

# STATE SUPREME COURT OPINIONS AS LAW DEVELOPMENT

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## I. KEY ROLES OF APPELLATE COURTS

The controversy over Justice Sotomayor's statement that the "Court of Appeals is where policy is made" illustrates that there is still confusion over the role of appellate courts.<sup>1</sup> That confusion is exacerbated by the recent movement toward measuring judicial productivity by opinion production, as noted below.

Appellate courts have two primary functions: "error correction" to ensure that law is interpreted correctly and consistently and "law making" to provide a means for the development of law through their decisions and explanations of decisions.<sup>2</sup> In states with only one appellate court, that one court must perform both functions. In states with two levels of appellate courts, the intermediate appellate court is often assigned the error-correcting role and the court of last resort, most often called the supreme court,<sup>3</sup> is primarily concerned

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1. The story was widely reported; the quote here is from the Christian Broadcasting Network. See *Conservatives Down on "Policy Maker" Sotomayor*, <http://www.cbn.com/cbnnews/politics/2009/May/Conservatives-Down-on-Policy-Maker-Sotomayor> (May 27, 2009) (accessed May 17, 2010; copy on file with Journal of Appellate Practice and Process).

2. Daniel John Meador and Jordana Simone Bernstein, *Appellate Courts in the United States* 4 (West 1994).

3. The highest court in each state is usually called the Supreme Court. In the District of Columbia, Maryland, and New York, the Court of Last Resort is called the Court of

with the development and declaration of law. Indeed, a primary rationale for the creation of intermediate appellate courts is to dispose of the bulk of appeals so that supreme courts can focus on cases with significant policy implications or cases of high salience to the public. More than thirty years ago, a group of scholars noted that they had observed

an emerging societal consensus that state supreme courts should not be passive, reactive bodies, which simply applied “the law” to correct “errors” or miscarriages of justice in individual cases, but that these courts should be policy-makers and, at least in some cases, legal innovators.<sup>4</sup>

As courts of last resort, state supreme courts have the final authority on issues most basic to people’s lives. In the words of Professor Rosenblum:

[I]n the complex system of government we adopted, most questions of private law were left to the states. The national government had almost no part in establishing or developing the law of property, contracts, wills, personal injury or damages. . . . [W]ithin the states it was often the courts rather than the legislatures that actually formulated such law.<sup>5</sup>

Moreover, state courts of last resort “interpret not only state laws but also federal laws,” and, in the process, they “contribute significantly to public policy.”<sup>6</sup> Justice Brennan acknowledged as much when he wrote that “state courts have responded with marvelous enthusiasm to many not-so-subtle invitations to fill the constitutional gaps left by the decisions of the Supreme

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Appeals; in Maine and Massachusetts the highest court is called the Supreme Judicial Court; and in West Virginia the highest court in the state is called the Supreme Court of Appeals. The names “supreme court” and “court of last resort” will be used interchangeably here for any of these bodies.

4. Robert A. Kagan, Bliss Cartwright, Laurence M. Friedman & Stanton Wheeler, *The Evolution of State Supreme Courts*, 76 Mich. L. Rev. 961, 983 (1978); see also Robert Leflar *Internal Operating Procedures of Appellate Courts* 1-2, 5-6 (Am. B. Found. 1976) (noting that appeals are no longer “heard only for the purpose of correcting errors committed in trial courts” and that “the lawmaking function of appellate courts is more clearly recognized”).

5. Victor Rosenblum, *Courts and Judges: Power and Politics*, in *The 50 States and Their Local Governments* 406 (James W. Fesler ed., Alfred A. Knopf 1967).

6. Paul Brace & Melinda Gann Hall, *Comparing Courts Using the American States*, 83 *Judicature* 250, 253 (Mar.-Apr. 2000).

Court.”<sup>7</sup> Professors Stumpf and Culver argue that the trend continued as the Burger and Rehnquist courts became more deferential to state courts, with the Supreme Court “literally inviting an increased activism in state judicial policy-making, and in many instances state supreme courts have displayed their willingness, if not at times their eagerness, to move into the vacuum.”<sup>8</sup>

If this trend continues, the state supreme courts will increasingly “‘define the quality of life’ in American states and communities.”<sup>9</sup> It is interesting to note that a very recent poll showed that seventy-one percent of Americans say their state supreme court should keep its ability to decide controversial issues, and sixty-eight percent believe that the courts either have the appropriate amount of power or should be awarded even greater power.<sup>10</sup> (Only twenty-four percent thought the state legislature and the governor should have more power over the courts.)<sup>11</sup>

Another indication of state supreme courts’ increased role in policy making is the renewed interest in election of judges and justices. According to Roger Warren, both a former judge and a former president of the National Center for State Courts,

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7. William J. Brennan, Jr., *The Bill of Rights and the States: The Revival of State Constitutions as Guardians of Individual Rights*, 61 N.Y.U. L. Rev. 535, 549 (1986); see also Assoc. Press, *Brennan Says State Courts Protect Rights*, Star-Banner (Ocala, Fla.) 10A (Apr. 12, 1987). Justice Brennan intended to give a speech in which the quoted statement also appears on April 26, 1987, but hoarseness prevented him from speaking that night; the text of the speech was nonetheless released to the press. Stuart Taylor, Jr., *Brennan Hails State Courts’ Record on Liberty*, 135 N.Y. Times A28 (Apr. 27, 1987).

8. Harry P. Stumpf & John H. Culver, *The Politics of State Courts* 137 (Longman Publg. Group 1992). They state further that “despite the ebb and flow of state power, state appellate courts remain major players in the overall growth of American law.” *Id.*

9. *Id.* at 156 (quoting Elder Witt, *State Supreme Courts: Tilting the Balance Toward Change*, 1 *Governing* 30 (1988)).

10. The survey of 1,200 American adults was conducted by Princeton Survey Research Associates International for the National Center for State Courts, and has a margin of error of plus or minus 2.8 percent, nineteen times out of twenty. The poll was paid for by NCSC, the Pew Center on the States, and the State Justice Institute. Complete results, including a report from the pollsters, are available in .pdf format on the NCSC website. See National Center for State Courts, *Separate Branches, Shared Responsibilities: Highlights from an NCSC Public Opinion Survey*, [http://www.ncsc.org/Web%20Document%20Library/Publications\\_SeparateBranches.aspx](http://www.ncsc.org/Web%20Document%20Library/Publications_SeparateBranches.aspx) (May 2009) (click “More” on summary page to reach survey results in .pdf form) (accessed May 17, 2010; copy of summary page on file with Journal of Appellate Practice and Process).

11. *Id.*

[s]tate judicial elections have become increasingly like elections for political office: expensive, contentious, partisan, political, and dominated by special interests. . . . Electing state court judges attuned to a particular special interest or ideology, and defeating those not so attuned, is increasingly viewed by political parties and special interests as politics—and business—as usual.<sup>12</sup>

## II. OPINIONS AS THE MECHANISM FOR DEVELOPING THE LAW

As the weakest branch of government, courts have no way to enforce their will except through their powers of persuasion. Indeed, the following observation about the United States Supreme Court really applies to all courts of last resort: “The power of the Supreme Court manifests itself in many forms, including in structural prestige and the reputation of individual justices, but is expressed through only one form: the written legal opinion.”<sup>13</sup> Thus, the appellate process requires that courts provide the reasons behind their decisions. In the words of Professor Stone, “[t]he legitimacy of the judicial branch rests largely on the responsibility of judges to explain and justify their decisions in opinions that can be publicly read, analyzed, and

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12. Roger K. Warren, *Politicizing America's State Courts: Critical Challenges Facing the Judiciary*, Cal. Cts. Rev. 6, 6 (Winter 2007). He also notes that campaign contributions to candidates for state supreme courts increased more than 750 percent between 1990 and 2004. Candidate fundraising broke records in nineteen states in 2000 and 2004, and at least four more states in 2006. Successful supreme court candidates now sometimes raise more money than gubernatorial or U.S. Senate candidates. *Id.* at 9. A related challenge, according to Warren, is that “judicial candidates are now free to—and are pressured to—announce their views on hot-button social and political issues” since *Republican Party of Minn. v. White*, 536 U.S. 765 (2002), in which the Supreme Court held that a Minnesota canon prohibiting a candidate from “‘announcing his or her views on disputed legal or political issues’ violated a candidate’s freedom of speech.” Warren, *supra* this note, at 11 (paraphrasing *White*, 536 U.S. at 768). As a result of *White*, Warren notes that Supreme Court candidates “blatantly announced their views on abortion, gun possession, right to life, gay marriage, and other disputed legal and political issues.” *Id.* And, he notes, “[o]nce judicial candidates were free to express their views,” special interests distributed questionnaires eliciting them. *Id.*

13. M. Todd Henderson, *From Seriatim to Consensus and Back Again: A Theory of Dissent*, <http://www.law.uchicago.edu/files/files/363.pdf>, at 3 n. 15 (U. Chi. L. Sch., John M. Olin Program in L. & Econ., Working Paper Series, Oct. 2007) (accessed May 19, 2010; copy on file with Journal of Appellate Practice and Process).

criticized.”<sup>14</sup> Full opinions—those that offer a justification for decisions and the reasoning behind them—guide the decisions of lower courts, and should be issued whenever the courts announce a new rule of law, resolve a conflict between subordinate courts, make a non-unanimous decision, or make a decision of substantial interest to the public.<sup>15</sup> The following analysis and discussion, and the charts and tables that follow, will address both the factors relevant to the issuance of those opinions and their effects on the development of the law.

### *A. Does Opinion Production Vary Over Time?*

#### *1. Assessing Quantity and Quality*

How many opinions per year are necessary to develop the law? Does the number of opinions per supreme court vary much or is it relatively constant over time? In their study of sixteen supreme courts between 1870 and 1970, Kagan and his colleagues found that some supreme courts wrote as many as 500 opinions per year, while others wrote fewer than 100.<sup>16</sup> The average did change over time, but within a comparatively small range: The average number of opinions per court issued in 1870 was 131, continued to increase to its high point of 291 per state in 1915, and then decreased into the early 1970s.<sup>17</sup> Professors Stumpf and Culver observed that

as populations grew and state legislatures shrank from the task of reforming their judicial systems along more modern lines, the number of written opinions of some of these courts rose to as high as 400 or 500 per year (e.g. California and Michigan); for other state supreme courts (North

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14. Geoffrey Stone, *Chief Justice Roberts and the Role of the Supreme Court*, [http://u-chicagolaw.typepad.com/faculty/2007/02chief\\_justice\\_r.html#more](http://u-chicagolaw.typepad.com/faculty/2007/02chief_justice_r.html#more) (U. Chi. Faculty Blog Feb. 2, 2007) (accessed May 19, 2010; copy on file with Journal of Appellate Practice and Process).

15. Paul D. Carrington, Daniel J. Meador & Maurice Rosenberg, *Justice on Appeal* 33-34 (West 1976).

16. Kagan et. al, *supra* n. 4, at 960-61.

17. Stumpf & Culver, *supra* n. 8, at 137. The drop in average number of opinions was even more dramatic in selected states: In North Carolina the decrease went from 440 in 1910-1915 to 118 in 1970, while in Michigan the decrease went from 413 in 1885 to ninety-six in 1970. *Id.*

Carolina, Alabama, and Minnesota), this figure hovered around 300 to 400 per year.<sup>18</sup>

They concluded that the consequences of writing a relatively high number of opinions are not positive, as doing so results in “less legal research undertaken in the writing of opinions, fewer dissents, shorter opinions, and an overall lower quality of output than these state courts had produced in earlier periods.”<sup>19</sup> And they point out that these courts’ “capacity to articulate carefully legal policy for the state, and nation, was thus seriously impaired.”<sup>20</sup>

One conclusion that could be drawn from this research is that if law development is the goal, an error-correction method of evaluation is not appropriate. Consequently, it is not appropriate to evaluate productivity in courts of last resort based upon opinion production or to rate states on number of opinions per justice, just as it would not be appropriate to evaluate state legislatures by number of bills enacted into law. The quality of the court decisions and the rationales for the decisions as documented in the opinion are the appropriate criteria. One great decision that breaks new ground, reconciles conflicts of laws, or settles an area of law is worth more than a larger number of “routine” decisions that are justified by more or less conventional lines of reasoning.

This would imply that the scholars who explicitly define productivity for appellate courts as “the number of opinions a judge publishes in a year”<sup>21</sup> should make a distinction between the functions of courts of last resort and those of intermediate appellate courts. The statement that “[a]ll else equal, a judge who publishes more opinions is better than a judge who publishes fewer opinions”<sup>22</sup> may be appropriate for intermediate appellate courts, which have the primary responsibility for error correction, but it is not appropriate for courts of last resort, which are developing the law. This statement also appears to

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18. *Id.* at 137.

19. *Id.*

20. *Id.*

21. See Stephen J. Choi, Mitu Gulati & Eric A. Posner, *Which States Have the Best (and Worst) High Courts?* <http://www.law.uchicago.edu/Lawecon/index.html>, at 9 (U. Chi. L. Sch., John M. Olin Program in L. & Econ., Working Paper Series, May 2008) (accessed May 19, 2010; copy on file with Journal of Appellate Practice and Process).

22. *Id.*

attribute opinion production to judges, rather than to collegial courts. If that is the case, and if the production of more opinions is to be the measurement, a supreme court justice could be more “productive” by writing separate concurring or dissenting opinions, which would be counter to the primary function of supreme courts to clarify the law and reconcile conflicting interpretations.<sup>23</sup>

## 2. *A Snapshot of the Status Quo*

As a baseline, what is the average number of opinions issued in courts of last resort today? Before answering that question, the definition of opinion used must be clarified. Kagan and his colleagues counted all opinions of at least one page in length.<sup>24</sup> The ideal would be to identify full written opinions providing a rationale for the courts’ decisions. The NCSC’s Court Statistics Project, in cooperation with the National Conference of Appellate Court Clerks, has recently recommended that the standard terms for opinion be “Full Opinion,” “Memorandum Opinion,” “Summary/Dispositional Order,” and “Other Opinion.” Full opinion is defined as one in which there is “an expansive discussion and elaboration of the merits of the case or the defect or procedural error.”<sup>25</sup> In contrast, a Memorandum opinion has only a “limited discussion of the merits of the case or the procedural determination” and the Summary/Dispositional Order has very little discussion or comment on the case.<sup>26</sup>

Unfortunately, this improved method of classification has just been adopted and the new terminology is not yet in widespread use. Consequently, we are left with the more traditional method of classification that emphasizes not the distinction between a full reasoned opinion and a summary judgment, but rather the distinction between a signed and an

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23. The authors do acknowledge that a judge who publishes more frequently might write lower quality opinions. *Id.* at 10.

24. Kagan et al., *supra* n. 4, at 963. The authors note that this restriction caused them to exclude “very short memorandum opinions” from their study. *Id.* at 963 n. 4.

25. Court Statistics Project, National Center for State Courts, *The New Appellate Section of the State Court Guide to Statistical Reporting—Caseload Highlights 4* (NCSC Jan. 2009).

26. *Id.*

unsigned opinion. Fortunately, in most cases signed opinions are most likely to approximate full written opinions, whereas per curiam opinions and memorandum opinions are likely to contain shorter, more summary conclusions.<sup>27</sup>

Of the fifty-four courts of last resort,<sup>28</sup> an average of twenty-two (between seventeen and twenty-six during the twenty-year period of the study) report data on per curiam opinions,<sup>29</sup> and that includes courts that report issuing no per curiam opinions. Only thirteen courts reported the number of per curiam opinions for at least fifteen of the twenty years studied, and most of those reported only a small number, with the average being seventy-five. The exception is the Pennsylvania Supreme Court, which reported the largest number of per curiam opinions by far, an average of 2,772 annually over the eleven-year period during which it reported data. The next most prolific user of per curiam opinions was the District of Columbia Court of Appeals, which reported an average of 520 per curiam opinions during the twenty-year study period.

Table 1<sup>30</sup> reveals that the number of signed opinions is relatively consistent from year to year among states, and even

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27. Granted some appellate justices will recall the time when they might have written a thirty-two-page per curiam that settled a point of law in an area, but those are now very unusual. For the most part, we will not be led too far astray by using “signed opinion” as the operational definition for “full written opinion.” See e.g. Robert J. Hume, *The Impact of Judicial Opinion Language on the Transmission of Federal Circuit Court Precedents*, 43 L. & Socy. Rev. 127, 133 (2009) (“It is true that per curiam, or unsigned, opinions are sometimes used in important cases to express the institutional view of a court or to summarize the points of consensus among a fractured court. . . . But on the U.S. Courts of Appeals per curiam opinions are used most commonly in unimportant cases, such as summary judgments and unpublished decisions.”) (citations omitted); see also Howard J. Bashman, *Per Curiam Opinions: What’s the Point?* <http://www.law.com/jsp/article.jsp?id=900005559003> (Dec. 10, 2007) (pointing out that “at the federal appellate level, no established rules seem to exist concerning when an opinion will be designated per curiam in place of identifying the judge who has written the decision”) (accessed May 19, 2010; copy on file with Journal of Appellate Practice and Process).

28. Fifty states plus the District of Columbia and Commonwealth of Puerto Rico would seem to make fifty-two, but Oklahoma and Texas both have two courts of last resort—a Supreme Court with largely civil jurisdiction and a Court of Criminal Appeals.

29. The NCSC Court Statistics Project has gathered data on total dispositions, signed opinions, and per curiam opinions from courts of last resort for at least the past twenty years, although per curiam opinions are not addressed in detail by this article.

30. Table 1 provides data on the signed opinions issued by supreme courts for the twenty-year period 1987-2006. To be included on the table, courts of last resort must have provided data for at least fifteen of the twenty years studied as well as data for the then-



more so within states. The number of signed opinions in courts of last resort ranges from fifty-five (Delaware, 1988) to 861 (Alabama, 1991) per year, with an overall average of 190 opinions per year. Table 1 shows the average (mean) number of signed opinions per court, but also the standard deviation, which measures the amount of variation in opinions within states from year to year. Note that the standard deviation for most states is rather low. To compare opinion production among state supreme courts with different averages of opinion production per year, a coefficient of variability (the ratio of the standard deviation to the size of the mean) was computed. Because the year-to-year variation was small, meaning that opinion production is relatively consistent from year to year, it is unnecessary to conduct separate analyses for each year. The average number of signed opinions over the twenty years is a good summary statistic for opinion production per supreme court.

Perhaps we should not be surprised that the number of signed opinions per court does not vary greatly. At the supreme court level, the number of justices remains constant and the number of opinions that they can thoughtfully author has a limit. One prominent set of scholars says, in fact, that an appellate justice can participate in 300 cases per year and can author 100 opinions.<sup>31</sup> Leflar's prescription is even more stringent:

[N]o appellate judge, however competent, can write more than 35, or conceivably 40, full-scale publishable opinions in a year. The effort to write more risks shoddy opinions and the shirking other duties, including the preparation of per curiam and memorandum opinions in less important cases.<sup>32</sup>

In sum, a fixed number of justices have a finite capacity to write full opinions, especially in complex cases, and once that limit is reached the number of signed opinions per justice must necessarily level off.

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most recent five-year period, which was 2002 to 2006. Forty-one high courts from forty states had data sufficiently complete and clean to be included in the table.

31. Carrington, Meador & Rosenberg, *supra* n. 15, at 145-46.

32. Robert A. Leflar, *Delay in Appellate Courts*, in John A. Martin & Elizabeth A. Prescott, *Appellate Court Delay* 151 (NCSC 1981).

*B. Does Opinion Production Vary by Number of Appellate Courts?*

Although the average number of opinions per state varies within a fairly narrow band, one might expect a significant difference between supreme courts over intermediate appellate courts versus those in states that have only one appellate court. The highest court in the second group of states must fulfill both the error-correcting and law-development functions of appellate courts,<sup>33</sup> while the discretionary jurisdiction of the courts in the first group “ensures that the typical case decided by the justices will be far more legally ambiguous and more politically salient than the typical cases found on other courts’ dockets.”<sup>34</sup> These complex cases require more time to research and more thoughtful opinion writing. With discretionary jurisdiction, courts of last resort could focus on a smaller number of cases, “compose longer, more scholarly opinions; issue more dissents; and generally improve their ability to develop legal doctrine more thoughtfully for their states.”<sup>35</sup>

The figures that follow this article’s text illustrate how signed opinions vary by number of appellate courts over the twenty-year time period of this study. Figure 1 is a line graph showing the number of opinions per year from courts of last resort in states that have multiple intermediate appellate courts that are distributed by region. With multiple intermediate appellate courts to decide the vast majority of cases, the supreme courts in these states can focus on developing the law, including the articulation of new principles, the resolution of conflicts among statutory laws, and the resolution of conflicts in interpretation among intermediate appellate courts. Figure 2 is a similar graph, but the data are drawn from courts of last resort in states having a single intermediate appellate court. Figure 3

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33. In fact, intermediate appellate courts were created to guarantee litigants at least one appeal while providing the supreme courts discretion to choose the appeals they hear.

34. Stefanie A. Lindquist & David E. Klein, *The Influence of Jurisprudential Considerations on Supreme Court Decisionmaking: A Study of Conflict Cases*, 40 L. & Socy. Rev. 135, 139 (Mar. 2006) (referring to the discretionary jurisdiction of the United States Supreme Court).

35. Stumpf & Culver, *supra* n. 8, at 137.

shows signed opinions from the highest courts in states that do not have an intermediate appellate court.

Figure 4 displays the average number of signed opinions per state court of last resort separated into two groups: single appellate courts and supreme courts in states with one or more intermediate appellate courts. The hypothesis would be that single-tier appellate courts would write more opinions because they need to perform both the error-correcting and law-development functions, whereas supreme courts in states with intermediate appellate courts could write fewer because, after all, the litigants already had the benefit of one appeal even if their cases were not heard by their states' highest courts. Surprisingly, however, single appellate courts did *not* write more signed opinions than supreme courts in states with intermediate appellate courts. Indeed, the average number of signed opinions for single appellate courts was 171, and the average number of signed opinions in courts of last resort in two-tiered systems was 187. In light of these results, it would appear that courts of last resort are similar in their production of signed opinions, regardless of whether they are part of a court system that includes only a single appellate court or one that includes multiple appellate courts.

One possible reason for this surprising result may be the lower volume of appeals in single-appellate-court states and consequently the lower number of signed opinions from those courts, but that would presume a relatively constant ratio of signed opinions per disposition. Is that the case or does the proportion of signed opinions diminish as the number of appeals—hence dispositions—increases?

Table 2 shows the ratio of signed opinions to dispositions. Here it appears as if the high courts in large states do dispose of more cases per year, which means that the percentage of cases disposed of by signed opinion is smaller in these states. Table 2 indicates that the California, Illinois, and Michigan Supreme Courts, the New York Court of Appeals, and the Texas Court of Criminal Appeals dispose of less than fifty percent of their cases by signed opinions, whereas the Supreme Courts of Arkansas, Connecticut, Montana, Nebraska, and North Dakota dispose of more than half of all of their cases by signed opinion. In other words, *the relative number of signed opinions per court remains*

*relatively constant regardless of the number of total appeals disposed of by the state's highest court.*

### *C. Does Opinion Production Vary by Number of Justices?*

It would seem logical to assume that collegial courts with even a few more members would have the capability to write more opinions than smaller courts. Most state courts of last resort have seven members, but some do have five, and some fewer follow the United States Supreme Court with nine members.<sup>36</sup> Figure 5 separates the average number of signed opinions by the number of justices on each court. There is a tendency for larger courts to issue more signed opinions, but the variation within categories is as dramatic as the variation among courts of different sizes. Five-judge courts issue an average of 167.5 opinions per year, seven-judge courts issue an average of 183.9 opinions per year, and nine-judge courts issue an average of 269.5 opinions per year. The higher average in the nine-judge courts, however, is largely driven by the Alabama and Mississippi Supreme Courts, which not only have nine justices, but also the ability to sit in panels.<sup>37</sup> The Alabama Supreme

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36. Most state supreme courts have seven members, eighteen have five members, and only seven courts of last resort have nine justices: In addition to the Supreme Court of Alabama, there is the District of Columbia Court of Appeals, the Mississippi Supreme Court, the Supreme Court of Oklahoma, the Texas Court of Criminal Appeals, the Supreme Court of Texas, and the Washington State Supreme Court.

37. Nine-justice state courts of last resort that may sit in panels are Alabama, District of Columbia, Mississippi, and Washington. See National Center for State Courts, Court Statistics Project, *Structure Charts*, [http://www.ncsconline.org/D\\_Research/csp/CSP\\_Main\\_Page.html](http://www.ncsconline.org/D_Research/csp/CSP_Main_Page.html) (click "Access Charts" link in "State Court Structure Charts" box on main page, then click outline of desired state) (accessed May 20, 2010; copy of "State Court Structure Charts" page on file with Journal of Appellate Practice and Process). The Oklahoma and Texas Supreme Courts have nine justices who sit en banc, but those states both also have second courts of last resort that handle criminal matters and that may also sit in panels. *Id.* Most seven-justice courts of last resort sit en banc; the exceptions that use panels for at least some types of cases are Connecticut, Massachusetts, Nevada, and Virginia. *Id.* The Supreme Court of Delaware—a five-justice court—also uses panels. *Id.*; see also David Rottman & Shauna Strickland, *State Court Organization 2004* at 138 (Bureau of Just. Statistics 2006) (including a reference to the five-member New Mexico court's "monthly three-judge panel selected to consider and decide substantive and policy-implicating procedural motions and other matters"). The Rhode Island Supreme Court reports that court rules permit its members to sit in panels of three, but the general practice is to hear all matters en banc. *Id.* at 139. The Vermont Supreme court sits in panels on cases that are "fast tracked." *Id.* at 138.

Court may “exercise all of its powers” in divisions of five judges, who must reach a unanimous decision or the case goes to the court as a whole.<sup>38</sup> Similarly, the Mississippi Supreme Court sits in panels of three justices.<sup>39</sup> On the other hand, supreme courts in Connecticut, Montana, Nevada, and Delaware may also sit in panels, but these courts are not above average in opinion production.

### III. CONCLUSIONS AND IMPLICATIONS

The information displayed in the charts and graphs that accompany this article enable us to draw several important conclusions:

The number of opinions produced in courts of last resort is relatively constant from year to year and is not correlated with the number of appeals disposed. (Although per curiam opinions were not a focus of the research supporting this paper, available information indicates that they are used sparingly by most courts of last resort.)

Single appellate courts do not produce more signed opinions on average than courts of last resort sitting in states that also have intermediate appellate courts.

Supreme courts with more justices write only marginally more opinions than appellate courts with fewer justices. Although the difference is not as striking, courts of last resort that sit in panels may issue more opinions than supreme courts that decide all cases en banc.

Those charts and graphs also enable us to consider the implications of the information that they present. Perhaps most important is the realization that appellate courts have two roles to play: error correction and law development. The obvious corollary to this realization is the recognition that court

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38. Ala. R. App. P. 16(a), (b) (available at <http://judicial.alabama.gov/library/rules/ap16.pdf>) (accessed May 20, 2010; copy on file with Journal of Appellate Practice and Process).

39. In certain enumerated circumstances the panels may, however, refer matters to the Supreme Court as a whole, where they will be “considered and adjudged by the full Court.” Miss. R. App. P. 24(a), (b) (available at [http://www.mssc.state.ms.us/rules/msrulesofcourt/rules\\_of\\_appellate\\_procedure.pdf](http://www.mssc.state.ms.us/rules/msrulesofcourt/rules_of_appellate_procedure.pdf)) (accessed May 20, 2010; copy on file with Journal of Appellate Practice and Process).

performance measures must distinguish between these separate appellate roles.

The data presented here show us too that law development requires selection of appropriate cases and then the articulation of reasons behind decisions, especially those that resolve conflicts of law, create new principles of law, more clearly articulate principles to guide lower-court decisions, and are intended to inform the legal community and the public at large of the rationale for a particular decision.

Finally, because law development requires thoughtful, considered opinions, these data suggest that appellate courts should not be evaluated according to the *quantity* of opinions produced, but according to the *quality* of opinions produced, much in the way that legislatures should not be evaluated according to the number of statutes passed, but according to the quality of laws enacted.

APPENDIX FOLLOWS

**Table 1**  
**Court of Last Resort Signed Opinions, 1987-2006**

State	Court	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998
Alabama	Supreme Court	668	672	751	703	861	738	745	499	430	333	264	307
Alaska	Supreme Court	135	193	89	180	103	190	132	145	117	478		179
Arkansas	Supreme Court	358	378	345	373	424	435	424	448	413	379	419	379
California	Supreme Court	85	122	120	100	127	89	102	99	97	102	82	97
Colorado	Supreme Court	238	244	221	237	227	216	181	192	233	193	214	187
Connecticut	Supreme Court	233	230	224	246	253	193	185	185	183	178	165	174
Delaware	Supreme Court	61	55	65	77	53	72	54	66	60	70	82	72
Florida	Supreme Court	195	222	171	199	187	231	231	187	172	175	133	160
Georgia	Supreme Court	374	348	384	384	436	350	316	401	421	404	364	394
Hawaii	Supreme Court	314	320	396	318	361	242	81	167	267	262	91	63
Illinois	Supreme Court						176	79	138	128	107	118	158
Indiana	Supreme Court	363	328	365	219	204	160	139	147	119	124	204	290
Iowa	Supreme Court	244	264	257	249	247	240	306			371	270	213
Kansas	Supreme Court	244	380	216	199	203	200	208	210	209	209	208	343
Louisiana	Supreme Court	145	149	137		111	91	120	150	76	126	86	70
Michigan	Supreme Court	108	79	68	71	66	75	90	108	95	109	88	121
Minnesota	Supreme Court	156	165	157	157	97	156	120	156	154	151	156	
Mississippi	Supreme Court	507	475	290	375	312	386	226	236	248	225	231	325
Montana	Supreme Court	359	363	356	387	331	324	437	368	392	372	384	254
Nebraska	Supreme Court	365	487	520	322	508	333	389	276	259	262	267	270
Nevada	Supreme Court	142	116	164	155	149	174	177	164	177	169	161	169
New Hampshire	Supreme Court	155	144	150	139	163	179	182	144	202	202	135	98
New Mexico	Supreme Court	192	220	171	166	188	147	129	56	139	86	60	49
New York	Court of Appeals	109	119	118	120	112	118	138	128	184	139	129	106
North Carolina	Supreme Court	160	188	119	93	118		99	126	137	152	120	84
North Dakota	Supreme Court	249	268	278	281	278	282	225	292	254	259	257	199
Oregon	Supreme Court	114	128	102	102	72	116	117	94	64	72		74
Pennsylvania	Supreme Court	299	268	281	209	299	284	190	165	204	204	207	198
Rhode Island	Supreme Court	181	139	141	163	153	126	86		122		216	87
South Carolina	Supreme Court	169	123	457	178	244	233	206	503	557	436	315	166
South Dakota	Supreme Court	186	194	199	159	222	166	204	196	195	183	174	174
Tennessee	Supreme Court	184	182	182	157	161	211	222	254	296	378	334	339
Texas	Supreme Court	93	93	68	66	119	127	145	146	236	183	179	222
Texas	Ct. of Crim. Appeals	214	235	163	170	201	206	198	156	127	130	140	
Utah	Supreme Court	182	141	159	111	111	103		95	90	116	96	85
Vermont	Supreme Court	117	217	221	211	186	138	125	108	94	112	111	78
Virginia	Supreme Court	149	183	215	164	144	145	142	168	162	162	131	159
Washington	Supreme Court	134	141	147	119	122	135	134	151	125	139	137	143
West Virginia	Sup. Ct. of Appeals	244	249	281	278	274	263	220	275	261	272	188	260
Wisconsin	Supreme Court	116	98	107	101	91	87	118	88	87	86	91	73
Wyoming	Supreme Court	196	178	252	161	189	209	188	167	241	180	178	181



**Table 1**  
**Court of Last Resort Signed Opinions, 1987-2006**

State	Court	1999	2000	2001	2002	2003	2004	2005	2006	Average 87-06	Standard Deviation	Coefficient of Variability
Alabama	Supreme Court	307	473		438		326		208	513	208	0.40
Alaska	Supreme Court	153	170	149	182	139	137	100	112	162	83	0.51
Arkansas	Supreme Court	304	246	321	301	290	198	202	231	343	79	0.23
California	Supreme Court	88	123	103	101	123	108	125	125	106	15	0.14
Colorado	Supreme Court	185	93	112	121	85	87	92	78	172	61	0.35
Connecticut	Supreme Court	174	144	120	180	190	187	157	158	188	34	0.18
Delaware	Supreme Court	62	44	53	71	67	60	61	96	65	12	0.18
Florida	Supreme Court	93		191	95	81	61	109	66	156	56	0.36
Georgia	Supreme Court	394	371	403	364	421	347	400	352	381	30	0.08
Hawaii	Supreme Court	88	59	49	191	69	86	74	85	179	119	0.66
Illinois	Supreme Court	104	144	130	131	113	123	118	104	125	24	0.19
Indiana	Supreme Court	186	248	183	195		90	117	95	199	86	0.43
Iowa	Supreme Court	307	210	187	180	171	161	135	131	230	63	0.28
Kansas	Supreme Court	183	374	306	312	249	260	227	264	250	61	0.24
Louisiana	Supreme Court	81	62	112	23	15	64	64	67	92	40	0.43
Michigan	Supreme Court	85	83	79	49	51	64	59	50	80	21	0.26
Minnesota	Supreme Court			176	196	146	106	106	132	146	26	0.18
Mississippi	Supreme Court	325	282	331		297	285	259	208	306	82	0.27
Montana	Supreme Court	255	245	316	343	377	376	361	353	348	49	0.14
Nebraska	Supreme Court	256	332	207	259	212	205	210	198	307	101	0.33
Nevada	Supreme Court	55	141	85	38	87	40	60	91	126	49	0.39
New Hampshire	Supreme Court	156	124	229	176	186	151	145	158	161	30	0.19
New Mexico	Supreme Court	64	36	33		35	45			107	65	0.61
New York	Court of Appeals	123	97	100		110	125	126	124	122	19	0.15
North Carolina	Supreme Court	79	60	40	64	28	48	31	35	94	47	0.51
North Dakota	Supreme Court	264	174	182	189	203	216	257	321	246	41	0.17
Oregon	Supreme Court	79	79		60	42	67	65	96	86	24	0.28
Pennsylvania	Supreme Court	234	190	155	178	158	168	381	477	237	82	0.34
Rhode Island	Supreme Court	91	96	75	64	67	79	68		115	45	0.39
South Carolina	Supreme Court	166	200	152	173	191	237	244	220	259	127	0.49
South Dakota	Supreme Court	182	173	184	164	177	196	159	101	179	24	0.14
Tennessee	Supreme Court	264		329	244	198	179	187	148	234	71	0.30
Texas	Supreme Court	165	62	110	135	96	89	83	84	125	51	0.41
Texas	Ct. of Crim. Appeals		162	120	319	325	254	275	243	202	63	0.31
Utah	Supreme Court	109	101	112		98	77	86	82	109	27	0.25
Vermont	Supreme Court	81	74	64	68	70	64	53	53	112	55	0.49
Virginia	Supreme Court	158	157	150	136	130	144	106	116	151	24	0.16
Washington	Supreme Court	143	105	136	129	131	129	144	124	133	11	0.08
West Virginia	Sup. Ct. of Appeals	324	80	94	88	68	57	84	60	196	94	0.48
Wisconsin	Supreme Court		112	101	81	128	141	158	109	104	22	0.21
Wyoming	Supreme Court	203	235	149	149	193			149	190	30	0.16

Average =  
186

**Table 2**  
Court of Last Resort Percentage of Signed Opinions/Dispositions, 1987-2006

State	Court	1987		1988		1989		1990		1991	
		Dispos.	Signed/Opinions	Dispos.	Signed/Opinions	Dispos.	Signed/Opinions	Dispos.	Signed/Opinions	Dispos.	Signed/Opinions
Alabama	Supreme Court	1,671	40%	1,597	42%	1,724	751	1,817	703	1,998	861
Alaska	Supreme Court	522	26%	649	30%	541	89	584	180	547	103
Arkansas	Supreme Court	416	38%	457	83%	421	345	448	373	508	424
California	Supreme Court	4,077	2%	4,153	3%	4,488	120	4,462	100	4,935	127
Colorado	Supreme Court	1,036	23%	1,001	24%	1,215	221	1,261	237	1,326	227
Connecticut	Supreme Court	293	23%	278	83%	296	224	440	246	301	253
Delaware	Supreme Court	423	61	410	55	485	65	558	77	439	53
Florida	Supreme Court	2,176	9%	1,960	11%	1,545	171	1,846	199	2,016	1887
Georgia	Supreme Court	1,524	374	1,615	348	1,885	384	2,061	384	1,635	436
Hawaii	Supreme Court	637	314	651	320	794	396	614	318	646	361
Illinois	Supreme Court	2,189		2,393		1,675		1,683		1,688	
Indiana	Supreme Court	821	363	874	328	1,017	365	888	219	1,015	204
Iowa	Supreme Court	1,261	244	1,190	264	1,273	257	1,258	249	1,430	247
Kansas	Supreme Court	333	244	459	380	290	216	267	199	291	203
Louisiana	Supreme Court	2,783	145	2,538	149	2,738	137	2,965	71	3,185	1111
Michigan	Supreme Court	2,168	108	2,254	79	2,453	68	2,755	71	2,444	66
Minnesota	Supreme Court	759	156	836	165	925	157	939	157	846	97
Mississippi	Supreme Court	833	507	793	475	872	290	1,003	375	998	312
Montana	Supreme Court	359		363		618	356	624	387	578	331
Nebraska	Supreme Court	964	365	1,094	487	1,277	520	1,022	322	1,420	508
Nevada	Supreme Court	1,013	142	922	116	1,047	164	1,087	155	1,035	149
New Hampshire	Supreme Court	451	155	543	144	532	150	567	139	543	163
New Mexico	Supreme Court	192		220		709	171	715	166	720	188

**Table 2**  
**Court of Last Resort Percentage of Signed Opinions/Dispositions, 1987-2006**

New York	3,847	109	3%	3,761	119	3%	3,916	118	3%	4,095	120	3%	4,200	112	3%
North Carolina	829	160	19%	940	188	20%	492	119	24%	703	93	13%	617	118	19%
North Dakota	357	249	70%	423	268	63%	381	278	73%	446	281	63%	414	278	67%
Oregon	1,355	114	8%	1,193	128	11%	1,034	102	10%	978	102	10%	1,030	72	7%
Pennsylvania		299			268			281		209	209			299	
Rhode Island	643	181	28%	581	139	24%	565	141	25%	673	163	24%	660	153	23%
South Carolina	596	169	28%	385	123	32%	537	457	85%	537	178	33%	560	244	44%
South Dakota		186		463	194	42%	484	199	41%	434	159	37%	428	222	52%
Tennessee	1,087	184	17%	1,057	182	17%	1,057	182	17%	772	157	20%	708	161	23%
Texas	1,264	93	7%	1,171	93	8%	1,097	68	6%	1,169	66	6%	1,303	119	9%
Texas	4,120	214	5%	4,983	235	5%	5,913	163	3%	3,839	170	4%	3,660	201	5%
Utah	521	182	35%	617	141	23%	642	159	25%	556	111	20%	597	111	19%
Vermont	553	117	21%	625	217	35%	659	221	34%	721	211	29%	689	186	27%
Virginia	1,169	149	13%	1,655	183	11%	1,800	215	12%	1,610	164	10%	1,308	144	11%
Washington	1,241	134	11%	1,214	141	12%	956	147	15%	1,022	119	12%	1,021	122	12%
West Virginia	1,909	244	13%	1,775	249	14%	1,735	281	16%	1,586	278	18%	2,675	274	10%
Wisconsin	725	116	16%	866	98	11%	802	107	13%	728	101	14%	905	91	10%
Wyoming	302	196	65%	334	178	53%	363	252	69%	287	161	56%	300	189	63%

**Table 2**  
**Court of Last Resort Percentage of Signed Opinions/Dispositions, 1987-2006**

State	Court	1992		1993		1994		1995		1996	
		Dispos.	Signed/Opinions/Dispos.	Dispos.	Signed/Opinions/Dispos.	Dispos.	Signed/Opinions/Dispos.	Dispos.	Signed/Opinions/Dispos.	Dispos.	Signed/Opinions/Dispos.
Alabama	Supreme Court	1,963	38%	2,034	74%	1,813	49%	1,812	43%	1,712	33%
Alaska	Supreme Court	676	28%	544	13%	528	14%	473	11%	803	47%
Arkansas	Supreme Court	521	83%	506	42%	556	44%	550	41%	502	37%
California	Supreme Court	5,466	2%	5,800	10%	6,801	9%	6,564	9%	6,538	10%
Colorado	Supreme Court	1,286	17%	1,261	18%	1,290	19%	1,316	23%	1,369	19%
Connecticut	Supreme Court	220	19%	255	18%	255	18%	238	18%	238	17%
Delaware	Supreme Court	549	13%	552	5%	482	6%	495	6%	535	7%
Florida	Supreme Court	1,890	12%	1,931	23%	2,065	18%	2,098	17%	2,542	17%
Georgia	Supreme Court	1,630	21%	1,662	31%	1,843	40%	2,173	42%	2,109	40%
Hawaii	Supreme Court	569	24%	367	8%	521	16%	744	26%	676	26%
Illinois	Supreme Court	2,667	7%	2,338	7%	3,018	13%	3,420	12%	3,393	10%
Indiana	Supreme Court	1,058	16%	820	13%	861	14%	949	11%	1,079	12%
Iowa	Supreme Court	1,329	24%	1,366	30%	1,426	17%	1,456	13%	1,483	11%
Kansas	Supreme Court	272	20%	298	20%	410	21%	882	20%	861	20%
Louisiana	Supreme Court	3,160	9%	2,984	12%	2,863	15%	2,879	7%	3,563	4%
Michigan	Supreme Court	2,665	3%	2,516	9%	2,733	10%	2,799	9%	2,898	9%
Minnesota	Supreme Court	1,011	15%	859	12%	942	15%	934	15%	951	15%
Mississippi	Supreme Court	941	38%	756	22%	865	23%	845	24%	797	22%
Montana	Supreme Court	521	32%	558	43%	619	36%	624	39%	679	37%
Nebraska	Supreme Court	634	33%	429	38%	315	27%	300	25%	305	26%
Nevada	Supreme Court	967	17%	943	17%	1,131	16%	1,078	17%	1,370	16%
New Hampshire	Supreme Court	515	17%	662	18%	793	14%	875	20%	875	20%
New Mexico	Supreme Court	720	14%	632	12%	810	5%	889	13%	709	8%

**Table 2**  
**Court of Last Resort Percentage of Signed Opinions/Dispositions, 1987-2006**

New York	Court of Appeals	4,482	118	3%	5,088	138	3%	4,552	128	3%	5,212	184	4%	5,091	139	3%
North Carolina	Supreme Court	524		24%	406	99	24%	574	126	22%	604	137	23%	577	152	26%
North Dakota	Supreme Court	422	282	67%	389	225	58%	414	292	71%	397	254	64%	415	259	62%
Oregon	Supreme Court	1,129	116	10%	1,087	117	11%	1,032	94	9%	1,014	64	6%	1,014	72	7%
Pennsylvania	Supreme Court	3,124	284	9%	2,763	190	7%	3,688	165	4%	3,286	204	6%	3,407	204	6%
Rhode Island	Supreme Court	676	126	19%	692	86	12%	687	714	17%	714	122	17%	705		
South Carolina	Supreme Court	544	213	43%	572	206	36%	503	503	100%	557	557	100%	436	436	100%
South Dakota	Supreme Court	341	166	49%	425	204	48%	406	196	48%	461	195	42%	461	183	40%
Tennessee	Supreme Court	885	211	24%	739	222	30%	1,151	254	22%	1,203	296	25%	1,369	378	28%
Texas	Supreme Court Ct. of Crim.	1,478	127	9%	1,577	145	9%	1,407	146	10%	1,376	236	17%	1,370	183	13%
Texas	Supreme Court Appeals	4,008	206	5%	4,389	198	5%	5,299	156	3%	6,234	127	2%	6,557	130	2%
Utah	Supreme Court	675	103	15%	718			584	95	16%	584	90	15%	604	116	19%
Vermont	Supreme Court	639	138	22%	699	125	18%	634	108	17%	665	94	14%	694	112	16%
Virginia	Supreme Court	1,588	145	9%	1,512	142	9%	1,840	168	9%	2,321	162	7%	2,455	162	7%
Washington	Supreme Court	1,079	135	13%	1,189	134	11%	1,288	151	12%	1,146	125	11%	1,185	139	12%
West Virginia	Sup. Ct. of Appeals	2,598	263	10%	2,100	220	10%	2,312	275	12%	2,098	261	12%	2,583	272	11%
Wisconsin	Supreme Court	720	87	12%	888	118	13%	991	88	9%	1,008	87	9%	1,181	86	7%
Wyoming	Supreme Court	331	209	63%	306	188	61%	282	167	59%	387	241	62%	318	180	57%

**Table 2**  
**Court of Last Resort Percentage of Signed Opinions/Dispositions, 1987-2006**

State	Court	1997		1998		1999		2000		2001	
		Dispos.	Signed Opinions	Dispos.	Signed Opinions	Dispos.	Signed Opinions	Dispos.	Signed Opinions	Dispos.	Signed Opinions
Alabama	Supreme Court	1,734	264	1,758	307	1,602	307	2,237	473	2,220	491
Alaska	Supreme Court	556	419	899	379	459	153	489	170	491	149
Arkansas	Supreme Court	1,343	82	8,235	97	867	304	859	246	903	321
California	Supreme Court	7,419	214	1,561	187	1,615	185	8,877	123	9,047	103
Colorado	Supreme Court	1,432	165	489	174	216	174	1,563	93	1,425	112
Connecticut	Supreme Court	458	82	582	72	527	62	426	144	475	120
Delaware	Supreme Court	537	133	2,452	160	2,516	93	599	44	598	53
Florida	Supreme Court	2,373	364	2,353	394	1,697	394	2,533	371	2,932	191
Georgia	Supreme Court	1,732	91	944	63	845	88	1,731	371	1,823	403
Hawaii	Supreme Court	908	118	3,360	158	3,463	104	620	59	756	49
Illinois	Supreme Court	3,477	204	1,015	290	1,100	186	3,176	144	2,706	130
Indiana	Supreme Court	1,041	270	2,150	213	2,021	307	1,260	248	1,071	183
Iowa	Supreme Court	1,073	208	1,228	343	1,114	183	2,071	210	2,404	187
Kansas	Supreme Court	989	86	3,392	70	3,290	81	1,281	374	1,094	306
Louisiana	Supreme Court	3,557	88	2,992	121	2,571	85	3,028	62	3,330	112
Michigan	Supreme Court	2,736	156	115	325	686	325	2,302	83	2,359	79
Minnesota	Supreme Court	884	231	641	325	738	325	787	282	191	176
Mississippi	Supreme Court	894	384	633	254	670	255	598	282	886	331
Montana	Supreme Court	781	305	309	270	327	256	843	245	910	316
Nebaska	Supreme Court	305	267	888	309	327	256	377	332	259	207
Nevada	Supreme Court	1,471	161	2,299	169	2,073	55	1,932	141	2,001	85
New Hampshire	Supreme Court	907	135	767	98	1,000	156	717	124	1,014	229
New Mexico	Supreme Court	716	60	745	49	562	64	579	36	580	33
New York	Court of Appeals	4,832	129	4,730	106	4,529	123	4,426	97	4,490	100

**Table 2**  
**Court of Last Resort Percentage of Signed Opinions/Dispositions, 1987-2006**

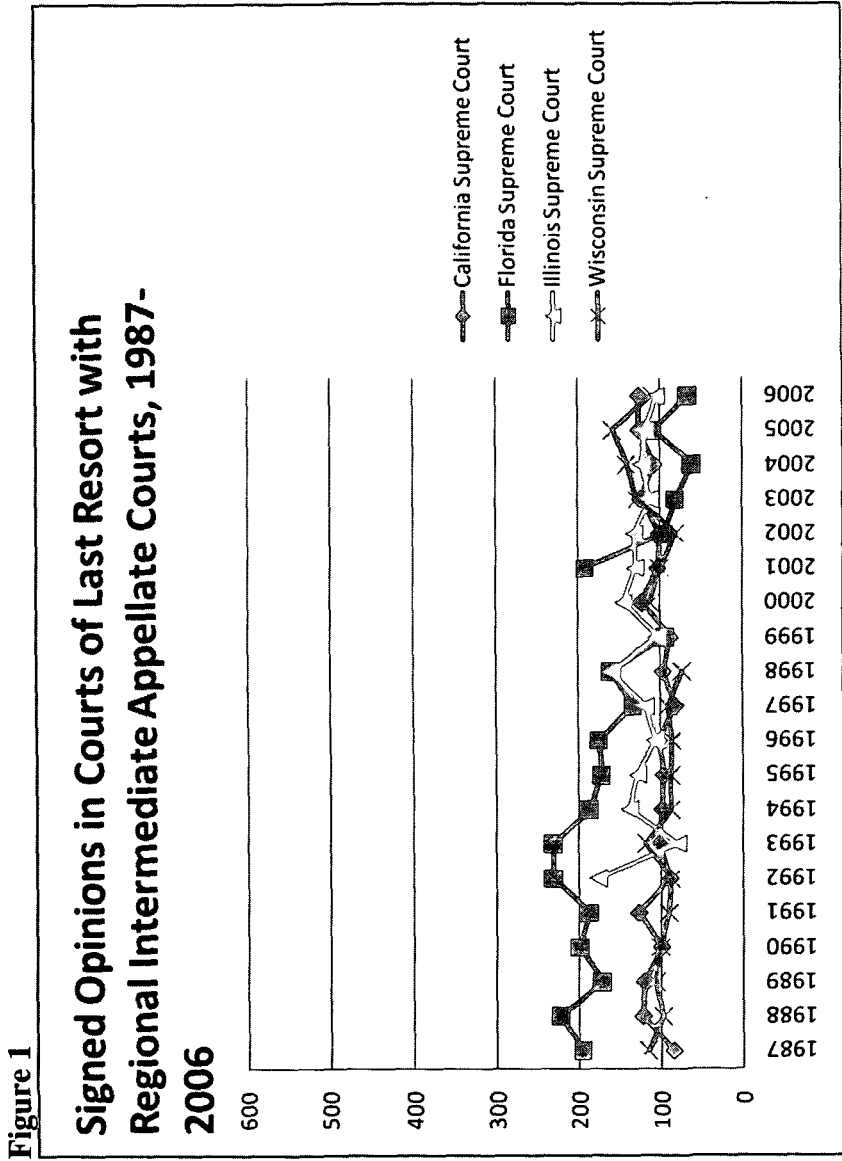
North Carolina	Supreme Court	685	120	18%	598	84	14%	707	79	11%	722	60	8%	700	40	6%
North Dakota	Supreme Court	406	257	63%	373	199	53%	392	264	67%	369	174	47%	348	182	52%
Oregon	Supreme Court	947			1,207	74	6%	1,303	79	6%	1,303	79	6%	1,093		
Pennsylvania	Supreme Court	3,619	207	6%	3,600	198	6%	4,725	234	5%	3,544	190	5%	3,351	155	5%
Rhode Island	Supreme Court	707	216	31%	682	87	13%	577	166	6%	563	91	16%	662	96	15%
South Carolina	Supreme Court	1,239	315	25%	2,159	166	8%	2,891	182	6%	1,316	200	15%	1,586	152	10%
South Dakota	Supreme Court	504	174	35%	397	174	44%	482	182	38%	407	173	43%	480	184	38%
Tennessee	Supreme Court	1,036	334	32%	1,313	339	26%	1,028	264	26%	1,161			1,322	329	25%
Texas	Supreme Court	1,313	179	14%	1,476	222	15%	1,458	165	11%	1,385	62	4%	1,312	110	8%
Texas	Ct. of Crim. Appeals	7,800	140	2%	8,354			10,233			10,342	162	2%	9,107	120	1%
Utah	Supreme Court	632	96	15%	561	85	15%	622	109	18%	587	101	17%	548	112	20%
Vermont	Supreme Court	642	111	17%	587	78	13%	641	81	13%	557	74	13%	604	64	11%
Virginia	Supreme Court	2,689	131	5%	2,856	159	6%	2,923	158	5%	2,990	157	5%	3,007	150	5%
Washington	Supreme Court	1,280	137	11%	1,343	143	11%	1,335	143	11%	1,417	105	7%	1,594	136	9%
West Virginia	Sup. Ct. of Appeals	3,085	188	6%	3,488	260	7%	3,089	324	10%	1,412	80	6%	3,703	94	3%
Wisconsin	Supreme Court	1,142	91	8%	1,177	73	6%	1,128			1,170	112	10%	1,237	101	8%
Wyoming	Supreme Court	344	178	52%	359	181	50%	372	203	55%	389	235	60%	271	149	55%

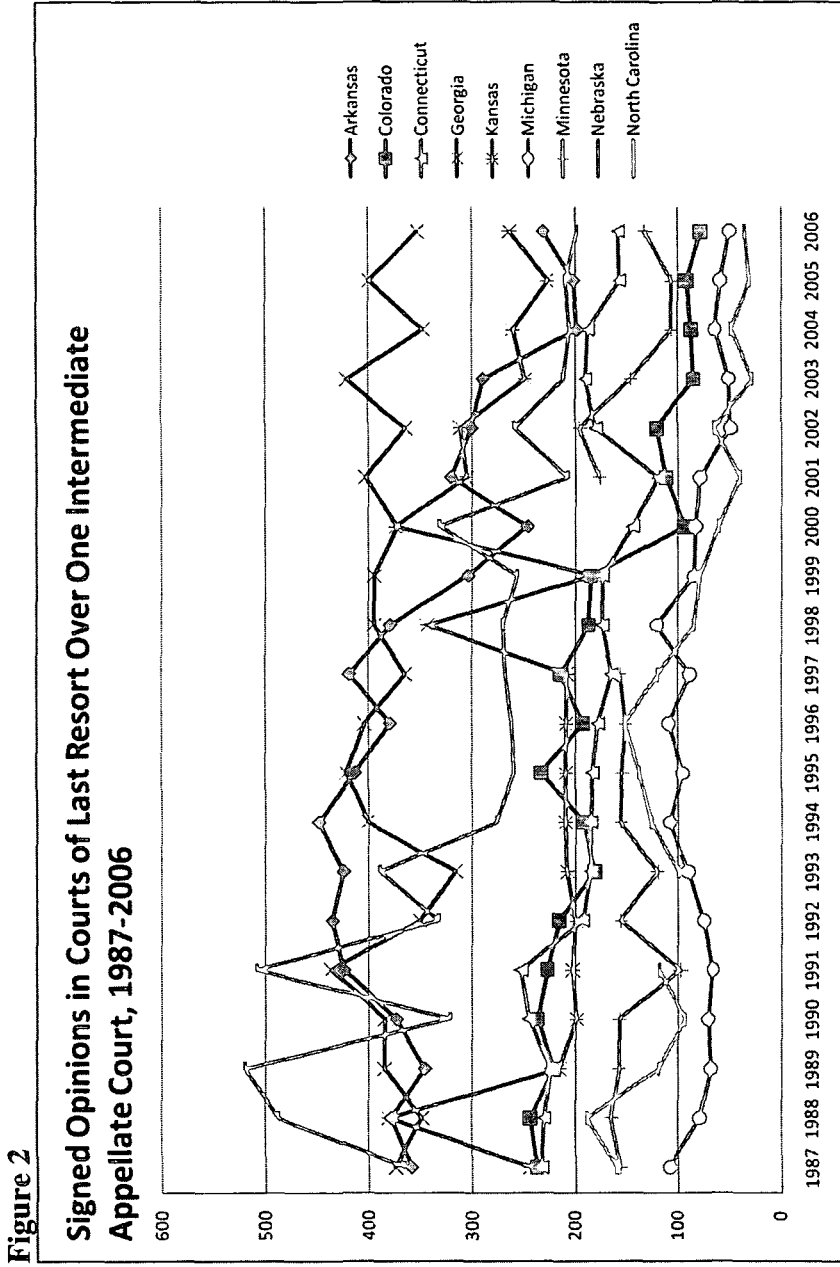
**Table 2**  
Court of Last Resort Percentage of Signed Opinions/Dispositions, 1987-2006

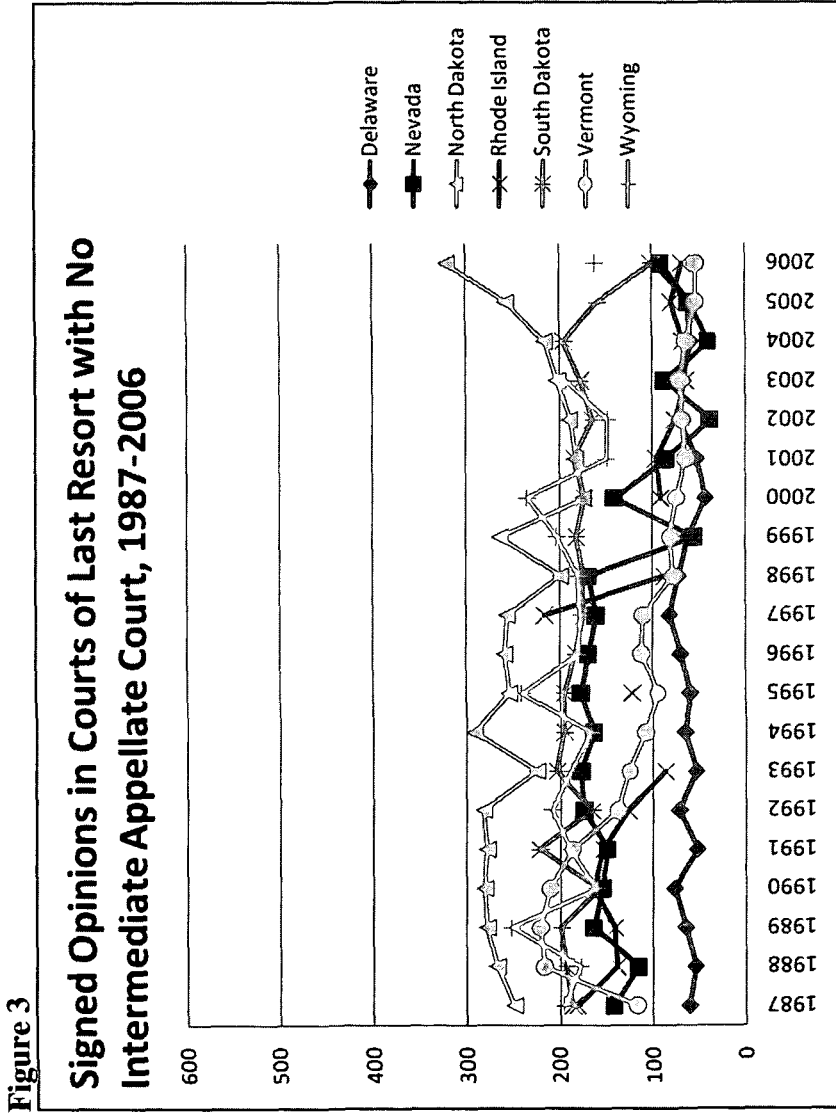
State	Court	2002		2003		2004		2005		2006		Average Signed/Disposed 97-06		
		Dispos.	Signed/Opinions	Dispos.	Signed/Opinions	Dispos.	Signed/Opinions	Dispos.	Signed/Opinions	Dispos.	Signed/Opinions			
Alabama	Supreme Court	2,527	438	17%	2,275	326	16%	1,896	426	23%	1,805	208	12%	28%
Alaska	Supreme Court	516	182	35%	484	137	35%	395	100	23%	394	112	28%	30%
Arkansas	Supreme Court	784	301	38%	851	290	34%	843	198	23%	785	231	28%	57%
California	Supreme Court	8,802	101	1%	8,652	123	1%	8,565	125	1%	8,535	125	1%	2%
Colorado	Supreme Court	1,425	121	8%	1,441	83	6%	1,319	92	6%	1,400	78	6%	13%
Connecticut	Supreme Court	539	180	33%	548	190	35%	543	157	29%	512	158	31%	59%
Delaware	Supreme Court	713	71	10%	726	67	9%	586	61	11%	650	96	15%	12%
Florida	Supreme Court	2,977	95	3%	2,291	81	4%	2,579	61	2%	2,693	66	2%	12%
Georgia	Supreme Court	1,993	364	18%	1,993	421	21%	1,898	347	18%	1,871	400	21%	21%
Hawaii	Supreme Court	847	191	23%	785	69	9%	952	86	9%	875	85	10%	26%
Illinois	Supreme Court	3,089	131	4%	3,328	113	3%	3,056	123	4%	3,217	118	4%	4%
Indiana	Supreme Court	1,103	195	18%	1,050	90	8%	1,063	90	8%	1,125	117	10%	20%
Iowa	Supreme Court	2,180	180	8%	2,142	171	8%	1,169	161	14%	1,250	135	11%	16%
Kansas	Supreme Court	1,059	312	29%	889	249	28%	861	260	30%	786	227	29%	44%
Louisiana	Supreme Court	3,450	23	1%	3,354	15	0%	3,470	64	2%	2,735	64	2%	3%
Michigan	Supreme Court	2,054	49	2%	2,431	51	2%	2,215	64	3%	2,564	59	2%	3%
Minnesota	Supreme Court	204	196	96%	200	146	73%	236	106	45%	261	106	41%	34%
Mississippi	Supreme Court	942	792	84%	874	297	34%	676	285	42%	694	259	37%	38%
Montana	Supreme Court	792	343	43%	878	377	43%	800	376	47%	810	361	45%	51%
Nebraska	Supreme Court	311	259	83%	282	212	75%	259	205	79%	252	210	83%	71%
Nevada	Supreme Court	1,866	38	2%	1,889	87	5%	1,949	40	2%	2,000	60	3%	10%
New Hampshire	Supreme Court	939	176	19%	893	186	21%	721	151	21%	881	145	16%	22%
New Mexico	Supreme Court	502	573	114%	573	35	6%	628	45	7%	613	158	18%	13%



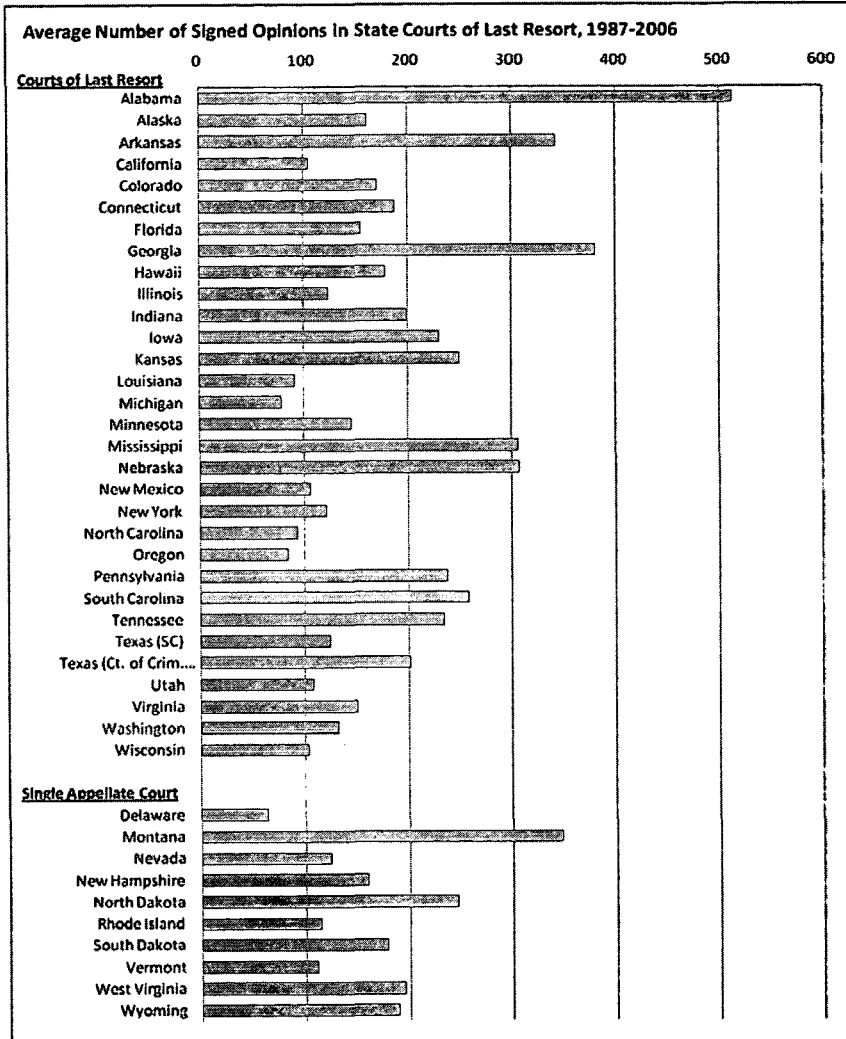




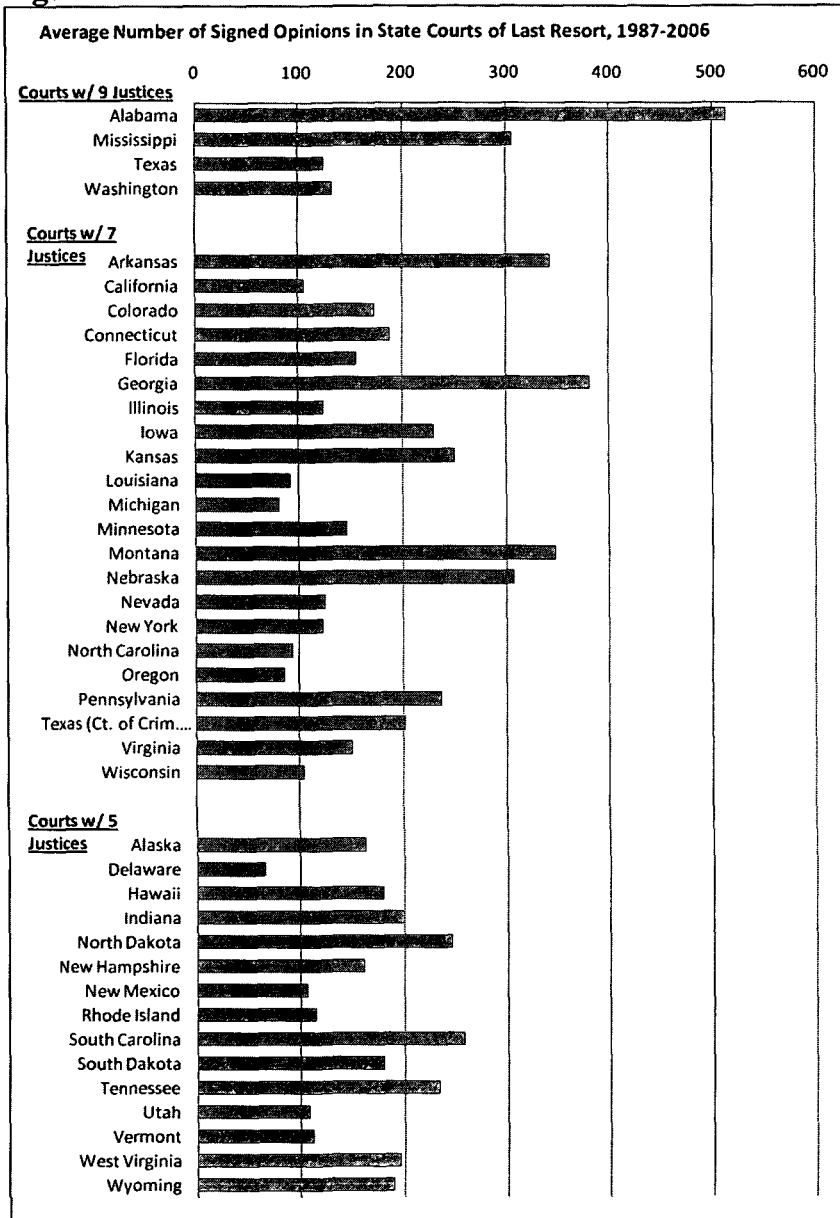




**Figure 4**



**Figure 5**



**Figure 6**

