Time on Appeal in State Intermediate Appellate Courts

By Dorothy Toth Beasley, Martin M. Doctoroff, Stephen J. McEwen, Jr., Ruth V. McGregor, Edward Toussaint, Jr., and Roger A. Hanson

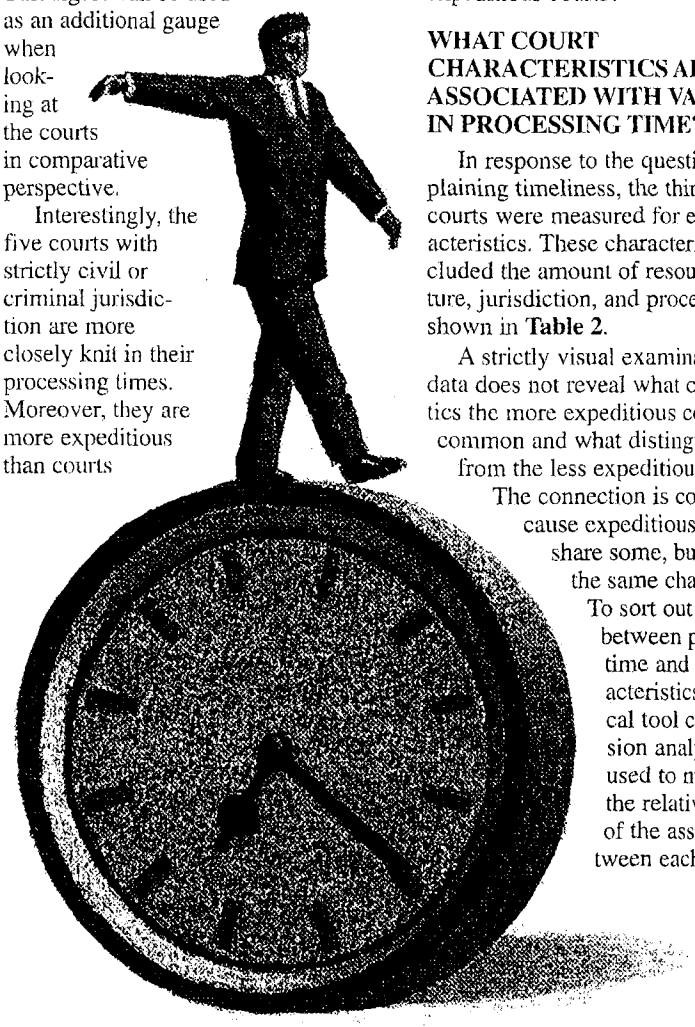
A basic standard of state appellate court performance is timeliness. Appellate courts are expected to be expeditious in resolving cases brought before them without impairing the quality of the review process or the decision.[1] However, there is considerable variation among appellate courts in the number of days that they take to resolve cases. A project completed by the National Center for State Courts in 1996 gathered information on court processing times and a broad range of particular court characteristics in thirty-five state intermediate appellate courts (IACs).[2]

The research addressed two fundamental issues concerning timeliness:

(1) the spectrum of court processing times and (2) the measurable features of courts associated with the length of time they take to resolve cases.

WHAT ARE THE PATTERNS IN COURT PROCESSING TIME?

In response to the first of these two issues, the processing time for 75 percent of the cases for each of the thirty-five courts is presented in **Table 1**. The 75th percentile is an appropriate focal point because it includes more than the routine cases and yet avoids the cases with the very longest processing times that are likely to be the product of very particularistic factors, and not necessarily case complexity. The most expeditious court takes 222 days or fewer to resolve 75 percent of its civil and criminal cases, while the least expeditious court takes 811 days or fewer to resolve the same percentage of cases. The average 75th percentile is 480 days. Keep in mind that the American Bar Association suggests that IACs consider a 290-day time limit when setting time goals.[3] This figure can be used as an additional gauge when looking at the courts in comparative perspective.



Interestingly, the five courts with strictly civil or criminal jurisdiction are more closely knit in their processing times. Moreover, they are more expeditious than courts with dual jurisdiction, which raises the question of whether the separation of civil from criminal appeals facilitates greater timeliness. Is efficiency enhanced by fewer types of issues (i.e., specialization)? That specific question is part of a larger question, namely, what, if anything, distinguishes the more expeditious courts from the less expeditious courts?

WHAT COURT CHARACTERISTICS ARE ASSOCIATED WITH VARIATION IN PROCESSING TIME?

In response to the question of explaining timeliness, the thirty-five courts were measured for eleven characteristics. These characteristics included the amount of resources, structure, jurisdiction, and procedures, as shown in **Table 2**.

A strictly visual examination of the data does not reveal what characteristics the more expeditious courts have in common and what distinguishes them from the less expeditious courts.

The connection is complex because expeditious courts share some, but not all, of the same characteristics. To sort out the linkage between processing time and court characteristics, a statistical tool called regression analysis was used to measure both the relative strength of the association between each court characteristic, court processing time, and the

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amount of the total variation in court processing time associated with all of the characteristics combined.

The statistical results are encouraging in two key respects. First, the court characteristics under study account for over half of the variation in court processing time. The "explanatory power" of the regression analysis exceeds parallel efforts to explain trial court processing time by a considerable margin. Second, the characteristics that are most highly associated with variation in processing time are two of the resource measures: the number of cases filed per judge and the number of cases filed per law clerk. The more work per judge, the more time it takes the court to resolve cases. The more work per law clerk, the more time it takes the court to resolve cases.

The ratio of case filings to law clerks is actually a stronger determinant of processing time than the ratio of filings to judges. Adding a law clerk tends to have the same effect on court processing time in all courts because the responsibilities and duties of law clerks are strikingly similar from court to court and reflect similarities in age, background, and training. In contrast, judges are less equivalent because they vary in age, background, and training. Thus, adding a judge does not necessarily have the same effect in all courts. As a result, the number of law clerks is more likely to be related, in a statistical sense, to processing time than the number of judges.[4]

The research results have three major implications for IACs. First, they provide a context for all IACs to compare themselves to other similarly situated courts. This comparison will enable them to determine whether there is room for improvement and whether additional clerks and judges should be obtained.

Second, the setting of individual and national time standards requires, at a minimum, information on the ratio of workload to court resources. To compare courts with different ratios is like comparing apples to oranges. In fact, time standards should be developed in tandem with resource standards. The questions that need to be asked and addressed are "How many cases per judge is desirable"? "Given that standard, how expeditious can courts be expected to be"? "Is that expected degree of timeliness satisfactory"? This iterative process will be difficult but, in the end, the result will be more coherent by viewing timeliness and resources together.[5]

Third, a complete explanation of the variation in court processing time will require information on more than resources and the other court characteristics studied. Resources and the other characteristics accounted for 60 percent of the variation in processing time, but the statistical models are not complete. There are noticeable exceptions to the general pattern. Some courts are more expeditious than others with a similar number of case filings per law clerk or per judge. Why do these exceptions occur? What factors do *judges* believe account for delay and determine the amount of time on appeal?

One way to begin uncovering what other important features are at play is to ask representatives from courts that are relatively expeditious. What are those judges' opinions on what helps their courts to be more expeditious than other courts with similar caseloads? Or to what do they attribute the improvement in their processing time since 1993, the study year?

For this article, five current and former chief judges have been asked to express their thoughts on these questions. Chief Judge Edward Toussaint, Jr., represents Minnesota, which is among the nation's most timely courts. Former Chief Judge Dorothy Toth Beasley represents Georgia, which has nearly triple Minnesota's ratio of cases to resources, but is the second most expeditious court among those courts with both a civil and criminal caseload. President Judge Stephen J. McEwen, Jr., is from Pennsylvania. His court is among the five most expeditious courts despite the fact that each judge authors approximately 250 decisions annually, and participates

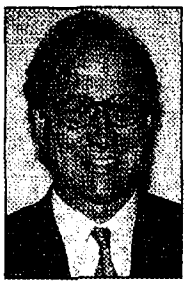
Dorothy Toth Beasley is the former Chief Judge of the Georgia Court of Appeals.

Ruth V. McGregor is the former Chief Judge of the Arizona Court of Appeals, Division One, Phoenix.

Martin M. Doctoroff is the former Chief Judge of the Michigan Court of Appeals.

Edward Toussaint, Jr. is the Chief Judge of the Minnesota Court of Appeals.

Stephen J. McEwen, Jr. is the President Judge of the Pennsylvania Superior Court.



Roger A. Hanson is a Senior Staff Associate with the National Center for State Courts in Williamsburg, Virginia.

Table 1

Number of Days from Filing Notice of Appeal to Resolution of Appeal, Cases Disposed, 1993

State IAC	Mandatory Appeals Number of Days at the 75th Percentile Combined	Criminal	Civil
Criminal and Civil Jurisdiction			
Minnesota	222	286	209
Georgia	297	291	304
Maryland	328	313	343
Texas, 11th Dist.	337	351	282
Pennsylvania	370	351	394
Arkansas	372	307	387
Missouri, South Dist.	411	727	392
California, 3d Dist.	417	502	384
Missouri, West Dist.	431	517	385
New Mexico	442	378	500
Missouri, East Dist.	447	782	395
Texas, 9th Dist.	463	488	434
California, 6th Dist.	464	460	465
Iowa	485	498	439
California, 1st Dist.	493	546	436
Colorado	511	652	434
Texas, 13th Dist.	533	512	559
Massachusetts	539	532	542
New York, 4th Dep't	549	654	472
Oregon	554	533	677
Kentucky	596	630	571
New York, 1st Dep't	604	954	448
Washington, 3d Div.	613	666	545
Arizona, 1st Div.	627	506	743
Idaho	630	580	654
Texas, 5th Dist.	633	697	390
California, 2d Dist.	644	693	609
Washington, 1st Div.	657	755	539
Michigan	720	700	800
Washington, 2d Div.	811	801	817
Criminal or Civil Jurisdiction			
Tennessee, Middle Civil	190		190
Tennessee, East Civil	192		192
Tennessee, West Civil	271		271
Alabama, Criminal	280	280	
Tennessee, Criminal	318	318	

Note: Some of the courts have improved their timeliness since the data were collected and published by the National Center for State Courts. A striking example is the Superior Court of Pennsylvania. The Pennsylvania court reports that in 1997, 75 percent of its cases were resolved in 280 days. That figure not only represents a positive change for Pennsylvania, but it surpasses the American Bar Association's guidelines. An even more impressive change took place in the Alabama Court of Criminal Appeals. In 1997, 75 percent of its cases were resolved within 213 days and 95 percent were resolved within 336 days. Both of these achievements were well within the ABA's benchmarks of 290 and 365 days, respectively.

as a panel member in an additional 500 decisions. Finally, former Chief Judge Martin M. Doctoroff and former Chief Judge Ruth V. McGregor represent courts that have improved substantially since 1993, which was the year under study in the National Center for State Courts' (NCSC) *Time on Appeal* Report. Their views on what accounts for this positive change should help to enrich our understanding of what courts need to succeed.

MINNESOTA COURT OF APPEALS, CHIEF JUDGE EDWARD TOUSSAINT, JR.

Approximately 2,500 cases are appealed to the Minnesota Court of Appeals annually. Of that number the sixteen permanent member court and senior judges author in excess of 1,800 decisions.

The court has internal rules that determine at an early stage cases that may have jurisdictional defects. A Special Term Panel, consisting of the Chief Judge together with two other judges, resolves motions made to the court, on a weekly basis. Cases are randomly assigned to panels after the respondent's brief is filed. Few, if any continuances are granted. Continuances are granted only when an "extreme emergency" arises.

Minn. Stat. § 480A.08, subd. 3 requires the court to file its decisions ninety days after submission or conference. This court has internal rules governing the circulation and filing of opinions with an emphasis on timely resolution of the issues.

External tasks, such as the preparation of court-reported transcripts in criminal cases, are handled in a timely manner because our State Public Defender system is adequately funded.

Our court is comprised of dedicated judges and staff who work collectively, guided by the principle "Justice Delayed Is Justice Denied."

PENNSYLVANIA SUPERIOR COURT, PRESIDENT JUDGE STEPHEN J. McEWEN, JR.

The 455 Common Pleas Court judges throughout this Commonwealth are beset with the awesome challenge of disposing of a considerable number of cases each year. Our statewide inter-

mediate appellate court, comprised of fifteen commissioned judges and five senior judges, is confronted with a similar challenge since, only five years ago, in 1990, each of its judges concluded by filed decision an average of 210 cases—a figure that grew to 247 filed decisions per judge in 1995.

There are several steps in the appeal process:

Period between date of filing appeal and date when the complete record is received from the trial court.

12.5 weeks

Period between receipt of the complete record and the date when all the briefs are received from the parties and the case is ready for assignment.

10 weeks

Period between the date when the case is ready for argument and the argument date.

8 weeks

Period between the argument date and the disposition date.

10.5 weeks

Thus, the total appeal period from the date the appeal is filed through the date of disposition is almost ten months. The first segment is a direct result of the alacrity—or lack of it—on the part of counsel for the parties and of the trial court in assembling and filing a complete record with our Prothonotary (clerk of court). The second segment rests solely upon the time consumed by counsel in preparing and filing their briefs.

The balance of the time is essentially the responsibility of the court. It bears mention that some of the time between the date when the appeal is ready for assignment for argument and the date of argument, is no longer "lost" time because, for the past decade or more, this court has been a "hot" court, which is to say that the judges undertake a preliminary review of the cases and the briefs prior to argument in order to be familiar with the issues during the presentation of argument and to enhance their focus on the issues of priority.

As for the time between argument and decision, it strikes me that one can only use the term *delay* when the passage of time is *undue*. There is virtually universal agreement that a period of time is necessary for a careful study

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of the appeal and drafting of the opinion, and a further period of time is necessary for study of the proposed opinion by the other members of the court. That process, as revealed by the foregoing table, averages 10.5 weeks—which, most observers feel, is relatively commendable.

Is the total time of ten months too long? Any lapse of time is too long. Should efforts be made to reduce that lapse of time? Yes. Are efforts being made to reduce that period of time? Yes, and constantly. Some of the current efforts include:

- **The Case Management Committee.** This committee is comprised of three judges whose primary function is to track the flow of cases through our system to determine if any patterns exist and, if so, to propose, and with court approval, to implement screening and diversionary programs
- **Argument Schedule.** The court proceeded to a final decision in approximately 5,000 of the 7,600 appeals filed in 1995. Those decisions, for purposes of this discussion, were all made by three-member panels. Sixty percent, specifically 2,974, of those decisions followed the presentation of oral argument, while the remainder were submitted to a three-member panel for decision on the briefs. Fifty-two panels of the court conducted argument sessions, in Philadelphia, Harrisburg, and Pittsburgh, during thirty-one weeks in 1995. The goal of each judge assigned to provide a written expression of decision was to circulate a proposed decision to the other panel members within sixty days.
- **The Central Legal Staff.** Each judge of the court has four *elbow* clerks assigned to chambers, one of whom is a permanent career administrative attorney. The superior court also employs a Central Legal Staff (CLS) that serves to expedite the processing time of appeals. CLS, at the outset of each appeal, conducts a screening process to ensure (1) that the appeal has been taken from an appealable order, and (2) that jurisdiction is proper in the superior court. CLS reviews a bulk of the motions filed with the court and provides a recommendation for resolution, although once the case is assigned to a panel, that function is assumed by the panel members. CLS also serves as the *institutional memory* of the court. While many courts ensure proposed decisions are circulated among all members of the court to assure that the decision is not in conflict with a previous ruling of that court, this procedure, given the number of appeals filed in the superior court, is simply too onerous a task for the court and would impose an extended and unnecessary delay in filing the decision. Instead, CLS performs this function more efficiently.
- **Trial Court Records.** This court, like most appellate courts, is confronted with the problem of delay in acquiring the complete trial court record. The court employs two devices to confront this problem. First, a Case Flow Manager in the Office of the Prothonotary has the responsibility to monitor appeals from the trial court and ensure that the complete trial court record is received in a timely fashion. Second, the prothonotary implements a "TBNR Program," which simply means "appellant's brief, no record." When a notice of appeal is filed, the prothonotary immediately issues a briefing schedule independent of the date the trial court record is due in the superior court. When the brief of appellant has been filed but the record has not yet been received and is more than one year overdue, the court will assign the case for consideration by a panel

whose members will rely upon the reproduced record of the parties for their review and decision. In the rare event that the reproduced record is inadequate, the panel will enter an order directing that the record be forwarded forthwith;[6] thus, few appeals, if any, languish in the court for more than fifteen months.

- **Computer Systems.** A networked computer system links all

Table 2

Selected Workload Measures and Court Characteristics, 1993
(Sorted by Days at the 75th Percentile)

State IAC	Days at 75th Percentile	Filings per Clerk	Filings per Judge	Filings per Staff Attorney	Statewide Jurisdiction	Limitations on Oral Arguments: Criminal	Limitations on Oral Arguments: Civil	Reasoned Opinion Required	Civil Settlement Conferences	How Chief Judge Selected
Criminal and Civil Jurisdiction										
Minnesota	222	57	106	134	X	X	X	X		External
Georgia	297	96	289	2601	X	X	X		X	Internal
Maryland	328	77	154	335	X			X	X	External
Texas, 11th Dist.	337	60	60	60		X	X	X		External
Pennsylvania	370	87	348	348	X					Internal
Arkansas	372	94	188	226	X		X			Internal
Missouri, South Dist.	411	74	112	307		X			X	Internal
California, 3d Dist.	417	96	193	385		X		X	X	External
Missouri, West Dist.	431	54	81	282		X	X		X	Internal
New Mexico	442	78	78	56	X	X	X			Internal
Missouri, East Dist.	447	58	112	1564		X	X		X	Internal
Texas, 9th Dist.	463	117	117	351		X	X	X		External
California, 6th Dist.	464	91	181	362		X	X	X		External
Iowa	485	130	108	*	X	X	X			Internal
California, 1st Dist.	493	77	153	364		X	X	X	X	External
Colorado	511	142	142	142	X	X	X			Internal
Texas, 13th Dist.	533	105	105	211		X	X	X		External
Massachusetts	539	121	130	59	X			X		External
New York, 4th Dep't	549	84	176	220					X	External
Oregon	554	195	391	592	X	X	X			Internal
Kentucky	596	97	193	386	X	X	X	X	X	Internal
New York, 1st Dep't	604	110	229	270					X	External
Washington, 3d Div.	613	76	153	1220				X		Internal
Arizona, 1st Div.	627	76	151	151		X	X	X		Internal
Idaho	630	40	80	239	X	X	X	X		Internal
Texas, 5th Dist.	633	175	175	207		X	X	X		External
California, 2d Dist.	644	114	227	455				X		External
Washington, 1st Div.	657	84	169	284				X		Internal
Michigan	720	378	336	130	X			X		Internal
Washington, 2d Div.	811	108	215	287				X		Internal
Criminal or Civil Jurisdiction										
Tennessee, Middle Civil	190	92	92	366		n/a		X		Internal
Tennessee, East Civil	192	82	82	326		n/a		X		Internal
Tennessee, West Civil	271	44	44	174		n/a		X		Internal
Alabama, Criminal	280	116	349	*	X	X	n/a	X	n/a	Internal
Tennessee, Criminal	318	103	103	309	X		n/a	X	n/a	Internal

Note : Selection of chief judges: Internal—made by members of the court, or by the chief judge or seniority.
External—made by the Governor or through popular election.
X = Yes

of the judicial chambers and administrative offices of the court. The system maintains an advanced docketing system that enables any judge or clerk or administrative staff member of the court to access information on any given appeal including the status of the circulating proposed opinions, the nature and status of motions, interchambers correspondence, and votes of the panel members. This enhances the efficiency of court operations.

We have no illusion that our efforts are uniquely innovative or so very efficient that all other intermediate appellate court systems should install them. Moreover, we hasten to declare that we seek guidance and suggestions from other courts as to how we might continue to improve our system.

In conclusion, the obvious must be emphasized: Regardless of how technologically current our systems or efficient our managerial efforts, the timeliness of this high-volume court is the result of the stalwart efforts of the judges, who, inspired by pride and commitment, assume and resolve a daunting workload. If fulfillment is to be found in effort, this court is abundant reason for fulfillment.

GEORGIA COURT OF APPEALS FORMER CHIEF JUDGE DOROTHY TOTH BEASLEY

The buck stops on the appellate level of the state court systems. The challenge for this court is to resolve the many bucks that come in a manner that is not only fair and in accordance with the rule of law, but also, in the words of the Georgia Constitution (article VI, section IX, paragraph X), "speedy, efficient, and inexpensive." From 1961 to 1996, the Georgia Court of Appeals had nine judges; one was added in July 1996. Approximately 3,000 direct appeals are filed each year, of which about 40 percent are criminal. In addition, about 1,000 applications for review are files consisting of discretionary appeals (55 percent) and interlocutory appeals (45 percent). Overall, some 25 percent of the applications are granted for full review.[7]

Despite the court's relatively large number of cases per judge, the time on

Cooperation among judges and between their staffs, as well as the clerk's office and technology experts, keeps the court running as a team.

appeal is a maximum of approximately eight months from the time the record is received from the trial court and the case is docketed in the court. How does the court resolve the appeals in accordance with the constitutional mandate? The factors that account for Georgia's relatively short time on appeal, despite its relatively large caseload per judge, are as follows:

- **Adhering to the Georgia Constitution's long-standing instruction.** *"The Supreme Court and the Court of Appeals shall dispose of every case at the term for which it is entered on the Court's docket for hearing or at the next term."* This two-term rule has never been violated, as far as anyone knows, and the court of appeals has existed since 1907. Everyone works together to meet the deadline. Cases that are in their second term are labeled "Distress" and the judges aim to dispose of every such case one month before the end of its second term, at the latest.

Having described the most important factor, I will now list the eight other factors that contribute significantly to the whole:

- **Reducing the number of cases for which direct appeal of right is available.** There are twelve categories of cases for which a direct appeal of right *does not* exist. An application for review must be filed and, if it is shown that there is a possibility of reversible error, a full review will be granted. Among these categories, created by statute, are judgments of $10,000 or less, orders revoking probation, domestic relations cases, and decisions of administrative agencies (except the Public Service Commission).[8] Interlocutory appeals must also be preceded by applications of review.[9]
- **Giving statutory priority to particular types of criminal appeals.** State statute imposes a duty on the appellate courts to expedite disposition of criminal cases where a defendant is confined in jail or prison pending appeal,[10] and civil cases where the State is a plaintiff.[11] The court of appeals, by internal policy, expedites cases involving child custody, termination of parental rights, and child deprivation. It does not have jurisdiction of divorce.
- **Using modern technology to expedite the process.** Three technical specialists are employed by the court to work constantly to monitor, control, and move the docket, upgrade equipment, train judges and staff, and keep everyone aware of the status of cases at all times. The senior specialist has attended the National Center for State Courts Technology Conferences, which enhances smooth operations. Draft opinions are reviewed and handled by each judge in the following order of priority: seven- or ten-judge whole court distress cases, three-judge division distress cases, seven- or ten-judge whole-court nondistress cases, three-judge division nondistress cases, and cases assigned to the author judge, first distress and then nondistress cases.[12] The general order is thus older cases before younger cases, whole court cases before division (panel) cases, and cases assigned to other judges before cases assigned to the author judge.
- **Delegating court operations to the Court Administrator.** Our Court Administrator, (who serves also as the clerk), is a dedicated lawyer who has been trained at the Institute for Court Management. The administrator handles problem cases personally. In addition, our deputy clerks maintain an open line of communication with trial clerks and lawyers to help ensure that deadlines are

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Time on Appeal

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met, proper papers are filed, and records are complete.

- **Encouraging teamwork.** Cooperation among judges and between their staffs, as well as the clerk's office and technology experts, keeps the court running as a team. Cases are decided by three judges, but if unanimity is lacking a second panel plus the chief judge participates. Occasionally the court decides that all ten judges should participate.[13] Rarely are cases discussed in a banc setting. Instead, the draft opinions are circulated among the three judges. Each judge has an equal number of cases from the civil and criminal wheels. However, the Chief Judge, beginning in January 1997, has a reduced caseload by way of the nonassignment of applications for interlocutory or discretionary appeal.
- **Using permanent central staff attorneys efficiently.** We hire experienced permanent central staff attorneys who build upon their expertise by working in the court and by attending mandatory continuing legal education seminars. Each judge has three staff attorneys. Six central staff attorneys (two share one position via a job-share arrangement) prepare the memoranda to the judges on the discretionary and interlocutory applications and also screen cases for jurisdiction (timeliness and proper court). Central staff plays a significant role in expediting appeals. Three floating staff attorneys fill in during vacancies and maternity leave, and assist the senior judges.
- **Using the temporary assistance of senior appellate and superior court judges.** The court is authorized to ask for temporary assistance from senior appellate and superior court judges to help with caseload. The court has specifically sought this type of assistance when there has been a vacancy, or when a judge has been absent for an extended period of time. Currently, a senior appellate judge is working regularly on a reduced workweek to help relieve the workload of each judge commensurately. If more support staff were available, additional senior judges could be used without increasing the complement of the court itself.[14]
- **Fostering good relationships with outside agencies.** Lastly, the court maintains a good relationship with outside supporting agencies. There is continuing liaison with the state bar through the Board of Governors, the Executive Committee, the Advisory Committee on Legislation, and the Judicial Procedure and Administration Committee (both committees include a member of the court). The judiciary committees of the House and Senate in the Georgia General Assembly also hear from the court directly through the Chief Judge. The governor must present the court's budget to the General Assembly; the General Assembly funds the courts at a level that it deems appropriate.

The clearance rate measures whether the court disposes of the same number of cases as it receives in a given year.

The Commission on the Appellate Courts, created by the legislature in 1996, reported to the 1997 General Assembly its recommendation for further assistance to the court of appeals to ease its chronic overload. However, despite the recommendation that four judges be added, only one was authorized in 1996, and none in 1997 or 1998. One additional area that needs attention to reduce the time on appeal is the time from the filing of the notice of appeal in the trial court to the time the case is docketed in the appellate court.

This court seeks to learn from other courts on methods to handle heavy caseload, improve the quality and clarity of its decisions, and prevent discrepancies among panels in their understanding of the law of the State.

MICHIGAN COURT OF APPEALS, FORMER CHIEF JUDGE MARTIN M. DOCTOROFF

Ideally, a high level of communication and cooperation should exist between the judicial branch of state government and its legislative and executive counterparts. The legislative and executive branches should be attuned to the changing needs of its courts and should work with the judiciary to prevent a backlog before the problem becomes acute. The judiciary should anticipate its own needs, and communicate them to the other branches of government in an effort to ensure that resources are allocated appropriately. As a result, the courts should have sufficient funding to increase the number of judges and staff so as to keep pace with increased demand for services.

Unfortunately, we do not live in an ideal world, and in states such as Michigan, there has been a consistent shortage of judges and a chronic failure to fund the intermediate court of appeals. The predictable result in Michigan has been a tremendous backlog within the court and an unacceptable delay in the decision-making process. The predicament did not stem from one particular governor or a single session of the legislature, but has been a perennial problem over the last twenty-five years. Other states have been able to review the needs of their judiciaries, and make additions when necessary, but Michigan failed to heed the growing needs of its intermediate court, and the problem worsened. In the midst of the court's pleas for additional resources, it became easy for the other branches of government to accuse the judges of failing to work strenuously to eliminate the backlog. By the time the legislative and executive branches became willing to address the problem, the backlog had become so large that an immediate cure would have been prohibitively expensive. When faced with this situation, the leadership of the Michigan Court of Appeals devised a strategy designed to cure the malaise. The following is a synopsis of the

problem the court has confronted and how the problem has been addressed.

The Michigan Court of Appeals was established under the 1963 Michigan Constitution and began operations in 1965 with nine judges. In 1965, there were 1,235 cases filed in the court, or 137 cases per judge. When the court was increased to twelve judges in 1969, there were 1,959 cases filed, which equaled 163.5 cases per judge. In 1975, the court was increased to eighteen judges and there were 4,435 cases filed, or 246 cases per judge. By the time the court was increased to twenty-four judges in 1989, the case filings had increased to 10,951, or 456 cases per judge.

To measure the production of the court, the "clearance rate" for a particular year is analyzed. The clearance rate measures whether the court disposes of the same number of cases as it receives in a given year. If the number of cases resolved by the court equals the number of cases filed, the clearance rate is 100 percent. However, when the court is unable to handle the number of cases filed, the clearance rate drops below 100 percent, and a backlog develops. By 1989, the caseload in the court was well beyond that which could be reasonably handled by the judges. As a result, the clearance rate dropped woefully below 100 percent. It quickly became obvious that the new judges added in 1989 were significantly fewer than the number required to do a reasonable job within a reasonable time. The predictable outcome was the development of a severe backlog. This situation led to a two-year delay between the time the last brief was filed and oral argument on the matter. Because of the overwhelming backlog and the unlikelihood that the court would be expanded to carry the appropriate complement of judges, new and innovative methods needed to be developed to increase the clearance rate.

The Michigan Court of Appeals was aided by a task force created by the State Bar of Michigan and by legislative leaders who recognized the need for additional financial help. In addition, representatives of the governor's office provided assistance to the court. Over a four-year period, the governor and the legislature provided significant sums of money in an effort to reduce the backlog. These funds enabled the court to increase the number of central staff attorneys and to use visiting trial court judges and retired appellate judges. These adjustments had the effect of increasing the number of three-judge panels available to hear cases each month by 50 percent. Without the visiting judges, the court was only able to assemble a maximum of eight panels per month. However, with a visiting judge on each panel, the court was able to form twelve panels each month. This was not an ideal situation, but one that was and is necessary on a temporary basis to handle an ever-burgeoning caseload. With this help, the clearance rate was raised above 100 percent, the court began to reduce its backlog, and the delay for oral argument was reduced.

However, the backlog reduction was not moving fast enough to satisfy the court or its leadership. With the help of the judges of the court, the legislature and the voters of the State of Michigan, the first of several additional steps was taken. In 1994, the Michigan electorate voted to amend the state constitution so as to restrict appeals by defendants who had pled guilty. The Michigan Constitution had previously granted such defendants an automatic right of appeal to challenge their sentences. The state constitution still allows a defendant to challenge a sentence by filing an application for leave to appeal. In the first full year following the amendment, the number of guilty pleas had dropped to 2,273, and currently the number is less than 700. This number is down from 4,226 in 1992, and obviously represents a significant reduction in overall case filings. The people of the state recognized that a change was needed and responded accordingly. Many members of the court were active in their support for the amendment, as well.

Despite the progress, more had to be done. To this end, the Michigan Supreme Court was helpful in accepting certain recommendations of the court of appeals that aided the latter court in expediting the handling of less difficult cases. This was accomplished with the promulgation of a rule that allows the court to decide these cases without oral argument. Each month a "summary panel" consisting of three judges resolves sixty cases at a time. If the judges all agree on the outcome, the case can be disposed of with an order and without a formal opinion. Summary panels have been a tremendously helpful tool in reducing the court's backlog.

As further assistance, the Michigan Supreme Court modified the definition of a "final order appealable by right to the Court of Appeals" in divorce cases.

STATEMENT OF EDITORIAL POLICY

The Judges' Journal is the official quarterly publication of the Judicial Division of the American Bar Association. The *Journal*'s goal is to help fulfill the Division's mission to assure efficient, effective, professional, fair, and impartial delivery of justice and dispute resolution throughout the nation.

The Judges' Journal accomplishes this goal by:

- publishing practical articles and reporting innovations to assist judges, attorneys, and court administrators in improving the administration of justice;
- promoting a dialogue between the bench and bar and among judges of various jurisdictions;
- presenting timely articles on important jurisprudential subjects; and
- imparting news of significant developments in the work of the Judicial Division and its conferences and committees.

The views espoused in the articles contained in *The Judges' Journal* are those of the authors, and do not necessarily represent the views or opinions of the Judicial Division or the American Bar Association.

Under the new definition, only postjudgment changes of custody can be appealed by right. The previous definition allowed any postjudgment order to be appealed by right. The supreme court also changed the rule regarding agency appeals, making them only appealable by leave. As designed, these changes effectively assisted in the reduction of the number of cases filed in the court. Finally, the supreme court promulgated a rule allowing the court of appeals to establish a settlement conference. Although this idea is still in its trial phase, the results are promising and the court is optimistic about its potential.

The strategies and procedures outlined above have enabled the court to reduce the time on appeal to less than one year, when it previously took two years after the filing of an appellee's brief for a case to be heard. Additionally, the court's clearance rate has been raised from 84-85 percent to over 135 percent. The backlog, which was over 4,500 cases at the end of 1992, now stands at just over 1,000 cases. The court is well on its way to reducing the average age of its pending cases to just four months. With the help of the supreme court, the legislature, and the electorate, the Michigan Court of Appeals is now in a much stronger position to resolve cases expeditiously. The court of appeals judges, who worked tirelessly to reduce the backlog, deserve a majority of the credit for the court's success. In a short period of time, the Michigan Court of Appeals has made appreciable progress, and it will continue to search for ways to become more efficient.

ARIZONA COURT OF APPEALS, DIVISION ONE, PHOENIX, FORMER CHIEF JUDGE RUTH V. McGREGOR

The numbers from Roger Hanson's study accurately portray the inordinate delay facing litigants in Division One of the Arizona Court of Appeals as of 1993. This court found that situation unacceptable. However, because political and economic reality told us that we could not expect to receive any additional resources, we had to find a way to eliminate our backlog and bring the court current with our existing

number of judges and staff, which is what we did.

Before turning to the specific measures we adopted, the most essential ingredient of our success should be singled out for attention. The judges of Division One, with the invaluable assistance of our colleagues on Division Two, committed themselves to ending delay. Without that commitment, which every member of the court understood would require very hard work, all our planning would have proved pointless.

We first attacked the delay between the time appeals came at issue and the time the court issued its decision because that stage of the appellate process is most directly within judges' control. To reduce the delay, we adopted or expanded several programs. First, we shortened our internal time standard for circulating draft decisions. Each judge is now required to explain at each judges' meeting why he or she failed to circulate any decision. In practice, few decisions now exceed our time standard because our second step was to adopt the practice of preparing and circulating preconference draft decisions. We were concerned that doing so might affect the willingness of the authoring judge to alter her position or discourage the other panel judges from giving the appeal careful attention. Fortunately, neither problem materialized. Instead, we have found that predrafting decisions focuses the discussion among the panel members and substantially limits the time spent "relearning" cases when draft decisions come to us long after our conference. Our third step involved encouraging lawyers to use our accelerated civil appeals procedure, which guarantees a speedy, extended oral argument and requires the court to issue a summary decision within three days after argument. We mailed letters to all attorneys on pending cases and, although few parties had used the procedure before our reminder, many use it now. The court heard the accelerated appeals in addition to, not in place of, other appeals. Fourth, we increased the use of our judge pro tem programs, in which two lawyers sit on a panel with one of our judges. I state the obvious when I say that each of these methods increased our productivity, but did so by requiring more work from our judges. To those extra efforts, the judges added another: They agreed to add one or two "extra" cases to each calendar. Finally, our Division Two colleagues agreed to accept ten cases per month from this court.

Using all those methods brought us current, but our judges cannot—and should not—be expected to sustain the level of effort required. We therefore looked for a method to reduce the number of cases awaiting decision. Our approach here was to develop a pilot settlement conference program, conducted by former state appellate judges. After the first six months of the program, we made the mediation program permanent. Applying the lessons learned through the pilot project, the court now resolves nearly one-half of the cases assigned to it.

Between 1994 and 1996, our efforts reduced the number of days from notice of appeal to resolution, measured at the 75th percentile, from 811 to 513 days in civil appeals and from 504 to 441 days in criminal appeals. The court's numbers continue to inspire; in 1997, they dropped to 420 days for civil, and 365 days for criminal.

No one program provided a magic bullet to cure the delay we faced, and no particular approach will work for every court. But Arizona Division One provides living proof that, with commitment and effort from its judges, a court can eliminate delay.

LESSONS FROM THE FIELD

As the five judges acknowledge in their remarks, these efforts illustrate what state intermediate courts can do to resolve cases expeditiously. Courts find themselves in different circumstances and confronted with different needs. Yet, despite these differences, some common themes emerge concerning the factors that enable these five courts to resolve cases in a timely manner. Those themes are as follows:

- Judicial commitment to achieving timeliness is the sine qua non of success. This intangible factor is mentioned by all of the judges.
- Capacity to measure case processing time, focus attention on the court's performance, identify possible problem areas, and suggest targets of opportunity to correct problems. All of the courts know the extent to which they are meeting their expectations for timeliness. In their own ways, the courts have used technology to support their monitoring of caseflow.
- Special procedures (e.g., special expedited calendars, settlement conference programs) in place to accelerate resolution of more routine cases. Cases are differentiated according to complexity, and the court allocates its available judicial and staff resources in proportion to the need for attention by the court to achieve the correct decision in each case.
- Resources become more salient as the number of cases filed per judge increases. In the three courts with the most cases per judge (Georgia, Pennsylvania, and Michigan) timeliness is linked in the minds of the judges to resource availability. Georgia and Pennsylvania compensate for this situation by maintaining three and four clerks per judge, respectively. In contrast, Michigan struggles with a relatively small complement of law clerks and judges when compared to its extraordinarily large caseload. Finally, Arizona, Division One, which has approximately fifty more cases per judge than Minnesota, points to the importance of resources through its use of a judge pro tem program.

All in all, these views resonate with the statistical results presented in *Time on Appeal.*

Summing up, the path to the timely resolution of appeals is illuminated by the experiences of these five courts. Other courts that find themselves in similar circumstances to one or more of these five courts, might seek information on what seems to work elsewhere. What resource levels, structural, and jurisdictional policies and procedures are deemed effective in achieving timely resolution of cases? Appellate courts have a great deal to learn from one another. It is hoped that this article will stimulate them to inquire into the practices of other courts and to engage in a fruitful dialogue with other members of the appellate court community.

NOTES

1. National Center for State Courts and the Appellate Court Performance Standards Commission. *Appellate Court Performance Standards*. Williamsburg, Va., National Center for State Courts. 1995. *See* Standard 2.4. Timeliness.

2. The larger study includes analyses of twenty-three courts of last resort in addition to the thirty-five IACs. *See* Roger Hanson, *Time of Appeal.* Williamsburg, Va., National Center for State Courts. 1996. This article focuses on the IACs because efforts to explain variation in processing time among courts of last resort were unsuccessful.

3. American Bar Association. *Standards Relating to Appellate Courts.* Chicago, Ill. American Bar Association. 1995.

4. The number of law clerks per judge is not uniform across the courts. For example, in Pennsylvania each judge has four law clerks, in Georgia there are three law clerks per judge, in Arizona, Division One, there are two law clerks per judge, and in Michigan there is one law clerk per judge.

5. This approach is consistent with that of the Appellate Performance Standards Commission. *See* Standard 4.1. Resources.

6. The TBNR Program was discontinued in January 1998 and the superior court is currently evaluating other programs to enhance timely transmission of the trial court record.

7. 1996 Annual Report on the Work of the Georgia Court of Appeals.

8. *See* OCGA § 5-6-35(a).

9. OCGA § 5-6-34.

10. OCGA § 5-6-34(c).

11. OCGA § 9-10-1.

12. INTERNAL OPERATIONS MANUAL XXIX, p. 57.

13. OCGA § 15-3-1(c).

14. OCGA § 15-3-1(g).

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CONFERENCE LISTSERVS

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