

Resources: The Key to Determining Time on Appeal

by Roger A. Hanson

INTRODUCTION

There is only limited agreement among the nation's state appellate court judges, lawyers, and court managers on how long it should take to resolve appeals, although interest in this topic has been expressed for more than fifty years.¹ The American Bar Association (ABA) has tried to formulate numerical time standards in terms of the maximum number of days that should elapse between the date of the filing of the appeal and its resolution. However, this effort was met with resistance because the criteria have been viewed by some as unrealistic.² There has been a call by judges and judicial organizations, including the Council of Chief Judges of Courts of Appeal, for information from a variety of courts on how long they actually take to handle appeals before setting new standards.

In response to the need to know why some courts are more expeditious than others, the National Center for State Courts combined data collected from a previous study of thirty-five state intermediate appellate courts³ with new data on managerial aspects of those same courts. The earlier study focused primarily on resources (e.g., number of case filings per judge) and organizational characteristics (e.g., method of selecting the chief judge, statewide versus regional jurisdiction) as possible explanations of variation in court processing time. The results of that study demonstrated the importance of resources: courts with more cases relative to the number of judges and legal staff took longer to resolve appeals. However, these con-

clusions were drawn without the benefit of data on managerial characteristics, such as the presence of local time standards, the extent of judicial training in case management, whether the judges monitored and discussed the court's degree of timeliness, and so forth. To remedy this gap, a questionnaire was mailed to the original thirty-five courts, asking for their responses to questions about various managerial policies.⁴ The returned questionnaires were then used to develop quantitative and qualitative indicators of management. Data from these management measures were then integrated into the original dataset, although sufficient management data were obtained from only thirty-one of the thirty-five courts.

The key findings from the new analysis, including both resource and management variables, are:

- Resources remained the most potent factors in accounting for why some courts are more expeditious than others. They had substantial effects on case processing time. A statistical analysis indicates that if a court has 100 more case filings per judge than another court, the court will take approximately four months longer to resolve seventy-five percent of its cases. On the other hand, by assigning an additional law clerk to each judge, processing time would be shortened by about three months.
- Many of the organizational variables found previously to be statistically significant were now found to be of negligible consequence in the overall picture. Alternative ways of

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Footnotes

1. See Will Shafroth, *Judicial Statistics of State Courts*, 31 J. AMER. JUD. Soc. 116-19 (1947).
2. The ABA's initial effort set forth criteria aimed primarily at state intermediate appellate courts. The key criterion was that the length of time from the filing of the notice of appeal to the court's resolution should be 280 days or fewer for all mandatory appeals. See APPELLATE DELAY REDUCTION COMMITTEE, A.B.A. APPELLATE JUDGES CONFERENCE, STANDARDS RELATING TO APPELLATE DELAY REDUCTION (1988). However, critics contended that a less stringent standard was needed because most courts could not approximate the 280-day deadline. See Carl West Anderson, *Are the*

American Bar Association's Time Standards Relevant for California's Court of Appeal?, 27 U.S.F. L. REV. 301 (1993). The critics prevailed and the ABA reformulated its criteria in several fundamental ways. First, the idea of a single, national standard was dropped. Courts were encouraged instead to adopt their own time goals. Second, guidelines called Reference Models were proposed as alternatives to uniform standards. Reference Models stipulated specific numerical criteria, but the deadlines were offered as starting points for discussion, not prescriptions. Third, different Reference Models were provided for intermediate appellate courts and courts of last resort. For intermediate appellate courts, the Reference Models suggest that seventy-five percent of mandatory and discretionary appeals should be resolved in 290 days or fewer and that ninety-five percent of appeals should be resolved in 365 days or fewer. A.B.A. JUDICIAL ADMINISTRATION DIVISION, STANDARDS RELATING TO APPELLATE COURTS (1994). Subsequently, the Appellate Court Performance Standards Commission has adopted timeliness as one of the basic standards that all state appellate courts should meet. However, the Commission followed the ABA's thinking and urged courts to set their own numerical timeframes. APPELLATE COURT STANDARDS COMMISSION & NATIONAL CENTER FOR STATE COURTS, APPELLATE COURT PERFORMANCE STANDARDS (1995).

selecting the chief judge, whether an opinion was required in every case, and whether restrictions were placed on oral argument were only of minor influence and have been omitted from the final statistical model used to explain inter-court variation in processing time. Among the organizational variables, only statewide jurisdiction retains some significant role.

- Management was relatively less influential than resources in the updated analysis. Basic principles of modern case management did appear to encourage timeliness. However, they were of such limited statistical significance that their impact could not be translated into specific case processing time savings.

The message for judges, attorneys, policymakers, and taxpayers is that courts need to seek and to receive adequate resources. Management has a positive role to play in the achievement of the efficient use of resources, but resources are essential.⁵

RESOURCES AND MANAGEMENT: COMPETING EXPLANATIONS

No single variable — or even several variables of the same type (e.g., case characteristics) — likely will account for why some appellate courts are able to decide cases within a shorter timeframe than others. The speed of the appellate process likely is a product of different types of factors, including both tangible and intangible ones (e.g., the charisma of a chief judge that spurs every judge to maximum efficiency). Because few efforts have been made to explain, instead of merely describing, court-processing time, a consensus on what to measure, how to measure it, and what the quantitative results really mean has not yet emerged. Conventional agreement on measurement issues will not result, furthermore, unless initial research studies are replicated and refined.⁶

Until widespread agreement arises, a reasonable strategy is to focus on some factors that plausibly shape case processing

time and to see how closely they track with processing times. Future research can then refine those measures and contribute to the development of time standards that are both aspirational and realistic. Hence, the goal of the current research is to describe how long it takes appellate courts to resolve their cases, to determine what combination of measurable factors best explains why some courts are more timely, and to suggest implications for time standards and court improvement.

Results of the previous research⁷ suggested that resources and organizational characteristics were associated with variation in court processing time. The larger the number of cases filed with the court (per judge) each year, the more time it took the court to resolve appeals. Additionally, courts with statewide rather than regional jurisdiction — and those that selected their chief judges by popular election or gubernatorial appointment rather than internally (e.g., seniority, selection by members of court, or by the chief justice) — were more expeditious. Yet, despite the fact that these factors are important to consider, the initial analysis did not include the role of management, which is frequently asserted to be a reason why some trial courts are more expeditious than others.⁸

Do courts that have adopted the ABA's standards or have developed their own standards work more efficiently? Are courts that discuss timeliness at monthly meetings more aware of and responsive to the need for resolving cases quickly? Are courts whose judges and legal staff attend educational programs where case management is discussed more attuned to effective ways of resolving cases? Does the use and configuration of legal staff make a difference?

These questions were part of the written questionnaire sent to the chief judges of the thirty-five courts previously studied.⁹ A visual inspection of the responses reveals no obvious, clear cut connection between management or the use of legal staff and timeliness, as shown in Tables 1 to 6. Courts that are relatively more expeditious do not appear to have adopted case management principles more frequently than other courts. However, eye measurement is not the most reliable method for

3. See ROGER A. HANSON, *TIME ON APPEAL* (1996).

4. For the benefit of future researchers, the questionnaire is reprinted as an appendix to this article.

5. This study — and related research — seeks to determine whether resources and management are of sufficient importance that they can influence timeliness among a wide variety of courts. If so, judges and court managers have powerful tools in choosing how to organize their work and in justifying budget requests. A strong claim for additional resources can be made if variation in resources is shown to be related to longer (or shorter) case processing time across several courts that are different in jurisdiction, organization, and procedure. The focus of this research project does not imply that timeliness is the only goal that courts should pursue. Quality of the review on appeal is a key value. However, this article is limited to exploration of the extent to which resources and management influence timeliness.

6. Most of the literature emphasizes the need to reduce delay and suggests what sorts of delay reduction strategies should be introduced. The number of days it takes courts to resolve appeals is often calculated and bottlenecks in the processing of cases are targeted for

reform. See, e.g., RITA M. NOVAK & DOUGLAS SOMERLOT, *DELAY ON APPEAL: A PROCESS FOR IDENTIFYING CAUSES AND CURES* (1990). Yet, despite the positive value of these efforts, they do not address the question of why some courts are more expeditious than others. Delay reduction is not the same as an explanation for variation in court processing time, even if a common set of tactics is proposed and implemented.

7. See Hanson, *supra* note 3.

8. See BARRY MAHONEY, ET AL., *CHANGING TIMES IN URBAN TRIAL COURTS* (1988).

9. Because many of the original thirty-five courts have improved their performance since the case processing times were measured in 1993, those specific times might be misleading when read in 1999. As a result, the courts are presented in this article in terms of their relative positions. For readers who want to know what the numbers look like, the specific processing times can be found in prior reports. See Hanson, *supra* note 3; Dorothy Toth Beasley, et al., *Time on Appeal in State Intermediate Appellate Courts*, *JUDGES' J.*, Summer 1998, at 12, 14. However, the specific numbers are used in the statistical analyses below.

inferring patterns among a large number of courts. For this reason, a statistical tool was used to examine the simultaneous effects of multiple measures of resources and management practices on case processing time. When a variety of factors are examined together, do courts that have a particular combination of resources and/or management have longer (or

shorter) processing times than other courts? The statistical results presented below indicate that management lacks substantial explanatory power in accounting for why some courts take longer than others to resolve appeals, but resources have statistically significant consequences.¹⁰

TABLE 1
Did the Court Have a Time Standard Governing Steps in the Appellate Process That Was Set by Statute, Rule, or Informal Policy?

| Name of Court* | Notice of Appeal to Submission of the Record | Completion of the Record to Filing of the Last Brief | Filing of the Last Brief to Oral/Argument/ Submission Without Oral Argument | Argument/ Submission to Decision | Notice of Appeal to Decision |
|--------------------------|--|--|---|----------------------------------|------------------------------|
| Tennessee, Middle Civil | ✓ | ✓ | ✓ | ✓ | ✓ |
| Tennessee, East Civil | ✓ | ✓ | ✓ | ✓ | ✓ |
| Minnesota | ✓ | ✓ | ✓ | ✓ | |
| Tennessee, West Civil | ✓ | ✓ | | ✓ | |
| Alabama, Criminal | | | | | ✓ |
| Georgia | | ✓ | | | |
| Tennessee, Criminal | ✓ | ✓ | | ✓ | |
| Maryland | ✓ | | | ✓ | |
| Texas, 11th District | ✓ | ✓ | | | |
| Pennsylvania | ✓ | ✓ | ✓ | ✓ | ✓ |
| Arkansas | ✓ | | | ✓ | |
| Missouri, South District | ✓ | ✓ | ✓ | ✓ | ✓ |
| California, 3rd District | ✓ | ✓ | ✓ | ✓ | ✓ |
| Missouri, West District | | | | ✓ | |
| New Mexico | | | | ✓ | ✓ |
| Missouri, East District | ✓ | ✓ | ✓ | ✓ | |
| California, 6th District | ✓ | ✓ | ✓ | ✓ | ✓ |
| Iowa | | | | | |
| California, 1st District | ✓ | ✓ | | ✓ | |
| Colorado | ✓ | ✓ | ✓ | ✓ | |
| Texas, 13th District | ✓ | ✓ | | ✓ | |
| Massachusetts | ✓ | ✓ | ✓ | ✓ | |
| New York, 4th Dept. | ✓ | ✓ | ✓ | ✓ | |
| Kentucky | ✓ | ✓ | | ✓ | |
| New York, 1st Dept. | ✓ | ✓ | ✓ | ✓ | |
| Washington, 3rd Div. | ✓ | ✓ | | ✓ | |
| Arizona, 1st Div. | ✓ | ✓ | | ✓ | ✓ |
| Idaho | ✓ | ✓ | ✓ | ✓ | ✓ |
| Texas, 5th Dist. | ✓ | ✓ | ✓ | ✓ | ✓ |
| California, 2nd Dist. | ✓ | ✓ | | ✓ | ✓ |
| Michigan | ✓ | ✓ | ✓ | ✓ | ✓ |
| Washington, 2nd Div. | ✓ | ✓ | ✓ | ✓ | |

* Courts are ranked according to their degree of timeliness from most expeditious to the least. Timeliness is measured by the number of days taken to resolve seventy-five percent of mandatory appeals.

10. Regression analysis is the statistical technique that has been applied to the combination of resources, organizational, and management variables under study. This technique helps to sort out which variables make a difference in explaining variation in the

processing times of the thirty-one courts and which ones do not. Moreover, this technique produces a number, called a coefficient, which can be interpreted as the number of days that a factor contributes (e.g., the number of cases filed per judge) to processing time.

**TABLE 2
Management Training**

| Name of Court* | Had Members of the Bench Attended Seminars, Conferences, or Workshops Where Appellate Caseload Management Was on the Agenda? | | | | Had the Court's Legal Staff Attended Seminars, Conferences, or Workshops Where Appellate Caseload Management Was on the Agenda? | | |
|--------------------------------------|--|--|------------------------------|--------------------------------------|---|---|---|
| | No, None of the Judges | Yes, But Only a Minority of the Judges | Yes, Over Half of the Judges | Yes, All or Almost All of the Judges | No, None of the Staff | Yes, But Only Those in Top Managerial Positions | Yes, Including Managerial and Nonmanagerial Positions |
| Tennessee, East Civil | | | ✓ | | ✓ | | |
| Minnesota | | | | ✓ | | | ✓ |
| Tennessee, West Civil | ✓ | | | | ✓ | | |
| Alabama, Criminal | ✓ | | | | | | ✓ |
| Georgia | | | | ✓ | | ✓ | |
| Tennessee, Criminal | | | | ✓ | ✓ | | |
| Maryland | | ✓ | | | | ✓ | |
| Texas, 11 th District | | | ✓ | | | ✓ | |
| Pennsylvania | | ✓ | | | | ✓ | |
| Arkansas | | ✓ | | | | ✓ | |
| Missouri, South District | | ✓ | | | ✓ | | |
| California, 3 rd District | | ✓ | | | | ✓ | |
| Missouri, West District | | ✓ | | | | ✓ | |
| New Mexico | | ✓ | | | | ✓ | |
| Missouri, East District | | ✓ | | | | ✓ | |
| California, 6 th District | | | ✓ | | | ✓ | |
| Iowa | | | ✓ | | | | |
| California, 1 st District | | ✓ | | | | ✓ | |
| Colorado | | | | ✓ | | ✓ | |
| Texas, 13 th District | | | | ✓ | | | |
| Massachusetts | | | ✓ | | ✓ | | |
| New York, 4 th Dept. | | ✓ | | | | ✓ | |
| Kentucky | | ✓ | | | | ✓ | |
| New York, 1 st Dept. | | ✓ | | | | ✓ | |
| Washington, 3 rd Div. | | | | ✓ | ✓ | | |
| Arizona, 1 st Div. | | ✓ | | | | ✓ | |
| Idaho | | ✓ | | | ✓ | | |
| Texas, 5 th Dist. | | ✓ | | | | ✓ | |
| California, 2 nd Dist. | | ✓ | | | ✓ | | |
| Michigan | | ✓ | | | | ✓ | |
| Washington, 2 nd Div. | | | ✓ | | | | ✓ |

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The American Judges Association

The American Judges Association is the largest independent organization of judges in the United States. It has about 3,500 members, including members from Canada, Mexico, Puerto Rico, Guam, American Samoa and the Virgin Islands. About forty percent of AJA's members are state general jurisdiction judges, while another forty percent are municipal court or other limited jurisdiction judges. The remainder include state and federal appellate judges, federal trial judges and administrative law judges.

TABLE 3
Court Meetings and Timeliness

| Name of Court* | How Frequently Was Timeliness Discussed at the Monthly Meetings of the Bench? | | | How Frequently Was Information on Case Processing Time Shared Among all of the Judges? | | |
|--------------------------|---|--------|-----------|--|--------|-----------|
| | Never | Seldom | Regularly | Never | Seldom | Regularly |
| Tennessee, East Civil | ✓ | | | | | |
| Minnesota | | | ✓ | | | ✓ |
| Tennessee, West Civil | | ✓ | | | ✓ | |
| Alabama, Criminal | | | ✓ | | | ✓ |
| Georgia | | | ✓ | | | ✓ |
| Tennessee, Criminal | | | ✓ | | | ✓ |
| Maryland | | ✓ | | | ✓ | |
| Texas, 11th District | | | | | | |
| Arkansas | | | ✓ | | | ✓ |
| Missouri, South District | | ✓ | | | ✓ | |
| California, 3rd District | | | ✓ | | | ✓ |
| Missouri, West District | | | ✓ | | ✓ | |
| New Mexico | | | ✓ | | | ✓ |
| Missouri, East District | | ✓ | | | ✓ | |
| California, 6th District | ✓ | | | | ✓ | |
| Iowa | | | ✓ | | | ✓ |
| California, 1st District | | | ✓ | | | ✓ |
| Colorado | | | ✓ | | | ✓ |
| Texas, 13th District | | | ✓ | | | ✓ |
| Massachusetts | | | ✓ | | | ✓ |
| New York, 4th Dept. | | | ✓ | | | ✓ |
| Kentucky | | | ✓ | | | ✓ |
| New York, 1st Dept. | | | ✓ | | | ✓ |
| Washington, 3rd Div. | | ✓ | | | ✓ | |
| Arizona, 1st Div. | | | ✓ | | | ✓ |
| Idaho | | ✓ | | ✓ | | |
| Texas, 5th Dist. | | | ✓ | | | ✓ |
| California, 2nd Dist. | | | ✓ | | | ✓ |
| Michigan | | ✓ | | | ✓ | |
| Washington, 2nd Div. | | | ✓ | | | ✓ |

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American Judges Association - Midyear Meeting April 15-17, 1999 Fort Worth, Texas

This year's AJA midyear meeting will be April 15-17 in Fort Worth. The meeting consists of working sessions for the AJA Executive Committee and Board of Governors, as well as several other AJA committee's. This year's program also includes a half-day education program and working conference with a group of physicians, addressing aspects of drug and alcohol abuse and the judicial system's response to those problems. For registration information, contact the Association Services office at the National Center for State Courts, 300 Newport Ave., P. O. Box 8798, Williamsburg, Virginia 23187-8798; (757) 259-1841.

**TABLE 4
Special Procedures**

| Name of Court* | Did Your Court Use a Special Expedited Calendar? | | Did Your Court Use a Civil Settlement Conference? | |
|--------------------------|--|--|---|----|
| | Percentage of Civil Cases on Calendar | Percentage of Criminal Cases on Calendar | Yes | No |
| Tennessee, Middle Civil | | 1% | | |
| Tennessee, East Civil | | | | ✓ |
| Minnesota | | | | ✓ |
| Tennessee, West Civil | | | | ✓ |
| Alabama, Criminal | | | | |
| Georgia | | | | ✓ |
| Tennessee, Criminal | | | ✓ | |
| Maryland | | | ✓ | |
| Texas, 11th District | | | | ✓ |
| Pennsylvania | | | | ✓ |
| Arkansas | | | | ✓ |
| Missouri, South District | | | | ✓ |
| California, 3rd District | | | | ✓ |
| Missouri, West District | | | ✓ | |
| New Mexico | 60% | 70% | ✓ | |
| Missouri, East District | 20% | 80% | ✓ | |
| California, 6th District | | | | ✓ |
| Iowa | | | | ✓ |
| California, 1st District | | | ✓ | |
| Colorado | 5% | 5% | ✓ | |
| Texas, 13th District | 10% | 20% | ✓ | |
| Massachusetts | | 30% | ✓ | |
| New York, 4th Dept. | | | | ✓ |
| Kentucky | | | ✓ | |
| New York, 1st Dept. | | | ✓ | |
| Washington, 3rd Div. | | | | ✓ |
| Arizona, 1st Div. | | 10% | | ✓ |
| Idaho | | | ✓ | |
| Texas, 5th Dist. | | 17% | ✓ | |
| California, 2nd Dist. | | | ✓ | |
| Michigan | 15% | 15% | ✓ | |
| Washington, 2nd Div. | | | | ✓ |

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American Judges Association - Annual Meeting and Educational Conference October 10-15, 1999 Cleveland, Ohio

This year's AJA annual meeting will be October 10-15 in Cleveland. The meeting consists of an educational conference plus AJA business meetings, which include a general assembly of all AJA members and meetings of the Executive Committee, Board of Governors and most other AJA committees. Expect the educational programming to span three days from October 11 to 13. More information on the annual meeting will be coming in later issues of *Benchmark* and *Court Review*.

TABLE 5
Use of Law Clerks
(Legal Staff Assigned to Individual Judges)

| Name of Court* | Almost All Law Clerks Work for 1-2 Years | Some Law Clerks Work for 1-2 Years But Others Work Longer | Almost All Law Clerks Work as Professional, Long Term Employees |
|--------------------------|---|--|---|
| Tennessee, East Civil | ✓ | | |
| Minnesota | ✓ | | |
| Tennessee, West Civil | ✓ | | |
| Alabama, Criminal | | ✓ | |
| Georgia | | | ✓ |
| Tennessee, Criminal | ✓ | | |
| Maryland | ✓ | | |
| Texas, 11th District | ✓ | | |
| Pennsylvania | | ✓ | |
| Arkansas | | ✓ | |
| Missouri, South District | ✓ | | |
| California, 3rd District | | | ✓ |
| Missouri, West District | ✓ | | |
| New Mexico | ✓ | | |
| Missouri, East District | ✓ | | |
| California, 6th District | | | ✓ |
| Iowa | ✓ | | |
| California, 1st District | | | ✓ |
| Colorado | ✓ | ✓ | |
| Texas, 13th District | | ✓ | |
| Massachusetts | | | ✓ |
| New York, 4th Dept. | | | ✓ |
| Kentucky | | | ✓ |
| New York, 1st Dept. | | | ✓ |
| Washington, 3rd Div. | | | ✓ |
| Arizona, 1st Div. | ✓ | | |
| Idaho | | ✓ | |
| Texas, 5th Dist. | ✓ | | |
| California, 2nd Dist. | | | ✓ |
| Michigan | ✓ | | |
| Washington, 2nd Div. | ✓ | | |

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Court Review The Resource Page

Each issue of *Court Review* features The Resource Page (see pages 55-56), which seeks to help judges find solutions to problems that may be facing them, alert them to new publications, and generally try to provide some practical information judges can use. Please let us know of resources you have found useful in your work as a judge so that we can tell others. Write to the editor, Judge Steve Leben, 100 N. Kansas Ave., Olathe, Kansas 66061, e-mail: sleben@ix.netcom.com.

TABLE 6
Roles of Central Staff (Legal Staff Not Assigned to Individual Judges):
Percent of Central Staff Time Devoted to Various Efforts

| Name of Court* | Number of Staff | Routine Appeals | Complex Appeals | Writs and Motions | Settlement Conference | Other (e.g., setting up dockets, proofing mandates) |
|--------------------------------------|-----------------|-----------------|-----------------|-------------------|-----------------------|---|
| Tennessee, East Civil | 1 | 0% | | 50% | | 50% |
| Minnesota | 6 | 40% | 10% | 20% | | 30% |
| Tennessee, West Civil | 1 | 20% | | 60% | | 20% |
| Georgia | 8 | 10% | 10% | | | 80% |
| Tennessee, Criminal | 3 | 0% | 40% | 60% | | |
| Maryland | 8 | 80% | | 20% | | |
| Texas, 11 th District | 3 | 50% | 25% | 15% | | 10% |
| Pennsylvania | 14 | 5% | 5% | 30% | | 60% |
| Arkansas | 4 | 0% | 25% | | | 75% |
| Missouri, South District | 2 | 10% | 10% | 50% | | 30% |
| California, 3 rd District | 11 | 64% | | 29% | | 7% |
| Missouri, West District | 3 | 90% | | 10% | | |
| New Mexico | 14 | 40% | 45% | 10% | 2% | 3% |
| Missouri, East District | 2 | 0% | | 35% | | 65% |
| Colorado | 16 | 89% | | 10% | | 1% |
| Massachusetts | 16 | 50% | 10% | | | 40% |
| New York, 4 th Dept. | 25 | 10% | 50% | 20% | | 30% |
| Kentucky | 10 | 38% | | 38% | 20% | 5% |
| New York, 1 st Dept. | 25 | 25% | 60% | 10% | | 5% |
| Washington, 3 rd Div. | 12 | 0% | 30% | 60% | | 10% |
| Arizona, 1 st Div. | 15 | 50% | 50% | | | |
| Idaho | 1 | 0% | | 1% | | |
| Texas, 5 th Dist. | 5 | 10% | 5% | 50% | | 35% |
| California, 2 nd Dist. | 2 | 0% | | 100% | | |
| Michigan | 76 | 50% | 35% | 5% | | 10% |
| Washington, 2 nd Div. | 3 | 50% | | 40% | | 10% |

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Court Review Author Submissions Welcome

Court Review invites the submission of original articles, essays and book reviews. *Court Review* seeks to provide practical, useful information to America's working judges. In each issue, we hope to provide information that will be of use to judges in their everyday work, whether in highlighting new procedures or methods of trial, court or case management, providing substantive information regarding an area of law likely to be encountered by many judges, or by providing background information (such as psychology or other social science research) that can be used by judges in their work. Guidelines for the submission of articles, essays or book reviews for *Court Review* are set forth in detail on page 44.

THE RESULTS

The best statistical explanation of variation in court processing time includes five characteristics, as shown in Table 7. They are: (1) the number of appeals filed per judge; (2) the number of legal staff assigned to individual judges; (3) whether the court has statewide or regional jurisdiction; (4) the presence or absence of time standards; and (5) the attendance or nonattendance by judges at case management workshops. Courts that had the following three attributes took longer than others to resolve appeals:

- (1) more appeals filed per judge;¹¹
- (2) fewer legal staff assigned to individual judges; and
- (3) regional rather than statewide jurisdiction.¹²

In addition, the last two of the five factors contributed to shorter processing times, although their effects were statistically weak and must, therefore, be considered more suggestive than definitive:

- (4) courts with time standards tended to be more expeditious; and

TABLE 7
Effects of Court Characteristics on
How Long It Took to Resolve
75 Percent of Mandatory Appeals in 1993

| Court Characteristics | Unstandardized Coefficient | Standard Error | t-value | Significance level |
|--|----------------------------|----------------|---------|--------------------|
| Number of Mandatory Appeals Filed Per Judge | 1.23 | .387 | 3.166 | .001 |
| Number of Legal Staff Assigned to Each Individual Judges | -100.19 | 43.410 | -2.308 | .030 |
| Court Has Statewide Rather than Regional Jurisdiction | -89.99 | 50.923 | -1.767 | .089 |
| The Court Has Time Standards for the Stage Between NOA and Resolution | -51.74 | 57.106 | -.906 | .374 |
| A Majority or More of the Judges Have Attended Programs Involving Case Management Issues | -34.44 | 55.659 | -.619 | .542 |
| Constant R ² = .337 | 512.23 | 79.857 | 6.414 | .001 |

The coefficients indicate the direction and the extent of the change in court processing time for a given change in each of the court characteristics under study. The coefficient of 1.23 associated with the filings per judge suggests that for every additional filing slightly more than one (1.23) day is added to processing time. For example, if two courts differ by one hundred cases per judge, the court with greater number of cases would be expected to take 123 (100 times 1.23) days longer to process seventy-five percent of its appeals than the other court. Now consider the coefficient of -100.19 associated with the ratio of law clerks to judges. This negative number indicates that every additional law clerk assigned to each judge reduces processing time by approximately 100 days (1 times -100.19). As a result, the addition of law clerks can be a countervailing force to the effects of increases in the number of cases filed per judge. Courts with statewide jurisdiction are likely to take 90 fewer days to resolve their appeals than those with regional jurisdiction. The negative coefficients of the two management variables (-51.74) and (-34.44) are in the predicted direction. Time standards and management training are associated with shorter case processing times. However, using the significance level of .10 as a criterion, these effects are not statistically significant. As a result, the values of these individual coefficients cannot be validly translated into specific case processing time savings. Finally, the R² of .337 indicates that the five factors, taken together, explain one-third of the variation in processing times.

(5) courts in which a majority of the judges had attended case management programs tended to be more expeditious.¹³

DISCUSSION

What do these results mean? Simply stated, they suggest that resources are relatively more important than management in court processing time. As the number of case filings increase, when measured against the number of judges, courts take longer to resolve their cases. Courts that have more law clerks assigned to each judge take a shorter time to process cases. Hence, as caseloads increase, the numbers of judges and law clerk needs to be reviewed, assessed, and placed on the agenda for possible expansion.¹⁴ The effect of resources, moreover, is felt after taking into account the role of management and statewide versus regional jurisdiction. Regression analysis spells out the independent effect of each factor — what each factor contributes above and beyond the influence of all the other factors. The measurable independent effects can be illustrated by considering the following situation.

Take two courts that are similar in several respects, such as one law clerk per judge, regional jurisdiction, the absence of time standards, and the participation of only a minority of judges at past case management seminars. Suppose that one court has 150 cases filed per judge and one has 250 cases filed per judge. The regression results suggest that the court with 250 filings will take approximately 123 days longer than the other court to resolve seventy-five percent of its mandatory

appeals. In a parallel manner, suppose that one court has two law clerks per judge and one has three. If the courts are similar in all other respects, including the number of case filings per judge, the court that assigns three clerks to each judge will take 100 days fewer than the other court to resolve seventy-five percent of its mandatory caseload.¹⁵

These differences are not inconsequential. They point to the central importance of courts seeking and receiving adequate resources. However, the specific coefficients should not be over-interpreted. For example, the estimated increase in case processing time associated with an increase of 100 filings per judge should not be taken literally or universally. The results pertain to the particular courts under study and to the range of factors taken into account. A broader set of courts and measures — or measurements in other years — might yield somewhat different statistical estimates. However, the results are sufficiently strong to expect that resources will remain a durable determinant, even with a more extensive database studied over a period of years.

The jury is still out on the impact of management. It contributes to delay reduction. On the other hand, the limited statistical power of the two management variables found to have a correlation cautions against their immediate adoption, at least to the extent that they are seen as key ingredients to a significant decrease in delay.¹⁶ Management techniques should be encouraged as a method of delay reduction, but with an understanding that their specific, positive effects remain to established.

11. Court resources are measured by the ratio of cases to resources to ensure comparability across courts. Appeals per unit of resources (e.g., judges) achieve a desired level of standardization among different courts to permit a fair and valid test of the effects of resources. Judges are measured by the number of permanent, authorized positions and the number of full-time equivalent positions obtained through the use of senior judges, visiting judges, or pro tem judges.
12. The effects of statewide jurisdiction in reducing case processing time are not intuitively obvious. Why should statewide versus regional jurisdiction make a difference? One answer is that statewide jurisdiction may be capturing the effects of several unmeasured variables, such as the length of the chief judge's tenure, the location of the judges' chambers in a single versus multiple locations, the degree of each judge's autonomy. Judges in courts with statewide jurisdiction might be more likely to comply with court-wide policies (e.g., tight timeframes) because the chief judge might be able to act as a more effective enforcer due to greater span of control, authoritative status, and ability to detect noncompliance. Obviously, there are possible counterexamples, but this variable has proven to be of significance in both the original and the reanalysis. Hence, it seems worthwhile for future researchers to uncover what lies behind this formal category in terms of what managerial disadvantages might lie in regional jurisdiction arrangements.
13. Organizational variables found to be statistically significant in the previous research, see Hanson, *supra* note 2, proved to be of virtually no significance in the reanalysis. For example, the effects of the method of selecting the chief judge, the requirement that the court write an opinion in every decided case, and the imposition of restrictions on oral argument were of virtually no impact in the updated analysis. Finally, some items on ques-

tionnaires proved to be constants. Virtually every court had time limits on record preparation and briefing — thus, these are not variables. Most organizational variables had response patterns with no tendency in the expected direction.

14. An alternative strategy to reducing the number of cases filed per judge might be to review, and in some instances, amend the court's jurisdiction. Because the scope and nature of court jurisdiction affect caseload volume and composition, courts should inform state legislatures of the consequences of legislative decisions to broaden or to narrow jurisdiction. The most obvious examples concern appeals arising from guilty pleas and appeals involving sentencing issues. If a legislature narrows the conditions under which appeals from guilty pleas are possible and the types of sentencing issues that are appealable, they can substantially affect the number of criminal appeals filed annually.
15. Of course, these expectations are based on the range of one to four law clerks found among the courts under study. It would be hazardous to estimate the consequences of five, six, seven or more law clerks per judge when no courts have had experienced that situation and moreover, there likely would be diminishing returns with such numbers. *But see* Stephen J. McEwen, Jr., *On the Effective Use of Resources in Pennsylvania*, COURT REVIEW, Fall 1998, at 48 (noting lack of management problems with four law clerks per judge and a central research staff of 16 other attorneys).
16. Before chief judges work to adopt time goals and send every judge to a training seminar, they should check the adequacy of their resources. The numbers of judges and law clerks are of vital importance and can be linked directly to timeliness. On the other hand, while time standards and education plausibly are related to timeliness, their connection remains more of a working hypothesis rather than a proven relationship.

IMPLICATIONS

At rock bottom, the results imply that courts, attorneys, policy makers, and taxpayers should understand that timely performance is tied to resources. You cannot have one without the other. When caseloads rise, timeliness and resources should be examined. Is an increase of 25, 50, or 100 cases per judge associated with an increase in processing time? What exactly is the increase? Is the increase in time acceptable? If not, what is the preferred response? More judges? More legal staff? Will one judge be sufficient? Or is a panel warranted? Finally, should the court's jurisdiction be modified to reduce the number of appeals?

A second implication concerns the idea of national time standards. How realistic is it to set the same standard for courts with different numbers of cases per judge and different numbers of law clerks per judge when we know that these differences affect case processing time? We also know from other research that not all cases are equivalent. In criminal appeals, there is ample evidence that the more severe the offense at conviction, the longer it takes virtually every court to resolve the appeal.¹⁷ These findings indicate that the composition of the caseload, e.g., the percentage of homicide appeals, needs to be factored in when setting time goals. To take both case complexity and the number of cases filed per judge into account, future research is needed to establish a weighted case measurement scheme applicable to all courts. Each court can then

more precisely call for a specific amount of resources to meet national time goals.

A third implication revolves around the question of the degree to which management efforts provide expected benefits. Are the true effects of management of secondary or tertiary significance compared to resources? Or is the lack of an association between management and timeliness in the current study merely evidence that effective management policies are very difficult to measure? A challenge for the future is to develop new and improved measures.

Finally, the utility of court research lies in its comparative nature. With data on a wide range of courts, the influence of competing explanations can be sorted out. We now have firmer knowledge than before that resources are a meaningful and substantial source of variation in processing time among a broad range of state intermediate courts. Every court – and every corresponding state legislature — needs to know that more, rather than less, resources makes a real and measurable difference in timeliness.



Court consultant Roger A. Hanson has worked with courts and other justice agencies for the past thirty years. Most recently, he was on the staff of the National Center for State Courts. Currently, he is writing a book on court reform and directing several projects on the effective use of resources.

17. See Joy A. Chapper & Roger A. Hanson, *Intermediate Appellate Courts: Improving Case Processing* (1990); Hanson, *supra* note 2, at 53-72.

Court Review Author Submission Guidelines

Court Review, the quarterly journal of the American Judges Association, invites the submission of unsolicited, original articles, essays and book reviews. *Court Review* seeks to provide practical, useful information to the working judges of the United States. In each issue, we hope to provide information that will be of use to judges in their everyday work, whether in highlighting new procedures or methods of trial, court or case management, providing substantive information regarding an area of law likely to be encountered by many judges, or by providing background information (such as psychology or other social science research) that can be used by judges in their work.

Court Review is received by the 3,500 members of the American Judges Association (AJA), as well as many law libraries. About 40 percent of the members of the AJA are general jurisdiction, state trial judges. Another 40 percent are limited jurisdiction judges, including municipal court and other specialized court judges. The remainder include federal trial judges, state and federal appellate judges and administrative law judges.

Articles: Articles should be submitted in double-spaced text with footnotes, preferably in WordPerfect format (although Word format can also be accepted). The suggested article length for *Court Review* is between 18 and 36 pages of double-spaced text (including the footnotes). Footnotes should conform to the 16th edition of *The Bluebook: A Uniform System of Citation*. Articles should be of a quality consistent with better state bar association law journals and/or other law reviews.

Essays: Essays should be submitted in the same format as articles. Suggested length is between 6 and 15 pages of double-spaced text (including any footnotes).

Book Reviews: Book reviews should be submitted in the same format as articles. Suggested length is between 3 and 15 pages of double-spaced text (including any footnotes).

Pre-commitment: We will consider making a tentative publication commitment based upon an article outline or proposal. In addition to the outline or proposal, a comment about the specific ways in which the submission will be useful to judges and/or advance scholarly discourse on the subject matter would be appreciated. Final acceptance for publication cannot be given until a completed article, essay or book review has been received and reviewed by the *Court Review* editor or editorial board.

Editing: *Court Review* reserves the right to edit all manuscripts.

Submission: Submissions may be made either by mail or e-mail. Please send them to *Court Review's* editor: Judge Steve Leben, 100 North Kansas Avenue, Olathe, Kansas 66061, e-mail address: sleben@ix.netcom.com, (913) 764-8484 ext. 5582. Submissions will be acknowledged by mail; letters of acceptance or rejection will be sent following review.

APPENDIX*

Reexamining Time on Appeal
 National Center for State Courts
 Roger Hanson, FAX (757) 220-0449

_____ Name of Court

General Instruction: To incorporate the new data into our existing database, when responding to the questions below, **please try to recall what policies you had in place in 1993.** Thank you.

1. Did your court have time standards for completion of appellate review? If so, what steps in the process were covered?

Please check appropriate category:

| | Court Rule | Statute | Informal Policy | Other (please specify) |
|--|--------------------------|--------------------------|--------------------------|--------------------------------|
| A. Notice of appeal to submission of the record | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> _____ |
| B. Completion of the record to filing of the last brief | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> _____ |
| C. From the filing of the last brief to oral argument/ submission without oral argument | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> _____ |
| D. Argument/submission to decision | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> _____ |
| E. Notice of appeal to decision | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> _____ |

2. Did your standards for steps C, D, and E cover both argued and nonargued cases?
 Check the appropriate category.

| | Yes, both | No, only argued cases |
|---|-----------|-----------------------|
| C | _____ | _____ |
| D | _____ | _____ |
| E | _____ | _____ |

3. If you had a time standard between NOA and final disposition, what was the elapsed time in days? And what percentage of cases were covered by the standard?
 _____% of cases were expected to be resolved within _____ days.

4. Was timeliness discussed at the monthly meetings of the bench? If so, was information on case processing time shared among all of the judges?

Please circle the most applicable category:

Timeliness was **never, seldom, regularly** discussed at judicial meetings.

Information was shared **rarely, only if serious delays existed, regularly** at judicial meetings.

*Note: As an aid to future researchers, we reprint here the questionnaire from which the data used in this article were obtained.

5. Did your court use a special expedited calendar (cases on a special expedited calendar may be required to submit briefs that are shorter than the normal length, may be decided by a hearing officer, commissioner or pro tem judge, and result in a short, unpublished or summary order) to handle routine (single issue, settled issues of law, relatively uncomplicated facts) cases?

Please Indicate the Approximate Percentage of Cases on an Expedited Calendar

| | Civil | Criminal |
|--|--------------|-----------------|
| No, in neither civil or criminal appeals | _____ % | _____ % |
| Yes, in criminal appeals only | _____ % | _____ % |
| Yes, in civil appeals only | _____ % | _____ % |
| Yes, in both civil and criminal appeals | _____ % | _____ % |

6. Were the legal staff assigned to individual judges in your court generally recent law school graduates and short-term employees of your court?

Please check the response that most closely approximates your situation:

- Yes, almost all of the legal staff assigned to individual judges generally work as "elbow clerks" for approximately _____ years.
- No, some legal staff assigned to individual judges work for up to _____ years with those judges.
- No, almost all legal staff assigned to individual judges work as professional, long-term employees of the court.

7. Did your court employ legal staff who are not assigned to individual judges? If so, what were their responsibilities? Total number of legal staff not assigned to individual judges = _____

Please indicate the approximate time that all central staff, not assigned to individual judges, including supervisors, devote to the following responsibilities:

- _____ % preparing memoranda decisions on routine appeals
- _____ % conducting research on routine appeals
- _____ % conducting research on complex appeals
- _____ % handling writs
- _____ % handling motions
- _____ % hosting settlement conferences
- _____ % other responsibilities (please specify, _____)
- 100%

8. Had members of the bench attended seminars, conferences, or workshops where appellate caseflow management was on the agenda?

Please check most appropriate response:

- No, none of the judges
- Yes, but only a minority of the judges
- Yes, over half of the judges
- Yes, all or almost all of the judges.

9. Had the court's legal staff attended seminars, conferences or workshops where appellate caseflow management was on the agenda?

- No, none of the staff
- Yes, but only those in top managerial position
- Yes, including managerial and nonmanagerial positions

10. Finally, did your court have a formal settlement conference? Was it mandatory? Please check the appropriate box.

- No, we had no program
- Yes, there was a voluntary program
- Yes, there was a mandatory program

Approximately _____ % of civil cases were referred to the program.