OF STATE SUPREME COURTS

Previous Studies on State Supreme Courts

A group of prominent scholars have developed a conceptual framework to understand state supreme courts. The analytical structure is organized around concepts such as the work of the courts, how the justices have tried to gain control over work demands, and ways that the justices have used their time to resolve significant cases. The framework emerges from an examination of sixteen supreme courts between 1870 and 1970. (The law professors and their respective institutions are Robert A. Kagan (Berkeley), Bliss Cartwright (Virginia), Lawrence M. Friedman (Stanford), and Stanton Wheeler (Yale). Hereinafter their framework will be referred to as the Kagan model for expository purposes.)[5]

The ideas embodied in the Kagan model are pertinent to the current research in three respects. First, both inquiries are concerned with the central issue of how state supreme courts manage to get their jobs done, although Kagan et al. do not measure timeliness.[6] Second, the

[5] The Kagan model is described in a series of essays. See, for example, Cartwright (1975); Kagan, Cartwright, Friedman, and Wheeler (1977, 1978); Note (1978); Friedman, Kagan, Cartwright, and Wheeler (1981); Kagan, Infelise, and Detlefsen (1984); Kagan (1984); and Wheeler, Cartwright, Kagan, and Friedman (1987).

[6] There are other distinctive bodies of literature on state supreme courts, but they are of marginal value in enlightening the current inquiry. They focus on aspects of courts that are quite unrelated to the current focus. For example, there is a sizable body of literature devoted to determining if there are voting patterns on state supreme courts. Do particular justices tend to vote with one another in non-unanimous cases? Are coalitions of justices bound together by party affiliation, ideology or some other background characteristic? This literature began with an examination of the U.S. Supreme Court and spread subsequently to state supreme courts (Adamany, 1969; Fair, 1967). Research of this sort, which began in the 1960s, no longer continues to focus on state supreme courts. The U.S. Supreme Court remains the court that scholars seek to understand in terms of judicial voting patterns. In contrast, the Kagan model has influenced the academic community and is found in textbooks on American courts. See, for example, Baum (1990). Moreover, it is an accepted framework for contemporary researchers who continue to use it as a starting point. See, for example, Farole (1999) and Dolan (1999). Another area of previous research has focused on the role of state supreme courts in shaping legal policy (e.g., interpreting tort laws to favor plaintiffs versus defendants). Doctrinal shifts are considered by some researchers in the field to be the result of ideological changes in the minds of the justices (e.g., Baum and Canon, 1982; Latzer, 1991; Tarr, 1994). As interesting as these studies are, they shed little light on how the content of state supreme court decisions might be related to court efficiency or other operational features of courts. The researchers seem to regard their interests concerning appellate policy making as self-contained. Consequently, it is difficult to see how this body of literature bears on the current research project.

comprehensive nature of the model provides a rich background and a perspective to view the current study of five state supreme courts in the 1990s. Third, the substantive nature of the model in many essential ways informs contemporary efforts by the ABA and others to assess the timely performance of state supreme courts.

The Kagan model contends that state supreme courts have obtained control over their dockets through the creation of intermediate appellate courts and by the expansion of their discretionary jurisdiction. As a result, except for death penalty cases and some other matters, which Kagan et al. believe are unlikely to require published opinions, state supreme courts can choose which cases to hear and to devote time to deciding.[7]

On one level, their assertion regarding the expansion of discretionary jurisdiction is undoubtedly true because every state supreme court in a two-tiered system has some degree of discretionary review authority. Every justice is well aware of this elemental fact; therefore, to question Kagan et al. might seem odd to some readers. In fact, the current research's interest in the breadth of discretionary jurisdiction might strike some readers as pursuit of a phantom. Yet, as will be seen later in Chapter III, the relative frequency of a state supreme court's cases that are granted discretionary petitions varies considerably.

[7] When state supreme courts review the judgments of trial courts, they do so on the basis of discretionary or mandatory jurisdiction. Discretionary jurisdiction means that a supreme court has the authority to decide whether a case warrants full examination (e.g., submission of briefs, oral argument, and a written decision). A supreme court can decide whether to grant or deny further review based on its own criteria (e.g., a case must be of major public policy consequence). Obviously, this type of jurisdiction is discretionary because it is the supreme court that interprets and applies the criteria. Mandatory jurisdiction generally refers to a situation where a litigant at trial has the right of an appeal, by state law, to challenge a trial court's judgment. If a supreme court has mandatory jurisdiction over a case, it cannot deny appellate review. Cases reviewed under these two forms of jurisdiction generally are called petitions for review (discretionary) or appeals (mandatory). Because of their unique nature, death penalty cases are a particular kind of mandatory appeal. In addition to these kinds of cases, supreme courts can have exclusive jurisdiction over bar and judicial disciplinary cases and original jurisdiction over applications for writs. In both instances, supreme courts do not have discretion to deny these cases review. In the current research, bar and judicial disciplinary cases and applications for writs, are considered mandatory cases, although they are distinct from mandatory appeals of trial court judgments.

Data from the five courts indicate that mandatory cases are neither few in number, nor insignificant in importance and the time the justices spend resolving them. However, to return to the purpose of this chapter, which is to explicate the content and implications of the Kagan model, their view of state supreme courts is consistent with the expectation that the courts should be able to decide cases in a reasonable amount of time.

In fact, the Kagan model is consistent with the ABA approach to setting time frames for all but the most complex cases. As noted previously, the ABA suggests a numerical time frame for up to 90 percent of the cases. The remaining 10 percent, presumably including capital cases should be resolved "as expeditiously as possible, given the length of the record, the complexity of the issues, or other unusual circumstances" (American Bar Association Judicial Administration Division, Standards Relating to Appellate Courts, Section 3.52 Standards of Timely Disposition of Appellate Cases, 1994:100).

The Kagan Model of State Supreme Courts

What exactly is the Kagan model? What are its key propositions? What does the model imply for the study of timeliness? These questions guide this portion of the current research.

The model asserts that state supreme courts have responded to caseload pressures brought by population increases and have found methods to control their workload. The two methods are the creation of intermediate appellate courts with primarily mandatory jurisdiction and an expansion of a supreme court's jurisdiction from primarily mandatory to primarily discretionary jurisdiction.

Concerning the creation of intermediate appellate courts, Kagan et al. found that of their sixteen states, only one, New Jersey, had an intermediate appellate court in 1870. However, they observed that by 1970, of the sixteen states with over two million residents, only Minnesota and

Kansas had not created intermediate appellate courts (Kagan et al., 1977:130). This trend has continued to the present. Only 11 of 50 states currently do not have intermediate appellate courts.

Concerning the expansion of discretionary jurisdiction, the model is not as well documented. The scholars assert that from 1870 to 1970 such a process took place, but they offer only illustrative and limited data on this process. They refer to the Michigan Supreme Court's elimination of mandatory jurisdiction in criminal appeals in 1927 as an example of expanding discretion (Kagan et al., 1977:131); however, that is the only illustration.

Kagan et al. reason that because the jurisdiction of the newly created intermediate appellate courts is primarily mandatory, the supreme court's jurisdiction over the same cases logically has to be discretionary (Kagan et al., 1977:131). Herein might lie a fatal flaw in the model. These scholars seem to assume that the scope of the jurisdictional changes taking place between 1870 and 1970 was broad in its coverage of substantive areas of law and that the areas in which the supreme courts retained mandatory jurisdiction were quite limited in scope.[8] They even appear to have assumed that the areas of law that remained within the mandatory jurisdiction of state supreme courts either involved fewer numbers of cases, fewer numbers of significant cases, or a combination of these two possibilities. However, nowhere in their essays are any data offered to support this assumption. Nevertheless, some strong claims are made by

[8] Cases for Kagan mean cases decided by a state supreme court with a published opinion, over one page, in Shepard's Citations. They consider these cases as being "cases treated as significant by the courts themselves" (Kagan et al., 1977:126). For Kagan et al., this defintion is appropriate. Cases for them would not be cases filed because they believe that almost all cases are discretionary, and few are granted. The work of the judges is in writing opinions in granted cases. Kagan et al. do not offer data to support an equivalency between cases and published opinions. Simply stated, they do not code opinions according to whether the case was mandatory or discretionary. They make an assumption about the interrelated nature of opinions and cases. That untested assumption is that granted discretionary petitions for review result in published opinions and published opinions occur in granted discretionary petitions for review.

Kagan et al. on the basis of their views on how supreme courts have gained control over their dockets.[9]

The model posits that by 1970 most large and mid-sized states had become two-tiered appellate state court systems. Moreover, supreme courts in two-tiered systems decide which cases to hear. The decision to grant or deny review is guided by a supreme court's sense of what is a truly important case (e.g., the case is of public policy significance, of first impression, involves conflicting constitutional or statutory provisions by lower courts). Correction of errors in individual cases is a matter primarily left to an intermediate appellate court. In their own words, the model builders write:

> The introduction of intermediate appellate courts (IACs) and the rise of SSCs (state supreme courts) discretion to choose cases have been important structural changes. In some states, a supreme court must hear whatever cases the trial court losers choose to appeal; there is no IAC and no discretion to choose cases. In other states, however, the SSC is insulated by the expense of a double appeal—to the IAC, and from the IAC to the SSC—and is armed with the power to choose only "significant" cases. These are powerful filters and they make the SSC relatively autonomous" (Kagan et al., 1977:154).

Kagan et al. elaborate on this point by suggesting that state supreme courts in two tiered systems retain mandatory jurisdiction over a small, select number of cases. They say that the retention is in many states a preference for certain areas of law. They write:

> Some states provide for direct state supreme court review of all capital cases; others provide for direct appeal to the state supreme court for workers' compensation cases; in still another, disputes over taxation received direct review for most of the period included in this study (Kagan et al., 1977:154).

Having established how the structure of state supreme courts has changed over time, Kagan et al. turn to the output of these courts. They examine how the structure of state supreme

[9] Kagan et al. drew random samples of opinions published in Shepard's Citations to create a database from which to analyze the work of state supreme courts. They sampled 18 cases every five years beginning in 1870 for each of the sixteen state supreme courts under study. This methodology yielded a total of approximately 6,000 cases. They read each of the opinions and classified them according to areas of law, nature of the parties, and outcome of the case. Additionally, they recorded information on the length of the opinion, nature of agreement among the justices, and so forth.

courts relates to the form of court decisions. They contend that as the state supreme courts have become more autonomous, they have chosen to decide fewer cases. Specifically, the courts "have been able to concentrate to a greater extent on cases that they consider important. They write longer opinions, and they are becoming more self-conscious about their role as policy makers" (Kagan et al., 1977:156).

A recapitulation of the relevant propositions by Kagan et al. serves to show how their framework, which is widely accepted by law professors, social scientists, and others, fits well with recent efforts to assess the timeliness of state supreme courts. Their five key propositions are as follows:

(1) State supreme courts have over time become the top tiers in two-tiered appellate systems.

(2) State supreme courts have limited mandatory jurisdiction.

(3) State supreme courts receive their cases from an intermediate appellate court.

(4) The most significant cases are granted discretionary petition for review cases.

(5) Other than writing opinions in granted discretionary cases most of the judges' other work is in deciding which discretionary cases to hear.

These propositions offer a framework for establishing time frames of the resolution of cases in state supreme courts. Specifically, they appear to provide support for the following five ideas:

(1) State supreme courts, especially those in two-tiered systems, have similar caseloads in key respects.

(2) Almost all cases filed with a state supreme court are petitions for review. Notable exceptions are mandatory appeals in capital cases.

(3) Cases come from an intermediate appellate court, which means that the step of preparing a record has been completed. Moreover, a supreme court not only has a completed record, but it has an opinion from a first level appellate court before it.

(4) There are limited numbers of other kinds of appellate cases.

(5) Therefore, the use of a standard time frame for the number of days that it should take a supreme court to resolve cases is viable.

The development of time standards has not occurred in an intellectual vacuum. Acute observers of state supreme courts have constructed a model that comports well with uniformity in time frames for state supreme courts in two-tiered systems.[10] The current research is intended to see how well that model compares to Supreme Courts in Florida, Georgia, Minnesota, Ohio, and Virginia. Additionally, the aim is to determine the implications of the results from comparisons of the assessment of timeliness in state supreme courts.

Time Standards

The American Bar Association has worked over the past several years to produce goals for appellate courts, including state supreme courts. They put these goals in the form of explicit (or numerical) time frames, called "Reference Models: Time Standards" (American Bar Association, Judicial Administration Division, 1994: 100). The exact interconnections among "goals", "reference models", and "time standards" are not entirely clear. However, the numerical time frames intended for use by state supreme courts are quite explicit (American Bar Association, Judicial Administration Division, Standards Relating to Appellate Courts, Section 3.52 Standards of Timely Disposition of Appellate Cases, 1994:100). The timeframes are as follows:

> (1) 50% of all cases should be resolved within 290 days from the time of the petition for certiorari from the intermediate court of appeals or filing of the notice of appeal.
>
> (2) 90% of all cases should be resolved within one year of the petition for certiorari from the intermediate appellate court of appeal or from the filing of the notice of appeal.

[10] The synchronicity between the Kagan model and the ABA time standard is not the result of a deliberate exchange of ideas. There is no mention of the Kagan model in the ABA work. However, it seems fair and valid to suppose that the model had become sufficiently disseminated in the literature and part of the conventional wisdom that it became suffused in the thinking of the participants in the ABA standards setting/enterprise.

(3) The remaining ten percent should be resolved as expeditiously as possible, given the length of the record, the complexity of the issues, or other unusual circumstances.

These threefold reference models (or time standards) provide benchmarks against which the five states under study can be compared. Interestingly, the ABA in its commentary to these standards takes one of the Kagan model's provisions and treats it in a normative manner.[11]

Concerning the presence of mandatory appeals in state supreme courts, the ABA says that there should be few of these cases in state supreme courts in two-tiered systems. Whereas Kagan et al. imply that there are few numbers of these cases, the ABA wants them eliminated. Despite the difference between "is and ought", both Kagan et al. and the ABA seemingly recognize that uniformity in time standards is inhibited by different caseload compositions and that the prospects for time standards depend on similar kinds of cases in different courts.

It should be noted that the ABA reference models treat petitions for review and mandatory appeals essentially as the same type of case. The same percentiles apply to both kinds of cases. However, the ABA time frames are as agnostic toward the relative frequency of mandatory and discretionary cases as is the Kagan model. They make no provision for courts with different frequencies. If data on the extent of discretionary jurisdiction fail to confirm the model, they will pose parallel problems for the setting of time frames.

[11] The ABA recognizes the importance of applications for writs and bar and judicial disciplinary cases. They contend that a supreme court should have authority over these kinds of cases (American Bar Association, Judicial Administration Division, 1994:5). For reasons that they do not specify, the ABA chooses to focus their time frames strictly on discretionary petitions for review and mandatory appeals and to exclude the other kinds of cases that state supreme courts handle. However, because writs and disciplinary cases are important, their case resolution times are calibrated in the current research. They warrant examination to provide a more complete view of the timeliness of state supreme courts.

Methodology of the Current Research

Data used in the current research were gathered from the five participating court's automated information systems. Clerks of court, state court administrators, and management information specialists were contacted and asked to provide diskettes of data stored on all appellate cases resolved in 1996 and all of those resolved in 1997. Guidance was provided to each court on some of the most essential elements on each of the individual cases that were needed to conduct the study. They included the following items:

(1) Kind of case (e.g., mandatory appeal v. petition for review (or leaves to appeal) v. application for a writ v. judicial and bar discipline v. death-penalty related case, including direct reviews after trial, retrial, or resentencing and writs for habeas corpus and other post-conviction challenges).

(2) Date of filing.

(3) Date of resolution.

(4) Type of case (i.e., civil v. criminal).

(5) Nature of resolution (e.g., granted v. denied v. dismissed).

(6) Form of decision (published opinion v. unpublished opinion v. order).

(7) Procedural events and dates (e.g., date record submitted, date of argument).

(8) Other information (e.g., number of motions, level of agreement among judges).

The fundamental objective of the planned data analysis was to develop an accurate and detailed description of the time taken to resolve each of the basic kinds of cases in each court. For example, concerning discretionary petition for review, the goal was to address the following sorts of questions:

(1) How long does it take to resolve 50 percent of all petitions for review? 90 percent?

(2) How long does it take to deny petitions?

(3) How long does it take to resolve granted petitions? Granted civil petitions? Granted criminal petitions?

(4) How long does it take to resolve petitions that come from an intermediate appellate court and those, if any, that arise from a trial court?

(5) How long does it take to resolve petitions that are certified by an intermediate appellate court and those that are not?

These sorts of questions were used to examine the data on a five-fold classification scheme of cases that the project developed. The kinds or categories of cases included discretionary petitions; mandatory appeals; other mandatory (or exclusively jurisdiction cases, such as bar disciplinary cases); applications for writs in non-death penalty cases; and death penalty related cases, such as direct reviews and applications for writs.

A great deal of time and effort by the current research project staff was spent in taking a case from a court's data set and placing it appropriately into one of the categories in the project's classification system. Every one of the courts had a wide variety of case types that could not immediately be sorted into broader, comparable categories. The current research classification of cases was shared with pertinent court staff and justices at each court. In some courts, there was an inspection of individual cases and sometimes searches of closed, manual paper files to ensure that the court staff knew exactly how their cases had been put into one of the project's case categories. Thus, the project is confident that the data presented in the tables in the following chapters are accurate, although the courts themselves do not necessarily publish figures on the same categories of cases.

It had been hoped that the data would permit a quantitative analysis of the combined cases from the five courts to see what influences some appeals to be resolved faster than others and what influences some courts to be faster than others. However, the descriptive profiles presented in the next chapter suggest that sort of analysis would not be valid given the mixture of cases from court to court. However, some basic assessments by examining the courts side by side are possible and shed light on both the Kagan model of state supreme courts and the efforts to develop time standards.

CHAPTER III. A COMPARISON BETWEEN A MODEL OF STATE SUPREME COURTS AND FLORIDA, GEORGIA, MINNESOTA, OHIO, AND VIRGINIA

Tiers

The most explicit, established model of state supreme courts hypothesizes that courts have changed from being single-level appellate courts into being the top tier of two-tiered appellate court systems. With primarily discretionary jurisdiction, state supreme courts choose which cases they wish to hear from among those cases that are appealed from intermediate appellate courts. Because this change is thought to be evolutionary, a reasonable expectation is that more states should have moved in this direction since 1970, the last year of the study period of Kagan et al., the originators of the model.

A basic aspect of the model is confirmed by changes that have occurred in the courts under study. Both Minnesota and Virginia have, since 1970, adopted intermediate appellate courts. In fact, since 1970, many other states also have established two-tiered systems, as hypothesized. They include Arkansas, Alaska, Arizona, Arkansas, Colorado, Connecticut, Hawaii, Idaho, Iowa, Kansas, Kentucky, Louisiana, Maryland, Mississippi, Nebraska, New Mexico, North Carolina, Oklahoma, Oregon, Puerto Rico, South Carolina, Utah, Washington, and Wisconsin. Some of these states established, and some of these states still continue to have, intermediate appellate courts with jurisdiction over only civil or criminal appeals. Nevertheless, the future trend toward the creation of intermediate appellate courts that Kagan et al. forecasted is well observed and supported.

The Kagan model's notion of an expanding discretionary jurisdiction among state supreme courts is not so well documented. There is no authoritative source of information that describes the precise jurisdiction of state supreme courts and how cases arrive on their dockets

for review. There is a graphic representation of the flow of cases to state supreme courts contained in the annual publications of the Court Statistics Project of the National Center for State Courts. However, those displays are more general than specific and provide no data that can be used to test the model. The five courts under study offer the potential of providing the first systematic scrutiny of the discretionary jurisdiction component of the Kagan model. Before turning to the five courts, two points warrant some mention and acknowledgment.

One point worth noting is that to some readers the Kagan model might seem to be a description of the U.S. Supreme Court. That Court seems to be the Kagen model taken to its logical conclusion. Virtually all cases coming to the U.S. Supreme Court are discretionary and the Court chooses a limited number to hear from among the thousands of petitions filed each year, primarily on the grounds that the Court deems some to be of utmost importance. Yet, it is an open question whether state supreme courts have approximated a position similar to the U.S. Supreme Court. As a result, it is worthwhile to gauge the discretion of the jurisdiction of the five courts.

Second, since the Kagan model was developed, relevant aspects of the American states have moved in the direction of creating conditions conducive to its confirmation. Specifically, both the population of virtually every state in the U.S. and the number of appellate cases filed with the courts each year have increased from 1970 to the current time. The smallest sized states have witnessed modest growth in these two areas, but since they also have not become two-tiered appellate systems, they are in no way a confirmation or disconfirmation of the model. However, the larger and mid-sized states in 1970 have grown in both areas and thereby should have experienced increased pressure toward an expansion of discretionary jurisdiction. These forces should be present in the five states under study. They were all large or mid-sized states in 1996,

the first year of data collection for this project.[12] Thus, a look at the five courts is a bona fide test of the model.

Context, Culture, and Kinds of Cases in the Five Courts

The five supreme courts of Florida, Georgia, Minnesota, Ohio, and Virginia have one essential element in common. They are all seven-member bodies, as shown in Table 1.

Other aspects of the courts, ranging from method of the selection of justices to judicial tenure are different for both the courts' associate justices and the chief justices. Staffing levels are different with Ohio having three in-chambers legal staff for each justice and Virginia having only one law clerk assigned to each justice. They all have an intermediate appellate court, but some have a single statewide court (Georgia, Minnesota, and Virginia) and others have regional district appellate courts (Florida, Ohio).

Table 1: What Do the Five State Supreme Courts Look Like? (1996)

	Number of Justices	Method of Selection for Full Terms	Length of Term (Years)	Method of Selection of Chief Justice	Length of Term (Years)	Nature of Intermediate Appellate Courts	Number of Law Clerks for Chief Justice	Number of Law Clerks For Each Justice	Number of Central Staff Attorneys
Florida	7	Gubernatorial Appointment	6	Members of Court	2	5 Regional Districts	3	2	4 (6)*
Georgia	7	Non-partisan Election	6	Members of Court	4	Single, Statewide	3	2	3
Minnesota	7	Non-partisan Election	6	Popular Election	6	Single, Statewide	2	1.5	3 (4)*
Ohio	7	Non-partisan Election	6	Popular Election	6	12 Regional Districts	3	3	11
Virginia	7	Legislative Appointment	12	Seniority	Until Retirement or Resignation	Single, Statewide	1	1	10

*Numbers in parentheses represent changes that occurred in 1998.

The potential effects of these readily observable differences among the courts are countered or attenuated by similarities among the justices in their perspectives toward their jobs. Based on interviews with justices and court personnel in each court, the following five sets of observations were drawn on how the justices view their work. Despite their subjective nature,

[12] In 1996, the five states ranked relatively high in total population, which strongly correlates with the number of appellate cases filed per state. The population rankings were as follows: Florida (4th), Ohio (7th), Georgia (9th), and Minnesota (16th) (See Flango, Fonner, and Way, 1997:233).

these observations deserve attention because of the very limited nature of available information on the culture of state supreme courts. They are as follows:

(1) Virtually all of the justices see their positions as having substantial workload responsibilities that must be discharged in a timely manner. None of the justices expressed the idea that their positions had the luxury of ample opportunities for cogitation and introspection. They saw value in their opportunities for collegial exchanges and with legal staff. Yet, there is a definite "mood" surrounding the justices. The position of a supreme court justice involves a lot of work and the completion of tasks is regarded as serious business.

(2) Despite the common agreement among the justices in the different courts that they have substantial workloads, few, if any, of the justices expressed the idea that they self-consciously engaged in applying principles of case management. Some of the justices said that their colleagues might not be fully aware of what case management is all about.

(3) The way the courts managed to be timely was attributed by the justices more to personal expectations and work habits. Justices mentioned that they had established their own time frames (e.g., when they expected to receive a memorandum from a law clerk or when they believed they needed to get a draft into circulation). Moreover, it was clear that the chief justices set and monitored informal norms on appropriate work hours (at least 9:00 a.m. to 5:30 p.m., five days a week) and places of work (i.e., in chambers, not at home).

(4) None of the justices saw themselves having to rely unduly on legal staff members to get their judicial jobs done, although legal staff members were highly regarded in all the courts. The unanimity of opinion on this point was maintained despite differences in how individual justices used staff (e.g., initial drafting of an opinion, at least the facts, by a law clerk versus only kibitzing or consulting by a law clerk on an opinion drafted by a justice). All justices regarded the final version of written opinions, including every word, as their own.

(5) The responsibility for ensuring that opinions were produced in a timely fashion was not left entirely to the chief justice. Even the newest members on these courts indicated that when they wanted to get an opinion out they were willing to go to their colleagues to secure their reactions to draft opinions. They also reported that they experienced similar nudges from other associate justices who sought their agreement. A related point is that the justices with previous experiences on an intermediate appellate court seemed to be quite willing to operate in this manner and were familiar and comfortable with the need for timeliness in state supreme court.

Three broader patterns emerge from the five observations taken together. One pattern is that the justices have definite work orientations. The justices are acutely attuned to what work

needs to be accomplished, who should do it, and how it should be done. A common manifestation of agreement on these points is each court's particular use of legal staff, especially central staff attorneys. Courts did not use central staff attorneys in the same way. For example, in Minnesota, central staff attorneys, who are called "Commissioners," work primarily on handling discretionary petitions from initial memoranda preparation to opinion drafting. In contrast, Florida's central staff attorneys work primarily on conducting background research on applications for writs and bar disciplinary cases. This different usage of staff arises because of the different mixture of cases in the two courts. In fact, the development of central staff attorneys in Florida coincides closely with an increase in the number of bar disciplinary cases in the l990s.[13]

A second pattern is that the justices have a sharp intuitive sense of what cases are labor intensive. They have their own answers to questions of workload. What cases consume a lot of effort in opinion writing? What circumstances arise that can be all time consuming?

The justices spoke of the close review that discretionary petitions receive after they are filed to ensure that the decision whether to hear a case is made consistently. However, in all of

[13] In Florida, three central staff attorneys spend the largest proportion of their time researching applications for writs and bar disciplinary cases and screening for jurisdiction (53 percent). Florida's large number of these kinds of cases and its certification process contribute to this staffing pattern. On the other hand, Minnesota's four central staff attorneys spend approximately 60 percent of their time preparing memorandum, and in some instances, draft opinions in discretionary cases. Only six percent of their time is spent on writs and bar disciplinary cases. This staff configuration is considerable given the relatively small number of these two kinds of cases. The linkage between caseload mixture and staff assignments also is evident in Virginia. Ten staff attorneys spend approximately 70 percent of their time on discretionary petitions and 15 percent of their time on writs. This allocation comports with Virginia's virtually exclusive discretionary jurisdiction and sizable number of writs. In contrast, given Ohio's broad spectrum of cases both in kind and in number, the Court's eleven staff attorneys are assigned specific areas of law (e.g., capital, public utility, workers' compensation, original actions, and tax cases). They spend most of their time (52 percent) reviewing the record and preparing memoranda on these cases. Finally, the concentration of mandatory appeals, bar disciplinary and applications for writs in Georgia affects the work of the Court's six staff attorneys. Forty-five percent of their time is spent on disciplinary cases and writs. Another 21 percent is spent on opinion preparation in mandatory cases. Only one percent of their time is spent on discretionary cases. The source of this information is a recently completed project by the National Center for State Courts. Responses to a survey of legal staff in each of the five courts under study were made available to the current research project staff. For a report on the aggregate work patterns among all of the nation's state supreme courts' legal staff members, including the five courts under study, see Hanson, Flango, and Hansen (2000).

the courts, the resolution of criminal cases, especially those with very violent offenses, long custodial sentences, or death penalty sentences was seen as disproportionately weighty.

A third pattern to emerge is that in all the courts there is a balancing between timeliness and other values, especially with what has come to be known as education, outreach, or public confidence building. In all of the courts, the chief justice as well as the associate justices have commitments to serving on committees, acting as liaisons with the bar, law schools and related groups, and educating the public on the mission and activities of the courts. The justices in all the courts contend that they have to husband their time for opinion writing and that they can not meet every opportunity to speak and to attend meetings outside the court.

At the same time that there are common patterns in the culture of the courts, the justices' views in each court are shaped by the particular combination of different kinds of cases that come to them and the absolute and relative number of each kind of case. In addition to helping understand the color and nuance of each court's culture, information on the frequency of different kinds of case that were resolved in each of the five courts provides a basis on which to assess the accuracy of the Kagan model. That model emphasizes the highly discretionary nature of state supreme courts, and a brief description of the kinds of cases coming to each court is offered.

Florida. The Florida Supreme Court's jurisdiction encompasses a broad spectrum including discretionary cases, mandatory civil and criminal appeals, bar disciplinary cases, applications for writs, and death penalty related cases including direct reviews, post-conviction challenges and applications for writs.[14] The discretionary cases arise from challenges to trial court judgments in civil and criminal cases that have been reviewed by one of the Florida Court

[14] For a detailed explication of the Florida Supreme Court's jurisdiction and a variety of other matters, see Kogan and Waters (1994).

of Appeal's five regional appellate districts. There is no common law writ of certiorari in Florida that allows any party who disagrees with a first-level regional appellate district court's decision to file a petition for review (or leave to appeal) to the Florida Supreme Court.[15]

Some of the regional district court decisions are, in fact, precluded from further appellate review. These cases include all intermediate appellate court decisions where the form of the decision is a per curiam affirmance, basically a one word disposition, "affirmed". Regional district courts in Florida decide some cases with an opinion (signed and published) or a per curiam opinion (unsigned and published), but per curiam affirmances are used in almost two-thirds of all appeals, with little difference in frequency between civil and criminal appeals (Chapper and Hanson, 1990:87).

To reach the Florida Supreme Court, discretionary cases first must be certified in one of two ways, although the Court is not required to hear certified cases. Certification may be completed by one of the regional district courts saying that a case either involves a matter of great public importance or a conflict among the regional appellate districts. These are commonly called "conflict cases". Another form of certification is by an appellant, who attests that a case involves issues of statutory, constitutional interpretations, a state official, or conflict among the regional district appellate courts. Those cases are called "notices to invoke discretionary review".

The remainder of Florida's cases is divided into several kinds of mandatory cases. They include mandatory appeals, applications for writs, and death penalty related cases. Mandatory appeals include a select number of civil and criminal appeals, although the criminal appeals are not necessarily cases arising from murder convictions or life imprisonment sentences. The bulk

[15] In 1996, there were approximately 18,542 mandatory cases filed and 18,674 mandatory cases resolved in Florida's Courts of Appeal. Additionally, there were approximately 3,580 discretionary cases filed and 3,352 discretionary

of the mandatory cases involve bar discipline matters, judicial conduct matters, and certificates of judicial manpower. They are in the exclusive or original jurisdiction of the court and have grown in number considerably since 1990.

The applications for writs cover both the distinct area of habeas corpus as well as a range of other types of writs, such as mandamus and quo warranto. There are several hundreds of both kinds of writs filed each year.

Finally, death penalty cases include direct reviews, post-conviction challenges by death row inmates, and inmates' applications for habeas corpus and other types of writs. In addition to these cases, the Florida Supreme Court devotes time to handling death penalty cases every time a warrant for execution is ordered. When a warrant is issued by the governor, the Court acts immediately to determine if there are any outstanding issues in the case and decides whether the order should be stayed or carried out.

Georgia. The Georgia Supreme Court has discretionary jurisdiction over a range of civil and criminal court and administrative agency decisions. However, these cases come to the court in two ways. One route is after first-level review by the Georgia Court of Appeals.[16] These cases are commonly called petitions for writ of certiorari. Another route is directly from a trial court. Virtually all of these cases are in the civil arena and involve zoning, domestic relations, and some administrative agency decisions. These cases are called "applications for review". Applications must be granted or denied full appellate review within 30 days after they are filed, according to state statute.

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cases resolved in 1996.

[16] In 1996, there were approximately 2,967 mandatory cases filed and 3,161 cases resolved in the Georgia Court of Appeals. Additionally, there were 483 discretionary cases filed and 502 cases resolved in 1996.

Mandatory cases involve both civil and criminal appeals and other matters. Civil appeals involve cases in equity, land titles, wills, public revenue, and election contests. (Other civil cases such as tort, contract, and real property are in the category of petitions for writs of certiorari).

Mandatory criminal appeals fall into two categories. One category consists of appeals of murder convictions with life imprisonment sentences. The other category involves non-murder convictions either involving constitutional issues or cases where the ten-member Georgia Court of Appeals was equally divided in its decision. In addition to criminal and civil appeals, the Georgia Supreme Court has mandatory jurisdiction over bar disciplinary matters and cases from the state's judicial qualification commission.

Finally, the Georgia Supreme Court has direct mandatory review over death penalty related cases. These cases include direct reviews after an initial trial, a retrial or a remanded sentencing hearing. They also include habeas corpus appeals and reviews of outstanding pretrial motions just prior to trial.

Minnesota. The Minnesota Supreme Court has discretionary jurisdiction in both civil and criminal cases. In fact, the court has no mandatory jurisdiction in civil cases. All of its discretionary cases arise after a first-level review by the Minnesota Court of Appeals.[17]

Mandatory cases consist of mandatory criminal appeals, all of which are first-degree homicide convictions, and administrative agency decisions involving workers' compensation or taxation. Other mandatory cases involve bar and judicial disciplinary matters and election contests. Finally, the Court has jurisdiction over applications for writs. There are no death penalty cases because the state has no death penalty statute.

[17] In 1996, there were 2,353 mandatory cases filed and 2,391 cases resolved in the Minnesota Court of Appeals. Additionally, there were 65 discretionary cases filed and the same number resolved in 1996.

Ohio. The Ohio Supreme Court has broad criminal case discretionary jurisdiction. Criminal cases, other than death penalty cases, come to the Supreme Court on discretionary review after a first-level review by the Ohio Court of Appeals.[18]

Most civil cases are heard on a discretionary basis but there are some that are mandatory. Civil appeals include administrative agency cases primarily involving public utilities or taxation. Additionally, there are mandatory cases involving bar and judicial disciplinary matters, election contests, and certified conflict cases.

Finally, the Ohio Supreme Court has jurisdiction over applications for writs and death penalty related cases. Historically, any offense receiving a death sentence penalty went directly from a trial court to the Ohio Court of Appeals for initial review. A state constitutional amendment changed that policy. For offenses committed after July 1, 1995, where a death penalty sentence has been imposed, they bypass the Court of Appeals and go directly to the Ohio Supreme Court.

Virginia. The Virginia Supreme Court virtually has complete discretionary jurisdiction in criminal and civil cases, with the exception of bar and judicial disciplinary matters, applications for writs, and death penalty reviews. The discretionary petitions for review come to the Court through two alternative routes depending on the area of law.

Tort, contract, and real property cases go directly from a trial court to the Virginia Supreme Court on a discretionary basis. Domestic relations, administrative agency, and non-death penalty criminal cases go to the Supreme Court after first-level review by the Virginia Court of Appeals.[19] However, the Virginia Court of Appeals has discretionary jurisdiction over

[18] In 1996, there were 12,455 mandatory cases filed and 12,509 cases resolved in the Ohio Court of Appeals. The Court has no discretionary jurisdiction.

[19] In 1996, there were 839 cases filed with and 876 resolved by the Virginia Court of Appeals. In addition, there were 2,379 discretionary cases filed and 2,460 resolved in 1996.

criminal appeals and mandatory jurisdiction only over domestic relations and agency cases. Hence, the state appellate system of Virginia is highly discretionary.

Comparing the Business of the Five Courts and the Kagan Model

Data from the five courts tend not to support the Kagan model's basic proposition that supreme courts in two-tiered appellate systems have primarily cases that they decide on a discretionary jurisdiction basis, as shown in Table 2.

Table 2: What is the Frequency of Different Kinds of Cases?
(Cases Resolved in 1996 and 1997)[1]

	Number of Discretionary Petitions Resolved	Number of Discretionary Petitions Granted	Number of Mandatory Appeals	Ratio of Granted Petitions to Mandatory Appeals	Number of Bar Disciplinary Cases	Number of Applications for Writs	Number of Death Penalty Related Cases	Total Number of Mandatory Cases
Florida	2091	368	117	3.2:1	1140	1286	227	2770
Georgia	1520	170	515	.3:1	198	627	39	1379
Minnesota	1425	211	243	.9:1	74	43	0	360
Ohio	3958	319	533	.6:1	342	673	34	1582
Virginia	3750	395	0	395:1	6	1394	7	1407

[1]Cases resolved includes cases decided on the merits, cases denied review, and cases dismissed either voluntarily or by a court.

There are several propositions concerning the relative frequency of granted discretionary petitions compared to the other kinds of cases in the courts. Presumably, the focus of attention should be on the number of discretionary petitions that are granted because only they constitute the portion of all of the discretionary petitions that can possibly result in a published opinion, which is what Kagan et al. define as a significant case. Discretionary petitions that are denied do not result in published decisions. To the extent that state supreme courts are able to focus on what they consider to be significant cases, each of the courts should have a substantial number of discretionary petitions that are granted. Yet, the number of discretionary cases appears to be quite limited when considering the five courts. Only Virginia has a preponderance of granted

discretionary petitions in its caseload mixture. This conclusion is based on the following four propositions based on the data in Table 2.

(1) Only Florida and Virginia have more discretionary petitions granted than mandatory appeals.

(2) Only Virginia has more granted discretionary petitions than mandatory appeals and death penalty related cases.

(3) Only Virginia has more granted discretionary petitions than mandatory appeals and disciplinary cases.

(4) Only Virginia has more granted discretionary petitions than mandatory appeals, bar disciplinary cases, and applications for writs.

In addition to the lack of a preponderance of granted discretionary petitions in all five of the courts, the mixtures of cases among the courts are strikingly different, as shown in Table 2. Some of the profiles include the following four patterns:

(1) Florida has nearly four times the number of disciplinary cases than any other court and nearly six times the number of death penalty related cases as any other court.

(2) Georgia and Ohio have more than twice the number of mandatory appeals as any other court.

(3) Florida and Virginia have twice as many applications for writs than any other court.

(4) Ohio has nearly twice the number of discretionary petitions granted and mandatory appeals as any other court.

Kagan et al. might contend that the data on the relative frequencies of granted discretionary petitions and the courts' caseload mixtures are really not a test of their model because the different kinds of cases are not equivalent. They might argue that discretionary granted cases are weightier, of greater precedential authority, or affect public policy more extensively than other kinds of cases.

Of course, a lawyer who faces the possibility of having his or her license to practice law revoked, suspended, or otherwise be disciplined by a state supreme court likely would contend that a bar disciplinary matter is significant. Likewise a political party that has filed an application for a writ contesting an election probably would say that nothing is as important as

their kind of case. And simply because a criminal defendant's case is a mandatory appeal rather than a petition for review of a life imprisonment sentence, he or she likely hopes that a state supreme court considers the case to be of ultimate significance.

As noted previously, Kagan et al. define "significant" cases to be cases resulting in published opinions, over one page. State supreme courts in two-tiered systems are not only using discretion to hear a particular number of cases, but to hear essentially only cases that they think are significant. If that relationship holds, the publication rate among granted discretionary cases should be substantial. Yet, what does substantial mean? Does it mean that nearly 100 percent of all granted discretionary petitions result in published opinions? Does it mean that more granted discretionary petitions are published than are decided by some form of a summary disposition? Or does it mean that more granted discretionary petitions than mandatory appeals result in published opinions?

Kagan et al. offer no answers. They have no data on which to address these questions. They looked at only published opinions, and they cannot say how many granted discretionary petitions resulted in published opinions during their study period. They did not collect any information on whether a case that did result in a published opinion was a discretionary or mandatory case. Therefore, they have no pertinent baseline data on these two basic kinds of cases.

Perhaps, Kagan et al. assume that most published opinions came from granted discretionary petitions because of their belief in the expanding discretionary jurisdiction of state supreme courts. As discretionary jurisdiction expands, there are necessarily fewer other kinds of cases to warrant opinion preparation. Despite these ambiguities, it seems fair and reasonable to presume that the model would predict that, were data available, more written opinions rather than

summary dispositions or dismissals would occur in granted discretionary petitions than in mandatory appeals.

Because all courts do not record the number of signed, published decisions or even written opinions in their automated record-keeping systems, this proposition cannot be examined precisely or uniformly across the four courts under study (Virginia is excluded because it does not have mandatory appeals). Nevertheless, the available data from the four courts offer limited support for the Kagan model.

The clearest degree of support is found in Florida, as shown below in Table 3. The rate of written opinions is considerably higher in both civil (71%) and criminal (62%) granted discretionary petitions than it is in civil (24%) and criminal (11%) mandatory appeals. However, Minnesota offers a contrasting picture. There the rates of written opinions are practically the same in discretionary and mandatory criminal cases (97% vs. 93%), although more opinions are produced in granted discretionary agency cases than in mandatory agency cases (86% vs. 34%).

Georgia and Ohio's patterns are discernable, but they provide comparisons only in the rates of "merits decisions" because the data on written decisions are not available. Nevertheless, one would expect from the model that the percentage of "merits" decisions is higher in granted discretionary petitions than in mandatory appeals in both states. Whereas Georgia tends to be supportive of this prediction, Ohio's figures are less supportive. It cannot be said that the data from all four courts confirm the assumption that only granted discretionary petitions are significant and that all significant cases are granted discretionary petitions.

Table 3: What is the Form of Dispositions?
(Cases Resolved in 1996 and 1997)

Florida

	Granted Discretionary Petitions		Mandatory Appeals		
	Civil	Criminal	Civil	Criminal	Agency
Rate of Written Opinions	71%	62%	24%	11%	37%
Rate of Summary Dispositions	29%	38%	58%	37%	5%
Dismissal Rate	0%	0%	18%	53%	58%
	174	194	79	19	19

Georgia

	Granted Discretionary Petitions	Mandatory Appeals	
	Civil	Civil	Criminal
Rate of Decisions on Merits	86%	45%	18%
Dismissal Rate	14%	55%	82%
	113	237	272

Minnesota

	Granted Discretionary Petitions			Mandatory Appeals	
	Civil	Agency	Criminal	Criminal	Agency
Rate of Written Opinions	95%	86%	97%	93%	34%
Rate of Summary Dispositions	0%	14%		0%	66%
Dismissal Rate	5%	0%	3%	7%	7%
	153	14	39	44	199

Ohio

	Granted Discretionary Petitions		Mandatory Appeals		
	Civil	Criminal	Civil	Criminal	Agency
Rate of Decisions on Merits	98%	100%	80%	98%	93%
Dismissal Rate	2%	0%	20%	2%	7%
	201	44	283	52	106

Summary

The Kagan model is of tremendous value in highlighting the essential elements of state appellate systems in the United States and the critical role that these courts play in resolving disputes. The analytical framework has been of enduring significance in understanding why intermediate appellate courts have been created and why they continue to expand. Yet, this model is of limited utility in appreciating the combination of different kinds of cases that come to the top tier of two-tiered appellate systems.

Contrary to the model, the work of state supreme courts is not focused only on discretionary petitions for review. Kagan et al. acknowledge that state supreme courts have more

to do than write opinions in granted discretionary cases. They note that the justices have to sift through all of the petitions that are filed and decide which ones to hear (Kagan et al., 1978). However, that is only part of the picture.

In this chapter, it has been demonstrated that the five courts under study demonstrate that there are at least five kinds of appellate cases. Granted discretionary petitions for review constitute only one kind. There are also mandatory appeals, applications for writs, bar disciplinary cases, and death penalty related cases. These kinds of cases are numerous and sizable portions of state supreme court caseloads. Moreover, the exact combination of these different kinds of cases is different among the five courts. The most far reaching implication of these patterns is the need to know what each court's caseload mixture looks like and to take it into account in measuring the timeliness of each individual state supreme court and the relative timeliness of different courts.

CHAPTER IV. TIMELINESS

Overview

There are three central questions that organize this chapter. First, how much time do state supreme courts take to resolve their cases? Are state supreme courts able to approximate the ABA guidelines? Is timeliness related to particular combinations of cases that a court has to handle?

To address these questions, data are presented on cases resolved in 1996 and in 1997 in each of the five courts. Without subscribing entirely to the ABA Reference Models, the ABA time frames are used as points of comparison.[20]

The initial section of this chapter is a broad comparison of the ABA criteria and the five courts. Discretionary petitions and mandatory appeals are examined to gauge how expeditiously these two basic kinds of cases are resolved. That inquiry is followed by a closer inspection of the full range of cases in each of the courts. This additional analysis is intended to determine if different kinds of cases have correspondingly different case processing times. Next, there is a discussion of the time taken to resolve death penalty related cases. Finally, there is a cross-court

[20] A note of caution concerning the use of the ABA's Reference Models is required. Simply stated, they cannot be applied in a straightforward, unambiguous manner. Several questions arise concerning their application. They are as follows: (1) Are reference models intended to apply to only petitions for review and mandatory appeals? The specific numerical time frames embodied in the ABA Standard 3.52 refer to the elapsed time beginning with the filing of a "petition for certiorari from the intermediate appellate court" or the "notice of appeal" (American Bar Association, Judicial Administration Division, 1994:100). What time frame should be applied to other kinds of cases, such as applications for writs and bar disciplinary cases? (2) What "petitions for certiorari" are to be included? Are granted and denied petition to be combined? Or are only granted petitions to be analyzed? Alternatively, should there be different time frames for granted and denied petitions? (3) What are the time frames for petitions for certiorari that do not come from an intermediate appellate court? Should granted petitions that come from a trial court and that require the record to be prepared have the same standard as petitions from an intermediate appellate court? (4) Should mandatory appeals have the same time frame as granted discretionary petitions? For example, what if mandatory criminal appeals have more serious underlying offenses than those under discretionary review? (5) Are civil cases equivalent to criminal cases? (6) Should discretionary petitions and mandatory appeals have the same standard? Mandatory appeals require record preparation, a step ostensibly completed with discretionary cases. What if a court has a substantial number of mandatory appeals? These

analysis to identify particular conditions under which some cases take longer to resolve than other cases.

ABA Reference Models and the Courts

A general way to estimate the timeliness of state supreme courts is to apply the ABA reference models to all discretionary petitions and to all mandatory appeals. These broad categories are appropriate because the ABA explicitly states that its time frames are to apply to these two kinds of cases. As a result, no distinction is made between civil and criminal cases or among different types of civil and criminal cases. Whether a petition comes directly from a trial court is not relevant, and the relative frequencies of petitions and appeals are not germane to an application of the ABA time standard. However, a distinction between granted and denied petitions is of importance, as Kagan et al. suggest. Justices, litigants, attorneys and the public likely focus on granted petitions in assessing timeliness; therefore, all petitions are looked at as well as the separate categories of granted and denied petitions.

Based on an examination of two broad case categories of discretionary petitions and mandatory appeals, the five state supreme courts appear expeditious, as shown in Table 4. If all discretionary petitions are combined into a single category, every court resolves these cases expeditiously at both the 50^{th} and 90^{th} percentiles. For example, whereas Ohio takes the longest time to resolve 50 percent of its petitions (104 days or fewer) and Florida take the longest time to resolve 90 percent of its petitions (296 days or fewer), these times are within the boundaries set by the ABA. Ability of all of the courts to make a decision of whether to quickly hear a case underlies overall positive performance. Proof of this connection can be seen in the elapsed

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questions are discussed in the analyses below and are the basis for suggested ways to improve the measurement of timely performance in the future.

number of days from the date of the filing of a petition for review to resolution in instances when petitions are denied.

Ohio takes the longest amount of time to deny cases full-blown appellate review at both the 50th (100 days or fewer) and 90th (154 days or fewer) percentiles. Florida (120 days or fewer), Georgia (144 days or fewer), and Virginia (145 days or fewer) have similar 90th percentile figures. Minnesota has even a tighter time frame. Ninety percent of the petitions that are denied full review are resolved in 46 days or fewer after filing.[21] The five courts manage to deny petitions well within the time frames set up by the ABA. Because many more petitions are denied than are granted by each court, the combination of denied petitions and granted petitions results in a speedy resolution of all discretionary petitions.

Table 4: How Do the Five Courts Stand in Relation to theABA Reference Models?

Elapsed Number of Days from the Date of the Filing to Resolution (Cases Resolved in 1996 and 1997)*

	ABA Guideline: 50 Percent of cases should be resolved in 290 days or fewer				*ABA Guideline: 90 Percent of cases should be resolved in 365 days or fewer*			
	All Petitions	**Denied Petitions**	**Granted Petitions**	**Mandatory Appeals****	**All Petitions**	**Denied Petitions**	**Granted Petitions**	**Mandatory Appeals**
Florida	64 (2091)	16 (1923)	311 (368)	141 (117)	296	120	528	328
Georgia	85 (1520)	84 (1400)	150 (120)	227 (515)	154	144	298	384
Minnesota	20 (1425)	19 (1412)	240 (211)	81 (243)	204	46	381	318
Ohio	104 (3958)	100 (3639)	404 (319)	162 (533)	175	154	580	624
Virginia	95 (3750)	91 (3555)	270 (395)	No Jurisdiction	212	145	355	No Jurisdiction

*The numbers in parentheses refer to the number of cases.

**Mandatory appeals do not include death penalty cases.

However, the courts are not able uniformly to resolve granted discretionary petitions in the same expeditious manner. Florida (528 days or fewer), Minnesota (381 days or fewer) and

[21] The relatively short period of time taken by the Minnesota Supreme Court might be attributable, at least in part, to its procedure of basing its grant versus deny decision on a limited petition for review. The parties submit petitions of no more than 5 pages (exclusive of the appendix) in civil cases and 10 pages (exclusive of the appendix) in criminal cases justifying why the Court should take the case. If granted, the parties then submit full written briefs. This two-step process might be an efficient way for the Court to make its initial grant versus deny decision. Shorter, well-focused briefs might facilitate the Court's initial decision.

Ohio (580 days or fewer) take longer to resolve 90 percent of their granted petitions than the ABA suggests. A parallel pattern exists in the mandatory appeal case category. Minnesota (318

days or fewer) and Florida (328 days or fewer) are within the ABA time frame at the 90th percentile, but Georgia (384 days or fewer) and Ohio (624 days or fewer) take longer than the ABA guideline of 365 days or fewer to resolve 90 percent of mandatory appeals.

Three implications flow from the data presented in Table 4. One implication is that timeliness depends on how discretionary cases are defined. Combining petitions that are denied with petitions that are granted results in every state supreme court being expeditious. Second, both granted petitions and mandatory appeals, at least in some courts, take more time to resolve than the ABA proposes. However, there is no obvious symmetry in the time required to handle these two kinds of cases. In Georgia and Ohio, mandatory appeals prove more time consuming. On the other hand, in Florida and Minnesota, granted discretionary petitions take longer to resolve than mandatory appeals. Third, courts (Florida and Ohio) where either granted discretionary petitions and mandatory appeals take relatively the longest time to resolve have relatively large numbers of cases. There is a need to examine each court to see more precisely what is the nature of the caseload mixtures and to determine if caseload mixture is associated with timeliness.

Individual Courts and Timeliness

Every court has a particular combination of five basic kinds of cases. However, the absolute numbers and relative frequencies of discretionary petitions, mandatory appeals, bar disciplinary cases, applications for writs, and death penalty related cases are different. The purposes of this discussion are to highlight the essential aspects of each court's caseload and to explore the relationship between caseload mixture and timeliness.

Florida. The Florida Supreme Court resolved 4861 cases in 1996 and 1997. Only Ohio resolved more cases. These cases ranged across a broad spectrum, as shown in Table 5.

Approximately half of the cases resolved in 1996 and 1997 are discretionary cases arising from one of the state's regional district appellate courts. Some of these cases are "conflict" cases that have been certified by a regional district appellate court as involving a matter of public importance or direct conflict among the state's first-level appellate courts. Most discretionary cases do not have court certification. Instead, an appellant certifies that a case involves constitutional or statutory interpretation or direct conflict among the appellate courts. It is understandable that a higher percentage of the conflict cases are granted (86 percent) than the appellant certified cases (60 percent). Nevertheless, the total number of granted discretionary cases (368) is greater than any other court except for Virginia, which has extensive discretionary jurisdiction.

There are a limited number of mandatory appeals (117). Generally speaking, mandatory appeals involve cases where one of the regional district appellate courts has declared a state statutory or constitutional provision invalid or the case involved bond validation or public utilities. There are sizable numbers of bar disciplinary cases (1140) and applications for writs (576). The number of disciplinary cases is greater than in any other court and only Virginia has more applications for writs. Finally, there are more death penalty related cases (227) in Florida than any other court. This is true for both direct reviews (113) and applications for writs and post-conviction challenges (114).

Table 5: Supreme Court of Florida
Number of Days from Filing to Resolution
(Cases Resolved in 1996 and 1997)

Type of Case		Number of Cases	50th Percentile	90th Percentile
American Bar Association (ABA) Guidelines			**290 Days**	**365 Days**
Discretionary Cases	**All Discretionary Cases**	**2091**	**64**	**296**
	All Granted Discretionary Cases	**368**	**311**	**528**
	Civil (including administrative agency cases)	174	338	564
	Criminal	194	283	479
	All Denied Discretionary Cases	**1723**	**16**	**120**
	Civil (including administrative agency cases)	913	52	129
	Criminal	810	11	107
	Conflict Cases[1]			
	Granted			
	Civil (including administrative agency cases)	127	329	550
	Criminal	135	272	529
	Denied			
	Civil (including administrative agency cases)	21	130	971
	Criminal	21	148	464
	Notices to Invoke Discretionary Jurisdiction[2]			
	Granted			
	Civil (including administrative agency cases)	47	374	596
	Criminal	59	325	465
	Denied			
	Civil (including administrative agency cases)	892	48	127
	Criminal	789	11	103
Mandatory Cases	**All Mandatory Cases**	**1257**	**164**	**480**
	Civil Appeals	98	170	330
	Criminal Appeals	19	135	311
	All Other Types of Cases[3]	1140	165	495
Applications for Writs in Non-Death Penalty Cases	**All Applications for Writs of Habeas Corpus**	**710**	**41**	**145**
	Habeas Corpus Applications Granted	33	130	451
	Habeas Corpus Applications Denied	657	39	118
	Habeas Corpus Applications Dismissed/Withdrawn	20	58	354
	All Applications for Other Types of Writs	**576**	**69**	**206**
	Other Writs Granted	131	187	215
	Other Writs Denied	399	55	121
	Other Writs Dismissed/Withdrawn	46	72	270

(Continued on next page)

Table 5: Supreme Court of Florida
Number of Days from Filing to Resolution
(Cases Resolved in 1996 and 1997)

Type of Case	Number of Cases	50th Percentile	90th Percentile
All Death Penalty Related Cases	**227**	**612**	**1241**
Direct Review	113	955	1492
Initial Review	89	962	1410
Review After Resentencing or Retrial	24	938	1696
Post-Convictions Challenges	58	350	1043
Cases Arising After Trial Court Evidentiary Hearing	26	626	1348
All Other Cases	32	138	532
Applications for Writs	56	67	223
Habeas Corpus	11	178	1570
All Other Types of Writs	45	62	134

[1] A Florida District Court of Appeal certifies that the case involves issues of great public importance or direct conflict among the Florida Courts of Appeal.
[2] Appellant contends that the case involves issue of statutory validity, constitutional construction, constitutional or state officers, or conflict among the Florida Courts of Appeals.
[3] All other cases are generally bar disciplinary cases, judicial ethics cases, and certificates of judicial manpower.

Ninety percent of Florida granted civil conflict cases are resolved in 550 days or fewer and ninety percent of granted criminal conflict cases are resolved in 529 days or fewer. Both figures exceed the ABA suggested limit of 365 days or fewer. A similar pattern is seen in the notices to invoke discretionary review. Ninety percent of notices in civil cases take 596 days or fewer to resolve and ninety percent of notices in criminal cases take 465 days or fewer to resolve. A similar situation occurs with bar disciplinary cases. Ninety percent of these cases take 495 days or fewer to resolve.

Mandatory appeals are resolved relatively more expeditiously. Civil and criminal cases take less time to resolve than the upper limit set by the ABA. Specifically, most civil appeals are resolved in 330 days or fewer and most criminal appeals are resolved in 311 days or fewer. Both figures are within the ABA criterion of 365 days or fewer for the resolution of 90 percent of a state supreme court's caseload.

Bar disciplinary cases and application for writs present a mixed picture. Generally speaking, applications for writs are resolved within the ABA time frame. The exception consists

of granted applications for writs at the 90th percentile. Ninety percent of the writs for habeas corpus take 451 days or fewer to be resolved, in contrast to the ABA standard of 365 days or fewer. A similar pattern occurs in bar disciplinary cases. The shortfall occurs primarily at the 90th percentile, which is 495 days or fewer.

Finally, death penalty related cases take more than a considerably long time to resolve, although the ABA seems to expect that such cases will be among those with the longest resolution times. Because there is a section below dedicated to death penalty cases, no further discussion is offered here.

Georgia. The Georgia Supreme Court has a substantial number of discretionary petitions for review. During 1996 and 1997 there were 1520 cases resolved. The process was timely using the ABA time frame as a yardstick, as shown in Table 6.

Table 6: Supreme Court of Georgia
Number of Days from the Date of Filing to Resolution
(Cases Resolved In 1996 and 1997)

Type of Case		Number of Cases	50th Percentile	90th Percentile
American Bar Association (ABA) Time Frames			**290 Days**	**365 Days**
Discretionary Cases	**All Discretionary Cases[1]**	**1520**	**85**	**154**
	All Discretionary Cases Granted	120	150	298
	All Discretionary Cases Denied	1400	84	144
	Petitions for Writs of Certiorari			
	Granted	**14**	**150**	**214**
	Civil (including child custody and administrative agency cases)	14	150	214
	Criminal	0	---	---
	Denied	**1148**	**88**	**149**
	Civil (including child custody and administrative agency cases)	839	88	153
	Criminal	309	88	144
	Applications for Review (filed directly or from trial court or an administrative agency)			
	Granted	**106**	**154**	**306**
	Civil (including zoning, domestic relations and administrative agency cases)	106	154	306
	Criminal	0	--	--
	Denied	**252**	**28**	**32**
	Civil (including domestic relations and administrative agency cases)	250	28	32
	Criminal (e.g., denial of post-trial motions)	2	13	22
Mandatory Cases	**All Mandatory Cases**	**713**	**194**	**368**
	Civil Appeals	242	229	378
	Criminal Appeals	273	224	391
	Murder convictions and Life Sentences	242	227	388
	All Other Criminal Cases[1]	31	196	464
	All Other Types of Cases[2]	198	90	258
Applications for Writs in Non-Death Penalty Cases	**All Applications for Writs of Habeas Corpus**	**533**	**129**	**300**
	Habeas Corpus Appeals[3]	20	198	305
	Habeas Corpus Applications Granted	11	113	576
	Habeas Corpus Applications Denied	489	128	292
	Habeas Corpus Applications Dismissed/Withdrawn	13	44	262
	All Applications for Other Writs	**94**	**120**	**289**
	Other Writs Granted	23	216	364
	Other Writs Denied	9	26	30
	Other Writs Dismissed/Withdrawn	62	108	302

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Table 6: Supreme Court of Georgia
Number of Days from the Date of Filing to Resolution
(Cases Resolved In 1996 and 1997)

Type of Case	Number of Cases	50th Percentile	90th Percentile
All Death Penalty Related Cases	**39**	**115**	**462**
Direct Review (including retrials and resentenced cases)	16	255	551
Habeas Corpus Appeals	12	125	305
Interim Appellate Review (cases involving pretrial motions)	11	20	22

[1] Includes criminal cases involving constitutional questions and criminal cases where the ten members of the Georgia Court of Appeals were divided equally.
[2] All other types of cases include bar disciplinary, judicial qualifications, and certified question cases.
[3] Habeas corpus appeals are from pre-trial detainees and habeas corpus applications are from convicted prisoners.

Both granted and denied discretionary cases are resolved within the limits prescribed by the ABA. Fifty percent of the granted discretionary cases are resolved within 150 days and 90 percent were resolved within 298 days after filing. Given that the ABA suggests upper time limits of 290 and 365 days, respectively, the performance of the Court is quite timely. Denied discretionary cases are resolved even more quickly. Fifty percent were resolved in 84 days or fewer and ninety percent were resolved in 144 days or fewer.

However, the timeliness of discretionary cases depends on whether the case is a petition for a writ of certiorari challenging a Georgia Court of Appeals decision or an application for review arising directly from a trial court or administrative agency. In the former kind of case, the Supreme Court has a lower trial court record and an intermediate appellate court opinion to work with immediately after the petition is filed. In contrast, a record has to be submitted in the event that an application for review is granted and it has no opinion from the Georgia Court of Appeals to consider.

The Georgia Supreme Court acts in accordance with a statutory mandate to grant or deny an application for review promptly after filing. Evidence of this situation is that ninety percent of the decisions to deny full-blown appellate review are made in 32 days or fewer. However, if an application for review is granted, the step of record preparation has to be completed. As a

result, it should be expected that granted applications for review take longer to resolve than petitions for writs of certiorari. As seen in Table 3, that is the case. Ninety percent of granted applications for review take 306 days or fewer to resolve and granted petitions for writs for certiorari take 214 days or fewer to resolve.

Most of the Georgia Supreme Court's caseload lies in the mandatory area. The Court grants approximately 8 percent of its discretionary cases, which translates to 60 cases annually, on average, for 1996 and 1997. In contrast, there were 546 mandatory civil and criminal appeals resolved in 1996 and 1997, or an annual average of 273 cases.

Mandatory cases take longer to resolve than discretionary petitions. Specifically, it takes the Court longer to resolve 90 percent of its appeals than the ABA recommendation. The ABA states that ninety percent should be resolved in 365 days or fewer and the Georgia Supreme Court takes 378 and 391 days or fewer to resolve 90 percent of its civil and criminal appeals, respectively.

The relatively longer time required to resolve a mandatory appeal is understandable on two grounds. First, the record has to be prepared and submitted in all of the mandatory appeals. Second, the weighty nature of mandatory criminal appeals is evident by the severity of the offense in some of the cases. Two hundred and twenty-three mandatory appeals involved murder convictions and life sentences. On the other hand, 31 criminal appeals posed either constitutional issues or an equally divided decision by the Georgia Court of Appeals. It is not surprising that these kinds of cases took longer to resolve than the granted discretionary cases.

In addition to discretionary petitions for review and mandatory appeals, the Georgia Supreme Court has three other kinds of cases. They include 198 bar disciplinary, judicial qualifications, and certified question cases. There are also 627 applications for writs and 39

death penalty related cases. All disciplinary cases and writs are resolved within the ABA time frames except for the granted habeas corpus petitions. Ninety percent of the granted habeas corpus applications are resolved in 576 days or fewer. As with the other states, the death penalty cases are subject to more extensive analysis in a later section. Suffice it to say, as in Florida, 90 percent of the death penalty direct reviews take more than 365 days or fewer to complete.

Minnesota. The Minnesota Supreme Court has a substantial number of both discretionary petitions and mandatory appeals. It comes close to meeting the ABA time frames in both instances. However, criminal cases in Minnesota take longer to resolve whether they are discretionary petitions for review or mandatory appeals.

Concerning petitions for review, 90 percent of the criminal cases are resolved in 413 days or fewer. On the other hand, 90 percent of the civil petitions for review are resolved in 379 days or fewer, as shown in Table 7.

Table 7: Supreme Court of Minnesota
Number of Days from the Date of Filing to Resolution
(Cases Resolved 1996 and 1997)

Type of Case		Number of Cases	50th Percentile	90th Percentile
American Bar Association (ABA) Time Frames			**290 Days**	**365 Days**
Discretionary Cases	**All Discretionary Cases**	**1425**	**20**	**204**
	All Granted Petitions for Review	**211**	**240**	**381**
	Civil[1] (including administrative agency cases)[2]	167	239	379
	Criminal	39	275	413
	All Other Types of Petitions[3]	5	163	268
	All Denied Petitions for Review	**1214**	**19**	**46**
	Civil (including administrative agency cases)	805	19	40
	Criminal	390	20	56
	All Other Types of Petitions	19	20	26
Mandatory Cases				
	All Mandatory Cases	**317**	**88**	**386**
	Criminal Appeals (first degree homicide convictions)	44	371	554
	Administrative Agency Appeals[4]	199	82	237
	All Other Types of Cases[5]	74	163	476
Applications for Writs	**All Applications for Writs of Habeas Corpus**	**8**	**15**	**61**
	Habeas Corpus Applications Granted	0	--	--
	Habeas Corpus Applications Denied	6	15	61
	Habeas Corpus Applications Dismissed	2	15	24
	All Applications for Other Writs	**35**	**17**	**49**
	Other Writs Granted	5	178	234
	Other Writs Denied	28	17	36
	Other Writs Dismissed	2	11	11

[1] Includes general civil, family, probate, and civil commitment cases.
[2] Includes petitions concerning the granting or denying of unemployment benefits to discharged employees and particular agency reviews.
[3] All other petitions include certified questions of law and implied consent cases (DUI).
[4] Includes workers' compensation and tax cases.
[5] All other types of cases includes bar and judicial disciplinary cases, election contests, and certified questions.

What is striking is the relatively long time taken to resolve the mandatory criminal appeals. Ninety percent are resolved in 554 days or fewer. The length of time taken to resolve these appeals does not seem to be a function of a large number of these cases, or even a large caseload overall. Minnesota has a relatively smaller caseload than the other courts under study.

Rather, the Minnesota situation is analogous to the one observed above concerning Georgia's mandatory criminal appeals. The mandatory criminal appeals in Minnesota involve

very serious offenses. They are all first-degree homicide convictions with lengthy custodial sentences. Additionally, a record has to be prepared in contrast to discretionary cases where the record already has been completed at the time the petition is filed. Finally, with discretionary cases, an opinion from the Minnesota Court of Appeals is available to the Supreme Court to consider. No such opinion is present in the case of mandatory appeals filed directly in the Supreme Court from a trial court.

There are limited numbers of other appellate cases before the Minnesota Supreme Court. It has the fewest number of applications for writs than any other court and fewer disciplinary cases than any other court except Virginia. Applications for writs are resolved well within the ABA guidelines for appellate cases, although 90 percent of the disciplinary cases are resolved within a wider time frame (476 days or fewer) than the ABA guideline (365 days or fewer). There are no death penalty cases because Minnesota has no death penalty statute.

Ohio. The Ohio Supreme Court has the largest number of discretionary petitions for review than any court under study. In 1996 and 1997, the Court resolved 3,958 petitions, as shown in Table 8.

Table 8: Supreme Court of Ohio

Number of Days from the Date of Filing to Resolution (Cases Resolved During 1996 and 1997)

Type of Case		Number of Cases	50th Percentile	90th Percentile
American Bar Association (ABA) Time Frames			**290 Days**	**365 Days**
Discretionary Cases	**All Discretionary Cases**	**3958**	**104**	**175**
	All Granted Petitions	**319**	**404**	**580**
	Civil	264	401	575
	Criminal[1]	55	415	653
	All Denied Petitions	**3639**	**100**	**154**
	Civil	2285	104	156
	Criminal	1354	93	152
Mandatory Cases	**All Mandatory Cases**	**875**	**188**	**698**
	Civil (including administrative agency cases)[2]	480	285	803
	Criminal Appeals	53	177	266
	All Other Types of Cases[3]	342	146	404
Applications for Writs in Non-Death Penalty Cases	**All Applications for Writs of Habeas Corpus**	**194**	**36**	**60**
	Habeas Corpus Applications Granted	0	-----	-----
	Habeas Corpus Applications Denied	0	-----	-----
	Habeas Corpus Applications Dismissed/Withdrawn	194	36	60
	All Applications for Other Writs	**479**	**58**	**163**
	Other Writs Granted	278	64	178
	Other Writs Denied	17	217	438
	Other Writs Dismissed/Withdrawn	184	54	82
Death Penalty Related Cases	**Direct Reviews**	**34**	**422**	**567**
	Reviews after retrials and resentencing; offense committed prior to 1/1/1995[4]	25	433	558
	Reviews after retrials and resentencing; offense committed on or after 1/1/1995	3	569	569
	Post-Conviction Proceedings	6	207	233

[1] There are some appeals of right in this category that cannot be sorted out from the discretionary cases in the Court's database.
[2] Administrative agency cases include utility and tax cases.
[3] All other types of cases include attorney and judicial disciplinary cases, election contests, and certified questions.
[4] For offenses committed prior to January 1, 1995, death penalty cases were filed directly with the Ohio Court of Appeals. If an offense was committed after that date, a death penalty case comes directly from the trial court to the Supreme Court.

The time that it takes the Court to make an initial decision whether to grant a petition is similar to the other courts and well within the ABA guidelines. Fifty percent of discretionary petitions are denied in 100 days or fewer after filing and 90 percent are denied in 154 days or fewer after filing.

On the other hand, the 8 percent or 319 petitions that are granted take longer to resolve than the guidelines set by the ABA. Of the granted petitions, 50 percent are resolved in 404 days or fewer and 90 percent are resolved in 580 days or fewer. As in Minnesota, granted criminal discretionary cases take longer to resolve than civil cases. Ninety percent of the criminal cases are resolved in 653 days or fewer and ninety percent of the civil cases are resolved in 575 days or fewer.

The timely resolution of granted discretionary petitions is affected not only by the large number of discretionary cases, but by the sizable number of mandatory appeals (533), bar disciplinary cases (342), applications for writs (673), and death penalty related cases (34). In fact, Ohio has the largest number of appellate cases of any of the five courts under study, whether all discretionary petitions or only granted discretionary petitions are included in the count.

The most troublesome kind of case for the Court is the mandatory civil appeal. Fifty percent of these cases are resolved in 285 days or fewer, which is within the ABA time frame of 290 days. However, 90 percent of the cases take 803 days or fewer, which is considerably beyond the ABA guideline of 365 days or fewer.

Ninety percent of the applications for writs, such as mandamus and prohibition, which were denied, are resolved in 438 days, or fewer. Again that figure exceeds the ABA recommendation of 365 days or fewer.

The time taken to resolve death penalty appeals in Ohio presents an interesting situation. Direct review by a state supreme court should take longer than a supreme court review where an intermediate appellate court has conducted an initial review. This difference is expected because when death penalty cases bypass an intermediate appellate court, a trial court record has to be

prepared and there is no first-level appellate court opinion for a supreme court to consider. It is possible to see if this expectation is consistent with reality because Ohio once had a policy in place that sent death penalty cases first to the Court of Appeals. Ohio then changed its policy by a constitutional amendment and sent death penalty cases directly from a trial court to the Supreme Court, bypassing the Court of Appeals. A before and after comparison indicates that death penalty cases filed directly in the Ohio Supreme Court take longer to resolve than those that do not by-pass the Court of Appeals. This relationship holds at both the 50th and 90th percentiles. For both percentiles, the number of days is greater for the cases filed directly with the Supreme Court. Because there are a limited number of cases that are resolved in 1996 and 1997 directly by the Ohio Supreme Court, it will be important to see if this trend continues in the future (The time taken to resolve the three cases are 175, 569, and 569 days respectively. This situation explains why the 50th and 90th percentiles are the same).

Virginia. The Virginia Supreme Court has primarily discretionary jurisdiction. The 3,750 discretionary cases resolved in 1996 and 1997 is second in number only to Ohio among the courts under study. There are a limited number of disciplinary cases (6), a relatively large number of applications for writs (1,394), and a relatively limited number of death penalty cases (7), as shown in Table 9. In contrast to all of the other courts under study, the Virginia Supreme Court resolves discretionary petitions for review within the ABA time frames. Fifty percent are resolved in 270 days or fewer and 90 percent are resolved in 355 days or fewer.

Table 9: Supreme Court of Virginia

Number of Days from the Date of Filing to Resolution
(Cases Resolved During 1996 and 1997)

Type of Case		Number of Cases	50th Percentile	90th Percentile
American Bar Association (ABA) Time Frames			**290 Days**	**365 Days**
Discretionary Cases	**All Discretionary Cases**	**3750**	**95**	**212**
	All Granted Petitions	**395**	**270**	**355**
	Civil (including Administrative Agency cases)	349	270	354
	Criminal	36	274	376
	All Other Types of Petitions[1]	10	220	288
	All Denied Petitions	**3355**	**91**	**145**
	Civil (including Administrative Agency cases)	1246	91	162
	Criminal	2105	91	134
	All Other Types of Petitions[2]	4	46	99
Mandatory Cases	**All Mandatory Cases[3]**	6	42	137
Applications for Writs in Non-Death Penalty Cases	**All Applications for Writs of Habeas Corpus**	**1138**	**103**	**166**
	Habeas Corpus Granted	185	105	160
	Habeas Corpus Denied	926	103	168
	Habeas Corpus Dismissed/Withdrawn	27	74	144
	All Applications for Other Writs	**256**	**59**	**120**
	Other Writs Granted	1	18	18
	Other Writs Denied	246	61	122
	Other Writs Dismissed/Withdrawn	9	43	97
Death Penalty Related Cases	**Direct Reviews[4]**	**7**	**183**	**281**

[1] Civil cases include habeas corpus appeals.
[2] All Other Petitions include certified questions of law.
[3] Mandatory cases are disciplinary cases.
[4] The time frame in Virginia is from docketing to resolution because of the unavailability of the date that the notice of appeal is filed.

Achievement of expedition and timeliness by the Virginia Supreme Court may be attributed to its near exclusive discretionary jurisdiction and particular caseload mixture. Virginia has more granted discretionary cases than either Ohio (319) or Florida (368), but the other two courts have considerably more mandatory appeals, bar disciplinary cases, and death penalty related cases.

The Virginia Supreme Court also manages to resolve its disciplinary cases and applications for writs within the ABA guidelines for appellate cases. None of the other courts

achieve these results at both the 50th and 90th percentiles. This pattern is noteworthy because the Court has more applications for writs (1,394) than any of the other courts. Fifty percent of the disciplinary cases are resolved in the 146 days or fewer. Ninety percent were resolved in 404 days or fewer, which is slightly greater than the 365 days standard of the ABA. A similar pattern occurs with applications for writs.

Finally, the Virginia Supreme Court resolves its death penalty cases faster than Florida, Georgia, or Ohio. Fifty percent of direct reviews are accomplished within 183 days or fewer and ninety percent are resolved in 281 days or fewer.

These figures, while initially startling, are more understandable in light of the fact that the observed elapsed time is from the date that the record is prepared to resolution. In the other Courts, the starting point is the date that the notice of appeal is filed. Because there is no notice of appeal date in Virginia's automated system, the elapsed time was calculated using the record preparation date. To avoid comparing apples and oranges, Virginia's case resolution time is examined in the section below on death penalty cases in relation to the time taken by other courts after the record has been prepared.

Death Penalty Cases

The review of death penalty cases deserves a separate section of analysis for several reasons. One reason is that these cases take a long time to be resolved. Additionally, the intricate nature of the law and the high intensity of politics surrounding these cases make them special, unique, and particularly demanding. Finally, the number of death penalty cases varies from court to court. It is intriguing whether the number of cases bears any connection to the time taken to resolve the cases. Or are there other factors that shape the time taken to resolve these cases?

To put the timeliness of death penalty cases in perspective, it is worthwhile to compare them to the time taken to resolve two other kinds of cases, granted discretionary petitions for review and mandatory civil and criminal (non-death penalty cases). The direct review of death penalty cases, including reviews after retrials and resentenced cases consumes considerable time, as shown in Table 10.

Because death penalty cases take a long time to be resolved and overall case processing times are not readily available for all of the courts, it is worthwhile to see if the time taken to complete similar steps in the process can be compared across the courts. This examination might indicate particular bottlenecks in some courts or whether some steps in the process consistently take approximately the same absolute or relative time to complete. Because the courts' databases did not include the same sets of parallel procedural events and corresponding dates in death penalty cases, several steps had to be considered to gain even a limited degree of valid comparisons. However, despite the lack of complete information on the same steps in the process for all of the courts, there are some observable patterns, as shown in Table 11.

Table 10: How Many Days Does it Take Appellate Cases To Be Resolved? (Cases Resolved in 1996 and 1997)

Kind of Case and Percentiles	Florida	Georgia	Minnesota	Ohio	Virginia
Discretionary Cases Granted					
50th	311	150	240	409	270
90th	528	298	381	574	355
	(368)	(120)	(211)	(319)	(395)
Mandatory Appeals					
50th	141	227	86	162	--
90th	323	384	368	624	--
	(117)	(515)	(243)	(333)	--
Death Penalty Cases (Direct Reviews Only)					
50th	955	255	--	433* 569**	183***
90th	1492	551	--	558 569	281***
	(79)	(16)	--	(25) (3)	(7)

*Includes cases that received an initial review from Ohio Court of Appeals. That policy is no longer in effect.
**Includes cases that by-passed the Ohio Court of Appeals and filed directly with the Ohio Supreme Court.
***Includes elapsed time beginning with the date that the record is filed.

Table 11: What Is the Average Number of Days Taken to Complete Steps in the Direct Review of Death Penalty Cases?

(Cases Resolved in 1996 and 1997)

	States			
STEPS	**Florida**	**Georgia**	**Ohio***	**Virginia**
Preparation of the record. Notice of appeal to docketing.	Not available	112	21	Not available
Perfecting the case. Notice of appeal to filing of last brief.	699	Not available	145	Not available
Briefing. Docketing to filing of last brief.	Not available	Not available	123	94
Deciding the case. Last brief to decision.	316	Not available	293	88
Overall time. Notice of appeal to decision.	1015	291	439	Not available
Number of cases.	79	15	25	7

*Only cases filed first with the Ohio Court of Appeals are included. There are too few cases (3) on which to draw inference on the time taken to complete specific steps for cases filed directly with the Supreme Court.

One striking relationship is the discrepancy in time taken to perfect the cases and time to decide the cases. In Florida and Ohio, time taken to perfect the case is considerably longer than time to decide the case.

A second striking relationship is the association between the number of cases and decision time. The more death penalty cases a court has to review, the longer the decision time. Virginia has seven cases and an average of eighty-eight days. Ohio has 25 cases and an average of 293 days. Finally, Florida has 79 cases and an average of 316 days. The extent to which a state supreme court is challenged with reviewing death penalty cases may not only might affect the resolution of death penalty cases. Death penalty cases raise the issue of the way a court's caseload mixture affects the timeliness of all cases.

Patterns Among the Courts

On a general level, the five state supreme courts under study approximate, or in some instances meet, the timeliness goals set by the ABA. The courts tend to resolve discretionary petitions for review and mandatory appeals in a manner that satisfies the ABA numerical time frames, as shown above in Table 4.

However, an examination of each individual court and the full range of its different kinds of cases suggests a more complicated picture. Each court is unable to resolve all kinds of its cases in a manner consistent with the ABA percentiles. Every court has some kind of case that take longer to resolve than the ABA urges, except for Virginia. As a result, whereas a general perspective portrays the courts as timely, a more differentiated perspective portrays each of the courts as somewhat less timely, at least in some cases. The objective of this section is to reconcile these two contending perspectives by describing four basic conditions under which some cases take longer to resolve. The presence or absence of these conditions should help to account for why courts exhibit different degrees of timeliness at different levels of abstraction. The conditions are as follows:

(1) Mandatory criminal appeals are potentially among the most time consuming cases for state supreme courts to resolve. Cases where the seriousness of the underlying offense is very severe, the sentence is of long-term incarceration, a constitutional issue is raised, and so forth, take even the most expeditious courts a long time to resolve. Moreover, these cases will be cases with relatively the longest processing times for an individual court to resolve. This situation occurs in both Georgia and Minnesota.

    Except for the cases in Georgia where the case has previously resulted in an equally divided Georgia Court of Appeals, they all require preparation of the record. Moreover, they lack a first level appellate court opinion for the state supreme court opinion. Finally, they likely consume a lot of time in opinion preparation because of the severity of the sentence, long-term incarceration. As a result, these cases have a disproportionate impact on the resolution of mandatory appeals in general. The more mandatory criminal appeals of this variety, the longer the time mandatory appeals take to resolve.

(2) Not all discretionary cases are equivalent. The obviousness of this proposition is deceiving. Differences in how much time it takes to resolve granted discretionary petitions does not necessarily lie in some case characteristic (e.g., such as area of law). There are structural features of the Courts and their corresponding processes account for why some discretionary petitions take longer to resolve than others. Florida and Georgia illustrate two possibilities.

    In Florida, the certification process seemingly screens out the cases that might otherwise come to the Supreme Court. More routine cases are

arguably not likely to be filed with the Florida Supreme Court. Those cases may be decided with a per curiam affirmance by a regional district appellate court and are not appealable to the Florida Supreme Court. This means that cases that might be filed, and even granted in other state supreme courts, are not likely to be resolved by the Florida Supreme Court. More routine cases, which can be resolved more quickly than other cases, are virtually absent from the cases resolved by the Florida Supreme Court. The time that it takes to resolve granted discretionary petitions in Florida understandably takes more time than in other courts.

In Georgia, there is an alternative structural feature that contributes to case resolution time of granted discretionary petitions. Most of the Georgia Supreme Court's granted petitions come directly from a trial court, not after having been reviewed first by the Georgia Court of Appeals. As a result, most of the granted petitions require preparation of a record and are without a first-level appellate court opinion. Consequently, it is understandable that these cases take a longer time to resolve than other petitions in Georgia and a longer time than do petitions in other courts.

(3) Some courts have either virtually no bar disciplinary cases or applications for writs, whereas other courts have substantial numbers of each of these two kinds of cases. Minnesota has very few applications for writs and Virginia has very few disciplinary cases. Florida, Georgia and Ohio have sizable numbers of both kinds of cases. Even without a case weighting scheme to measure the workload of each of these two kinds of cases, the qualitative difference between virtually no cases and a substantial number of cases contributes to the relative ability of Minnesota and Virginia to be more expeditious than the other courts.

(4) Differences in the number of cases per justice highlight the connection between caseload mixture and timeliness. Because all five courts have the same number of justices, the number of cases resolved per justice is a way to gauge more closely the connection between the amount of work to be done and timeliness. This examination indicates that the more cases per justice, the longer it takes to resolve cases, as shown in Table 12. Again, even in the absence of a case weighting system, differences among the courts are striking.

Table 12: What Is the Average Annual Number of Cases Resolved Per Justice?

(Cases Resolved in 1996 and 1997)

	Florida	Georgia	Minnesota	Ohio	Virginia
Number of Discretionary Cases Granted	26	9	15	23	28
Number of Discretionary Cases Granted and Mandatory Appeals	34	46	40	61	28
Discretionary Cases Granted, Appeals, Writs, Disciplinary Cases	208	104	41	133	128
All Cases, including Death Penalty Related Cases	216	107	41	136	129

The differences in the numbers of cases per justice are pronounced and magnified as more kinds of cases are considered. However, even with a focus strictly on discretionary

petitions granted, three of the courts have twice as many cases as the court with the fewest number per justice. If both granted discretionary petitions and mandatory appeals are considered, the court with the greatest number of cases per justice has twice as many as the court with the fewest number. When bar disciplinary cases and applications are taken into account, the differences among the courts in the numbers of cases per justice becomes more pronounced. More importantly, the number and kinds of cases bear some relationship to timeliness when each court's full caseload is taken into account.

Minnesota and Virginia, which are perhaps the more expeditious courts, tend to have fewer cases and fewer kinds of cases to handle. Florida and Ohio tend to have more kinds of cases and greater numbers of cases. They also tend to take longer to resolve their granted discretionary petitions and mandatory appeals. Therefore, caseload mixture bears some relationship to timeliness.

Summary

The five state supreme courts under study all demonstrate a degree of timeliness. Positive performance is most visible when the focus is on the broad case categories of all discretionary appeals. However, when the courts' caseloads are viewed in a more differentiated perspective, specific kinds of cases pose hurdles for every court. The only court that consistently proves to meet the ABA guidelines is the Virginia Supreme Court, although it has fewer mandatory appeals and bar disciplinary cases than any other court.

An analogy might help to clarify the relationship between caseload mixtures and timeliness. Consider a group of students who all satisfy a physical fitness test by amassing the requisite minimal number of points from a combination of events; however, no two students are alike. They each score differently on running, throwing, lifting, and jumping events. Whereas

all of the students are deemed physically fit, they are far from uniformly fit. Some are fat and strong. Others are lean and weak. Some are well proportioned. No two students look alike and all have their own particular physical gifts and own physical limitations.

A similar phenomenon exists among the courts under study. They are all relatively timely. However, timeliness is not uniform across all courts. Each court has difficulty resolving a particular kind of case expeditiously. Moreover, they do not consistently find the same kind of case especially challenging. The lack of consistency might be because the courts have quite different combinations or mixtures of cases. Not all of the cases are discretionary. In fact, the numbers of granted discretionary cases are dwarfed in most courts by other kinds of cases. Perhaps, not all the other kinds of cases are as weighty as granted discretionary cases, even though in some instances they appear to be weightier. That is an unanswered question.

What is called for is a scheme to assess the impact of different caseload mixtures. The ABA guidelines have served to raise the importance of defining and measuring timely performance. Given the caseload mixtures extant in state supreme courts, it is now necessary and appropriate to develop ways of taking caseload composition into account to permit fair and valid application of uniform time frames.

CHAPTER V: SUMMARY AND RECOMMENDATIONS

Summing Up

The popular and academic images of state supreme courts have a great deal in common. A basic tenet of both perspectives is that state supreme courts are the top tier of two-tiered appellate court systems. They choose which cases to hear from among those cases that have been reviewed previously by an intermediate appellate court. Besides, of their primary activity, preparing opinions in cases granted full review, justices devote energy to sorting through the cases that have been filed and selecting which ones to decide.

These images support efforts led by the ABA to develop a national yardstick for the assessment of timeliness. The ABA has developed numerical guidelines on how long state supreme courts should take to resolve cases. What percentage of cases should be resolved within a particular number of days? The ABA says within 290 days or fewer 50 percent of the cases should be resolved and within 365 days or fewer 90 percent should be resolved. Clearly, if state supreme courts have essentially the same kinds of cases and approximately the same numbers of each kind of case, there is a foundation for a common yardstick, including the ABA recommendations.

Based on an examination of five state supreme courts in two-tiered appellate systems, the assumption or belief that state supreme courts have essentially the same work to do is called into question. Data were collected on all cases resolved in 1996 and 1997 in the Supreme Courts of Florida, Georgia, Minnesota, Ohio, and Virginia. What do the data suggest? Two different observations concerning timeliness emerge from an analysis of the elapsed time taken to resolve cases in the five courts.

First, the courts look timely when their cases are grouped together in a very general manner. Specifically, when all discretionary petitions, including both granted and denied petitions are examined, every court is expeditious when compared to the ABA standards. When all mandatory appeals are combined, the performance of most of the courts is again positive when compared to the ABA standards.

Second, even if there is minimal case differentiation, the courts fall short of the ABA criteria. Specifically, when granted discretionary petitions are examined, some of the courts resolve their cases conspicuously less expeditiously than the ABA recommends. The success of the courts in resolving all of their petitions in a timely manner is because most petitions are denied, and denied in a very short time. Combining the two sets of petitions serves to bring the pace of resolution for all petitions well within the ABA time frame.

To understand these divergent observations more fully, each court is looked at more closely and completely. Each of the courts is examined to determine how long it takes to resolve each of five kinds of cases: (1) discretionary petitions, (2) mandatory appeals, (3) bar disciplinary cases, (4) applications for writs, and (5) death penalty-related cases. Additionally, the process by which these cases come to the supreme courts is documented. Do they come directly to the supreme court or does an intermediate appellate court decide them first? Do cases need to be certified? Finally, characteristics of the cases are noted. Are they civil or criminal cases? Are they criminal cases involving convictions of very serious offenses?

Using these sorts of questions as organizing devices, the timeliness of each court under study is described in some detail. The differentiated breakdown of the different kinds of cases, the manner in which cases can be appealed, and basic case characteristics contribute to a sense of each court's caseload mixture. The immediate observation that emerges from the more finely-

grained classification of cases is that each court has some difficulty in resolving some portion of its caseload in a timely manner.

More importantly, two broader patterns are seen from a comparison of each of the individual courts. The first pattern is that whereas there are differences in the degree of timeliness among the courts, some of these differences are understandable. There are comprehensible structural, process, and case-related characteristics of the courts that reasonably account for why some cases take longer to be resolved and, hence, why some courts take longer than others do to resolve their cases.

The second pattern is that there appears to be a connection between the numbers of cases resolved per justice and the timeliness of the courts. More cases assigned per justice, the longer it takes to resolve cases.

These patterns are not the same as definitive conclusions based on highly quantitative analyses of comparative data. However, they are observations based on more detailed data than ever assembled on the speed of which state supreme courts resolve cases. Hence, they provide a reasonable basis for recommending future action and research.

Recommendations

One of the significant and conspicuous facts concerning the five courts under study is that they all are in a process of continuous self-improvement. Since the current research began, the courts have undertaken a variety of ways to improve their automated record keeping procedures for handling cases and measuring their performance. The five state supreme courts are not institutions that stand still.

Without favoring one court over another, the work of the Florida Supreme Court in establishing a performance and accountability system for all of the courts in the State deserves

mention. It has, perhaps, made more progress in reducing the goals of fairness, timeliness, and consistency to writing and offers some concrete products for other courts to consider. Other courts, policy makers, and expert appellate court observers should contact the Florida Office of the State Courts Administrator for pertinent information. As a result, the following recommendations complement what the five courts have done or are in the process of doing as well as raise issues for their consideration. In this spirit, six suggestions are offered to the five courts, the rest of the appellate court community, the American Bar Association and others interested in the timely performance of state supreme courts.

First, the full range of cases that state supreme courts are expected to review should be the basis for performance evaluation. There are some courts that have primarily discretionary jurisdiction over appeals of trial court judgments, but even these courts have other kinds of cases (e.g., disciplinary cases, applications for writs). A complete and correct assessment of timeliness is not possible until and unless all cases are considered.

Second, the five-fold classification of cases is offered as a starting point for courts to organize their cases into categories that can be compared to cases in other courts. There can be no evaluation without comparison. A delineation of state supreme court caseloads into discretionary petitions, granted and denied petitions; mandatory appeals; bar and judiciary disciplinary cases, applications for writs, and death penalty related cases is recommended as a point of departure. Whether the cases are filed directly with a supreme court should be noted. State supreme courts also should consider identifying criminal cases involving convictions of very serious offenses and long custodial sentences. In short, the kinds of distinctions among cases that are made in this report are recommended to all courts.

Third, death penalty cases deserve special attention. For meaningful assessment, the basic steps in the appellate process need to be measurable. Because the overall length of time taken to resolve these cases is considerable, it is essential to know the lengthier steps in the process.

Fourth, the National Center for State Courts and other organizations are in a position to assist state supreme courts develop ways of weighting each kind of case. The bottom line is that state supreme courts need to have a sense of the average time spent by justices and court staff on each of the five possible kinds of cases. However, without knowing the average time necessary to resolve discretionary petitions for review, for example, there will be limited opportunity to compare the timeliness among courts with different caseload mixtures. State supreme courts should call on the National Center to assist them in this measurement process.

Fifth, an approach to appellate case weighting is available in the final product of the Appellate Court Performance Standards Commission.[22] State supreme courts should reexamine this publication and use the Commission's ideas as background material. Because of the limitations of space, only the kernel of case weighting for the purpose of measuring timeliness among courts with different caseload mixtures can be described in this report. Nevertheless, essential aspects of case weighting can be highlighted.

Basically, the aim of case weighting in the context of the current research is to develop ways of knowing how many hours or days it takes justices to resolve each of the five kinds of appellate cases discussed in this report. To gain this knowledge, information is needed on how much work time a justice devotes to the separate tasks associated with each kind of case.

[22] See Standard 4.1, Resources (Appellate Court Performance Standards Commission, 1999: 73-81).

Reviewing memoranda, reading briefs, attending argument, conferencing, drafting opinions, and revising opinions illustrate some of these tasks.

The amount of work time devoted to each task and ultimately to each kind of case can be calculated in the form of a statistical average. Obviously, no two cases are necessarily alike in all respects. However, the typical or average work time is sufficient for analysis purposes. An average of each individual justice's time spent on a given kind of case is a case weight. Case weights can be multiplied by the total number of each kind of case filed in a court to obtain an estimate of the total amount of work necessary to resolve all of the cases and the total time for each kind of case.

Courts can use the information from this caseload weighting exercise in two ways. First, each individual court can reexamine its management, procedural goals and so forth to see if its case weights (i.e., hours required to complete tasks) can be reduced. Additionally, as more cases are filed each year, a court has a basis for reexamining its resource needs. What resources might be necessary to offset such caseload challenges?

Second, agreement among courts on case weights will enable courts to compare themselves to courts with different caseload mixtures. There will always be particular circumstances that affect appeal time. However, a working consensus on case weights will permit courts to be held accountable to essentially the same time standard.

The suggestion that cases can and should be weighted according to how much work time is necessary to resolve them is not novel to this report. Appellate justices and legal staff have recognized the importance of knowing how much effort is required to resolve cases (See, for example, England and McMahon, 1977). However, previous attempts to estimate work time have been the product of an individual justice's self-reported estimates. Moreover, these

personal estimates have been made to illustrate the vast amount of work confronting a state supreme court justice. What now is needed is an objective estimate of the court wide judicial and court staff time required in resolving different combinations of different kinds of cases.

Sixth, the application of the ABA reference models should be held in abeyance, but not abandoned. There is nothing inherently flawed in the use of percentiles or even the specific number of days used by the ABA. The problem before state supreme courts lies in understanding the relative weights of cases, not the yardstick applied to cases. Once there is greater understanding of how to count different kinds of cases, and to establish a level playing field on which to assess courts with different caseload mixtures, work can begin to test the utility of different yardsticks.

These recommendations are offered to all state supreme courts, regardless of how expeditious they know (or think they know) they are. The yardsticks that are developed in the next ten to twenty years will be based on how expeditious supreme courts actually are. The only way timeliness will be measured accurately is if all of the cases are considered and numbers of each kind of case are taken into account. Thus, it is up to the courts themselves to lay the groundwork for time performance standards. It is hoped that state supreme courts working cooperatively can build on the information and ideas in this report in moving toward that goal.

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