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

*Clark Thomas**
*Anthony Champagne***

INTRODUCTION

THE purpose of this brief article is to provide statistical information on the state's highest courts much like *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 analyses of the Texas Supreme Court by *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, 1991 and September 30, 1992. Per curiam opinions are excluded from the analysis.

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

	<u>Opinions Written</u>			<u>Dissenting Opinions</u>				Not Participating
	Wrote Majority Opinion	Wrote & Concurred in Majority Opinion ¹	Concurred Majority Opinion	Wrote Dissenting Opinion	Wrote & Concurred Dissenting Opinion ²	Concurred in Dissent	Concurred & Dissent ³	
Phillips	2 ⁴	1	56	3	0	1	0	0
Gonzalez	9	3	37	7	1	6	0	0
Mauzy	4	3	37	6	0	10	3	0
Cook	9	2	50	1	0	1	0	0
Hightower	5	0	54	0	1	2	1	0
Hecht	8	3	47	1	1	3	0	0
Doggett	2	2	42	6	0	10	1	0
Cornyn	9	3	43	3	1	2	1	1
Gammage	6	0	43	1	3	8	2	0

¹ The Judge wrote a concurring opinion that agreed with 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.

² The Judge wrote a dissenting opinion that concurred with another dissenting opinion.

³ In a few cases, a judge concurred with the majority in part and dissented in part.

⁴ 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

	<u>Opinions Written</u>			<u>Dissenting Opinions</u>				Not Participating
	Wrote Majority Opinion	Wrote & Concurred in Majority Opinion ⁵	Concurred Majority Opinion	Wrote Dissenting Opinion	Wrote & Concurred Dissenting Opinion ⁶	Concurred in Dissent	Concurred & Dissent ⁷	
McCormick	15 ⁸	0	111	4	3	15	2	0
Overstreet	10	2	123	2	2	7	1	3
Maloney	15	2	114	2	2	6	2	6
Clinton	5	9	106	7	6	14	2	0
Benavides	10	5	120	2	5	5	1	1
Baird	12	5	111	5	3	8	3	2
Miller	16	6	114	1	3	7	1	1
Campbell	26	4	112	3	2	1	1	0
White	17	0	109	0	1	19	0	3

⁵ *Supra* note 1.

⁶ *Supra* note 2.

⁷ *Supra* note 3.

⁸ *Supra* note 4.

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

Tax	3
Medical Malpractice	1
Against Local Entity/Officer ⁹	5
Garnishment of Wages	1
Education ¹⁰	2
Private Litigation ¹¹	17
Writ ¹²	7
Procedure ¹³	5
Workers Compensation	1
Property ¹⁴	1
Environmental ¹⁵	1
Reapportionment	2
Product Liability	2
Define/Interpret ¹⁶	4
Election	2
Liability/Injury/Death ¹⁷	4
Insurance ¹⁸	1
Parental Rights/Support	2
Legal Malpractice	<u>6</u>
TOTAL	67

⁹ This category includes cases involving litigation against local governmental entities.

¹⁰ Cases in this category concern litigation raising constitutional questions regarding schools.

¹¹ Cases in this category involve purely private litigation concerning corporations or individuals.

¹² Cases in this category considered issues involving writs, e.g., mandamus.

¹³ Cases in this category considered issues involving proper legal procedure.

¹⁴ Cases in this category involve land use or property rights issues.

¹⁵ Cases in this category involved litigation dealing with a hazardous waste disposal plant.

¹⁶ Cases in this category considered issues involving the application of or the interpretation of words in statutes.

¹⁷ This category includes cases that are not workers' compensation cases and that involve wrongful death or injury.

¹⁸ These cases involved interpretation of an uninsured motorist provision of an automobile policy and interpretation of a catastrophe and accident medical policy.

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

Capital Punishment	15
Due Process ¹⁹	5
Jury Composition/Selection	10
Writ ²⁰	8
First Amendment	1
Equal Protection	1
Sufficient Evidence	13
Admission/Exclusion ²¹	22
Search and Seizure ²²	4
Timeliness ²³	3
Jury Instruction	13
Plea/Admonishment ²⁴	1
Discretionary Rev./General	14
Double Jeopardy	1
Procedural Error/General	24
Definition/Interpretation ²⁵	11
Ineffective Counsel	4
Jury Action ²⁶	1
TOTAL	151

¹⁹ Cases in this category considered issues involving such due process issues as consolidated prosecutions, pretext arrests, attorney-client relationships, warrantless arrests, application of new parole laws, and requiring a defendant to appear before a jury in jail issue clothing.

²⁰ Cases in this category considered issues involving writs, e.g., habeas corpus.

²¹ These cases involved admissibility of evidence issues that are not search and seizure issues such as admissibility of testimony or outbursts in the courtroom.

²² These cases involved probable cause questions and issues involving searches for and seizures of evidence.

²³ These cases considered questions involving whether motions or appeals were filed in a timely manner.

²⁴ This issue involves a question of a judge's failure to adequately instruct a defendant on the consequences of a plea.

²⁵ *Supra* note 16.

²⁶ The issue involves the propriety of juror discussion of the application of the parole law.

TABLE 5
 CONCURRENCES AND DISSENTS BY TEXAS SUPREME COURT
 JUSTICES ACCORDING TO ISSUE AREA²⁷

	Phillips	Gonzalez	Mauzy	Cook	Hightower	Hecht	Doggett	Cornyn	Gammage
Tax	$\frac{3}{6}$ ²⁸	$\frac{2}{1}$	$\frac{1}{2}$	$\frac{3}{0}$	$\frac{3}{0}$	$\frac{3}{0}$	$\frac{1}{2}$	$\frac{3}{0}$	$\frac{1}{2}$
Medical Malpractice	$\frac{1}{0}$	$\frac{1}{0}$	$\frac{1}{0}$	$\frac{1}{0}$	$\frac{1}{0}$	$\frac{1}{0}$	$\frac{1}{0}$	$\frac{1}{0}$	$\frac{1}{0}$
Against Local Entity	$\frac{4}{1}$	$\frac{3}{2}$	$\frac{3}{2}$	$\frac{4}{1}$	$\frac{5}{0}$	$\frac{3}{2}$	$\frac{4}{1}$	$\frac{3}{2}$	$\frac{4}{1}$
Garnishment of Wages	$\frac{1}{0}$	$\frac{1}{0}$	$\frac{0}{1}$	$\frac{1}{0}$	$\frac{1}{0}$	$\frac{1}{0}$	$\frac{0}{1}$	$\frac{1}{0}$	$\frac{0}{1}$
Education	$\frac{2}{0}$	$\frac{2}{0}$	$\frac{1}{1}$	$\frac{2}{0}$	$\frac{2}{0}$	$\frac{2}{0}$	$\frac{1}{1}$	$\frac{1}{0}$	$\frac{1}{0}$
Private Litigation	$\frac{16}{1}$	$\frac{12}{5}$	$\frac{10}{4}$	$\frac{16}{1}$	$\frac{15}{1}$	$\frac{17}{0}$	$\frac{11}{5}$	$\frac{15}{2}$	$\frac{14}{2}$
Writ	$\frac{7}{0}$	$\frac{6}{1}$	$\frac{7}{0}$	$\frac{7}{0}$	$\frac{7}{0}$	$\frac{7}{0}$	$\frac{6}{1}$	$\frac{7}{0}$	$\frac{6}{1}$
Procedure	$\frac{5}{0}$	$\frac{5}{0}$	$\frac{4}{1}$	$\frac{5}{0}$	$\frac{5}{0}$	$\frac{5}{0}$	$\frac{4}{1}$	$\frac{5}{0}$	$\frac{4}{1}$
Workers' Compensation	$\frac{1}{0}$	$\frac{0}{1}$	$\frac{0}{1}$	$\frac{1}{0}$	$\frac{1}{0}$	$\frac{1}{0}$	$\frac{1}{0}$	$\frac{1}{0}$	$\frac{0}{1}$
Property	$\frac{1}{0}$	$\frac{1}{0}$	$\frac{1}{0}$	$\frac{1}{0}$	$\frac{1}{0}$	$\frac{1}{0}$	$\frac{1}{0}$	$\frac{1}{0}$	$\frac{1}{0}$
Environmental	$\frac{1}{0}$	$\frac{1}{0}$	$\frac{1}{0}$	$\frac{1}{0}$	$\frac{1}{0}$	$\frac{1}{0}$	$\frac{1}{0}$	$\frac{1}{0}$	$\frac{1}{0}$
Reapportionment	$\frac{2}{0}$	$\frac{2}{0}$	$\frac{1}{1}$	$\frac{2}{0}$	$\frac{1}{1}$	$\frac{2}{0}$	$\frac{1}{1}$	$\frac{2}{0}$	$\frac{1}{1}$
Product Liability	$\frac{2}{0}$	$\frac{2}{0}$	$\frac{2}{0}$	$\frac{2}{0}$	$\frac{2}{0}$	$\frac{2}{0}$	$\frac{2}{0}$	$\frac{2}{0}$	$\frac{2}{0}$
Define/Interpret	$\frac{4}{0}$	$\frac{3}{1}$	$\frac{3}{1}$	$\frac{4}{0}$	$\frac{4}{0}$	$\frac{4}{0}$	$\frac{3}{1}$	$\frac{4}{0}$	$\frac{4}{0}$
Election	$\frac{2}{0}$	$\frac{1}{1}$	$\frac{1}{1}$	$\frac{2}{0}$	$\frac{1}{1}$	$\frac{2}{0}$	$\frac{2}{0}$	$\frac{1}{1}$	$\frac{1}{1}$
Liability Injury/Death	$\frac{3}{1}$	$\frac{3}{1}$	$\frac{3}{1}$	$\frac{4}{0}$	$\frac{4}{0}$	$\frac{2}{2}$	$\frac{2}{2}$	$\frac{3}{1}$	$\frac{3}{1}$
Insurance	$\frac{1}{0}$	$\frac{1}{0}$	$\frac{1}{0}$	$\frac{1}{0}$	$\frac{1}{0}$	$\frac{1}{0}$	$\frac{1}{0}$	$\frac{0}{0}$	$\frac{1}{0}$
Parental Rights	$\frac{1}{1}$	$\frac{1}{1}$	$\frac{2}{0}$	$\frac{2}{0}$	$\frac{2}{0}$	$\frac{1}{1}$	$\frac{2}{0}$	$\frac{2}{0}$	$\frac{2}{0}$
Legal Malpractice	$\frac{2}{0}$	$\frac{2}{0}$	$\frac{2}{0}$	$\frac{2}{0}$	$\frac{2}{0}$	$\frac{2}{0}$	$\frac{2}{0}$	$\frac{2}{0}$	$\frac{2}{0}$

²⁷ See *supra* notes 9-18 for explanations of the issue areas.

²⁸ The numerator is the total number of cases in that issue area in which the judge wrote or concurred with the majority opinion. The denominator is the total number of cases in that issue area in which the judge wrote a dissenting opinion or concurred in a dissenting opinion. Cases in which the judge did not participate or in which the judge concurred in part with the majority and dissented in part are excluded.

TABLE 6
CONCURRENCES AND DISSENTS BY TEXAS SUPREME COURT
JUSTICES AND COURT OF CRIMINAL APPEALS JUDGES
ACCORDING TO ISSUE AREA²⁹

	McCormick	Overstreet	Maloney	Clinton	Benavides	Baird	Miller	Campbell	White
Capital Punishment	13/2 ³⁰	13/1	14/1	11/4	14/1	13/0	14/1	14/1	13/2
Due Process	5/0	4/1	3/1	2/3	5/0	5/0	4/1	5/0	5/0
Jury Composition	8/2	10/0	8/0	9/0	8/1	9/0	9/0	9/0	8/1
Writ	7/1	6/1	6/1	5/3	7/1	8/0	8/0	8/0	7/0
First Amendment	1/0	1/0	1/0	1/0	1/0	1/0	1/0	1/0	1/0
Equal Protection	1/0	1/0	1/0	1/0	1/0	1/0	1/0	1/0	1/0
Sufficiency of Evidence	12/1	12/1	11/0	9/4	13/0	9/3	13/0	13/0	11/1
Admission of Evidence	19/2	19/1	18/3	18/4	19/3	17/3	21/1	21/1	17/3
Search & Seizure	2/2	3/1	4/0	4/0	4/0	4/0	3/1	4/0	3/1
Timeliness	3/0	3/0	3/0	3/0	3/0	3/0	3/0	3/0	3/0
Jury Instructions	11/2	12/1	10/2	9/4	12/1	11/2	12/0	12/1	11/2
Plea/Admonishment	1/0	1/0	0/0	1/0	1/0	1/0	1/0	1/0	1/0
Discretion	13/1	13/1	13/1	14/0	13/0	13/1	11/2	14/0	12/2
Double Jeopardy	1/0	1/0	1/0	1/0	1/0	1/0	1/0	1/0	0/0
Procedural	18/4	21/2	22/1	18/3	19/3	20/1	20/3	20/2	21/2
Definition	8/3	10/1	11/0	9/2	11/0	9/2	9/2	11/0	9/2
Ineffective Counsel	3/1	4/0	4/0	4/0	3/1	3/1	4/0	4/0	2/2
Jury Action	0/1	1/0	1/0	1/0	0/1	0/1	1/0	0/1	1/0

²⁹ See *supra* notes 19-26 for explanations of the issue areas.

³⁰ *Supra* note 28.

TABLE 7
AGREEMENT & DISAGREEMENT³¹ AMONG TEXAS SUPREME
COURT JUSTICES

	Phillips		Gonzalez		Mauzy		Cook		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		49	10	40	16	58	1	56	2	57	2	43	15	52	5	45	12
	D		0	4	4	0	3	1	3	1	1	3	3	1	3	1	4	0
Gonzalez	C				36	10	48	1	47	1	48	1	37	11	45	2	39	8
	D				8	6	13	1	12	2	10	4	9	5	10	4	10	4
Mauzy	C						42	2	43	1	39	5	42	2	37	6	43	1
	D						16	0	14	2	16	0	3	13	15	0	4	11
Cook	C								58	2	56	5	44	16	53	6	47	12
	D								1	1	2	0	2	0	2	0	2	0
Hightower	C										54	5	44	15	51	6	48	10
	D										3	0	2	1	3	0	1	2
Hecht	C												42	15	53	3	44	12
	D												4	1	2	3	5	0
Doggett	C														39	6	43	3
	D														15	0	6	9
Cornyn	C																42	12
	D																6	0
Gammage	C																	
	D																	

³¹ 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 cases in which justices agree and disagree in the same judgement of the court and the total number of cases in which the justices agree and disagree in the same dissent from the judgement of the court. Thus Chief Justice Phillips and Justice Gonzalez both concurred with the majority in 49 cases. In no case did Chief Justice Phillips dissent where Justice Gonzalez concurred with the majority. However, Justice Gonzalez dissented in 10 cases where Chief Justice Phillips concurred with the majority. In four cases both Chief Justice Phillips and Justice Gonzalez dissented.

TABLE 8
AGREEMENT & DISAGREEMENT³² AMONG TEXAS
COURT OF CRIMINAL APPEALS JUDGES

	McCormick		Overstreet		Maloney		Clinton		Benavides		Baird		Miller		Campbell		White	
	C	D	C	D	C	D	C	D	C	D	C	D	C	D	C	D	C	D
McCormick	C		114	9	107	10	97	26	121	3	105	15	121	3	124	0	119	4
	D		20	1	22	0	21	1	12	9	21	1	15	6	16	6	6	15
Overstreet	C				120	8	112	21	122	10	116	13	124	9	127	6	113	19
	D				8	2	6	4	10	1	9	2	8	2	11	0	10	1
Maloney	C						113	17	118	11	114	12	119	10	124	6	108	20
	D						3	6	9	1	7	3	9	1	10	0	10	0
Clinton	C								110	9	106	11	109	9	114	6	98	20
	D								24	3	21	5	25	2	27	0	26	0
Benavides	C										117	14	124	9	134	1	122	11
	D										10	2	11	1	7	5	3	8
Baird	C											115	11	123	5	107	18	
	D											16	0	15	1	14	2	
Miller	C													129	6	120	13	
	D													11	0	5	6	
Campbell	C															124	15	
	D															1	5	
White	C																	
	D																	

³² See *supra* note 31 for an explanation of the matrix and cross-tabulation of pairings of judges. As an example of how to read this table, Judge Campbell and Judge White agreed in 124 judgements of the court. In one case Judge Campbell dissented from the majority, whereas, Judge White concurred with the majority. In fifteen cases Judge White dissented and Judge Campbell concurred with the majority. In five cases, both Judge Campbell and Judge White dissented from the judgement of the court.

