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ABSTRACT — On November 2, 1982, a majority of Minnesota voters approved a constitutional amendment that transformed the state's appellate judiciary. A newly created Court of Appeals, currently consisting of 12 judges, began accepting cases on August 1, 1983, and deciding them on November 1, 1983. To assess the consequences of this change, the authors explored the rationale underlying the amendment, examined the anticipated costs and benefits of implementation, and analyzed caseload data. Questionnaire responses from members of the Supreme Court are discussed, jurisdictional relationships between the two courts are explained, and decision-making practices are compared (including oral argument and published opinion frequency in cases raising constitutional questions). Prospects for enhancing the quality and reducing the quantity of decisions by the Supreme Court are good due to: 1) the diversion of nearly 80% of new filings since August 1983 to the Court of Appeals; and 2) the rapidity with which the Court of Appeals, sitting in panels of three, has been clearing its docket. The full impact of the reform had not yet been felt in Supreme Court chambers by February 1985. The time lag was due to the priority the high court was giving to disposition of a 1200-case backlog.

Introduction

The Minnesota Court of Appeals was brought into legal being by constitutional amendment in November 1982. Since then, Governor Rudy Perpich has appointed a full complement of 12 judges for terms of 6 years to the ranks of this intermediate appellate body: Chief Judge Peter Popovich (St. Mary's Point) and associate judges Gary Crippen (Worthington), Daniel Foley (Rochester), Thomas Forsberg (Fridley), Doris Ohlsen Huspeni (Minneapolis), Harriet Lansing (St. Paul), David Leslie (Golden Valley), Roger Nierengarten (Sartell), Edward Parker (Minneapolis), R. A. Randell (Hibbing), Susanne Sedgwick (Excelsior), and D. D. Wozniak (St. Paul). This Court of Appeals has been accepting case filings since August 1983 and has been disposing of them since November 1983, sitting in three-judge panels.

The Minnesota Supreme Court is the oldest court of statewide jurisdiction and, until the Court of Appeals commenced operation, was the only appeals court authorized by the state constitution. Current membership includes Chief Justice Douglas K. Amdahl (Minneapolis), and associate justices M. Jeanne Coyne (Edina), Glenn E. Kelley (St. Paul), C. Donald Peterson (Edina), George M. Scott (Minneapolis), John E. Simonett (St. Paul), Rosalie E. Wahl (Lake Elmo), and Lawrence R. Yetka (Maplewood). The vacancy on the nine-member court is due to the resignation of John J. Todd on March 8, 1985.

Why was the amendment proposed? What consequences will its approval have for the administration of justice in Minnesota, especially with regard to the Supreme Court? This study seeks to answer these and related questions.

Materials and Methods

Because previous studies of the appellate process in Minnesota, along with any recommendations made at an earlier date, would serve as a potentially fruitful source of information about the circumstances leading to ratification of the amendment, a series of three reports written under a variety of auspices between 1968 and 1974 was consulted and its advice noted (1).

Second, filing and disposition data from cases appealed to the Supreme Court were examined in search of an underlying rationale for the amendment. How an appellate court's time is spent deciding cases might be indicated through a number of recent trends — proportion of filings dismissed, summarily affirmed or reversed, orally argued, or unanimously decided. How often a court justifies its decisions with published, individually authored opinions also may reveal whether deliberation or abbreviation characterizes its proceedings. A court beset by augmented caseload demands might be expected to dismiss, summarily review, and unanimously decide an increasing fraction of its docket. Such a group of judges would also be expected to entertain oral argument and to author full opinions for the edification of litigants, bench, bar, and attentive public in a diminishing proportion of its case filings through time.

Third, the relevant sections of the Minnesota Constitution and Statutes-at-Large were scrutinized on the theory that, indeed, caseload pressure was the prime reason the proposal was made (2). If so, the jurisdictional relationship between the two courts ideally would have been altered in such a way as to relieve the Supreme Court of numerous types of cases

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coming to it on direct appeal. Major categories of trial court dispositions would be redirected elsewhere.

Fourth, the authors prepared and mailed a questionnaire consisting of seven open-ended items, along with a cover letter, to each of the nine members of the Supreme Court in November 1984. A collective response was received in mid-December under the Chief Justice's signature. Such firsthand reactions based on the experiences of the justices themselves are valuable, of course. No one is in a superior position to appreciate the extent to which the Court's task has been altered.

Finally, the authors read some 70 cases printed in the *Northwestern Reporter*. They were not randomly selected. Rather, cases in which constitutional interpretation was requested of the Court by one or both parties were singled out from among those to which the Court might be expected to give close attention. With constitutional issues presented, the statewide import of such cases was very likely to engage the Court's interest. We deliberately chose a class of cases the processing of which might be highly resistant to the effects of agenda overload. The collegial, deliberative character of the Court would be likely to figure prominently in the decisions reached. In other words, these are matters about which the membership would probably feel obliged to invite oral argument, to issue opinions, and perhaps, due to individual effort expended, to disagree in the casting of their votes. Similarly, these are controversies incompatible with disposition by mere dismissal or summary judgment.

What difference would the availability of a Court of Appeals to accept case filings make in the way such cases were processed? To find out, the authors used August 1, 1983, the date on which the Court of Appeals began to docket cases, as the dividing line between two equal time periods of 13 months each. If implementation of the amendment had an immediate impact on Supreme Court caseload, disposition data for the Court should show a marked contrast between the two time periods studied. More specifically, a sudden decline in Supreme Court output would suggest that the reform measure was yielding intended results.

Results and Discussion

That the "wheels of justice grind exceedingly slow" and that "justice delayed is justice denied" are all-too-familiar criticisms of judicial process in general. Explanations vary. But for the Supreme Court of Minnesota, recent delay can be safely attributed to an overwhelming demand for its services. Indeed, storm clouds of institutional overload were evident on the horizon nearly 20 years ago. Between 1968 and 1978, for example, the volume of filings and the average elapsed time between filing and disposition doubled to roughly 1200 cases and 16 months, respectively. By August 1983, when the amendment became operative, the corresponding annual figures were almost 1700 cases and 21 months. This disposition period is far in excess of the American Bar Association's recommendation of 7 months for criminal appeals and 8 months for civil appeals (3).

Table 1 illustrates the changing nature of Supreme Court review in the wake of mounting caseload demand. The number of cases accorded disposition through published opinion increased gradually during the decade preceding ratification of the amendment. However, the number of such cases as a percentage of those filed declined sharply during the mid-1970s. Table 2 reveals a similar trend regarding oral argument. Even state courts of last resort can become institutions of low public visibility when these two procedures fall into relative disuse. As Chief Justice Douglas Amdahl points out, "Oral argument is very important to an informed disposition of cases. Questions always arise during consideration of briefs and the record on appeal, and the oral argument provides an opportunity for a judge to seek answers and to discuss with counsel matters important to a decision" (4). In tandem, oral argument and written opinion assure the litigant that a court has considered the merits of his claim. Opinions provide guidance about how to deal with legal affairs in the future as well.

Table 1. Filings and dispositions by full opinion by the Minnesota Supreme Court in selected years.

	1973	1978	1982
Filings	686	1206	1592
Opinion Disposition	341	361	518
Percentage by Opinion Disposition	50%	30%	32%

Table 2. Filings and dispositions using oral argument before the Minnesota Supreme Court in selected years.

	1973	1978	1982
Filings	686	1206	1592
Cases Argued	184	361*	139
Percentage of Cases Argued	27%	30%	9%

*In 1978, oral argument was heard by panels of three justices rather than by the entire court.

Table 3 shows the ongoing degeneration of the Court's caseload control during the years immediately preceding the reform. As filings increased, the number of dispositions by dismissal and/or summary affirmance of trial court outcomes grew ever-more dramatically. Perhaps that trend is indicative of an ever larger proportion of frivolous appeals; perhaps not. The potential danger is that time constraints replace intrinsic merit as the decisive criterion in determining which matters receive thorough review. As Stephen Eckman, president of the Minnesota Trial Lawyers' Association observed, "The Supreme Court had. . .become so inundated by. . .appeals that it was issuing. . .summary affirmances which had as their purpose absolutely nothing but clearing its calendar" (5).

Table 3. Dispositions, dispositions by dismissal and summary affirmance, and percentage of dispositions by dismissal and summary affirmance by the Minnesota Supreme Court in selected years.

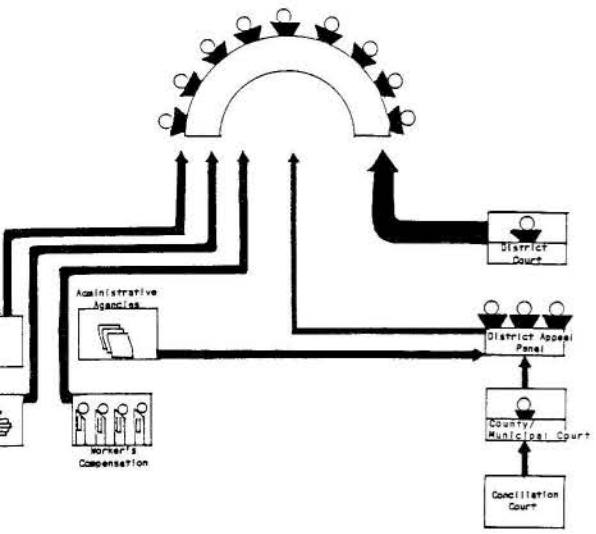
	1973	1978	1982
Dispositions	686	770	1352
Dismissals	226	340	288
Summary Affirmances	1	40	433
Percentage of Dispositions by Dismissal and Summary Affirmance	33%	49%	53%

So serious had docket pressure become by 1981 that drastic reform measures were essential. The report of the Judicial Planning Committee circulated that same year endorsed

restructuring of the appellate judiciary and deemed on of an intermediate court of review to be an urgent ty (6). Clearly, the series of incremental changes insti- during the 1970s had failed to ease the burden of the me Court. For example, the legislative authorization of dditional seats on the Court in 1973 ironically may have nened rather than shortened case processing time. On her hand, convening prehearing conferences in all civil hearing oral argument in panels of only three justices, emporarily using trial court judges to hear appeals did erate the appellate process as intended. As Table 3 s, dispositions increased but were still not commensu- with the explosion in filings. The basic problem ned: the Supreme Court was deciding an insufficient ber of cases, and of those decided, more and more were ring only cursory review.

e Court's dissatisfaction with these expedients became ent in the summer of 1980. On September 1, the Court doned the practice of hearing oral argument in panels. rently the justices were concerned that the practice was ging the institution's collegial tradition. Several weeks r in his State of the Judiciary address before the Minne- State Bar Association, former Chief Justice Sheran had unced an alternative strategy: oral argument, a time- ming procedure, would henceforth be limited to a max- of 160 cases per term (7). The policy remained opera- hrough the 1982 term of the Court.

w much caseload relief ratification of the proposed dment might afford would depend on the jurisdictional onship of the new tribunal with the old. Jurisdiction is thority to decide legal controversies, to say what the law e jurisdiction of the Minnesota Supreme Court and Court peals is specified in Article VI, sections 1 and 2 of the esota Constitution. Figures 1 and 2 depict what the con- on states.



1. Former Minnesota Appellate Court System.
of decisions from district courts, district appeal panels, the tax of appeals, Economic Security Commission, and Worker's ensation Commission proceeds to the Supreme Court on appeal. Review of decisions from conciliation courts, county unicipal courts, and administrative agencies is filtered through trict appeal panels to the Supreme Court.

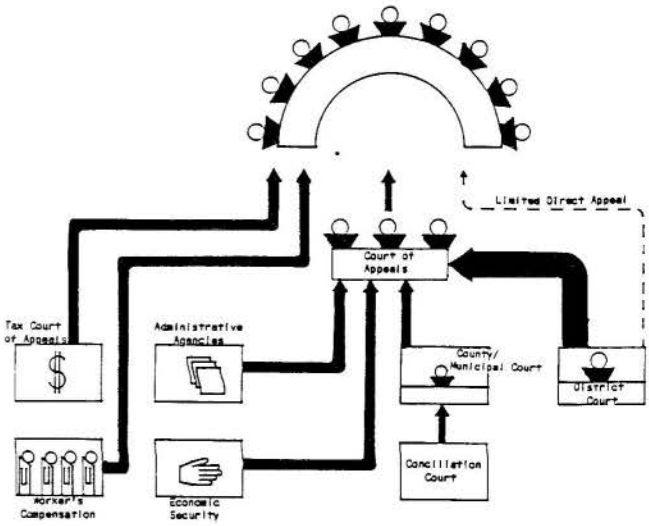


Figure 2. Present Minnesota Appellate Court System.
Only appeal from exceptional district court cases may proceed to the Supreme Court directly along with review of decisions from the Tax Court of Appeals and Worker's Compensation Commission. All other appellate cases originating in the district courts, county and municipal courts, conciliation courts, Economic Security Commission, and administrative agencies cannot reach the Supreme Court without prior review by the Court of Appeals.

Formerly, the constitution provided that the Supreme Court ". . .shall have original jurisdiction in such remedial cases as are prescribed by law *and appellate jurisdiction in all cases*. . ." However, this provision had not contributed to the caseload nightmare to the extent that its words would suggest. In practice, the Court had not construed this italicized passage as mandatory. Instead, the Court created an expedient of its own by holding in a 1974 case that appellate review is *not* a right guaranteed by the constitution (8).

Under the new arrangement, the Court of Appeals is assuming between 80% and 90% of initial appeals that had before been directed to the Supreme Court. The remainder continue to come directly to the Supreme Court. In addition, appeals to the Supreme Court from an adverse judgment by the Court of Appeals is wholly discretionary with the high court. This system is similar to the *certiorari* jurisdiction of the United States Supreme Court. Tables 4 and 5 reveal the profound impact the new jurisdictional framework is having on the Supreme Court's agenda.

At first glance one might suspect that this jurisdictional juggling act will merely shift the balance of the Supreme Court's former caseload onto the shoulders of a dozen other judges who would soon be mired down in identical demand overload. However, this is unlikely because the Court of Appeals sits in panels of three. Actually, the twelve-member Court consists of four smaller courts for the purpose of deciding cases. Unlike the Supreme Court, the Court of Appeals has no obligation to establish or to maintain a tradition of collegial, policy-oriented decision making. Further, Chapter 480A of the Minnesota Statutes-at-Large empowers the governor to appoint additional members at two-year intervals as the trend in filings might warrant. In essence, five appellate courts now function were only one existed prior to November 1, 1983.

Table 4. Filings in the Minnesota Supreme Court by case type during two selected time periods.

	July 1, 1982 - July 31, 1983	August 1, 1983 - August 31, 1984
Civil Appeal	924	59
Criminal Appeal	373	43
Certiorari — Workers' Compensation*	166	111
Certiorari — Tax Court*	15	19
Certiorari — Economic Security Comm.	139	1
Discretionary Review	141	81
Writs of Mandamus/ Prohibition	97	35
Attorney Discipline*	19	21
Other*	15	22
Total	1889	392

*These categories continue to be filed directly in the Supreme Court, bypassing action by the Court of Appeals. The "Other" category consists in part of appeals from first-degree murder convictions and contested elections.

Table 5. Dispositions by the Minnesota Supreme Court by type during two selected time periods.

	July 1, 1982 - July 31, 1983	August 1, 1983 - August 31, 1984
Summary Affirmance	469	318
Summary Reversal	3	0
Dismissal	424	249
Full Opinion	499	450
Per Curiam Opinion*	15	9
Denial/Discharge	264	116
Petitions for Review from the Court of Appeals	0	96
Total	1674	1238

*Per Curiam Opinions are written without personal authorship. The phrase means literally "for the Court."

Tables 6 and 7 show the actions of the Court of Appeals during its first 13 months of operation. Combining the 1471 cases disposed of with the 1238 resolved by the Supreme Court during a slightly earlier 13-month period translates into an appellate output of over 2700 cases — more than double that during any previous comparable time span.

Another salutary effect of the reform is enhanced public access to a state court of review. By sitting in various locations around the state, rather than only in St. Paul, the three-judge panels of the Court of Appeals are potentially less costly to petition. Expenses for travel and lodging are often less burdensome for litigant and lawyer alike. The meritorious cause is not likely to be discouraged under these circumstances. The legally irrelevant but too often materially critical considerations of expense and delay are of diminished concern. Conversely, though, the frivolous appeal is more likely to be filed as access is improved. The point to be noted here is that making those distinctions is now in the hands of the Court of Appeals, not the Supreme Court.

By contrast, a serious objection to the reform has yet to be tested. Skeptics worry that the precedential value of decisions made by multiple panels of the Court of Appeals will be questionable for two reasons (6). First, differently constituted panels will inevitably reach inconsistent conclusions in cases presenting similar fact patterns and legal issues over time. What is the status of such decisions absent Supreme Court reconciliation of the conflict? If those situations become numerous, meaningful caseload relief for the Supreme Court is jeopardized. Second, any litigant suffering defeat before the Court of Appeals might well pursue the cause a step further with attendant costs. Will such behavior distort the intended effect of the reform by reducing the Court of Appeals to little more than a costly waystation to the Supreme Court?

At this writing insufficient time has passed to determine with confidence whether these concerns are of substance. What evidence we have indicates that between November 1, 1983, and October 31, 1984, just under 20% (about 300) of all actions by the Court of Appeals were filed with the Supreme Court. This figure is comparable to that in adjacent states (Iowa and Wisconsin) and would appear to cast doubt on the reservations discussed above. In turn, the Supreme Court has granted review to about one-fifth (about 60) of those petitions, roughly twice as high proportionally as in neighboring states. Even if that trend persists, the Supreme Court will be dealing with, perhaps, 250 to 300 cases per year, a six- or seven-fold reduction compared with the 1981-1984 terms.

We also know that the Court of Appeals is achieving more than mere expedition of decision making. Three-judge panels are hearing argument and publishing opinions in virtually all cases — some 773 between January and October of 1984 alone (9). The full impact of the amendment will not be felt by the Supreme Court until sometime in 1985. As late as February 1, 1985, Chief Justice Douglas Amdahl and his colleagues carried on much as they had before the amendment's approval 27 months earlier. The Chief Justice explains the delay: "Our primary concern has been to dispose of the backlog of cases pending on August 1, 1983" (there were 1187 of them) (4).

Table 6. Filings in the Minnesota Court of Appeals by case type.

	August 1, 1983 - August 31, 1984
Civil Appeal	1357
Criminal Appeal	495
Certiorari — Workers' Compensation*	0
Certiorari — Tax Court*	0
Certiorari — Economic Security Comm.	113
Discretionary Review	109
Writs of Mandamus/Prohibition	78
Attorney Discipline*	0
Other*	67
Total	2219

*These categories continue to be filed directly with the Supreme Court.

Table 7. Dispositions by the Minnesota Court of Appeals by type during the first 13 months in operation.

	November 1, 1983 - November 30, 1984
Full Opinion	731
Memorandum Opinion	17
Dismissal	561
Denial/Discharge	140
Certified*	20
Stayed	2
Total	1471

*Certified disposition is one in which the Court is asked to provide an answer to a question raising a point of law concerning a case pending in a trial court.

As this logjam breaks up, the contours of future Supreme Court decision making should take shape. The Court's disposition of cases presenting constitutional issues indicates just how small the reform's impact had been in the first year after the Court of Appeals began generating its own agenda. Table 8 indicates that the Supreme Court has been as pressed for time since as before. A more deliberate approach would allow more argument and engender more intra-court dissent. Those developments should occur within the coming months as Table 4 suggests. The dramatic shift in new filings, if it persists, should enable the Supreme Court to reestablish its policy-making role at the pinnacle of the Minnesota judiciary.

Table 8. Cases presenting constitutional issues before the Minnesota Supreme Court for two selected time periods.

	July 1, 1982 - July 31, 1983	August 1, 1983 - August 31, 1984
Cases	36	33
Argued Cases	18 (50%)	16 (48%)
Unanimous Cases	30 (83%)	27 (82%)

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