

Evaluation and Recommendation for the Georgia Appeals
Court System

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I. WORKLOAD

Frankly put, both the Georgia State Supreme Court and the Georgia Court of Appeals have extremely high workloads. In Table I are the results of a workload model I created for the State Supreme Courts of the United States using the 1994 data from the book State Court Caseload Statistics for 1994¹. My workload model ranks the nation's state supreme courts according to workload per justice for 1994, accounting for the number of opinions written, number of mandatory cases and the number of discretionary petitions submitted to the court. The Georgia State Supreme Court, in 1994, ranked 12th in overall workload per justice. Furthermore, the Georgia State Supreme Court wrote 401 opinions and therefore was ranked 6th in number of opinions written in 1994. Found in Table II is a similar workload model for the Intermediate Appellate Courts in the nation. The Georgia Court of Appeals was ranked 2nd in the nation, only behind Michigan, in terms of workload per justice. Also in 1994, the Georgia Court of Appeals was 2nd in terms of the number of opinions written per justice, which was at 257. These numbers were approximately the same for a workload model I created using 1993 data, thereby discounting any notion of a single year aberration.

¹State Court Caseload Statistics for 1994, National Center for State Courts, Williamsburg V.A. (1995).

TABLE I

Workload Rank Per Justice
of State Supreme Courts 1994

1. CA	11. TX	21. MT	31. IN	41. KY
2. OK	12. GA	22. VA	32. AZ	42. MA
3. NY	13. AR	23. ND	33. MO	43. MN
4. ME	14. AL	24. HI	34. SD	44. DE
5. IL	15. NJ	25. RI	35. CO	45. OR
6. WV	16. PA	26. UT	36. MD	46. NE
7. NV	17. TN	27. VT	37. KS	47. WA
8. IA	18. MI	28. AK	38. NM	48. WI
9. OH	19. FL	29. ID	39. NH	49. NC
10. SC	20. LA	30. MS	40. WY	50. CT

TABLE II

Workload Rank Per Justice
of State Intermediate Appellate Courts 1994

1. MI	11. NJ	21. MN	31. ID
2. GA	12. NC	22. OK	32. SC
3. VA	13. NY	23. TN	33. AK
4. PA	14. WA	24. IL	34. UT
5. CA	15. NE	25. IA	35. AZ
6. AL	16. FL	26. IN	36. CO
7. OR	17. MA	27. MD	37. MO
8. LA	18. WI	28. TX	38. HI
9. KS	19. OH	29. CT	39. ND
10. NJ	20. AR	30. NM	

What can be gathered from Tables I and II is that both the Georgia State Supreme Court and the Georgia Court of Appeals have extremely high workloads. Justices need time to deliberate and conference in order to craft clear, precise and comprehensive opinions. It is my opinion that appeals court justices in Georgia simply do not have the time they need to craft the types of opinions needed. Only a superhuman could meet the task.

I point to the high dissent rate on the Georgia Supreme Court as an example of the justices not having enough time to work out

differences. In 1980, the Georgia State Supreme Court's dissent rate was 20 percent per case, which was the 22nd highest dissent rate in the nation. Today the percentage rate is above 30 percent. It cannot be denied that this high dissent rate on the Georgia State Supreme Court is in part due to political and philosophical differences among the justices and will not easily be resolved. Nevertheless, I believe a significant portion of the disagreement could be resolved if the court had more time per case. Also, the Georgia State Supreme Court has a great number of plurality opinions. Plurality opinions are where a clear majority cannot agree upon the correct reasoning for the winner in a case. I believe that this also is sign of a court that does not have time to work out differences.

When a trial judge strongly relies upon an opinion that contains many dissents, in my opinion this encourages litigants to appeal. Furthermore, when the justices do not have time to set down clear precedent and address all necessary issues, then the trial courts have a hard time applying the law. Plurality opinions and conflicting precedent often leave those trying to interpret the legal standards confused. When there are plurality opinions or series of decisions that do not fit together this causes even more appeals. Consequently, extremely high workloads for appeals courts have the inevitable effect of causing workloads to be even higher.

In an interview with a recent clerk for the Chief Justice of the Maryland Court of Appeals, Maryland's highest court, the clerk told me that there is rarely dissent on any opinion. She noted

that while the justices did have divergent views, they had time to work out these differences by circulating draft opinions and frequently meeting to discuss the case. In my workload model, Maryland's highest court is ranked 36th in workload and the intermediate court of appeals is ranked 27th. With this low workload, Maryland appeals courts have the necessary time to craft opinions. The Maryland Court of Appeals also has a large amount of discretion in terms of the cases it hears. Therefore, the court has the freedom to choose areas of the law that are in most need of attention and consequently reduce its workload. This results in an actual reduction of appeals to the court.

My recommendation is that any policy that the state of Georgia adopts to reform the appeals court system should not have the effect of increasing the workload per justice on either court. Any such policy would certainly encourage collapse of the whole system by actually further increasing the workload. The appeals court justices in Georgia are highly qualified and extremely professional, but they are not superhuman. They cannot be asked to work at a rate akin to reading *Gone With The Wind* every morning before breakfast.

II. EVOLUTION OF STATE SUPREME COURTS

There is a natural evolutionary process of development regarding state supreme courts as their caseload and state population grows. Robert Kagan did a seminal quantitative study examining state supreme courts from 1870 to 1970 concerning the

evolution of state supreme courts. The widely cited article is titled The Evolution of State Supreme Courts². He found that as a state's population grows and its economic base moves away from agriculture, a natural set of reformations occur. He notes that these changes, especially in the later stages, occurred only after fierce political battles among the state legislature and various lawyer organizations.

Kagan found that two reforms were universally made in order to reduce caseloads. First, states created intermediate appellate courts. Secondly, states gave their state supreme court great discretion over its docket.

Kagan's research showed that state supreme courts essentially pass through three phases. In Phase I, the state supreme court has a low caseload, little discretionary jurisdiction and no intermediate appellate court. When the caseload reaches a high level, the state creates an intermediate appellate court to relieve the pressure. At this point, a court becomes a Phase II state supreme court. The Phase II state supreme court still has little discretionary jurisdiction. When the workload reaches another critical level, the state changes the state supreme court's jurisdiction so that it has much greater discretion over its docket. At that point, the state supreme court reaches Phase III. A Phase III state supreme court has a large intermediate appellate court beneath it and has a substantial amount of discretion

²Robert Kagan, Bliss Cartwright, Lawrence Friedman and Stanton Wheeler, The Evolution of State Supreme Courts, 76 Michigan Law Review 961 (1979).

regarding its docket. According to Kagan, state supreme courts evolve in this fashion and states inevitably adopt these measures, regardless of what alternative routes they may initially take.

Kagan spends a great amount of time analyzing the opinions of Phase II state supreme courts with heavy workloads. Some courts in Phase II, according to Kagan, write as many as 400 or 500 opinions per year. Kagan says "...the flood of cases threaten the quality of decision making..."³. In an effort to prove this hypothesis he compares cases written by Phase II courts and Phase III courts. Kagan found that Phase II courts, as compared to Phase III courts, "wrote opinions which were shorter, which used fewer citations, and which referred less often to treatises, legal encyclopedias, and law reviews".⁴ Kagan indicates that it would be rash to conclude that the opinions written by Phase II courts are of poor quality. However, Kagan says, "This may have increased the risk of routine, poorly crafted opinions".⁵

The Georgia State Supreme Court is definitely a Phase II court and has been a Phase II court with a high workload for quite some time. Kagan points out that Phase II courts that write more than 400 opinions per year are courts on the verge of becoming Phase III courts. In 1994, the Georgia State Supreme Court wrote 401 opinions, which is a level it has been at for many years.

³Kagan. at 969.

⁴Ibid. at 971.

⁵Ibid. at 972.

III. RECOMMENDATION ONE: Increase the number of justices on the Georgia Court of Appeals.

As a part of the natural evolution of state supreme courts, states have created intermediate appellate courts. These intermediate appellate courts have grown in size. As the caseloads have increased, so have the number of intermediate appellate court justices. Table III lists the number of justices on the states' intermediate appellate courts. States with Phase III state supreme courts roughly have the most justices on their intermediate appellate courts.

TABLE III

Number of Justices on Intermediate Courts of Appeals (1994)

CA 88	WA 18	OR 10
TX 80	CO 16	VA 10
OH 65	MN 16	CT 9
NY 63	WI 16	GA 9
FL 61	IN 15	AL 8
LA 54	KY 14	UT 7
IL 52	MA 14	AR 6
MO 32	MD 13	IA 6
NJ 32	NC 12	NE 6
MI 24	OK 12	SC 6
PA 24	KS 10	HI 4
AZ 21	NM 10	AK 3
TN 21	OR 10	ID 3
		ND 3

As can be seen from Table III, Georgia is near the bottom in terms of the number of justices on its intermediate appellate court. States with similar numbers of intermediate appellate court justices are much less developed states. Many have small populations or are agrarian based. It appears that Georgia has fallen behind in terms of increases in numbers of intermediate

appellate judges.

It is simple mathematics that more justices need to be added. This, however, will not cure all of the workload problems, unless it is combined with reducing the Georgia State Supreme Court's mandatory jurisdiction. Three more justices on the Georgia Court of Appeals would help, yet the need for more justices will simply continue as the economic base in Georgia changes and the population grows. Tennessee has 21 justices on its court of appeals and that would seem to be an appropriate number for Georgia to have.

IV. RECOMMENDATION II: Increase the Georgia State Supreme Court's discretion over its docket.

As state supreme courts evolve, they cease to be courts of personal justice. Cardozo wrote that a state's highest court is not for the "individual litigant, but for the indefinite body of litigants... The wrongs of aggrieved suitors are only the algebraic symbols from which the court is to work out the formula of justice".⁶ In other words, the business of state supreme courts should not be simply to resolve individual disputes, but rather to create policy and rules of law. To this end, the State Supreme Court of Georgia needs to move toward being a certiorari driven court. The Georgia State Supreme Court is now laden with mandatory cases and, therefore, has less time to accept certain cases it probably should be accepting.

In Table IV are found the percentage of cases heard in state

⁶B. Cardozo, The Jurisdiction of the Court of Appeals of the State of New York, 2d Edition (1909).

supreme courts that are discretionary for 1994. It is positive that the Georgia State Supreme Court has a certiorari docket and that makes up approximately 10 percent of the cases it decides each year. This shows the court is heading toward becoming a Phase III state supreme court. Such a policy surely helps reduce the workload. Yet, as the state grows and more people and major businesses come to Georgia, the state will need to allow the Georgia State Supreme Court to have even greater discretion over its docket. There are various areas of the law that are emerging in technology, banking and family law. The Georgia State Supreme Court needs time to set definite standards in those areas. In my opinion, approximately 30 to 50 percent of the cases the Georgia State Supreme Court decides every year should come via certiorari. If the state supreme court can apply its resources where they would be most efficiently, then demands on the appellate system would decrease.

TABLE IV
 Percentage of Cases Decided that are Discretionary
 in State Supreme Courts (1994)

State	%	State	%	State	%
WV	100	MD	30	TX	8
MI	95	NJ	22	AK	7
VA	83	TN	20	SD	1
LA	78	MO	16	MS	1
CA	78	OH	15	MT	1
CT	64	IN	15	OK	0
MA	62	GA	10	VT	0
NC	45	SC	10	NV	0
MN	40	IL	10	DE	0
OR	36	KS	9	WY	0

(all others omitted for lack of data)

V. OBSERVATIONS AND CONCLUSION

Transferring some of the workload from the Georgia Court of Appeals to the Georgia State Supreme Court would be an ill advised policy. Instead of reducing the workload, such a plan would actually increase the workload. Making family law cases come under the mandatory jurisdiction of the Georgia State Supreme Court would be a bad policy. Similarly, Workers Compensation cases should not come to the Georgia State Supreme Court under mandatory jurisdiction. All criminal matters should go to the Georgia Court of Appeals first, except death sentences. A large portion of the Georgia State Supreme Court's mandatory jurisdiction should be transferred to an expanded Georgia Court of Appeals. The Georgia State Supreme Court should continue moving towards becoming a Phase III state supreme court and not away from it.

Both of my recommendations should be adopted at the same time. Adopting one measure without the other will likely not have a great effect upon court workloads. G. Alan Tarr and Mary C. Porter in their book State Supreme Courts in State and Nation say that "The key variable here is whether the institution of an intermediate appellate court is accompanied by a reduction in the mandatory jurisdiction of the state's highest court".⁷ Victor Flango and Nora Blair found that in Arizona, where an intermediate court of appeals was created, the caseload of the court was not reduced, because the Arizona State Supreme Court was straddled with so many

⁷G. Alan Tarr and Mary C. Porter, State Supreme Courts in State and Nation, Yale University Press (1988) at 49.

cases coming under mandatory jurisdiction⁸.

The Georgia appeals court system is under a tremendous strain caused by the growth in the state. Ignoring the problem and not following virtually the same reformation programs that every other state supreme court in the nation is following could cause the appeals system to collapse. Ultimately, the ones that suffer are those individuals that are wronged at trial and cannot get the time by an appeals court for a sufficient review of their cases. Georgians deserve to continue having a first rate appeals system. Appellate courts are the gatekeepers of justice in our society and they need to have the time and the ability to efficiently apply their resources so they can best do their jobs. In the end, the Georgia States Supreme Court must eventually cease to be a court of personal justice and the number of justices on the Georgia Court of Appeals must rise substantially.

⁸Victor Eugene Flango and Nora F. Blair, Creating an Intermediate Appellate Court: Does It Reduce the Caseload of a State's Highest Court?, *Judicature* 64:74-85 (1980).

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- Introduction to American Government
- Constitutional Law: Federalism and Separation of Powers
- Constitutional Law: Civil Rights and Civil Liberties
- American Judicial Process
- Constitutional Politics and the U.S. Supreme Court
- Introduction to Law and the Legal Process
- Legal Research and Writing

ARTICLES

"Methods of Selection and Judicial Roles in the Nation's State Supreme Courts"

"Judicial Roles in the State Supreme Courts"

ORGANIZATIONS

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REFERENCES

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RESEARCH INTERESTS

My major interest is in developing attitudinal models of appellate court justices in order to predict their vote on a particular case and to identify key factors and arguments that the justices would find most compelling.