

AN EXAMINATION OF THE INDIANA SUPREME COURT DOCKET, DISPOSITIONS, AND VOTING IN 2009*

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In U.S. Supreme Court lore, several justices have been given the mantle of “The Great Dissenter.” That title was initially bestowed on the first Justice Harlan¹ for his notable dissent in the notorious *Plessy v. Ferguson*² case. The mantle later passed to Justice Oliver Wendell Holmes, whose prolific writing included his dissent in *Lochner v. New York*.³ In more recent years, the sheer volume of their dissents placed the moniker of “The “Great Dissenter” on the second Justice Harlan,⁴ Justice Douglas,⁵ and finally Justice Brennan.⁶

Despite this long history of venerating “The Great Dissenters” of the U.S.

* The Tables presented in this Article are patterned after the annual statistics of the U.S. Supreme Court published in the *Harvard Law Review*. An explanation of the origin of these Tables can be found at Louis Henkin, *The Supreme Court, 1967 Term*, 82 HARV. L. REV. 63, 301 (1968). The *Harvard Law Review* granted permission for the use of these Tables by the *Indiana Law Review* this year; however, permission for any further reproduction of these Tables must be obtained from the *Harvard Law Review*.

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1. Gabriel J. Chin, *The First Justice Harlan by the Numbers: Just How Great Was “The Great Dissenter?”* 32 AKRON L. REV. 629, 647 (1999).

2. 163 U.S. 537 (1896).

3. 198 U.S. 45, 65-74 (1905) (Holmes, J., dissenting).

4. TINSLEY E. YARBROUGH, JOHN MARSHALL HARLAN: THE GREAT DISSENTER OF THE WARREN COURT, at viii (1992).

5. Sheri J. Engelken, *Majoritarian Democracy in a Federalist System: The Late Chief Justice Rehnquist and the First Amendment*, 30 HARV. J.L. & PUB. POL’Y 695, 701 (2007).

6. Alex Kozinski, *The Great Dissenter*, N.Y. TIMES ONLINE, July 6, 1997, available at <http://www.nytimes.com/books/97/07/06/reviews/970706.06kozinst.html>.

Supreme Court, the term has never quite applied to any of the justices of the Indiana Supreme Court. A worthy claimant to the title is the late Justice Roger DeBruler, who rightfully could be called a “Great Dissenter” both because of the volume of his work in dissent and because his dissents have been favorably cited in U.S. Supreme Court cases, including the rarity of a lengthy, verbatim quotation of a state court dissent.⁷

But a modern Great Dissenter might be emerging in the form of Justice Rucker. In 2009, Justice Rucker authored dissents in 12 cases, the most of any justice. That total exceeded the number of majority opinions he drafted. Justice Rucker has only accomplished that feat on one prior occasion in the 10 years he has been on the bench, as Justice Rucker also handed down more dissents (15) than majority opinions (7) in 2003. In 2009, he tipped the scales again and handed down 12 dissents and only 10 majority opinions. By contrast, every other justice wrote more than double the number of majority opinions than their dissents in 2009. In fact, Chief Justice Shepard wrote three times as many majority opinions as dissents (18 versus 6), a feat Justice Boehm almost matched (23 versus 8). Indeed, in what may be an example of the exception that proves the rule, since these annual statistics were first compiled, Justice DeBruler had the only other year in which a justice wrote more dissents than majority opinions, as he drafted 19 dissents and 16 majority opinions in 1995. No other justice has done so in Justice Rucker’s 10 years on the court.

Justice Rucker’s dissenting voice was heard equally in both criminal and civil cases in 2009. He tied Justice Dickson for the most dissents in criminal cases with five and had more dissents in civil cases than any other justice with five. But Justice Rucker’s dissents have historically been more frequent in criminal cases. Tracing back through the past five years, he led the court with dissents in criminal cases in every year but 2006. During that same time period, Justice Rucker drafted 24 of the court’s 78 dissents in criminal cases, meaning that he was the writing justice for almost a third of the court’s criminal dissents in the past five years.

Although it is outside the scope of this Article to address the merits of his dissenting opinions and their impact on the development of Indiana law, the sheer persistency of Justice Rucker as a dissenting voice on the court has some practical consequences. For instance, the frequency of his dissents affects the percentage of agreement between Justice Rucker and the other four justices. For the second year in a row, Justice Rucker did not agree with any other justice in more than 80% of the court’s cases. Similarly, because he is so frequently the dissenting voice on the court, he has fewer opportunities to draft the majority opinion. Justice Rucker had authored the fewest majority opinions in every year since 2004, including 2006 when he tied with Chief Justice Shepard. As would be expected in a year when he drafted nearly a third of the court’s dissenting opinions, Justice Rucker again authored the fewest majority opinions in 2009, with 10 opinions split evenly between criminal and civil cases.

7. See *Schiro v. Farley*, 510 U.S. 222, 237-38 (1994) (Blackmun, J., dissenting); see also *Duckworth v. Eagan*, 492 U.S. 195, 217 (1989).

As a final note, Justice Boehm announced his retirement on May 25, 2010 and 2009 will mark his final full year on the court.⁸ Only a law journal article of far broader scope could begin to evaluate Justice Boehm's substantive contribution to the court and the development of Indiana law. His scholarly opinions impacted Indiana law on an incredible breadth of topics with clarity, insight, and flashes of an underappreciated wit uncommon in judicial opinions, including, as just a few examples, the following notable passages:

- [I]f neither of us joins in the result reached by Justice Dickson and the Chief Justice, we have no majority to grant rehearing as to any aspect of the original opinion and Wilkins' thirty-day suspension stands. Lewis Carroll would love that result: half the Court believes no sanction is appropriate, and half would impose a small sanction, so the result is a major penalty. Only those who love the law could explain that to their children. To free parents everywhere from that burden, I concur⁹
- [The reasonable particularity] test also smuggled in the commonsensical elements of a showing that the information is not readily available elsewhere . . . and that the party seeking it is not engaged in a fishing expedition with no focused idea of the size, species, or edibility of the fish.¹⁰
- This writer is further removed from high school than his colleagues. But even a casual reviewer of pop culture must view with extreme skepticism the undocumented claim that participants in this broad list of activities are all, or even predominantly, viewed by their peers as role models. . . . I cite the recent motion picture "American Pie II," which I confess to having viewed by reason of friendship with the parents of its director, whom I have known from childhood. I believe most of us could provide more persuasive authority from our own experiences in high school.¹¹
- Law enforcement is not baseball and the residence of a fleeing suspect does not constitute a base that is a safe haven from being tagged out.¹²
- Under the trial court's calculations and rationale, a person would violate Indiana Code § 9-30-5-1(a)(2) only if his or her "alcohol

8. Jon Murray, *State Court Retirement Opens Door for Diversity*, INDIANAPOLIS STAR, May 26, 2010, at A1.

9. *In re Wilkins*, 782 N.E.2d 985, 988 (Ind. 2003) (Boehm, J., concurring).

10. *WTHR-TV v. Cline*, 693 N.E.2d 1, 7 (Ind. 1998).

11. *Linke v. Nw. Sch. Corp.*, 763 N.E.2d 972, 992 & n.4 (Ind. 2002) (Boehm, J. dissenting).

12. *Hardister v. State*, 849 N.E.2d 563, 572 (Ind. 2006).

blood ratio” were 210%, which would long since have produced not an impaired driver but a corpse, indeed one perhaps needing no embalming.¹³

One aspect of Justice Boehm’s legacy that should not be ignored is the sheer volume of his work and the diligence and consistency of his work product. Justice Boehm has authored the most or the second most opinions of any justice in each of the past four years. During that same time period, he handed nearly down 25% of all of the court’s opinions. In 2009 alone, he handed down nearly 24% of the court’s entire caseload while in 2006, he handed down 32 of the court’s 106 opinions, close to a third of the total. Although it is easy to focus on his artful opinions and the quality of his analysis, Justice Boehm’s prodigious body of work certainly has contributed to his legacy on the court.

Table A. The court handed down a total of 97 cases in 2009, up one from 2008. Since the effects of the change in the court’s jurisdiction began to be felt in 2003, the court has averaged 101 opinions per year. That number is pulled down slightly by an anomalous year in 2007, in which the court handed down only 78 opinions because of a significant number of particularly difficult cases. Given the experience over the past several years, it is fair to expect the court to hand down around 100 opinions in a given year. Interestingly, this number is more than the average of the U.S. Supreme Court, which typically hands down less than 80 opinions per year despite more Justices, more clerks, and more resources.¹⁴

The court again handed down more civil cases than criminal cases, as 60% of the court’s opinions came in civil cases. In fact, in the past eight years, civil cases have outnumbered the criminal cases in every year but 2002, 2004, 2005, and 2007.

Justice Boehm authored the most total opinions with 23, which amounted to 24% of all of the court’s opinions. It was a remarkably active year for Justice Boehm, as he also authored the most concurrences (4) and the second most dissents (8).

Table B-1. Chief Justice Shepard continues to be a critical swing vote to obtain in civil cases. As this Article has noted in previous years, there is a consistent alignment in civil cases between Chief Justice Shepard and Justices Boehm and Sullivan. In 2009, Chief Justice Shepard agreed with Justice Sullivan in 86.4% of all civil cases, the highest of any two justices for the year. Chief Justice Shepard agreed with Justice Boehm in 81.4% of all cases, the third most of any two justices. Another consistent alignment is between Justices Dickson and

13. *Sales v. State*, 723 N.E.2d 416, 421 (Ind. 2000).

14. *The Supreme Court, 2008 Term—The Statistics*, 123 HARV. L. REV. 382, 382 (2009) (78 opinions); *The Supreme Court, 2007 Term—The Statistics*, 122 HARV. L. REV. 516, 516 (2008) (70 opinions); *The Supreme Court, 2006 Term—The Statistics*, 122 HARV. L. REV. 516 (2007) (70 opinions).

Justices Rucker, who had the second most alignment in 2009 at 85% and were the most aligned in 2008.

Table B-2. Chief Justice Shepard and Justice Sullivan were the most aligned in criminal cases at 81.8%. But no other pair of justices agreed more than 80% of the time. This marks a contrast to prior years, where the justices generally each agreed more the 80% of criminal cases. Justices Dickson and Rucker agreed in only 65% of the time, the lowest of any pair. Despite their consistent agreement in civil cases, this level of disagreement between Justices Dickson and Rucker appears to be part of a pattern, as the same pair also had the lowest amount of agreement in criminal cases for 2008, 2007, and 2006. In 2009, two other pairs of justices—Justices Boehm and Dickson and Justices Boehm and Sullivan—also exhibited a higher level of disagreement, as they voted the same in barely 70% of cases.

Table B-3. Only one pair of justices—Chief Justice Shepard and Justice Sullivan—agreed in more than 80% of all cases. This result was consistent with 2008, when only two pairs of justices agreed in more than 80% of all cases. In 2007, however, all of the justices agreed with all other justices in more than 80% of all cases in 2007.

The lowest agreement between any two justices in all cases was between Justices Sullivan and Rucker. In fact, Justice Sullivan has only agreed with Justice Rucker in more than 80% once in the past five years (2007).

Table C. The percentage of unanimous opinions continues to wane. The court was unanimous in 74.4% of cases in 2007, a number that dropped to 62% in 2008. Although the amount rose slightly in 2009 to 63.4%, the total amount of agreement remains below the levels common before the effects of the court's jurisdictional change began to be felt 2003. Of the 34 separate opinions in 2009, only four were concurrences. The total percentage of cases drawing a dissent continues to run in the mid-30s. In 2009, 33.3% of the cases had at least one dissent. That number is down slightly from the 35% in 2008 but still part of an overall increase since the 2005, where the court's cases only drew a dissent in 26.2% of all cases. In 2006, only 23.3% of all cases drew a dissent and in 2007, only 20.5% cases drew a dissent. For the first time in more than five years, the number of dissents in criminal cases outnumbered the dissents in civil cases. In prior years, civil cases were far more likely to draw a dissent. For instance, in 2003 there were three times as many dissents in civil cases than criminal cases, while in 2007 there were two times as many dissents in civil cases.

Table D. The percentage of the court's decisions that were split 3-2 dropped to 19% after a spike to 24% in 2008. Despite this drop, the percentage remains higher than in prior years. For instance, the percentage of cases that were split 3-2 were only 12 and 10 in 2007 and 2006, respectively. Not surprisingly given the agreement shown in the earlier tables, Chief Justice Shepard and Justice Sullivan were both in the majority in 11 of the 18 split decisions.

Table E-1. The court reversed in only 70.8% of its civil cases. That percentage is down dramatically from 2008 and 2007, where the court reversed in 80% and 93.5% of civil cases, respectively. The percentage of reversals in all cases also dropped in 2009, as the court reversed in 67.4% of all cases. The court reversed in 76% of all cases in 2008, as compared to 78% in 2005, 76.3% in 2006, and 74% in 2007.

Table E-2. The number of petitions to transfer dropped again in 2009. After growing steadily for years, the number of petitions dropped in 2008 to 858. That number was almost 100 lower than the number of petitions in 2007 and was the first time since 2004 that fewer than 900 petitions were filed. This past year proved that 2008 was not a fluke, as the number of petitions dropped to 795. The percentage of petitions that the court granted dropped to 8.4%, which was less than the 11% granted in 2008 but more than the 7.2% granted in 2007 and the 7% granted in 2006. Given the decline in petitions for transfer, it bears watching whether that change continues to affect the percentage of cases in which the court grants transfer.

Table F. The court's cases continue to cover a broad scope of topics, including 21 different areas of law in 2009. The court handed down seven opinions in death penalty cases in 2009, a high number considering the effort and attention that goes into those cases given the stakes at issue. The court also had a remarkable year in terms of the number of reported writs of mandamus or prohibition. After handing down only one in the previous five years, the court issued seven such writs in 2009.

The 2008 version of this Article predicted that Uniform Commercial Code (UCC) might be an area the court would address in coming years given that the court had not handed an opinion addressing the UCC since 2003, save on case. The court addressed a single UCC case in 2008, but once again left that area of the law for future years in 2009. Given Justice Boehm's impact on corporate governance law, it would not be surprising to see the court address that topic in 2010, particularly given that the court has only handed down two opinions in that area in the past five years.

TABLE A
OPINIONS^a

	OPINIONS OF COURT ^b			CONCURRENCES ^c			DISSENTS ^d		
	Criminal	Civil	Total	Criminal	Civil	Total	Criminal	Civil	Total
Shepard, C.J.	7	11	18	0	1	1	3	3	6
Dickson, J.	8	12	20	0	0	0	4	5	9
Sullivan, J.	9	9	18	0	0	0	4	3	7
Boehm, J.	9	14	23	0	4	4	5	3	8
Rucker, J.	5	5	10	1	0	1	5	7	12
Per Curiam	1	7	8						
Total	39	58	97	1	5	6	21	21	42

^a These are opinions and votes on opinions by each justice and in per curiam in the 2009 term. The Indiana Supreme Court is unique because it is the only supreme court to assign each case to a justice by a consensus method. Cases are distributed by a consensus of the justices in the majority on each case either by volunteering or nominating writers. The chief justice does not have any power to control the assignments other than as a member of the majority. See Melinda Gann Hall, *Opinion Assignment Procedures and Conference Practices in State Supreme Courts*, 73 JUDICATURE 209, 209, 213 (1990). The order of discussion and voting is started by the most junior member of the court and follows reverse seniority. See *id.* at 209, 213.

^b This is only a counting of full opinions written by each justice. Plurality opinions that announce the judgment of the court are counted as opinions of the court. It includes opinions on civil, criminal, and original actions.

^c This category includes both written concurrences, joining in written concurrence, and votes to concur in result only.

^d This category includes both written dissents and votes to dissent without opinion. Opinions concurring in part and dissenting in part or opinions concurring in part only and differing on another issue are counted as dissents.

TABLE B-1
VOTING ALIGNMENTS FOR CIVIL CASES^e

		Shepard	Dickson	Sullivan	Boehm	Rucker
Shepard, C.J.	O		47	50	47	45
	S		0	1	1	1
	D	---	47	51	48	46
	N		59	59	59	59
	P		79.6%	86.4%	81.4%	78.0%
Dickson, J.	O	47		47	45	47
	S	0		0	2	4
	D	47	---	47	47	51
	N	59		60	60	60
	P	79.6%		78.3%	77.0%	85.0%
Sullivan, J.	O	50	47		46	45
	S	1	0		1	0
	D	51	47	---	47	45
	N	59	60		60	60
	P	86.4%	78.3%		78.3%	75.0%
Boehm, J.	O	47	45	46		45
	S	1	2	1		1
	D	48	47	47	---	46
	N	59	60	60		60
	P	81.4%	77.0%	78.3%		76.7%
Rucker, J.	O	45	47	45	45	
	S	1	4	0	1	
	D	46	51	45	46	---
	N	59	60	60	60	
	P	78.0%	85.0%	75.0%	76.7%	

^e This Table records the number of times that one justice voted with another in full-opinion decisions, including per curiam, for only civil cases. For example, in the top set of numbers for Chief Justice Shepard, 47 is the number of times Chief Justice Shepard and Justice Dickson agreed in a full majority opinion in a civil case. Two justices are considered to have agreed whenever they joined the same opinion, as indicated by either the reporter or the explicit statement of a justice in the body of his or her own opinion. The Table does not treat two justices as having agreed if they did not join the same opinion, even if they agreed only in the result of the case or wrote separate opinions revealing little philosophical disagreement.

“O” represents the number of decisions in which the two justices agreed in opinions of the court or opinions announcing the judgment of the court.

“S” represents the number of decisions in which the two justices agreed in separate opinions, including agreements in both concurrences and dissents.

“D” represents the number of decisions in which the two justices agreed in either a majority, dissenting, or concurring opinion.

“N” represents the number of decisions in which both justices participated and thus the number of opportunities for agreement.

“P” represents the percentage of decisions in which one justice agreed with another justice, calculated by dividing “D” by “N.”

TABLE B-2
VOTING ALIGNMENTS FOR CRIMINAL CASES^f

		Shepard	Dickson	Sullivan	Boehm	Rucker
Shepard, C.J.	O		33	36	32	31
	S		0	0	0	0
	D	---	33	36	32	31
	N		44	44	44	44
	P		75.0%	81.8%	72.7%	77.3%
Dickson, J.	O	33		34	30	28
	S	0		0	1	0
	D	33	---	34	31	28
	N	44		44	44	43
	P	75.0%		77.3%	70.5%	65.0%
Sullivan, J.	O	36	34		31	30
	S	0	0		0	2
	D	36	34	---	31	32
	N	44	44		44	44
	P	81.8%	77.3%		70.5%	72.7%
Boehm, J.	O	32	30	31		30
	S	0	1	0		2
	D	32	31	31	---	32
	N	44	44	44		44
	P	72.7%	70.5%	70.5%		72.7%
Rucker, J.	O	31	28	30	30	
	S	0	0	2	2	
	D	31	28	32	32	---
	N	44	43	44	44	
	P	77.3%	65.0%	72.7%	72.7%	

^f This Table records the number of times that one justice voted with another in full-opinion decisions, including per curiam, for only criminal cases. For example, in the top set of numbers for Chief Justice Shepard, 33 is the number of times Chief Justice Shepard and Justice Dickson agreed in a full majority opinion in a criminal case. Two justices are considered to have agreed whenever they joined the same opinion, as indicated by either the reporter or the explicit statement of a justice in the body of his or her own opinion. The Table does not treat two justices as having agreed if they did not join the same opinion, even if they agreed only in the result of the case or wrote separate opinions revealing little philosophical disagreement.

“O” represents the number of decisions in which the two justices agreed in opinions of the court or opinions announcing the judgment of the court.

“S” represents the number of decisions in which the two justices agreed in separate opinions, including agreements in both concurrences and dissents.

“D” represents the number of decisions in which the two justices agreed in either a majority, dissenting, or concurring opinion.

“N” represents the number of decisions in which both justices participated and thus the number of opportunities for agreement.

“P” represents the percentage of decisions in which one justice agreed with another justice, calculated by dividing “D” by “N.”

TABLE B-3
VOTING ALIGNMENTS FOR ALL CASES⁸

	Shepard	Dickson	Sullivan	Boehm	Rucker
Shepard, C.J.	O	80	86	79	76
	S	0	1	1	1
	D	---	87	80	77
	N	103	103	103	103
	P	77.7%	84.5%	77.7 %	74.7 %
Dickson, J.	O	80	81	75	75
	S	0	0	3	4
	D	80	---	78	79
	N	103	104	104	104
	P	77.7%	77.9%	75.0 %	76.7 %
Sullivan, J.	O	86	81	77	75
	S	1	0	1	2
	D	87	81	---	77
	N	103	104	104	104
	P	84.5%	77.9%	75.0 %	74.0 %
Boehm, J.	O	79	75	77	75
	S	1	3	1	3
	D	80	78	78	---
	N	103	104	104	104
	P	77.7%	75.0%	75.0%	75.0 %
Rucker, J.	O	76	75	75	75
	S	1	4	2	3
	D	77	79	77	78
	N	103	104	104	104
	P	74.7%	76.7%	74.0 %	75.0%

⁸ This Table records the number of times that one justice voted with another in full-opinion decisions, including per curiam, for all cases. For example, in the top set of numbers for Chief Justice Shepard, 80 is the total number of times Chief Justice Shepard and Justice Dickson agreed in all full majority opinions written by the court in 2009. Two justices are considered to have agreed whenever they joined the same opinion, as indicated by either the reporter or the explicit statement of a justice in the body of his or her own opinion. The Table does not treat two justices as having agreed if they did not join the same opinion, even if they agreed only in the result of the case or wrote separate opinions revealing little philosophical disagreement.

“O” represents the number of decisions in which the two justices agreed in opinions of the court or opinions announcing the judgment of the court.

“S” represents the number of decisions in which the two justices agreed in separate opinions, including agreements in both concurrences and dissents.

“D” represents the number of decisions in which the two justices agreed in either a majority, dissenting, or concurring opinion.

“N” represents the number of decisions in which both justices participated and thus the number of opportunities for agreement.

“P” represents the percentage of decisions in which one justice agreed with another justice, calculated by dividing “D” by “N.”

TABLE C
UNANIMITY
NOT INCLUDING JUDICIAL OR ATTORNEY DISCIPLINE CASES^h

Unanimous ⁱ			Unanimous with Concurrence ^j			Opinions with Dissent			Total
Criminal	Civil	Total	Criminal	Civil	Total	Criminal	Civil	Total	
24	35	59 (63.4%)	1	2	3 (3.2%)	16	15	31 (33.3%)	93

^h This Table tracks the number and percent of unanimous opinions among all opinions written. If, for example, only four justices participate and all concur, it is still considered unanimous. It also tracks the percentage of overall opinions with concurrence and overall opinions with dissent.

ⁱ A decision is considered unanimous only when all justices participating in the case voted to concur in the court's opinion as well as its judgment. When one or more justices concurred in the result, but not in the opinion, the case is not considered unanimous.

^j A decision is listed in this column if one or more justices concurred in the result, but not in the opinion of the court or wrote a concurrence, and there were no dissents.

TABLE D
SPLIT DECISIONS^k

Justices Constituting the Majority	Number of Opinions ^l
1. Shepard, C.J., Dickson, J., Sullivan, J.	5
2. Shepard, C.J., Sullivan, J., Boehm, J.	5
3. Shepard, C.J., Sullivan, J., Rucker, J.	1
4. Shepard, C.J., Boehm, J., Rucker, J.	1
5. Dickson, J., Sullivan, J., Rucker, J.	1
6. Dickson, J., Boehm, J., Rucker, J.	4
7. Sullivan, J., Boehm, J., Rucker, J.	1
Total ^m	18

^k This Table concerns only decisions rendered by full opinion. An opinion is counted as a split decision if two or more justices voted to decide the case in a manner different from that of the majority of the court.

^l This column lists the number of times each group of justices constituted the majority in a split decision.

^m The 2009 term's split decisions were:

1. Shepard, C.J., Dickson, J., Sullivan, J.: *Williams v. Tharp*, 914 N.E.2d 756 (Ind. 2009) (Dickson, J.); *Pendergrass v. State*, 913 N.E.2d 703 (Ind. 2009) (Shepard, C.J.); *Bonner v. Daniels*, 907 N.E.2d 516 (Ind. 2009) (Dickson, J.); *Hardley v. State*, 905 N.E.2d 399 (Ind. 2009) (Dickson, J.); *McCullough v. State*, No. 495-0809-CR-508, 2009 Ind. LEXIS 326 (Ind. Feb. 10, 2009) (Dickson, J.).

2. Shepard, C.J., Sullivan, J., Boehm, J.: *McSwane v. Bloomington Hosp. & Healthcare Sys.*, 916 N.E.2d 906 (Ind. 2009) (Shepard, C.J.); *Ind. Dep't of Revenue v. Kitchin Hospitality, LLC*, 907 N.E.2d 997 (Ind. 2009) (Sullivan, J.); *Stanley v. Walker*, 906 N.E.2d 852 (Ind. 2009) (Sullivan, J.); *Jackson v. Scheible*, 902 N.E.2d 807 (Ind. 2009) (Boehm, J.); *State v. Kimco of Evansville, Inc.*, 902 N.E.2d 206 (Ind. 2009) (Boehm, J.).

3. Shepard, C.J., Sullivan, J., Rucker, J.: *Jensen v. State*, 905 N.E.2d 384 (Ind. 2009) (Rucker, J.).

4. Shepard, C.J., Boehm, J., Rucker, J.: *Tyler v. State*, 903 N.E.2d 463 (Ind. 2009) (Boehm, J.).

5. Dickson, J., Sullivan, J., Rucker, J.: *B.W. & W.G. v. D.B. & J.B.*, 908 N.E.2d 586 (Ind. 2009) (Dickson, J.).

6. Dickson, J., Boehm, J., Rucker, J.: *Holly v. State*, 918 N.E.2d 323 (Ind. 2009) (Rucker, J.); *Myers v. Leedy*, 915 N.E.2d 133 (Ind. 2009) (Rucker, J.); *In re Hawkins*, 902 N.E.2d 231 (Ind. 2009) (per curiam); *Klotz v. Hoyt*, 900 N.E.2d 1 (Ind. 2009) (Dickson, J.).

7. Sullivan, J., Boehm, J., Rucker, J.: *State ex rel. Ind. State Police v. Arnold*, 906 N.E.2d 167 (Ind. 2009) (Sullivan, J.).

TABLE E-1
DISPOSITION OF CASES REVIEWED BY TRANSFER
AND DIRECT APPEALSⁿ

	Reversed or Vacated ^o	Affirmed	Total
Civil Appeals Accepted for Transfer	34 (70.8%)	14 (29.2%)	48
Direct Civil Appeals	1 (33.3%)	2 (66.7%)	3
Criminal Appeals Accepted for Transfer	22 (71.0%)	9 (29.0%)	31
Direct Criminal Appeals	5 (50.0%)	5 (50.0%)	10
Total	62 (67.4%)	30 (32.6%)	92 ^p

ⁿ Direct criminal appeals are cases in which the trial court imposed a death sentence. *See* IND. CONST. art. VII, § 4. Thus, direct criminal appeals are those directly from the trial court. A civil appeal may also be direct from the trial court. *See* IND. APP. R. 56, 63 (pursuant to Rules of Procedure for Original Actions). All other Indiana Supreme Court opinions are accepted for transfer from the Indiana Court of Appeals. *See* IND. APP. R. 57.

^o Generally, the term “vacate” is used by the Indiana Supreme Court when it is reviewing a court of appeals opinion, and the term “reverse” is used when the court overrules a trial court decision. A point to consider in reviewing this Table is that the court technically “vacates” every court of appeals opinion that is accepted for transfer, but may only disagree with a small portion of the reasoning and still agree with the result. *See* IND. APP. R. 58(A). As a practical matter, “reverse” or “vacate” simply represents any action by the court that does not affirm the trial court or court of appeals’s opinion.

^p This does not include four attorney discipline opinions, three judicial discipline opinions, and one original action. This opinion did not reverse, vacate, or affirm any other court’s decision.

TABLE E-2
DISPOSITION OF PETITIONS TO TRANSFER
TO SUPREME COURT IN 2009^q

	Denied or Dismissed	Granted	Total
Petitions to Transfer			
Civil ^r	201 (86.6%)	31 (13.4%)	232
Criminal ^r	488 (94.%)	31 (6.0%)	519
Juvenile	39 (88.6%)	5 (11.1%)	44
Total	728 (91.6%)	67 (8.4%)	795

^q This Table analyzes the disposition of petitions to transfer by the court. *See* IND. APP. R. 58(A).

^r This also includes petitions to transfer in tax cases and workers' compensation cases.

^s This also includes petitions to transfer in post-conviction relief cases.

TABLE F
SUBJECT AREAS OF SELECTED DISPOSITIONS
WITH FULL OPINIONS¹

Original Actions	Number
• Certified Questions	0
• Writs of Mandamus or Prohibition	7 ^u
• Attorney Discipline	4 ^v
• Judicial Discipline	3 ^w
Criminal	
• Death Penalty	7 ^x
• Fourth Amendment or Search and Seizure	6 ^y
• Writ of Habeas Corpus	0
Emergency Appeals to the Supreme Court	0
Trusts, Estates, or Probate	2 ^z
Real Estate or Real Property	6 ^{aa}
Personal Property	0
Landlord-Tenant	1 ^{bb}
Divorce or Child Support	5 ^{cc}
Children in Need of Services (CHINS)	5 ^{dd}
Paternity	2 ^{ee}
Product Liability or Strict Liability	1 ^{ff}
Negligence or Personal Injury	11 ^{gg}
Invasion of Privacy	0
Medical Malpractice	3 ^{hh}
Indiana Tort Claims Act	3 ⁱⁱ
Statute of Limitations or Statute of Repose	2 ^{jj}
Tax, Department of State Revenue, or State Board of Tax Commissioners	2 ^{kk}
Contracts	6 ^{ll}
Corporate Law or the Indiana Business Corporation Law	0
Uniform Commercial Code	0
Banking Law	0
Employment Law	3 ^{mm}
Insurance Law	7 ⁿⁿ
Environmental Law	2 ^{oo}
Consumer Law	0
Workers' Compensation	0
Arbitration	1 ^{pp}
Administrative Law	4 ^{qq}
First Amendment, Open Door Law, or Public Records Law	0
Full Faith and Credit	0
Eleventh Amendment	0
Civil Rights	2 ^{rr}
Indiana Constitution	21 ^{ss}

¹ This Table is designed to provide a general idea of the specific subject areas upon which the court ruled or discussed and how many times it did so in 2009. It is also a quick-reference guide to court rulings for practitioners in specific areas of the law. The numbers corresponding to the areas of law reflect the number of cases in which the court substantively discussed legal issues about these subject areas. Also, any attorney discipline case resolved by order (as opposed to an opinion) was not considered in preparing this Table.

^u State *ex rel.* Crain Heating Air Conditioning & Refrigeration, Inc. v. Clark Circuit Court, 917 N.E.2d 660 (Ind. 2009); State *ex rel.* Kirtz v. Delaware Circuit Court No. 5, 916 N.E.2d 658 (Ind. 2009); State *ex rel.* Johnson v. Hamilton Superior Court No. 1, 915 N.E.2d 975 (Ind. 2009); State *ex rel.* Pemberton v. Porter Superior Court No. 4, 912 N.E.2d 377 (Ind. 2009); State *ex rel.* Bousum v. Howard Superior Court No. 2, 909 N.E.2d 1006 (Ind. 2009); State *ex rel.* Seal v. Madison Superior Court No. 3, 909 N.E.2d 994 (Ind. 2009); State *ex rel.* Seal v. Madison Superior Court No. 3, No. 48S00-0901-OR-32, 2009 Ind. LEXIS 1493 (Ind. Mar. 6, 2009).

^v In re Anonymous, 914 N.E.2d 265 (Ind. 2009); In re Marshall, 902 N.E.2d 249 (Ind. 2009); In re Recker, 902 N.E.2d 225 (Ind. 2009); In re Lehman, 901 N.E.2d 1097 (Ind. 2009).

^w In re Felts, 902 N.E.2d 255 (Ind. 2009); In re Hawkins, 902 N.E.2d 231 (Ind. 2009); In re Scheibenberger, 899 N.E.2d 649 (Ind. 2009).

^x Wilkes v. State, 917 N.E.2d 675 (Ind. 2009); Wrinkles v. State, 915 N.E.2d 963 (Ind. 2009); Ward v. State, 908 N.E.2d 595 (Ind. 2009); Camm v. State, 908 N.E.2d 215 (Ind. 2009); Dennis v. State, 908 N.E.2d 209 (Ind. 2009); Ward v. State, 903 N.E.2d 946 (Ind. 2009); Pruitt v. State, 903 N.E.2d 899 (Ind. 2009).

^y Holly v. State, 918 N.E.2d 323 (Ind. 2009); Armfield v. State, 918 N.E.2d 316 (Ind. 2009); Jackson v. State, 908 N.E.2d 1140 (Ind. 2009); Meredith v. State, 906 N.E.2d 867 (Ind. 2009); Bannister v. State, 904 N.E.2d 1254 (Ind. 2009); Ward v. State, 903 N.E.2d 946 (Ind. 2009).

^{zz} In re Estate of Lawrence W. Inlow, 916 N.E.2d 664 (Ind. 2009); Estate of Prickett v. Womersley, 905 N.E.2d 1008 (Ind. 2009).

^{aa} Myers v. Leedy, 915 N.E.2d 133 (Ind. 2009); Thomas v. Blackford County Area Bd. of Zoning Appeals, 907 N.E.2d 988 (Ind. 2009); Lake County Trust Co. v. Advisory Plan Comm'n of Bachorski, 904 N.E.2d 1274 (Ind. 2009); Jackson v. Scheible, 902 N.E.2d 807 (Ind. 2009); State v. Kimco of Evansville, Inc., 902 N.E.2d 206 (Ind. 2009); Klotz v. Hoyt, 900 N.E.2d 1 (Ind. 2009).

^{bb} Klotz v. Hoyt, 900 N.E.2d 1 (Ind. 2009).

^{cc} Hamilton v. Hamilton, 914 N.E.2d 747 (Ind. 2009); Basileh v. Alghusain, 912 N.E.2d 814 (Ind. 2009); Rovai v. Rovai, 912 N.E.2d 374 (Ind. 2009); Becker v. Becker, 902 N.E.2d 818 (Ind. 2009); Clark v. Clark, 902 N.E.2d 813 (Ind. 2009).

^{dd} T.B. v. Ind. Dep't of Child Servs. (*In re* M.B.), 921 N.E.2d 494 (Ind. 2009); Pappas v. A.S. (*In re* J.M.), 908 N.E.2d 191 (Ind. 2009); Ind. Dep't of Child Servs. v. LaPorte Circuit Court (*In re* T.S.), 906 N.E.2d 801 (Ind. 2009); R.Y. v. Ind. Dep't of Child Servs. (*In re* G.Y.), 904 N.E.2d 1257 (Ind. 2009); Marion County Div. of Ind. Dep't of Child Servs. v. S. M. (*In re* H.), 904 N.E.2d 203 (Ind. 2009).

^{ee} B.W. v. D.B., 908 N.E.2d 586 (Ind. 2009); *In re* K.L., 903 N.E.2d 453 (Ind. 2009).

^{ff} Kovach v. Caligor Midwest, 913 N.E.2d 193 (Ind. 2009).

^{gg} Babes Showclub v. Lair, 918 N.E.2d 308 (Ind. 2009); Clay City Consol. Sch. Corp. v. Timberman, 918 N.E.2d 292 (Ind. 2009); Gary Cmty. Sch. Corp. v. Lolita Roach-Walker & Victor Walker, 917 N.E.2d 1224 (Ind. 2009); McSwane v. Bloomington Hospital & Healthcare Sys., 916 N.E.2d 906 (Ind. 2009); Williams v. Tharp, 914 N.E.2d 756 (Ind. 2009); Kovach v. Midwest, 913 N.E.2d 193 (Ind. 2009); Spar v. Cha, 907 N.E.2d 974 (Ind. 2009); Stanley v. Walker, 906 N.E.2d 852 (Ind. 2009); Estate of Jerome Mintz v. Conn. Gen. Life Ins. Co., 905 N.E.2d 994 (Ind. 2009); Butler v. Ind. Dep't of Ins., 904 N.E.2d 198 (Ind. 2009); Jackson v. Scheible, 902 N.E.2d 807 (Ind. 2009).

^{hh} Spar v. Cha, 907 N.E.2d 974 (Ind. 2009); Butler v. Ind. Dep't of Ins., 904 N.E.2d 198 (Ind. 2009); Atterholt v. Herbst, 902 N.E.2d 220 (Ind. 2009).

ⁱⁱ Gary Cmty. Sch. Corp. v. Roach-Walker, 917 N.E.2d 1224 (Ind. 2009); Lake County Trust Co. v. Advisory Plan Comm'n, 904 N.E.2d 1274 (Ind. 2009); Butler v. Ind. Dep't of Ins., 904 N.E.2d 198 (Ind. 2009).

^{jj} City of East Chi. v. East Chi. Second Century, Inc., 908 N.E.2d 611 (Ind. 2009); Cooper Indus. LLC v. South Bend, Ind., 899 N.E.2d 1274 (Ind. 2009).

^{kk} Ind. Dep't of Revenue v. Kitchin Hospitality, LLC, 907 N.E.2d 997 (Ind. 2009); Miller Brewing Co. v. Ind. Dep't of State Revenue, 903 N.E.2d 64 (Ind. 2009).

ⁱⁱ Gunashekar v. Kay Grose, 915 N.E.2d 953 (Ind. 2009); City of East Chicago v. East Chi. Second Century, Inc., 908 N.E.2d 611 (Ind. 2009); Henri v. Curto, 908 N.E.2d 196 (Ind. 2009); N. Ind. Pub. Serv. Co. v. U. S. Steel Corp., 907 N.E.2d 1012 (Ind. 2009); Conwell v. Gray Look Outdoor Mktg. Group, Inc., 906 N.E.2d 805 (Ind. 2009); Zoeller v. East Chi. Second Century, Inc., 904 N.E.2d 213 (Ind. 2009).

^{mm} Baker v. Tremco Inc., 917 N.E.2d 650 (Ind. 2009); Filter Specialists, Inc. v. Brooks, 906 N.E.2d 835 (Ind. 2009); Gary Cmty. Sch. Corp. v. Powell, 906 N.E.2d 823 (Ind. 2009).

ⁿⁿ Bradshaw v. Chandler, 916 N.E.2d 163 (Ind. 2009); Wagner v. Yates, 912 N.E.2d 805 (Ind. 2009); Tri-etch v. Cincinnati Ins. Co., 909 N.E.2d 997 (Ind. 2009); Bush v. State Farm Mut. Auto. Ins. Co., 905 N.E.2d 1003 (Ind. 2009); Estate of Mintz v. Conn. Gen. Life Ins. Co., 905 N.E.2d 994 (Ind. 2009); Dreaded, Inc. v. St. Paul Guardian Ins. Co., 904 N.E.2d 1267 (Ind. 2009); Atterholt v. Herbst, 902 N.E.2d 220 (Ind. 2009).

^{oo} Dreaded, Inc. v. St. Paul Guardian Ins. Co., 904 N.E.2d 1267 (Ind. 2009); Cooper Indus. LLC v. South Bend, Indiana, 899 N.E.2d 1274 (Ind. 2009).

^{pp} Lake County Trust Co. v. Advisory Plan Comm'n of Bachorski, 904 N.E.2d 1274 (Ind. 2009).

^{qq} N. Ind. Pub. Serv. Co. v. U. S. Steel Corp., 907 N.E.2d 1012 (Ind. 2009); Thomas v. Blackford County Area Bd. of Zoning Appeals, 907 N.E.2d 988 (Ind. 2009); Young v. State, 906 N.E.2d 875 (Ind. 2009); Meredith v. State, 906 N.E.2d 867 (Ind. 2009).

^{rr} Bonner v. Daniels, 907 N.E.2d 516 (Ind. 2009); Filter Specialists, Inc. v. Brooks, 906 N.E.2d 835 (Ind. 2009).

^{ss} Holly v. State, 918 N.E.2d 323 (Ind. 2009); Armfield v. State, 918 N.E.2d 316 (Ind. 2009); Wilkes v. State, 917 N.E.2d 675 (Ind. 2009); Williams v. Tharp, 914 N.E.2d 756 (Ind. 2009); State v. Hernandez, 910 N.E.2d 213 (Ind. 2009); State v. Pollard, 908 N.E.2d 1145 (Ind. 2009); Jackson v. State, 908 N.E.2d 1140 (Ind. 2009); Mosley v. State, 908 N.E.2d 599 (Ind. 2009); Dennis v. State, 908 N.E.2d 209 (Ind. 2009); Bonner v. Daniels, 907 N.E.2d 516 (Ind. 2009); Meredith v. State, 906 N.E.2d 867 (Ind. 2009); Young v. State, 906 N.E.2d 875 (Ind. 2009); Hayes v. State, 906 N.E.2d 819 (Ind. 2009); State *ex rel.* Ind. State Police v. Arnold, 906 N.E.2d 167 (Ind. 2009); Jensen v. State, 905 N.E.2d 384 (Ind. 2009); Wallace v. State, 905 N.E.2d 371 (Ind. 2009); Ward v. State, 903 N.E.2d 946 (Ind. 2009); Gray v. State, 903 N.E.2d 940 (Ind. 2009); Tyler v. State, 903 N.E.2d 463 (Ind. 2009); Edwards v. State, 902 N.E.2d 821 (Ind. 2009); State v. Kimco of Evansville, Inc., 902 N.E.2d 206 (Ind. 2009); McCullough v. State, No. 49502-0809-CR-5908, 2009 Ind. LEXIS 326 (Ind. Feb. 10, 2009).