

The Work of the Court of Appeals: a Statistical Miscellany - September 1983 Term

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THE WORK OF THE COURT OF APPEALS:
A STATISTICAL MISCELLANY*
September 1983 Term¹

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* Tables prepared by Rebecca Laws and Bruce Luchansky, Assistant Editors of the *Maryland Law Review*. These tables follow the format used in Reynolds, *The Court of Appeals of Maryland: Rules, Work and Performance—Part I*, 37 MD. L. REV. 1, 40-60 (1977) (September 1975 Term); *The Work of the Court of Appeals: A Statistical Miscellany*, 39 MD. L. REV. 646 (1980) (September 1978 Term); and *The Work of the Court of Appeals: A Statistical Miscellany*, 41 MD. L. REV. 554 (1982) (September 1980 Term); 42 MD. L. REV. 610 (1983) (September 1981 Term); 43 MD. L. REV. 863 (1983) (September 1982 Term). Unless otherwise noted, figures from these tables may be compared with figures in the earlier tables. Comparable figures for the September 1957 through September 1963 Terms are found in *Special Report of the Committee on Judicial Administration of the Maryland State Bar Association*, reprinted in 1 Md. App. vii, xxv-xxx (1967).

1. Throughout these Tables, unless otherwise noted, the data include all published opinions of the Court of Appeals decided between September 1, 1983, and December 31, 1984, inclusive. These tables, unlike some previous tables, include per curiam opinions (excluding voluntary dismissals and writs of certiorari dismissed as improvidently granted). Separately captioned cases consolidated and disposed of by the court in a single decision are treated as separate cases in Tables IA, IB, IIA, and IIB. All other tables treat such a decision as a single case. Consolidated cases are included throughout if one of the cases consolidated was heard in the 1983 term.

TABLE I
SOURCE OF CASES
A. PROCEDURAL SOURCE

	Number	Percentage
WRIT OF CERTIORARI		
To the Court of Special Appeals		
Decided in the Court of Special Appeals		
Reported	29	
Unreported	<u>31</u>	
Total	60	42.5
Expedited to Court of Appeals	48	34.0
To Circuit Courts	5	3.5
DIRECT APPEALS FROM CIRCUIT COURT	3	2.1
CERTIFIED QUESTIONS FROM FEDERAL COURT	1	.7
PROFESSIONAL SUPERVISION	<u>24²</u>	<u>17.0</u>
	<u>141</u>	<u>99.8</u>

2. Figure does not include 3 consents to disbarment.

B. COUNTY OF ORIGIN

COUNTY	NO. OF CASES	POPULATION ³	PCT. OF CASES	PCT. OF POPULATION
Allegany	0	80,548	0.0	1.9
Anne Arundel	14	370,775	12.1	8.8
Baltimore	17	655,615	14.7	15.5
Calvert	0	34,638	0.0	.8
Caroline	1	23,143	.9	.5
Carroll	3	96,356	2.6	2.3
Cecil	2	60,430	1.7	1.4
Charles	1	72,751	.9	1.7
Dorchester	0	30,623	0.0	.7
Frederick	0	114,263	0.0	2.7
Garrett	0	26,498	0.0	.6
Harford	3	145,930	2.6	3.5
Howard	8	118,572	6.9	2.8
Kent	2	16,695	1.7	.4
Montgomery	19	579,053	16.4	13.7
Prince George's	15	665,071	12.9	15.8
Queen Anne's	2	25,508	1.7	.6
St. Mary's	2	59,895	1.7	1.4
Somerset	1	19,188	.9	.5
Talbot	1	25,604	.9	.6
Washington	1	113,086	.9	2.7
Wicomico	0	64,540	0.0	1.5
Worcester	1	30,889	.9	.7
Baltimore City	23	786,775	19.8	18.7
Total	116 ⁴	4,216,446	100.2	99.8

3. Population figures reflect population as of April, 1, 1980. The statistics are taken from U.S. DEPARTMENT OF COMMERCE BUREAU OF THE CENSUS, VOLUME I CHARACTERISTICS OF THE POPULATION, CHAPTER B GENERAL POPULATION CHARACTERISTICS, PART 22 MARYLAND, PC 80-1-B22 (Aug. 1982).

4. Figure does not include 24 professional supervision cases and 1 certified question from federal court.

TABLE II
THE COURT OF SPECIAL APPEALS IN
THE COURT OF APPEALS⁵
A. OPINIONS OF THE COURT OF
SPECIAL APPEALS

Unreported	Number	Percentage
Affirmed	11	35.5
Reversed	18	58.1
Affirmed in Part/ Reversed in Part	<u>2</u>	<u>6.4</u>
Total	31	100.0
Reported		
Affirmed	22	75.9
Reversed	7	24.1
Affirmed in Part; Reversed in Part	<u>0</u>	<u>0.0</u>
Total	29	100.0
Total		
Affirmed	33	55.0
Reversed	25	41.7
Affirmed in Part; Reversed in Part	<u>2</u>	<u>3.3</u>
Total ⁶	60	100.0

5. In these tables, a decision has been designated as "affirmed" or "reversed" if that is the label placed upon it by the Court of Appeals. The "reversed" column also includes decisions that were "modified," "vacated," or "remanded" either wholly or in part, and one decision that was remanded without reversal. The affirmed column includes cases affirmed as to judgment but vacated as to sentence, but not cases where only the sentence was at issue and that sentence was vacated.

"Affirmed" and "reversed" are fairly crude labels. A decision may be "affirmed," for example, even if the reviewing court thought the grounds given by the lower court to support the decision below were completely wrong. Nevertheless, the terms serve only as rough indicators of possible trends or problems.

6. Total of reported and unreported opinions in Table II do not include cases in which the Court of Appeals dismissed the writ of certiorari as improvidently granted.

B. REPORTED OPINIONS OF THE COURT OF SPECIAL APPEALS

	MAJORITY				CONCURRENCE				DISSENT			
	Authored Aff'd	Rev'd	Joined Aff'd	Rev'd	Authored Aff'd	Rev'd	Joined Aff'd	Rev'd	Authored Aff'd	Rev'd	Joined Aff'd	Rev'd
Adkins	4		7	1								
Alpert	2	1	1	2								
Bishop	1		1	1								
Garrity	1	1	4	2								
Getty			2									
Gilbert	2		3	2								
Liss	3	1	2		1				1			
Lowe		4	2	1								
Mason			1									
Moore			1									
Morton			4									
Moylan	2		2	1								
Wilner	3		5	2								
Weant	2		3	1								
Specially Assigned	2		3	2								
Total	22	7	41	15	1	0	0	0	1	0	0	0

TABLE III
ACTION OF JUDGES

JUDGE	AUTHORED ⁷				JOINED			
	OPIN. OF COURT	(PCT.) ⁸	CONCURRENCE	DISSENT ⁹	OPIN. OF COURT	CON.	DIS.	Pt. CON. Pr. Dis.
COLE	8	(5.9)	0	2	122	1	1	2
COUCH	19	(14.0)	0	0	115	0	0	0
DAVIDSON	6	(4.4)	5*	7	89	1	1	3
ELDRIDGE	10	(7.4)	2	9	114	0	1	0
MURPHY	23	(16.9)	1	0	98	0	2	0
RODOWSKY	18	(13.2)	0	2	112	0	1	0
SMITH	14	(10.3)	0	3	93	0	0	0
Specially Assigned**	11	(8.1)	0	2	32	0	0	0
PER CURIAM ¹⁰	27	(19.8)	—	—				
Total	136 ¹¹	(100.0)	8	25	7			

* Judge Davidson filed an opinion in only one of the five cases in which she concurred. In the other four cases, she only noted a concurrence.

** In two cases, two of the seven judges were specially assigned. In these cases, both votes were included in the Specially Assigned columns of the tables.

7. Judges participating in a per curiam decision are listed as joining the opinion of the court. A concurrence or dissent by a judge who does not publish an opinion is treated nonetheless as a concurrence or dissent.

8. The parenthetical figures in this column are the percentages of signed opinions of the court authored by each judge.

9. Opinions designated by their authors as "Concurring in Part and Dissenting in Part" are treated in this table as dissenting opinions. Similarly, judges joining such opinions are treated as joining dissenting opinions.

10. "Per Curiam" includes per curiam opinions and orders published without a signed opinion. Dismissals of writs of certiorari as improvidently granted, and voluntary dismissals are not included.

11. Cases consolidated on appeal, in which the court issued a single opinion disposing of more than one case, are treated as a single opinion in this and all subsequent tables.

TABLE IV
FREQUENCY OF SEPARATE OPINIONS

The Court	Number	Percentage
Unanimous Opinions	106	77.9
Decisions With Concurring Opinions	7	5.1
Decisions With Dissenting Opinions	16	11.8
Decisions With Both Concurring Opinions and Dissenting Opinions	1	.7
Decisions Concurring in Part and Dissenting in Part	6	4.4
	<u>136</u>	<u>99.9</u>

TABLE V
JUDICIAL PERSUASIVENESS

Author of the Opinion of the Court	Unanimous Opinions	Opinions with Concurrences	Opinions with Dissents	Opinions with Both	Opinions with pt. concurrence/ pt. dissent
Cole	6 (75.0)	0 (0.0)	2 (25.0)	0 (0.0)	0 (0.0)
Couch	13 (68.4)	2 (10.5)	3 (15.8)	0 (0.0)	1 (5.3)
Davidson	4 (66.7)	1 (16.6)	1 (16.6)	0 (0.0)	0 (0.0)
Eldridge	5 (50.0)	1 (10.0)	3 (30.0)	1 (10.0)	0 (0.0)
Murphy	16 (69.6)	1 (4.3)	3 (13.0)	0 (0.0)	3 (13.0)
Rodowsky	18 (100.0)	0 (0.0)	0 (0.0)	0 (0.0)	0 (0.0)
Smith	13 (92.9)	0 (0.0)	0 (0.0)	0 (0.0)	1 (7.1)
Specially Assigned	9 (81.8)	1 (9.1)	1 (9.1)	0 (0.0)	0 (0.0)
Per Curiam	24 (88.9)	0 (0.0)	2 (7.4)	0 (0.0)	1 (3.7)

TABLE VI
VOTING ALIGNMENT
(Figures are Percentages)

A. ALL CASES¹²

		COUCH	DAVIDSON	ELDRIDGE	MURPHY	RODOWSKY	SMITH	SPECIALLY ASSIGNED
Cole	M	95.5	82.9	90.3	93.5	93.2	95.3	91.1
	S	0.0	1.8	3.0	0.8	0.0	0.0	2.2
	R	2.2	6.3	3.0	3.3	2.3	1.9	2.2
	D	2.2	9.0	3.7	2.4	4.5	2.8	4.4
Couch	M		84.5	91.7	97.5	97.7	97.2	95.6
	S		0.0	0.0	0.0	0.0	0.0	0.0
	R		7.3	5.3	0.8	0.0	0.0	0.0
	D		8.2	3.0	1.7	2.3	2.8	4.4
Davidson	M			80.9	81.7	84.3	82.6	71.4
	S			4.5	0.0	0.0	0.0	0.0
	R			5.5	9.6	7.4	6.5	10.7
	D			9.1	8.7	8.3	10.9	17.9
Eldridge	M				88.5	90.1	89.7	86.7
	S				0.0	0.0	0.0	0.0
	R				6.6	5.3	3.7	6.6
	D				4.9	4.6	6.5	6.6
Murphy	M					95.0	95.8	94.1
	S					0.0	1.0	2.9
	R					0.8	1.0	0.0
	D					4.2	2.1	2.9
Rodowsky	M						95.3	95.1
	S						0.9	0.0
	R						0.0	0.0
	D						3.8	4.9
Smith	M							100.0
	S							0.0
	R							0.0
	D							0.0
	D							0.0

12. Key: M—The two judges joined in the *majority opinion*. One may have authored it.
S—The two judges joined in a separate opinion, either a concurrence or a dissent. One may have authored it.
R—The two judges joined in the result, but in different opinions.
D—The two judges *disagreed* in the result.

This table includes all cases, whether signed opinion or per curiam (except voluntary dismissals and writs of certiorari dismissed as improvidently granted). Percentages vary not only because of agreement and disagreement between the judges, but also because of the number of cases each judge heard.

TABLE VI (continued)

B. MOST ALIGNED—LEAST ALIGNED¹³

Most Aligned	M/S/R	D
Couch/Murphy	98.3	1.7
Murphy/Smith	97.8	2.1
Cole/Couch	97.7	2.2
Couch/Rodowsky	97.7	2.3
Cole/Murphy	97.6	2.4
Least Aligned		
Davidson/Specially Assigned	82.1	17.9
Davidson/Smith	89.1	10.9
Davidson/Eldridge	90.9	9.1
Davidson/Cole	91.0	9.0
Davidson/Murphy	91.3	8.7

13. Figures used in this table are from Table VI.A. The "Most Aligned" table presents the five most aligned pairs of judges; the pairs are arranged in descending order according to the combined "M," "S," and "R" percentages. Conversely, the "Least Aligned" table presents the five least aligned pairs.

C. SWING VOTES

*Number of Swing Votes*¹⁴

Couch	1
Davidson	1
Eldridge	1
Murphy	1
Cole	0
Murphy	0
Smith	0
Specially Assigned	0

Voting Combinations in Swing Vote Opinions

Couch, Davidson, Eldridge, Murphy	1
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14. A "swing vote" is cast by each judge in the majority in a 4-3 case.

TABLE VII
PRIMARY SUBJECT MATTER OF OPINIONS

	<i>Number of Opinions</i>
A. Public Law	
Criminal	
Constitutional Issues (federal and/or state)	19
Evidentiary	6
Procedural (non-constitutional)	16
Substantive	4
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Administrative	3
Antitrust	1
Constitutional	
Federal	3
State	2
Consumer Law	1
Health Care	3
Municipal Law	2
Real Property	
Eminent Domain	3
Zoning	1
Taxation	5
Other	6
B. Private Law	
Procedural	
Appellate	0
Pre-Trial and Trial	7
Substantive	
Commercial	1
Contracts	0
Corporations	0
Custody/Domestic Relations	5
Insurance	1
Labor (including unemployment and worker's compensation)	8
Property (not including eminent domain and zoning)	3
Torts	5
Wills/Estates/Trusts	0
Other	6
	111
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Survey Table of Cases

Maryland cases from the period June 1983 to July 1984 which are discussed in the *Survey* are indexed below.

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