



1994

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Recommended Citation

Clark Thomas, et al., *Statistics on the Texas Supreme Court and the Texas Court of Criminal Appeals*, 47 SMU L. Rev. 1771 (1994)
<https://scholar.smu.edu/smulr/vol47/iss4/27>

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

*Clark Thomas**
*Anthony Champagne***

INTRODUCTION

THE purpose of this brief article is to provide for the second year¹ 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, 1992 and September 30, 1993. Per curiam opinions are excluded from the analysis.

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1. Our first presentation of statistics is for the period October 1, 1991 through September 30, 1992. It may be found in 46 SMU Law Review 1879-1886 (Spring, 1993).

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

	Opinions Written			Dissenting Opinions					Not on Bench ⁴
	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	Not Participating	
Phillips	9 ⁵	2	60	3	0	9	2	1	
Gonzalez	10	10	52	4	1	6	2	1	
Mauzy	3	1	17	3	0	5	2	0	55
Cook	3	2	25	0	0	1	0	0	55
Hightower	11	1	66	2	0	3	2	1	
Hecht	10	4	48	12	2	6	3	1	
Doggett	6	4	44	12	0	90	7	4	
Cornyn	14	0	56	2	1	10	2	1	
Gammage	8	3	49	2	2	16	4	2	31
Spector	6	0	36	4	0	3	4	2	
Enoch	5	1	34	2	2	8	2	1	31

¹The Judge wrote a concurring opinion which agreed in the judgement 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.

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

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

⁴During the course of this study, as a result of the 1992 elections, Justice Enoch replaced Justice Mauzy and Justice Spector replaced Justice Cook.

⁵Numbers 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				Not on Bench ⁴
	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	Not Participating	
McCormick	11 ⁵	0	88	6	4	15	2	2	
Overstreet	7	0	104	1	1	10	3	2	
Maloney	14	1	94	2	1	8	6	2	
Clinton	13	20	66	18	3	7	0	1	
Benavides	7	3	19	1	2	2	0	2	
Baird	18	7	88	6	2	4	3	0	92
Miller	11	7	102	2	0	5	1	0	
Campbell	20	7	88	4	4	4	1	0	
White	13	1	88	3	2	16	1	4	
Meyers	11	4	70	0	0	5	0	2	36

¹Supra note 1.

²Supra note 2.

³Supra note 3.

⁴During the course of this study, as a result of the 1992 elections, Justice Meyers replaced Justice Benavides.

⁵Supra note 5.

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

Tax	4
Medical Malpractice	3
Against Local Entity/Officer ¹	4
Private Litigation ²	13
Writ ³	11
Procedure ⁴	17
Workers Compensation	1
Employment Discrimination	2
Property ⁵	6
Environmental ⁶	2
Reapportionment	1
Product Liability	1
Define/Interpret ⁷	1
Liability/Injury/Death ⁸	7
Due Process	2
Insurance ⁹	8
Parental Rights/Support	3
TOTAL	86

¹This category includes cases involving litigation against local governmental entities.

²Cases in this category involve purely private litigation concerning corporations or individuals.

³Cases in this category considered issues involving writs (i.e., mandamus).

⁴Cases in this category considered issues involving proper legal procedure.

⁵Cases in this category involve land use or property rights issues.

⁶Cases in this category involved litigation dealing with the Texas Clean Air Act.

⁷Cases in this category considered issues involving the application of or the interpretation of words in statutes.

⁸This category includes cases that are not workman's compensation cases that involve wrongful death or injury.

⁹These cases involved interpretation of provisions of insurance policies.

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

Capital Punishment	32
Due Process ¹	3
Jury Composition/Selection	1
Writ ²	4
Sufficient Evidence	5
Admission/Exclusion ³	9
Timeliness ⁴	1
Jury Instruction	6
Discretionary Review/General	44
Double Jeopardy	5
Procedural Error/General	13
Definition/Interpretation ⁵	1
Ineffective Counsel	2
Jury Action ⁶	2
TOTAL	128

¹Cases in this category considered issues involving such due process issues as consolidated prosecutions, pretext arrests, attorney-client relationships, warrantless arrests, application of parole laws, and exceeding bounds of a warrant.

²Cases in this category considered issues involving writs (i.e., habeas corpus).

³These cases involved admissibility of evidence issues that are not search and seizure issues such as admissibility of testimony.

⁴These cases considered questions involving whether motions or appeals were filed in a timely manner.

⁵*Supra* note 17.

⁶The issue involves allegations of inappropriate actions by jurors.

TABLE 5
 CONCURRENCES AND DISSENTS BY TEXAS SUPREME COURT JUSTICES ACCORDING
 TO ISSUE AREA¹

	Phillips	Gonzalez	Mauzy	Cook	Hightower	Hecht	Doggett	Cornyn	Gammage	Spector	Enoch
Tax	3/1 ²	3/1	0/0	0/0	3/1	3/1	3/1	4/0	3/1	4/0	3/1
Medical Malpractice	2/1	3/0	1/1	2/0	2/1	2/1	1/2	3/0	1/2	1/0	1/0
Against Local Entity	4/0	4/0	4/0	4/0	4/0	3/1	4/0	3/1	4/0	0/0	0/0
Private Litigation	10/1	10/1	3/1	4/0	11/1	9/1	7/4	10/1	10/2	7/2	6/2
Writ	9/2	8/3	4/1	4/1	11/0	8/3	6/2	8/2	8/3	4/0	6/0
Procedure	15/2	13/4	6/4	10/0	14/1	11/6	11/3	12/5	11/3	4/1	4/3
Workers' Compensation	1/0	1/0	0/0	0/0	1/0	1/0	0/1	1/0	0/1	1/0	1/0
Property	5/1	6/0	0/0	0/0	6/0	4/2	6/0	4/2	6/0	6/0	4/2
Employment	2/0	2/0	0/0	0/0	2/0	2/0	1/1	2/0	1/1	2/0	2/0
Discrimination	2/0	2/0	0/0	0/0	2/0	2/0	1/0	2/0	0/1	0/1	2/0
Environmental	1/0	1/0	1/0	1/0	1/0	1/0	1/0	1/0	1/0	0/0	0/0
Reapportionment	1/0	1/0	0/0	0/0	1/0	1/0	0/1	1/0	0/1	1/0	1/0
Product Liability	0/1	1/0	0/0	0/0	1/0	0/1	1/0	1/0	1/0	1/0	0/1
Define/Interpret Liability	6/0	5/1	0/0	3/0	7/0	6/0	2/3	7/0	4/2	3/1	4/0
Injury/Death	0/2	2/0	0/0	0/0	2/0	0/2	2/0	1/1	2/0	2/0	1/1
Due Process	7/1	7/1	2/1	3/0	7/1	6/2	5/3	8/0	5/3	3/2	3/1
Insurance	3/0	3/0	0/0	0/0	3/0	3/0	3/0	2/1	3/0	3/0	2/1

¹See *supra* 11-19 for explanations of the issue areas.

²The 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 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 AREA¹

	McCormick	Overstreet	Maloney	Clinton	Benavides	Baird	Miller	Campbell	White	Meyers
Capital Punishment	25/7 ²	28/2	22/5	20/12	5/2	24/6	30/1	29/3	27/4	20/3
Due Process	3/0	3/0	3/0	3/0	1/0	3/0	3/0	3/0	2/1	2/0
Jury	1/0	1/0	1/0	1/0	0/0	1/0	1/0	1/0	1/0	1/0
Composition	1/3	3/1	3/1	3/1	0/0	4/0	4/0	3/1	4/0	4/0
Writ	5/0	3/2	5/0	4/1	2/0	5/0	5/0	4/1	4/1	2/0
Sufficiency of Evidence	5/2	9/0	8/0	9/0	5/1	7/1	9/0	7/2	5/3	3/0
Admission of Evidence	1/0	1/0	1/0	1/0	0/0	1/0	1/0	1/0	1/0	1/0
Timeliness	4/2	6/0	6/0	6/0	1/1	6/0	6/0	5/1	4/2	4/0
Jury Instructions	35/9	37/6	40/3	32/11	11/0	42/2	41/3	41/3	33/9	31/2
Discretion	4/1	5/0	4/1	4/1	1/1	5/0	4/1	5/0	4/0	2/0
Double Jeopardy	11/1	12/1	11/1	11/2	3/0	10/3	11/2	11/1	12/1	10/0
Procedural	1/0	1/0	1/0	1/0	0/0	1/0	1/0	1/0	1/0	1/0
Definition	1/0	1/0	2/0	2/0	0/0	2/0	2/0	2/0	2/0	2/0
Ineffective Counsel	2/0	1/0	2/0	2/0	0/0	2/0	2/0	2/0	2/0	2/0
Jury Action										

¹See *supra* 20-25 for explanations of the issue areas.

²*Supra* note 27.

TABLE 7
AGREEMENT & DISAGREEMENT¹ AMONG TEXAS SUPREME COURT JUSTICES

	Phillips		Gonzalez		Mauzy		Cook		Hightower		Hecht		Doggett		Cornyn		Gammage		Spector		Enoch	
	C	D	C	D	C	D	C	D	C	D	C	D	C	D	C	D	C	D	C	D	C	D
Phillips	C		61	8	16	8	25	1	64	5	62	8	41	20	63	6	46	20	33	6	38	7
	D		9	3	5	0	5	0	12	0	0	12	12	0	5	7	12	0	7	0	1	5
Gonzalez	C				17	5	23	0	68	2	55	15	45	18	61	10	50	16	37	6	36	10
	D				4	2	5	1	8	3	6	5	9	2	8	3	8	3	4	1	3	2
Mauzy	C						21	0	21	0	13	8	20	0	14	7	20	0	0	0	0	0
	D						7	1	7	1	7	0	1	7	7	0	2	6	0	0	0	0
Cook	C								29	1	21	8	21	6	22	7	23	5	0	0	0	0
	D								1	0	1	0	0	1	1	0	0	1	0	0	0	0
Hightower	C								55	20	52	18	52	18	63	13	57	17	38	6	34	11
	D								5	0	2	3	2	3	5	0	2	3	3	1	3	1
Hecht	C												34	19	59	3	38	19	29	6	37	3
	D												19	0	9	10	20	0	11	0	2	9
Doggett	C														41	13	52	2	31	2	19	12
	D														20	0	3	17	8	5	13	0
Cornyn	C																45	19	35	7	38	6
	D																13	0	6	0	0	6
Gammage	C																		34	1	23	12
	D																		8	5	14	0
Spector	C																				28	12
	D																				6	0
Enoch	C																					
	D																					

¹The 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 61 cases. In 9 cases Chief Justice Phillips dissented where Justice Gonzalez concurred with the majority. Justice Gonzalez dissented in 8 cases where Chief Justice Phillips concurred with the majority. In 3 cases both Chief Justice Phillips and Justice Gonzalez dissented.

TABLE 8
 AGREEMENT & DISAGREEMENT¹ AMONG TEXAS COURT OF CRIMINAL APPEALS JUDGES

	McCormick		Overstreet		Maloney		Clinton		Benavides		Baird		Miller		Campbell		White		Meyers	
	C	D	C	D	C	D	C	D	C	D	C	D	C	D	C	D	C	D	C	D
McCormick	C		86	9	83	9	74	25	23	1	86	11	95	3	96	2	88	8	71	0
	D		21	3	22	2	22	2	4	4	24	1	21	4	15	10	11	13	12	5
Overstreet	C		97	8	86	8	86	24	24	5	102	7	104	7	100	10	88	18	74	4
	D		8	3	8	3	8	4	4	0	8	4	12	0	11	1	10	2	7	1
Maloney	C				90	18	28	4	4	4	103	5	103	5	98	11	84	20	69	4
	D				5	6	1	1	1	1	5	6	10	1	10	1	10	1	9	0
Clinton	C				5	6	24	5	5	0	91	6	92	6	86	12	75	20	65	3
	D				5		5				21	6	27	1	28	0	27	0	20	1
Benavides	C										27	1	28	1	27	2	23	5	0	0
	D										5	0	4	1	2	3	3	2	0	0
Baird	C												106	7	102	11	90	19	73	5
	D												11	0	10	1	10	2	10	0
Miller	C														108	11	97	18	80	4
	D														6	1	4	3	4	1
Campbell	C																98	12	77	5
	D																3	9	7	0
White	C																		70	2
	D																		12	2
Meyers	C																			
	D																			

¹See *supra* note 30 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 98 judgements of the court. In 3 cases Judge Campbell dissented from the majority; whereas, Judge White concurred with the majority. In 12 cases Judge White dissented and Judge Campbell concurred with the majority. In 9 cases, both Judge Campbell and Judge White dissented from the judgement of the court.

Articles

