

WHY SO LONG? EXPLAINING PROCESSING TIME IN CAPITAL APPEALS*

JAMES N. G. CAUTHEN AND BARRY LATZER

No studies to date have investigated processing time in capital appeals across states. This article presents the findings of an investigation of the time expended by fourteen state supreme courts to resolve direct appeals of capital convictions and sentences. Data on 1,676 direct appeals decided between 1992 and 2002 showed that these states expended a median of 897 days to resolve direct appeals. There were significant differences in processing time across states, with much of this state-to-state variation explained by capital-case characteristics, court rules and resources devoted to capital appeals, and court attributes.

It is well recognized that the capital-appeals process is unusually lengthy. While the United States Department of Justice keeps track of the overall processing time nationwide, it does not examine each state's efficiency in resolving these controversial cases. This article reports on the findings of a multistate study of time allocated to death penalty appeals and includes some explanations for the differences in time consumption across states.

Measuring from sentence to execution, it takes more than twelve years to carry out fully reviewed death sentences in the United States. Yet in death penalty cases, full and timely review is not assured. At year-end 2005, 43 percent of those sentenced to death between 1973 and 2005 were still in prison awaiting the application of the sentence or the resolution of their appeals. Also, 339 inmates, roughly 10 percent of the death-row population, were under sentence of death for twenty years or more at the end of 2005 (Bureau of Justice Statistics, 2005).

Most of this post-conviction time is, of course, devoted to the capital-appeals process (Banner, 2002), and the vast majority of this processing time is expended at the state level (Aarons, 1998a). Of the states authorizing the death penalty, practically all mandate appellate review of all death sentences regardless of the defendant's wishes, and most of these states also require review of the underlying conviction (Bureau of Justice Statistics, 2005). In all but two death penalty states, this initial review, the "direct appeal," proceeds from the trial court directly to the state court of last resort (referred to here as the "state supreme court," although not all courts of last resort have that designation). In Alabama and Tennessee, the direct appeal begins in the intermediate appellate court.

There have been few studies investigating processing time in direct appeals in death penalty cases, and these have been limited to a single state supreme court (e.g.,

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Cauthen and Latzer, 2000; Office of the Attorney General, 2002). To date, no works have sought to identify and explain cross-state differences in the processing times of capital appeals, either generally or specifically in direct appeals. To fill this void, we mounted a study focusing on the time expended by state courts at the direct-appeal stage.

WHY BE CONCERNED WITH PROCESSING TIME IN CAPITAL APPEALS?

As one would expect, researchers have found that direct appeals in capital cases can take significantly longer to resolve than other types of appeals. In a 2001 report prepared for the National Center for State Courts, Hanson (2001) found that the median time to decide capital cases in Florida in 1996 and 1997 was approximately seven times greater than the time taken to decide all other types of mandatory appeals. Time consumption in capital cases was approximately three times higher in Ohio and slightly higher in Georgia.

Certainly, a significant part of the time devoted to appeals in death penalty cases is attributable to United States Supreme Court mandates, sometimes referred to as the “constitutionalization of capital punishment.” (Banner, 2002:292). For instance, bifurcated (two-part) capital trials, endorsed by the Supreme Court in *Gregg v. Georgia* (1976), are a potent source of appellate-error claims and, therefore, increase the number of legal issues that must be reviewed on appeal. The use of juries in the second or sentencing phase of death penalty trials greatly increases the incidence of appellate claims (Latzer and Cauthen, 2000; King and Noble, 2004). Noncapital cases, by contrast, are by and large resolved by a guilty plea, from which there is scant basis for appeal (Bureau of Justice Statistics, 2006).

Some assert that the additional time devoted to these cases is justified given what is at stake, as the extended time devoted to appeal and post-conviction review is necessary to guarantee that those on death row are accorded due process before an execution is carried out (e.g., Bright, 1998). Without such extensive review, they argue, society may be putting people to death who do not deserve such punishment or, worse yet, are innocent of the underlying crime.

While recognizing the additional time that may be needed to meet constitutional requirements and other state mandates, many have criticized appellate courts for the excessive time they take to resolve capital appeals (Powell, 1989; Kozinski and Gallagher, 1995; Aarons, 1998a; Morgan, 2000). The critics have identified a number of negative consequences of the extraordinary length of the capital-appeals process on the administration of justice.

First, some argue that lengthy reviews of death sentences over a period of many years create a sense of lack of finality in death penalty cases, thereby decreasing public confidence in the criminal-justice system (Powell, 1989; Kozinski and Gallagher, 1995). In 1994 the Ohio Supreme Court observed that the failure to carry out death sentences that it had affirmed “creates doubt about the ability of the justice system to carry out the death penalty and, perhaps even more importantly, a perception that the entire criminal justice system is not working” (*State v. Steffan*, 1994, at 73).

A second negative consequence flowing from the extraordinary length of the capital-appeals process according to critics is that it weakens any deterrent effect of the sentence (Powell, 1989; Johnson, 2001; Shepherd, 2004). Clearly, the extent to which the death penalty deters crime is a matter in controversy (Bailey and Peterson, 1994; Donohue and Wolfers, 2005) and beyond the scope of this study, but *if* capital punishment has a deterrent effect over and above life imprisonment, a lengthy implementation process may undermine that effect. A recent empirical examination of the relationship between deterrence and the length of time on death row before execution found that shorter waits on death row increase deterrence (Shepherd, 2004), although another analysis of the same data found no such effect (Berk, 2005).

A third possible negative consequence is that the extraordinary length of the capital-appeals process has, in itself, become a ground for litigation, generating assertions that execution after a long stay on death row may violate the Eighth Amendment (Aarons, 1998b; Root, 2001). In a recent dissent from the United States Supreme Court's denial of certiorari in a capital appeal, Justice Stephen Breyer wrote that when there is an inordinate delay in carrying out a death sentence while the case works its way through the appellate process, "the claim that time has rendered the execution inhuman is a particularly strong one" (*Knight v. Florida*, 1999, at 993). However, responding to Justice Breyer in the same case, Justice Clarence Thomas noted that "lengthy delay" was a necessary consequence of current constitutional mandates and therefore could not violate the death-row defendant's constitutional rights (*Knight v. Florida*, 1999, at 992).

EXPLAINING APPELLATE PROCESSING TIME

The criticisms of inordinate delay just discussed have been leveled against the processing of all stages of capital appeals—direct appeals, state post-conviction review, and federal habeas-corpus review. We look here at processing time during the first stage of the capital-appeals process—the direct appeal. As noted above, there have been no cross-state studies seeking to explain processing time in capital appeals, and scholars have undertaken only a very few explanatory studies on appellate processing time in general. In those that have been undertaken, two of the major factors found to affect processing time in appellate courts have been case characteristics and institutional arrangements and resources.

Case characteristics have been identified in a number of works as contributing to the variation in the time taken by state appellate courts to decide cases (Martin and Prescott, 1981; Chapper and Hanson, 1990; Hanson, 1996). For example, in his study of felony appeals, Hanson (1996) found that the seriousness of the criminal conviction affected time on appeal, as appeals of homicide convictions took longer to resolve than non-homicide appeals. In addition, he found that the trial length affected processing time: longer trials resulted in lengthier appeals. Finally, he discovered that appeals affirming the trial court's decision took less time to resolve than those overturning the lower court's decision. Consistent with these results, we found, in our

earlier study focusing on the New Jersey Supreme Court, that case complexity, measured by appellate-court opinion length, helped explain the time needed to resolve capital and noncapital criminal appeals; more complex cases took longer to resolve (Cauthen and Latzer, 2000).

Beyond case complexity, agreement on the court with regard to case outcome also has been found to contribute to processing time. That is, consensus among justices may lead to greater efficiency, given that all agree on the case result. In his study of decisions of the Texas Supreme Court, Hanson (1996) found that the court expended more time in appeals resulting in nonunanimous decisions than it did when all justices agreed with the outcome.

Another explanatory factor identified in previous studies is institutional rules and resources. Adopting special rules to expedite appeals has been seen by judges as an effective tool in addressing undue delay (Beasley et al., 1998), and research has shown that such rules have their desired effect. Included here are rules focusing on record preparation and monitoring of the briefing process, the adoption of caseload-management techniques to encourage completion of the decision-making process (Hanson, 1998; Hoffman and Mahoney, 2002), and elimination of the requirement of a reasoned opinion in each case (Hanson, 1996).

In their work focusing on intermediate appellate courts, Martin and Prescott (1981) found that court organization and procedures designed to increase efficiency had a significant effect on processing time, even more so than reducing caseload, suggesting that the lack of efficiency in resolving appeals was not solely a factor of too few judges handling too many cases. Caseload does have an impact, however, as other studies have found that higher caseloads contribute to inefficiency in time to decision. For example, focusing on resources in his study of intermediate appellate courts, Hanson (1996) found that case processing in intermediate appellate courts became less efficient as caseload increased per judge, but this could be offset with the presence of additional clerks on staff. Hanson reaffirmed these findings in a later study in which he concluded that resources were more central to understanding variations in processing time than were rules or other case-management innovations (Hanson, 1998).

While the vast majority of these previous explanatory studies focused on intermediate appellate courts and none included capital cases, some of their findings may be applicable to death penalty appeals. In addition, some idiosyncratic features of capital cases and the courts that decide them may also contribute to time on appeal.

DESIGN OF THE STUDY

The present study investigates the time taken to process direct appeals of capital cases before state appellate courts. These direct appeals are the first stage in the capital-appeals process, and in all but two death penalty states, only the state supreme court hears these appeals. We included in the investigation decisions from fourteen states that we believe to be representative of the thirty-seven states that have enforceable death penalty laws: Arizona, Florida, Georgia, Kentucky, Missouri, Nevada, New

Jersey, North Carolina, Ohio, South Carolina, Tennessee, Texas, Virginia, and Washington.

We relied initially on the work of Lofquist (2002) to select the states for this study. Lofquist classified all fifty states in terms of their application of the death penalty as measured by three criteria: the number of death sentences, the number of reversals, and the number of executions. He then established six categories of states, which he labeled Abolitionist, Inactive, Active, Symbolic, Inefficient, and Aggressive. To allow for generalization of our results, we included in the study states from each of Lofquist's categories except the "Abolitionist" and the "Inactive." We selected states spread across the other categories, also seeking variation in geographical region given its significance in the imposition of the death penalty. We confirmed that the states chosen provided a sufficient number of death sentences and executions for meaningful analysis by examining the Justice Department data on death sentences from 1973 to 2000 (Bureau of Justice Statistics, 2002).

Our selections were subjected to two other confirmatory checks. According to Liebman, et al. (2002), the five states with the highest capital "backlogs" are California, Texas, Florida, Pennsylvania, and Ohio. Three of these states—Florida, Ohio, and Texas—are included in our study. The five states with the lowest capital backlogs are Nebraska, Montana, Washington, Connecticut, and Wyoming, each with less than one backlogged capital case on average. Washington is included in our study. In addition, two states with moderately low backlogs—New Jersey and Kentucky—are a part of our study. The selected states also allowed us to determine whether the use of intermediate appeals courts in capital-case review affects efficiency. Two states, Alabama and Tennessee, send direct capital appeals to their intermediate courts, and one state, Ohio, did so for part of the study period. Tennessee and Ohio are included here.

Justice Department data shed light on efficiency in executing death sentences by a different measure: the average time under sentence of death of prisoners, broken down by state (Bureau of Justice Statistics, 2002). States with the longest incarceration time on death row (in descending order; years in parentheses) are Tennessee (10.8), Idaho (10.6), Illinois (10.4), Indiana (10.4), Utah (10.3), and Florida (10.2). States with the shortest incarceration time (in ascending order) are Virginia (2.6), Delaware (4.4), Oregon (5.2), North Carolina (6.0), Arkansas (6.2), Louisiana (6.4), and South Carolina (6.4). Three of the short-incarceration states, Virginia, North Carolina, and South Carolina, were selected for our time-allotment study, and among the long-incarceration states, Tennessee and Florida were chosen for analysis.

For each of the fourteen states in the study, we examined every capital case in which a decision was rendered on direct appeal by the state supreme court between January 1, 1992, and December 31, 2002. This time period was selected for two reasons. First, it is long enough to provide sufficient cases from which to draw generalizable conclusions. A second advantage is the recency of the time period, which makes our conclusions and policy recommendations more relevant. Death penalty

laws, policies, and practices have changed sufficiently since the early years following the Supreme Court's reinstatement of the penalty that generalizations drawn from cases decided in the 1970s and 1980s will have to be reappraised.

We collected cases using a variety of sources. First, we turned to the clerk's office of each state supreme court in the study. Most of the offices have electronic docket control systems that identify capital appeals. Second, to confirm completeness, we searched the online legal databases, Westlaw and Lexis, for all years of the study. Third, for cases decided through 1995, we reviewed the data on direct appeals produced by Liebman et al. (2002). In the end, we identified 1,676 capital appeals from the fourteen states in the investigation.

Once all the cases were identified, information on each case had to be obtained to determine processing time. The state supreme court clerks' offices provided, either electronically or through docket sheets, the dates of various steps in each appeal. Thus, for each direct appeal included in the data we have both a starting date and an ending date. For all cases other than those from Virginia, the starting date we use is the date of the filing of the pleading that initiates the appeal (usually the "notice of appeal," although some states have other designations). For Virginia, because it does not require the filing of a notice of appeal or other similar pleading in capital cases, we used the trial court sentencing date as the starting date. The ending date for each appeal was the later of the date of the state supreme court's decision on direct appeal or the date of the court's resolution of any motion for reconsideration of the decision.

Because we selected cases based on whether the decision or ending date fell within the study period, there are no cases in the data that remained undecided at the end of the study period. Also, as a result of this case-selection approach, the starting date in some cases preceded January 1, 1992, notably in those cases completed during the early years of the study period. This case-selection method excludes those direct appeals that started but did not end during the study period, but given the eleven-year scope of the study, the large number of decisions contained in the database, and the fact that our data are complete with regard to all of the cases included, we felt confident that we could reach generalizable conclusions about processing time in capital appeals.

DESCRIPTIVE FINDINGS

As expected, the data are not distributed evenly across states. Rather, the distribution reflects the variation across states in the frequency of death sentences imposed. Many of the cases in the data came from three of the more active death penalty states, Florida, North Carolina, and Texas (see Table 1). However, the data are well distributed across years, ranging from 111 decisions for 2002 (6.6 percent of the overall data) to 204 decisions from 1997 (12.2 percent of the overall data).

Across all the cases, the median processing time in direct appeals, from the filing of the notice of appeal to the state supreme court decision, was 897 days, approximately two and one-half years. Median processing times in the states ranged from a low of 295 days in Virginia to a high of 1,331 days in Ohio (see Table 2). One factor

Table 1
Number of Direct Appeals in Capital Cases Decided by State, 1992-2002

State	Frequency	Percent
Arizona	114	6.8
Florida	423	25.2
Georgia	87	5.2
Kentucky	27	1.6
Missouri	96	5.7
Nevada	70	4.2
New Jersey	22	1.3
North Carolina	260	15.5
Ohio	137	8.2
South Carolina	67	4.0
Tennessee	65	3.9
Texas	222	13.2
Virginia	69	4.1
Washington	17	1.0
Total	1,676	100.0

Table 2
Processing Times in Direct Appeals in Capital Cases by State, 1992-2002
(in days)

State	Minimum	Maximum	Median
Arizona	476	2,995	1,049.5
Florida	479	2,453	945
Georgia	180	2,943	297
Kentucky	832	2,284	1,296
Missouri	307	3,100	706.5
Nevada	101	1,948	639
New Jersey	423	877	718
North Carolina	247	2,111	725
Ohio	306	4,389	1,331
South Carolina	561	1,991	859
Tennessee	703	2,425	1,182
Texas	433	3,633	1,033.5
Virginia	196	525	295
Washington	770	1,498	1,193
Total	101	4,389	897

N = 1,676

that contributed to the high processing time in Ohio was that for part of the study period the state required appeals to proceed first to its intermediate appellate court before any review by the Ohio Supreme Court. The same was true for all of the cases from Tennessee, also contributing to its ranking as one of the least efficient states.

EXPLAINING VARIATION IN PROCESSING TIME IN CAPITAL APPEALS

The finding that there is significant variation in processing time across states and cases does not identify factors that may explain this variation. To investigate possi-

ble explanations, therefore, we developed a multivariate model, allowing us to determine the influence of individual factors on processing time. Our unit of analysis is the individual case that proceeds through direct appeal. For the dependent variable in our model, we used the number of days from notice of appeal to decision.¹

Independent Variables Included in the Model. Based on existing case-processing scholarship, we hypothesized that case characteristics and institutional arrangements and resources affect processing time. In addition, we believe that court attributes, also recognized as adding to the explanation of decisions, may help explain processing time. We identified specific variables to include in our model for each of these categories.

Case Characteristics. Not all capital appeals brought to state courts of last resort are the same, of course, and differences across cases may affect the time needed to resolve the appeals (e.g., Chapper and Hanson, 1990; Hanson, 1996). For example, the issues that come to the courts may vary based on whether the appeal seeks review of both the conviction and sentence or review of the sentence only. Capital trials are bifurcated into guilt-determination proceedings and sentence-determination proceedings. An appeal of the conviction and sentence—in essence, a review of alleged errors in two separate proceedings—may present the appellate court with more issues than an appeal of sentence only, necessitating more time to address and resolve issues (Latzer and Cauthen, 2000). We, therefore, included in the model a *Scope of Review* variable, expecting that a state court of last resort would take longer to process a case when the appeal was of a conviction and sentence rather than of the sentence alone.

Regardless of the scope of review, there may be significant variation among cases in the number and complexity of issues presented to the state supreme court. These differences also may affect processing time. In a study of cases before the New Jersey Supreme Court, Cauthen and Latzer (2000) found that opinion length, used as a measure of case complexity, helped explain the time needed to resolve both capital and noncapital appeals. In his study of civil appeals before a single state high court, Hanson (1996) also found that opinion length influenced time on appeal. Thus, we included in the model a variable for *Case Complexity*, measuring this variable by the number of pages in the court's majority opinion as reported in the West Publishing Company's regional reporter for that state. We expected that more complex cases would take longer to decide.

The outcome of a capital appeal also may affect processing time. On one hand, we might expect that a court, when upholding a conviction, death sentence, or both, would present a more detailed and reasoned opinion, adding to processing time. On the other hand, a decision overturning a jury's determination might take longer to process, as the court may feel the need to address the legal issues in more detail, par-

¹ When running the model, we used as the dependent variable the log of the total number of days to aid in model interpretation, allowing the individual effects of the independent variables on the variation in the dependent variable to be addressed in percentage terms (e.g., Bonneau, 2005). In addition, the transformation may prevent problems that cause model estimates to be inefficient (Fox, 1991).

ticularly given the high level of public support for capital punishment. Here, we hypothesized that cases in which the sentence, conviction, or both are overturned will take longer to resolve than affirmances (*Outcome*).

There is one final case characteristic that we investigated in the model. Often, decisions in capital cases are nonunanimous. Indeed, in our data, 27 percent of the decisions included one or more dissenting opinions. If there were disagreement on the court, one would expect case-processing time to increase, as the dissenting justices devote time to the drafting of dissenting opinions that are usually circulated for review among the justices. This is consistent with findings by Hanson (1996) respecting intermediate appellate courts. Consequently, we hypothesized that the more disagreement there is in a case, the more time it will take the court to reach a resolution of the appeal. We measured disagreement by the total number of dissenting opinions filed in the case (*Disagreement*).

Institutional Arrangements and Resources. Beyond case characteristics, we hypothesized that institutional arrangements and resources contribute to the amount of time it takes for a state court of last resort to process a capital case. All states have specific rules for addressing appeals to the state supreme court, and previous research has found that variation in these rules may affect case-processing time (e.g., Martin and Prescott, 1981). Some states have enacted laws or court rules intended to speed up the decision-making process, and given the history of long, drawn-out appeals in death penalty cases, some of these laws or rules are designed specifically to increase efficiency in capital appeals. For example, Virginia Supreme Court Rule 5:23 gives docket preference to reviews of death sentences. By statute (Section 177.267), Nevada requires that the state supreme court resolve reviews of death sentences within 150 days after receiving the record. If an opinion is not rendered within that period, the chief justice must state on the record the reasons that caused the delay and the facts supporting those reasons. As a result, we included in the model whether, at the time the appeal was filed, there was any law or rule in the state specifically directed to efficient processing of capital appeals. We expected that the presence of such laws or rules (*Law/Rule*) would reduce the time devoted by the state high court to processing capital appeals.

In addition to laws and procedural rules, court resources may affect time on appeal. Much of the existing research on case processing before state appellate courts focuses on court resources as a major factor explaining variations in time to decision (Hanson, 1996, 1998; Hoffman and Mahoney, 2002). Large capital caseloads may have a negative impact on the ability of the court to process those cases efficiently given the extraordinary time needed for such appeals. Consequently, we expected that courts with larger capital caseloads would take longer to process capital appeals than courts with fewer such cases on the docket. We measured caseload by the number of capital appeals decided by that court during the same calendar year as the unit of analysis (*Capital Caseload*).

Given the complexity of legal issues arising in capital cases, legal resources available to the judges also may affect court efficiency. These resources can come in many different forms, including staff available to perform legal research and assist in the resolution of motions and clerks to help with the writing of opinions (Hanson, 1996). Thus, we anticipated that the larger the number of staff attorneys on the court, the shorter the time needed to process capital appeals. However, because these staff attorneys may have to handle both capital and noncapital cases, their availability to work on death penalty appeals may be affected by overall caseload on the court. Consequently, we measured these legal resources by the number of staff attorneys per 100 cases on the court's docket (*Staff Attorneys*). Data on the number of staff attorneys on each court as well as overall caseload, were obtained from the annual editions of *State Court Caseload Statistics* published by the National Center for State Courts (1985-2001; 2002). This measure does not differentiate between lawyers who are on the court's central staff and lawyers who are assigned to specific justices. Our measure determined whether the increase in lawyers on staff in *any capacity* affects processing time in capital appeals.

The final institutional variable controls for the effect of intermediate court review of death penalty cases before final review by the state court of last resort. For all of the years covered by our data, direct appeals in Tennessee death penalty cases proceeded first to the state's intermediate appellate court and then, if affirmed, to the state court of last resort. For a portion of our study period, a similar process existed in Ohio. In capital crimes occurring on January 1, 1995 or thereafter, the defendant could appeal as of right from the trial court directly to the Ohio Supreme Court. For capital crimes occurring earlier, defendant could appeal to the Ohio Court of Appeals, and if the death penalty was affirmed, could further appeal as of right to the state supreme court.

For the cases from these states that were subjected to intermediate appellate court review, the notice-of-appeal date used to compute the value of the dependent variable was the date of filing in the intermediate court. Thus, we included a variable in the model (*IAC Review*) expecting that appeals subjected to review by both the intermediate *and* the state high court would take longer to process than cases reviewed by the state court of last resort only.

Court Attributes. The filing of dissenting opinions in a case may evidence conflict among the state high-court justices, but conflict may exist even without the filing of dissenting opinions. If justices hold differing positions on issues raised by the cases, it will be more difficult to form a majority. To keep a majority vote, then retain a majority for the opinion, the writer must ensure that a sufficient number of differing views are satisfied.

Many studies addressing individual decision making by state high-court judges in capital appeals have found that the ideology of a justice influences the decision (e.g., Brace and Hall, 1997; Traut and Emmert, 1998). We hypothesized that these

ideological views also may affect case-processing time in that a court with relatively more homogeneous ideological views will take less time to prepare a majority opinion than a court with conflicting views. Previous research developed party-adjusted ideological scores for individual justices on state courts of last resort, taking into account partisan affiliation and ideology at the time of the justice's ascension to the bench (Brace, Langer, and Hall, 2000), and these scores were used to develop a measure of ideological conflict on the court.² Therefore, we included in the model a variable representing ideological conflict on the court at the time of the decision (*Ideological Conflict*), expecting that the more conflict, the longer the processing time

DETERMINANTS OF CASE-PROCESSING TIME

Together, the independent variables in the model explain 66.3 percent of the variation in processing time across states.³ Our methods also allowed us to measure the effect on processing time of an increase in each statistically significant independent variable by one unit of measurement (e.g., the increase in processing time caused by one additional dissenting opinion). Among case-characteristic variables, the results confirm the expectation that *Case Complexity* increases time to decide appeals. For each additional page of the majority opinion (our measure of case complexity), processing time increased by 1.3 percent, holding other factors constant. *Outcome* also was significant. A reversal of the lower-court decision increased processing time by about 7 percent. As noted above, the cases ultimately reversed may be the more problematic appeals for the court to resolve, and the court may need to spend more time working out the legal issues and justifying its decision in an opinion. This may especially be true given the high level of public support for the death penalty and crime reduction in general; the court may need additional time to prepare the justification of a decision to overturn the conviction or death sentence of a notorious murderer.

The results also supported the hypothesis that the extent of *Disagreement* among justices increased the time necessary to resolve capital appeals. For each dissenting opinion filed in an appeal, processing time increased 7.1 percent. The final case-characteristic variable, *Scope of Review*, was not significant, suggesting that courts spent just as much time resolving appeals of sentences alone as they did resolving appeals of convictions and sentences.

² The ideology scores and standard deviations for the years 1970 to 2004 for each natural court per court year were obtained from a dataset compiled by Professor Laura Langer, University of Arizona. Unfortunately, Professor Langer's data do not include ideological scores for justices on the Texas Court of Criminal Appeals, so we used scores for justices on the Texas Supreme Court as surrogates, assuming that the ideological division on the two courts was roughly the same.

³ Statistical details are available from the authors on request. The final model included 1,602 cases. Two cases were excluded because they were not reported in the West Regional Reporters, preventing us from computing the page-length variable. Also, after initially running the model, we identified, using a standard statistical diagnostic tool, 72 cases (4 percent of the total) as unusually influential on our results. This was not surprising given the size of our dataset and our descriptive findings, and given the small relative size of this group, we decided to exclude these cases from our final analysis.

The overall results for institutional arrangements and resources also were impressive, with a number of variables in this group found statistically significant in explaining variation in processing time. As expected, prior review of an appeal by an intermediate appellate court (*IAC Review*) had a statistically significant impact on processing time, holding all other variables constant. Specifically, it added about 43 percent to the time necessary to process an appeal through to the state court of last resort. Recall that the study does not include reversals by the intermediate appellate court that were not subsequently reviewed by the state supreme court. State supreme court review in Tennessee and Ohio was mandatory when the death penalty was affirmed by the intermediate appellate court and discretionary when the sentence or underlying conviction was reversed.

The other statistically significant variable in this group with noteworthy impact was the existence of a *Law/Rule* in the state specifically directed to expediting capital appeals. The presence of such a statutory or procedural rule decreased processing time by about 13 percent, holding all other variables constant. We also found that general standards for time on appeal (as opposed to standards specifically directed to capital appeals) did not significantly affect processing time in these cases; thus, our findings suggest the need for standards targeting capital appeals. The *Capital Caseload* variable also was significant, but its impact was slight. Specifically, for each additional capital appeal on the court's docket for that year, processing time in an appeal increased by less than 1 percent.

The *Staff Attorneys* variable was not significant. This finding could be a result of the measure used in the model, as the variable does not take into account how these staff attorneys are used—only that they are on the court's staff. We do not know, for instance, the extent to which the courts are using these staff attorneys on capital cases, if at all.

As to *Ideological Conflict*, our results show that ideological differences among a state's high-court justices were significant as courts with ideologically diverse justices took longer to resolve direct appeals in capital cases. The impact was small, but it suggests that conflict between liberal and conservative justices increases the time necessary to resolve these appeals as justices work through conflict.

CONCLUSION AND FUTURE RESEARCH

State courts devote more time to capital appeals than other appeals that come before them. While this additional time may result from the "super due process" afforded capital defendants and the constitutional requirements of capital trials, our cross-state study demonstrates that, even in the face of these constraints, some courts are significantly more efficient in resolving these appeals. The less efficient states may risk decreased public confidence in the criminal-justice system, reduction of any deterrent benefit of capital punishment, and increased litigation over the impact of delay.

The model results indicate that variation in processing times is influenced by factors relating to individual cases, court rules and resources, and court characteris-

tics. However, variation is most significantly influenced by case attributes and institutional factors. Cases that are complex, generate dissenting opinions, and reverse trial court decisions require more time to resolve. Courts seeking to increase efficiency in capital appeals will have little control over these case attributes, but they *do* have an influence over the institutional factors that influence time on appeal.

First, avoiding intermediate appellate court review markedly speeds up time on appeal. Cases moving directly to the state supreme court for review proceed through the direct-appeal stage significantly more rapidly than those going through the intermediate appellate court. Second, specialized laws or rules directed to increasing appellate efficiency in capital cases are having their desired effect.

In the end, the findings from this initial investigation indicate that courts can increase their efficiency in capital appeals and still ensure that death-row defendants receive a full review of their convictions and sentences on direct appeal, a review that satisfies the stringent demands of super due process. In future studies, additional focus on the institutional-arrangements variables may lead to additional explanations for case-processing time. For example, the record-preparation process and the extent of its oversight by the state supreme court, the experience and resources available to lawyers for both the state and the defense, and other case management rules may add to explanations not identified here. In addition, as our work only focuses on direct appeals, it does not address the impact of post-conviction review on the overall time taken at the state level to review death sentences. Future work in all these areas will allow administrators and policymakers to adopt effective reforms to increase efficiency in these cases. **jsj**

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