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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 third year¹ 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, 1993 and September 30, 1994. Per curiam opinions are excluded from the analysis.

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1. Our first presentation of statistics 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). Our 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).

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	10 ⁵	3	76	2	0	2	1	0
Gonzalez	10	2	69	2	0	7	3	1
Hightower	11	1	74	3	0	4	1	0
Hecht	12	2	70	4	0	4	2	0
Doggett	8	1	53	11	0	14	6	1
Cornyn	17	1	71	3	1	0	1	0
Gammage	7	1	60	6	2	13	4	1
Enoch	9	3	70	2	2	1	1	6
Spector	6	2	67	4	1	9	3	2

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 & Concluded in Majority Opinion ⁶	Concurred Majority Opinion	Wrote Dissenting Opinion	Wrote & Concluded Dissenting Opinion ⁷	Concurred in Dissent	Concurred & Dissent ⁸	Not Participating
McCormick	11 ⁹	1	79	9	3	21	1	2
Clinton	5	12	68	21	4	16	1	0
Miller	11	4	89	1	1	16	3	2
Campbell	12	3	93	6	1	5	4	3
White	11	0	84	1	2	27	1	1
Baird	19	9	72	11	1	8	4	3
Overstreet	13	1	96	2	3	10	2	0
Maloney	30	8	74	6	2	5	1	1
Meyers	9	3	97	1	1	11	0	5

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	4
Against Local Entity/Officer ¹⁰	1
Private Litigation ¹¹	9
Writ ¹²	5
Procedure ¹³	9
Workers Compensation	6
Employment Discrimination	1
Property ¹⁴	4
Constitution	2
Education	1
Product Liability	5
Define/Interpret ¹⁵	7
Liability/Injury/Death ¹⁶	14
Due Process	1
Insurance ¹⁷	12
Parental Rights/Support	1
Medical Malpractice	3
Legal Malpractice	3
Public Utility	3
Trade Practices	3
Total	94

¹⁰ Involved litigation against local governmental entities.

¹¹ Purely private litigation involving corporations or individuals.

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

¹³ Issues involving proper legal procedure.

¹⁴ Land use or property rights issues.

¹⁵ Issues involving the application of or the interpretation of words in statutes.

¹⁶ Cases that are not workman's compensation cases that involve wrongful death or injury.

¹⁷ Involves interpretation of insurance policies.

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

Capital Punishment	36
Due Process ¹⁸	2
Ineffective Counsel	3
Writ ¹⁹	9
Sufficient Evidence	4
Admission/Exclusion ²⁰	10
Timeliness ²¹	1
Jury Instruction	6
Discretionary Review/General	43
Double Jeopardy	4
Procedural Error/General	8
Definition/Interpretation ²²	1
Total	127

¹⁸ 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.

¹⁹ Issues involving writs (i.e., habeas corpus).

²⁰ Admissibility of evidence issues that are not search and seizure issues such as admissibility of testimony or outbursts in the courtroom.

²¹ Questions involving whether motions or appeals were filed in a timely manner.

²² *Supra* note 15.

TABLE 5
CONCURRENCES AND DISSENTS BY TEXAS SUPREME COURT JUSTICES ACCORDING TO ISSUE AREA²³

	Phillips	Gonzalez	Enoch	Spector	Hightower	Hecht	Doggett	Cornyn	Gammage
Tax	4/0 ²⁴	4/0	3/0	4/0	4/0	4/0	3/1	4/0	4/0
Against Local Entity	1/0/1	1/0	1/0	0/0	1/0	1/0	0/1	1/0	1/0
Private Litigation	9/0	8/1	8/1	8/1	8/1	8/1	8/1	8/1	8/1
Writ	5/0	3/2	4/0	5/0	5/0	3/2	3/2	5/0	5/0
Procedure	8/1	9/0	9/0	7/2	9/0	8/1	7/2	9/0	7/2
Workers Comp	5/1	5/1	5/1	5/0	5/0	6/0	2/1	6/0	2/1
Employment Discrimination	1/0	1/0	1/0	1/0	1/0	0/1	1/0	1/0	1/0
Property	4/0	3/0	3/0	4/0	4/0	4/0	3/1	4/0	4/0
Constitution	2/0	2/0	2/0	2/0	2/0	2/0	2/0	2/0	2/0
Education	1/0	1/0	1/0	1/0	1/0	1/0	1/0	1/0	1/0
Product Liability	5/0	3/1	3/1	4/1	5/0	4/0	3/2	5/0	3/2
Define/Interpret	7/0	6/0	6/0	3/4	5/2	7/0	2/4	7/0	3/4
Liability/Injury/Death	13/1	14/0	13/0	11/2	13/1	13/1	10/2	13/1	11/2
Due Process	1/0	1/0	1/0	1/0	1/0	1/0	1/0	1/0	1/0
Insurance	11/1	9/2	10/1	11/0	10/2	10/1	8/3	9/2	9/3
Parental Rights/Support	0/0	1/0	1/0	1/0	1/0	1/0	0/1	1/0	0/1
Medical Malpractice	3/0	3/0	2/1	1/2	2/1	2/1	1/2	3/0	1/2
Legal Malpractice	3/0	3/0	3/0	3/0	3/0	3/0	3/0	3/0	2/1
Public Utility	3/0	1/2	3/0	1/2	3/0	3/0	1/2	3/0	0/2
Trade Practices	3/0	3/0	3/0	2/0	3/0	3/0	3/0	3/0	3/0

²³ See *supra* notes 10-17 for explanations of the issue areas.

²⁴ 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 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 AREA²⁵

	McCormick	Clinton	Miller	Campbell	White	Baird	Overstreet	Maloney	Meyers
Capital Punishment	29/5 ²⁶	18/18	32/4	33/2	31/4	27/5	32/3	31/3	32/3
Due Process	1/1	1/1	2/0	1/1	2/0	0/1	2/0	1/0	2/0
Ineffective Counsel	2/1	3/0	3/0	3/0	2/1	2/1	2/1	3/0	3/0
Writ	7/2	4/5	5/2	8/1	7/2	7/2	7/2	8/1	7/1
Sufficient Evidence	4/0	1/3	3/1	4/0	4/0	3/1	3/1	4/0	4/0
Admission of Evidence	2/8	9/1	7/2	7/3	2/8	9/1	9/1	9/1	8/2
Timeliness	1/0	1/0	1/0	1/0	1/0	1/0	1/0	1/0	1/0
Jury Instructions	5/1	5/1	5/1	5/1	5/1	5/1	6/0	4/2	5/1
Discretionary Review	30/12	34/8	34/7	33/4	31/12	34/7	35/7	39/4	36/5
Double Jeopardy	3/1	4/0	4/0	4/0	4/0	4/0	4/0	4/0	4/0
Procedural Error	7/1	4/4	7/1	8/0	6/1	7/1	8/0	7/1	6/1
Definition/Interpret	0/1	1/0	1/0	1/0	0/1	1/0	1/0	1/0	1/0

²⁵ See *supra* notes 18-21 for explanations of the issue areas.

²⁶ *Supra* note 24.

TABLE 7
AGREEMENT & DISAGREEMENT²⁷ AMONG TEXAS SUPREME COURT JUSTICES

	Phillips		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		78	7	78	4	71	13	82	6	81	6	59	23	85	4	65	19
	D		2	2	3	1	3	1	3	1	2	2	3	1	3	0	3	1
Gonzalez	C				74	3	64	12	73	7	77	4	52	23	79	2	57	19
	D				6	2	7	2	9	0	5	4	7	2	7	1	7	2
Enoch	C						63	14	74	7	76	6	53	23	79	2	56	21
	D						5	0	5	0	4	1	5	0	4	1	5	0
Spector	C								72	3	65	8	60	10	71	3	64	7
	D								10	4	14	0	0	14	14	0	0	14
Hightower	C										77	7	61	19	81	4	67	15
	D										6	1	1	6	7	0	1	6
Hecht	C												52	25	81	3	58	21
	D												8	0	7	0	8	0
Doggett	C														57	4	60	1
	D														25	0	5	20
Cornyn	C																63	21
	D																4	0
Gammage	C																	
	D																	

²⁷ 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 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 78 cases. In 2 cases Chief Justice Phillips dissented where Justice Gonzalez concurred with the majority. Justice Gonzalez dissented in 7 cases where Chief Justice Phillips concurred with the majority. In 2 cases both Chief Justice Phillips and Justice Gonzalez dissented.

TABLE 8
AGREEMENT & DISAGREEMENT²⁸ AMONG TEXAS COURT OF CRIMINAL APPEALS JUDGES

	McCormick		Clinton		Miller		Campbell		White		Baird		Overstreet		Maloney		Meyers	
	C	D	C	D	C	D	C	D	C	D	C	D	C	D	C	D	C	D
McCormick C			50	40	74	14	88	1	84	5	68	19	76	13	77	12	84	4
McCormick D			32	1	28	3	18	11	8	25	30	1	31	2	32	1	23	9
Clinton C					69	12	68	11	57	28	71	10	78	6	80	5	72	9
Clinton D					35	6	40	1	38	1	28	10	31	9	31	8	2	4
Miller C							89	9	80	23	84	13	93	10	92		89	11
Miller D							16	2	13	4	11	1	12	5	15	3	16	2
Campbell C									88	18	86	19					95	9
Campbell D									3	9	9	1	10	2	11	1	8	4
White C											70	19	80	14	81	12	88	4
White D											28	1	29	1	29	1	20	8
Baird C													94	5	94	6	85	11
Baird D													11	9	12	6	18	2
Overstreet C															99	11	93	12
Overstreet D															11	2	15	0
Maloney C																	96	12
Maloney D																	11	1
Meyers C																		
Meyers D																		

²⁸ 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 Campbell and Judge White agreed in 88 judgments of the court. In 3 cases Judge Campbell dissented from the majority; whereas, Judge White concurred with the majority. In 18 cases Judge White dissented and Judge Campbell concurred with the majority. In 9 cases, both Judge Campbell and Judge White dissented from the judgment of the court.

