Statistics on the Texas Supreme Court and the Texas Court of Criminal Appeals

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STATISTICS ON THE TEXAS SUPREME COURT AND THE TEXAS COURT OF CRIMINAL APPEALS

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INTRODUCTION

The purpose of this brief article is to provide for the fourth year[1] statistical information on the state's highest courts, much like the HARVARD LAW REVIEW provides statistical information on the Supreme Court of the United States. With the exception of publications of the Office of Court Administration and Texas Judicial Council and a yearly bloc analysis of the Texas Supreme Court by the TEXAS LAWYER, no publication has on a regular basis attempted to provide a statistical review of the Texas high courts' productivity.

The data used for these statistics consist of all authored opinions decided between October 1, 1994 and September 30, 1995. Per curiam opinions are excluded from the analysis.

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1. Our first presentation was for the period October 1, 1991 through September 30, 1992. *See* Clark Thomas and Anthony Champagne, *Statistics on the Texas Supreme Court and the Texas Court of Criminal Appeals, Annual Survey of Texas Law*, 46 SMU L. REV. 1879-86 (1993). The second presentation of statistics was for the period from October 1, 1992, through September 30, 1993. *See* Clark Thomas and Anthony Champagne, *Statistics on the Texas Supreme Court and the Texas Court of Criminal Appeals, Annual Survey of Texas Law*, 47 SMU L. REV. 1771-79 (1994). The third statistical presentation was for October 1, 1993 through September 30, 1994. That appeared in Clark Thomas and Anthony Champagne, *Statistics on the Texas Supreme Court and the Texas Court of Criminal Appeals, Annual Survey of Texas Law*, 48 SMU L. REV. 1655-1663 (1995). In this presentation of statistics, there are 10 justices listed on the Texas Supreme Court. That is because Justice Doggett did not seek re-election to the Court and he was replaced on January 1, 1995 by Justice Owen. Eleven judges are listed on the Court of Criminal Appeals. Judge Miller did not seek re-election. He was replaced by Judge Keller on January 1, 1995. Judge Campbell was defeated for re-election. The victor in that election contest was Judge Mansfield who took office on January 1, 1995.

TABLE 1
ACTIONS OF INDIVIDUAL JUSTICES ON THE SUPREME COURT OF TEXAS

	Opinions Written			Dissenting Opinions				
	Wrote Majority Opinion	Wrote & Concurred in Majority Opinion[2]	Concurred Majority Opinion	Wrote Dissenting Opinion	Wrote & Concurred Dissenting Opinion[3]	Concurred in Dissent	Concurred & Dissent[4]	Not Participating
Phillips	7[5]	0	53	1	0	6	2	0
Gonzalez	9	5	43	5	0	4	1	2
Hightower	7	2	51	3	0	3	3	0
Hecht	6	3	52	1	0	5	2	0
Doggett	0	0	6	0	0	0	1	0
Cornyn	10	1	50	2	0	4	2	0
Gammage	3	0	43	9	1	6	6	1
Enoch	12	4	43	3	0	2	2	0
Spector	6	1	45	4	1	9	3	0
Owen	6	0	50	3	0	1	1	8

[2] Wrote a concurring opinion which agreed in the judgment of the court. The length of the concurrence is not considered so if a judge adds even one sentence of comment in concurrence with the opinion of the court, it is considered a concurring opinion.

[3] Wrote a dissenting opinion which concurred with another dissenting opinion.

[4] In a few cases, a judge concurred with the majority in part and dissented in part.

[5] Numbers in the table are numbers of opinions, concurrences, or dissents.

TABLE 2
ACTIONS OF INDIVIDUAL JUDGES ON THE COURT OF CRIMINAL APPEALS OF TEXAS

	Opinions Written			Dissenting Opinions				
	Wrote Majority Opinion	Wrote & Concurred in Majority Opinion[6]	Concurred Majority Opinion	Wrote Dissenting Opinion	Wrote & Concurred Dissenting Opinion[7]	Concurred in Dissent	Concurred & Dissent[8]	Not Participating
McCormick	18[9]	2	61	9	0	7	3	0
Clinton	4	20	48	11	4	10	3	0
Miller	2	0	22	0	0	5	0	71
Campbell	5	2	16	1	0	2	0	74
White	7	1	71	0	0	17	2	2
Baird	8	22	52	9	1	7	1	0
Overstreet	12	1	75	1	1	9	1	0
Maloney	15	10	56	10	3	5	1	0
Meyers	9	4	68	7	4	6	1	1
Mansfield	6	6	50	4	1	1	1	31
Keller	4	1	51	1	0	7	1	35

[6] *Supra* note 2.
[7] *Supra* note 3.
[8] *Supra* note 4.
[9] *Supra* note 5.

TABLE 3
SUBJECT MATTER OF DISPOSITIONS OF THE
SUPREME COURT OF TEXAS

Tax	3
Against Local Entity/Officer[10]	4
Private Litigation[11]	7
Writ[12]	7
Procedure[13]	12
Workers Compensation	2
Constitution	1
Education	1
Product Liability	3
Define/Interpret[14]	1
Liability/Injury/Death[15]	14
Due Process	1
Insurance[16]	4
Medical Malpractice	5
Legal Malpractice	1
Public Utility	1
Trade Practices	2
Total	**69**

TABLE 4
SUBJECT MATTERS OF DISPOSITIONS OF THE
COURT OF CRIMINAL APPEALS OF TEXAS

Capital Punishment	24
Right to Counsel	1
Ineffective Counsel	4
Writ[17]	4
Sufficient Evidence	7
Admission/Exclusion[18]	6
Timeliness[19]	1
Jury Instruction	5
Discretionary Review/General	36
Double Jeopardy	5
Procedural Error/General	5
Jury Action	1
Search and Seizure	1
Total	**100**

[10]Involved litigation against governmental entities.

[11]Purely private litigation involving corporations or individuals.

[12]Issues involving writs (i.e., mandamus).

[13]Issues involving proper legal procedure.

[14]Issues involving the application of or the interpretation of words in statutes.

[15]Cases that are not workman's compensation cases that involve wrongful death or injury.

[16]Involves interpretation of insurance policies.

[17]Issues involving writs (i.e., habeas corpus).

[18]Admissibility of evidence issues that are not search and seizure issues such as admissibility of testimony or outbursts in the courtroom.

[19]Questions involving whether motions or appeals were filed in a timely manner.

TABLE 5
CONCURRENCES AND DISSENTS BY TEXAS SUPREME COURT JUSTICES ACCORDING TO ISSUE AREA[20]

	Phillips	Gonzalez	Enoch	Spector	Hightower	Hecht	Doggett	Cornyn	Gammage	Owen
Tax	3/0[21]	1/2	1/2	2/1	2/1	2/1	1/0	3/0	3/0	2/0
Against Local Entity	4/0	4/0	4/0	3/1	4/0	4/0	0/0	3/1	4/0	4/0
Private Litigation	7/0	7/0	5/1	6/1	5/2	7/0	1/0	6/0	4/2	5/0
Writ	5/2	5/2	5/1	6/1	7/0	5/2	1/0	5/2	5/2	4/2
Procedure	11/1	9/3	11/1	10/2	10/2	11/1	2/0	10/2	8/4	10/0
Workers Comp	2/0	1/1	2/0	1/0	1/0	2/0	0/0	2/0	1/0	2/0
Medical Malpractice	4/1	5/0	4/1	5/0	5/0	4/1	1/0	5/0	5/0	3/1
Legal Malpractice	0/1	0/0	1/0	0/1	1/0	1/0	0/0	1/0	0/1	1/0
Constitution	1/0	0/0	1/0	1/0	1/0	1/0	0/0	1/0	0/0	1/0
Education	1/0	1/0	0/0	0/1	1/0	0/0	0/0	1/0	1/0	0/0
Product Liability	3/0	3/0	3/0	2/1	3/0	3/0	0/0	3/0	3/0	3/0
Define/Interpret Liability/Injury/	1/0	1/0	1/0	1/0	1/0	0/0	0/0	0/0	1/0	1/0
Death	11/2	13/1	14/0	10/3	12/0	3/1	0/0	13/1	5/6	12/1
Due Process	1/0	1/0	1/0	1/0	1/0	1/0	0/0	1/0	1/0	1/0
Insurance	3/0	4/0	4/0	2/1	3/1	4/0	0/0	4/0	3/1	4/0
Trade Practices	2/0	2/0	1/0	2/0	2/0	2/0	0/0	2/0	2/0	2/0
Utilities	1/0	0/0	1/0	/1	1/0	1/0	0/0	1/0	0/0	1/0

[20]*See supra* notes 10-16 for explanations of the issue areas.

[21]The numerator is the total number of cases in which the judge wrote or concurred with the majority opinion. The denominator is the total number of cases in which the judge wrote a dissenting opinion or concurred in a dissenting opinion. Cases are excluded in which the judge did not participate or in which the judge concurred in part with the majority and dissented in part.

TABLE 6
CONCURRENCES AND DISSENTS BY COURT OF CRIMINAL APPEALS JUDGES
ACCORDING TO ISSUE AREA[22]

	McCormick	Clinton	Miller	Campbell	White	Baird	Overstreet	Maloney	Meyers	Mansfield	Keller
Capital Punishment	20/4[23]	13/10	5/19	7/0	21/3	19/5	23/1	19/5	23/1	17/0	16/1
Rt. Counsel	0/0	1/0	0/1	0/0	0/1	1/0	1/0	1/0	1/0	0/0	0/1
Ineffective Counsel	4/0	4/0	1/3	0/0	4/0	3/1	3/1	3/1	4/0	3/0	3/0
Writ	3/0	3/1	0/4	0/0	2/1	4/0	4/0	4/0	2/1	3/0	1/1
Sufficient Evidence	6/1	7/0	1/6	1/0	6/1	7/0	7/0	6/1	4/3	5/0	2/1
Admission of Evidence	4/2	5/1	4/2	2/1	3/2	5/1	5/1	5/1	5/1	2/0	1/0
Timeliness	1/0	1/0	0/1	0/0	1/0	0/1	0/1	/0	0/1	1/0	1/0
Jury Instructions	4/1	3/2	3/2	3/0	4/1	4/1	4/1	4/1	5/0	1/1	2/0
Discretionary Review	29/6	26/8	6/30	6/2	30/5	27/8	29/6	9/6	30/5	24/3	24/2
Double Jeopardy	4/1	4/1	3/2	3/0	4/1	5/0	5/0	4/1	3/2	2/0	2/0
Procedural Error	4/1	4/1	1/4	1/0	2/2	5/0	5/0	4/1	3/2	2/2	2/2
Jury Action	1/0	1/0	0/1	0/0	1/0	1/0	1/0	/1	0/1	1/0	1/0
Search & Seizure	1/0	0/1	0/1	0/0	1/0	1/0	1/0	1/0	1/0	1/0	1/0

[22] *See supra* notes 17-19 for explanations of the issue areas.
[23] *Supra* note 21.

TABLE 7
AGREEMENT & DISAGREEMENT[24] AMONG TEXAS SUPREME COURT JUSTICES

		Owen		Gonzalez		Enoch		Spector		Hightower		Hecht		Doggett		Cornyn		Gammage	
		C	D	C	D	C	D	C	D	C	D	C	D	C	D	C	D	C	D
Phillips	C	52	1	52	6	52	4	46	12	52	5	56	2	5	0	54	4	42	12
	D	4	3	3	3	5	2	5	2	7	0	3	4	1	0	5	2	4	3
Owen	C			48	5	50	4	41	12	47	6	53	2	0	0	48	6	34	16
	D			1	3	4	0	3	1	4	0	1	3	0	0	4	0	4	0
Gonzalez	C					50	3	44	10	49	5	50	2	5	0	50	5	37	15
	D					6	3	7	2	8	1	5	3	1	0	8	1	9	0
Enoch	C							46	12	51	6	54	4	3	0	53	5	39	14
	D							5	1	5	1	4	2	2	0	5	1	5	2
Spector	C									50	2	45	6	66	0	46	4	40	6
	D									10	5	13	0	0	0	12	2	4	8
Hightower	C											52	6	6	0	53	5	44	12
	D											6	0	0	0	5	1	2	4
Hecht	C													5	0	55	5	39	6
	D													1	0	6	1	5	1
Doggett	C															6	0	6	0
	D															0	0	0	0
Cornyn	C																	43	12
	D																	2	4
Gammage	C																		
	D																		

[24] The Table provides a matrix of agreement and disagreement among the justices. "C" refers to total majority opinions or concurrences with the majority. "D" refers to total dissenting opinions or concurrences with the dissenting opinion. Concurrences with the majority in part and concurrences with the dissenting opinion in part are excluded from the analysis, as are cases in which the justice did not participate. Within each pairing of justices are cross-tabulations that allow one to determine the total number of cases in which justices agree and disagree in the same judgment of the court and the total number of cases in which the justices agree and disagree in the same dissent from the judgment of the court. Thus, Chief Justice Phillips and Justice Gonzalez both concurred with the majority in 52 cases. In 3 cases Chief Justice Phillips dissented where Justice Gonzalez concurred with the majority. Justice Gonzalez dissented in 6 cases where Chief Justice Phillips concurred with the majority. In 3 cases both Chief Justice Phillips and Justice Gonzalez dissented.

TABLE 8
AGREEMENT & DISAGREEMENT[25] AMONG TEXAS COURT OF CRIMINAL APPEALS JUDGES

Judge	C/D	Clinton C	Clinton D	Miller C	Miller D	Campbell C	Campbell D	White C	White D	Baird C	Baird D	Overstreet C	Overstreet D	Maloney C	Maloney D	Meyers C	Meyers D	Mansfield C	Mansfield D	Keller C	Keller D
McCormick	C	54	24	15	4	15	1	77	2	63	17	70	11	62	18	69	10	58	3	54	3
	D	15	1	8	1	7	2	2	14	16	0	16	0	16	0	10	5	3	3	2	5
Clinton	C			19	3	16	3	51	17	60	11	66	5	63	9	58	12	42	6	37	8
	D			5	2	7	0	25	0	20	5	19	6	17	8	20	5	17	0	16	0
Miller	C					19	3	14	8	23	1	23	0	21	3	17	7	0	0	0	0
	D					4	0	4	1	3	2	4	1	4	1	5	0	0	0	0	0
Campbell	C							14	7	21	2	21	1	19	4	18	5	0	0	0	0
	D							1	2	3	0	3	0	3	0	1	2	0	2	0	0
White	C									61	17	68	11	60	18	68	10	57	3	55	7
	D									17	0	17	0	14	0	10	7	4	6	1	8
Baird	C											79	2	72	9	64	16	47	6	41	8
	D											8	9	8	9	16	1	14	0	14	0
Overstreet	C													75	11	71	15	52	6	46	8
	D													5	6	9	2	10	0	10	0
Maloney	C															67	12	47	6	41	8
	D															13	5	14	0	14	0
Meyers	C																	51	6	49	5
	D																	8	0	7	3
Mansfield	C																			53	4
	D																			3	4
Keller	C																				
	D																				

[25] *See id.* for an explanation of the matrix and cross-tabulation of pairings of judges. As an example of how to read this table, Judge McCormick and Judge Clinton agreed in 54 judgments of the court. In 15 cases Judge McCormick dissented from the majority; whereas, Judge Clinton concurred with the majority. In 24 cases Judge Clinton dissented and Judge McCormick concurred with the majority. In 1 case, both Judge McCormick and Judge Clinton dissented from the judgment of the court.