

**TRENDS IN THE USE OF
FEDERAL AUTHORITY
AND
AUTHORITY FROM OTHER STATES
BY
THE SUPREME COURT OF TEXAS
OVER A QUARTER CENTURY (9/1/1980-8/31/2005)**

By

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- Hints and Invitations: Enticements from the Supreme Court of Texas?* by Steven K. Hayes © 2006, compiled and updated monthly since January, 2006.

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TRENDS IN THE USE OF FEDERAL AUTHORITY AND AUTHORITY FROM OTHER STATES BY THE SUPREME COURT OF TEXAS OVER A QUARTER CENTURY (9/1/1980-8/31/2005).

A. Introduction—What Prompted This Study, How This Study Was Done, and the Organization of This Paper.

1. What Prompted This Study.

In the recent past, at least two well-known observers of the Supreme Court of Texas have commented on the tendency of the Supreme Court of Texas to rely on federal authority. One of these observers suggested that the Supreme Court has come to rely more heavily on federal authority.¹ The other observer suggested that we look for future trends in the Supreme Court by watching for citations in Supreme Court opinions which contain only federal or out-of-state cases to support certain propositions.² These suggestions by Professor Wayne Scott and Charles T. “Skip” Watson, Jr., respectively, prompted this empirical evaluation of majority opinions issued by the Supreme Court of Texas over the last twenty five years.

This study tested the suggestions of Professor Scott and Mr. Watson by measuring and comparing the tendency of the Supreme Court of Texas to issue majority opinions which cited either federal authority, or authority from other states. This study measured and tracked that tendency, on an yearly basis, over the quarter century which ran from September 1, 1980, through August 31, 2005. As measured in that manner, this study shows that the Supreme Court of Texas has significantly increased its tendency over the last quarter century to cite federal authority and

authority from other states in its majority opinions. This study shows that increased tendency, correlates it with certain administrative and legal changes affecting the Court, speculates about what we might see concerning this tendency in the future, and comments on what this study might mean for those who have an interest in the Court.

2. How This Study was Done.

This study analyzed majority opinions issued by the Supreme Court of Texas over the twenty five year period which began September 1, 1980, and ended August 31, 2005, by following these steps:

- 1) tallying the total majority opinions issued by the Court and each Justice in each year;
- 2) identifying those majority opinions which cited either federal authorities or authorities from other states;
- 3) calculating the percentage of majority opinions which cited either federal authorities or authorities from other states, both for the Court as a whole and for individual Justices for each fiscal year, or term of the Court (i.e., September 1 through August 31);
- 4) comparing the annual percentages calculated in the preceding step to determine if the Supreme Court, and the individual Justices on the Court, were issuing more or fewer majority opinions citing federal authority or authority from other states over time; and
- 5) examine the extent to which the Court’s changing tendencies coincided with certain other structural changes affecting the Court, and speculate about what we might expect from the Court in the future.

If you have an interest in the details of the protocol followed in performing this study, and

¹ Professor L. Wayne Scott, *Trends in the Texas Supreme Court*, PRACTICE BEFORE THE TEXAS SUPREME COURT, Pages 15-17, 39 (2004).

² Charles R. “Skip” Watson, Jr., *Petition for Review Grant Trends in the Supreme Court of Texas*, ADVANCED CIVIL APPELLATE PRACTICE COURSE, Chapter 9, Page 12-13 (2005).

some of this study's limitations, you can read Appendix One to this paper.

3. The Organization of This Paper.

Following this Introduction, the first thing you will find in this paper is a Summary of the study (Section B). Next, you will find a detailed recitation of the facts, figures, trends, and tendencies which support the Summary (Section C). Following that, you will find the Conclusion to the paper, which contains suggestions about the ways in which practitioners could consider the trends confirmed by this study.

B. Summary of the Study

1. Over the Last Quarter Century, the Supreme Court Has Shown a Significantly Increased Tendency to Issue Majority Opinions Which Cite Federal Authority and Authority From Other States.

Over the twenty five years since 1980:

- a) the Supreme Court's tendency to issue majority opinions which cited federal authority has nearly doubled; and
- b) the Supreme Court's tendency to issue majority opinions which cited authorities from other states has increased by nearly two-thirds.

In terms of using this study to try to predict what will happen in the future concerning these tendencies, the Court's current composition puts us in a quandary: three Justices have a measurable history of opinions, two Justices have two to three years' worth of opinions for us to evaluate, and four of the Justices have less than one year's experience on the Court and only two opinions among them.

Having said that, this study reflects the following for all five of the current Justices on the

Court with more than one year's service on the Court:

- a) As to their tendency to author majority opinions that cite federal authority:
 - i) they are among the top third of the 34 Justices whose service on the Court began after September 1, 1980, in terms of their tendency to author majority opinions that cite federal authority;³
 - ii) they have shown a tendency to author such majority opinions at a rate anywhere from 25% to 75% higher than the Court as a whole;⁴ and
 - iii) they have a preference to cite opinions of the U.S. Supreme Court, the Fifth Circuit, and, to a lesser and mixed extent, some other federal courts.⁵
- b) As to their tendency to author majority opinions that cite authority from other states:
 - i) two of these Justices⁶ are among the top third of the 34 Justices whose service on the Court began after September 1, 1980, in terms of their tendency to author majority opinions that cite

³ *See* Section C.3.b.i., and Table C.2, *infra*.

⁴ *See* Section C.3.b.i., *infra*.

⁵ *See*, Section C.3.c., and Chart C.5.

⁶ Chief Justice Jefferson and Justice O'Neill.

- authority from other states;⁷ and
- ii) the remaining three of these Justices⁸ show a tendency to author such opinions at a rate that equals or slightly exceeds the tendency of the Court as a whole;⁹ and
- iii) they collectively tend to cite authority from New York, California, and New Jersey, but they do not collectively tend to follow the law of any given state.¹⁰

So, it is at least possible, and we assume probable, that the Court's tendency to issue majority opinions which cite federal authority or authority from other states will continue to rise for the foreseeable future.

2. Structural Changes, Within and Without the Court, Which Coincided with the Increased Tendency of the Court to Issue Majority Opinions Which Cited Federal Authority and Authority from Other States.

An examination of the increased tendency of the Court to issue majority opinions which cited federal authority and authority from other states reveals that those upward trends began in about 1989 or 1990.¹¹ Aside from judicial philosophies

and partisan political affiliations (which this study does not does not address), consider the following institutional dynamics which coincided with the upward trends concerning federal authority and authority from other states:

- a) The advent of the Court's exercise of Discretionary Jurisdiction, which occurred in 1987;¹²
- b) Additional Legal Staff:
 - i) an additional Briefing Attorney/Law Clerk for all but the Chief Justice, beginning in about 1982; and
 - ii) a Staff Attorney for each Justice, beginning in 1989;¹³
- c) Conversion from Applications for Writ of Error to Petitions for Review, which occurred in 1997;¹⁴
- d) Turnover on the Court;¹⁵ and
- e) Other factors, such as:
 - i) the advent and expanded use of electronic legal research databases by the Court in about 1990 or 1991;¹⁶
 - ii) the increase in the number of Justices who belonged to the American Law Institute, which encourages an awareness of legal developments in other jurisdictions. This increase may have begun as early as 1987.¹⁷

These developments might amount to no

⁷ See Section C.3.b.ii., and Table C.3, *infra*.

⁸ Justices Hecht, Wainwright, and Brister.

⁹ See Section C.3.b.ii., and Table C.3, *infra*.

¹⁰ See Section C.3.d. and, in Appendix Six, Tables C.10-13 and Charts C.6-7, *infra*.

¹¹ See Tables C.1-C.2 and C.3-C.4, and related Charts C.1-C.2 and C.3-C.4, *infra*.

¹² See Section A.4.a., *infra*.

¹³ See Section A.4.b., *infra*.

¹⁴ See Section A.4.c., *infra*.

¹⁵ See Section A.4.d., *infra*.

¹⁶ See Section A.4.e.i, *infra*.

¹⁷ See Section A.4.e.ii. *infra*.

more than coincidences, and perhaps no more than interesting tidbits to explore, at this point. But practitioners can identify these types of structural changes as they occur. Once identified, practitioners should think about how such changes might alter their approach in their attempts to advocate before the Court.

3. The Use of This Study by the Practitioner: Historical Review, Practical Advice to Clients, and Suggestions for Analyzing Future Trends.

This study has several possible uses for the appellate practitioner:

- a) As a historical review, it sets out when, and to what extent, the Supreme Court of Texas increased its tendency over the last twenty five years to issue majority opinions that relied on federal authority and authorities from other states;
- b) It gives the appellate practitioner a tool to emphasize to clients, and other lawyers, the need to consider the role which federal authority and authority from other state could play in cases and on issues of interest to those clients and lawyers; and
- c) Perhaps, it will encourage practitioners to explore new ways that the various electronic and database-type tools at our disposal allow us to search for, discover, confirm, and take advantage of trends and tendencies emerging in various courts as those trends and tendencies emerge—instead of 15 years after the fact.

C. Trends and Tendencies

This Section of the paper shows what the

study revealed. After dealing with the tendency of the Court to issue majority opinions which cited federal authority, and authority from other states, the study analyzes the tendencies of the Justices currently on the Court and what we might expect from the Court in the future with regard to its reliance on federal authority and authority from other states.

1. The Tendency of the Supreme Court to Issue Majority Opinions Citing Federal Authority Has Nearly Doubled Since 1982.

This study first measures the tendency of the Supreme Court of Texas to cite federal authority in the majority opinions it issued over the last twenty five years. In doing so, this study makes no effort to distinguish between a majority opinion of the Supreme Court which relied on federal authority to dispose of an issue, as compared to a majority opinion which cited federal authority as mere dicta. This study also makes no effort to distinguish between majority opinions which mentioned only one federal authority, and those which exhausted the existing federal authority on one or several points. Finally, this study makes no distinctions between majority opinions which relied on the Supreme Court of the United States, as opposed to those majority opinions which relied on a single opinion from a United States District Court. If a majority opinion of the Supreme Court of Texas relied on a federal authority for legal reasoning of any type, no matter how minimal or ministerial,¹⁸ this study counted it.

a. The Tendency of the Supreme Court to Issue Majority Opinions Citing Federal Authority Has Both Steadily Risen, and Has Nearly Doubled, Since 1982.

¹⁸ This study does eliminate, and does not count, those majority opinions in which a federal court certified a question to the Supreme Court of Texas, and the only federal authority cited in the opinion was to the decision of that federal court certifying the question to the Supreme Court.

Appendix Three to this paper sets for the raw data gathered while doing this study concerning the tendency of the Court, and the individual Justices on the Court, to issue majority opinions which cite federal authority. Studying those numbers will undoubtedly help the reader see, analyze, and appreciate the increasing tendency of the Court to issue majority opinions which cited federal authority, but the following charts provide a more easily visualized snapshot of that trend:

Chart C.1. Percentage of Majority Opinions of the Supreme Court Citing Federal Authority, Annual Measurement, 9/1/1980-8/31/2005.

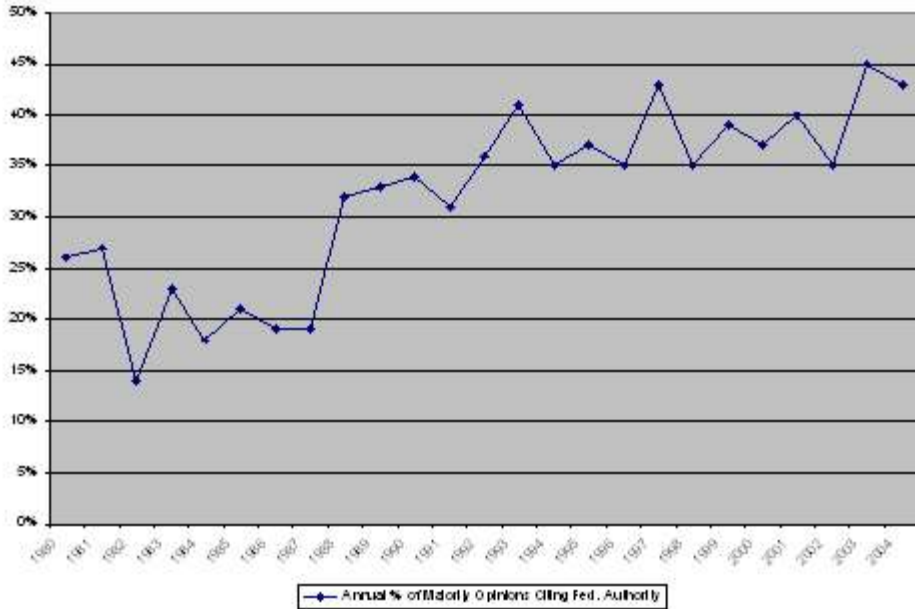
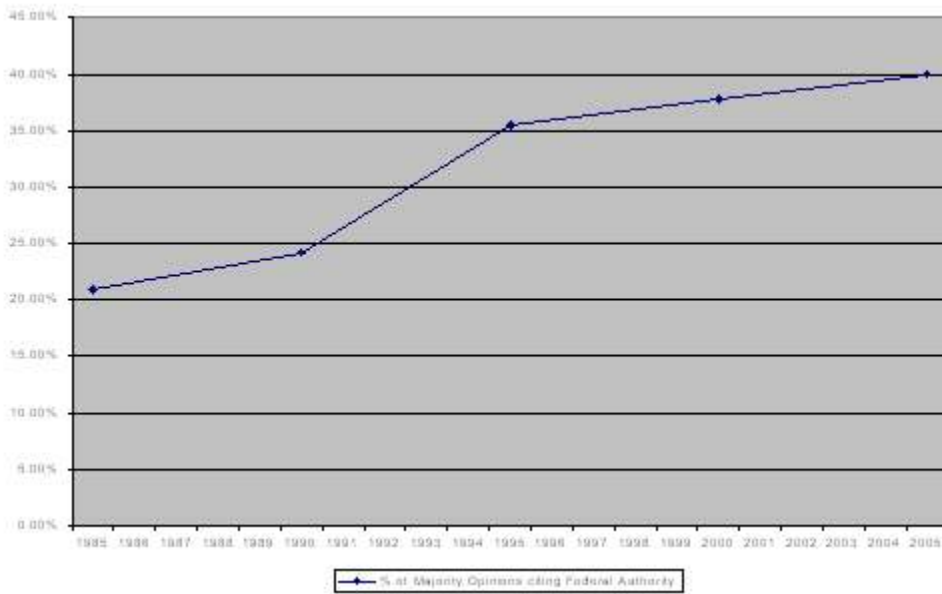


Chart C.2. Percentage of Majority Opinions of the Supreme Court Citing Federal Authority, Five Year Averages, 9/1/1980-8/31/2005.



As these charts reflect, in comparing successive five year periods of time since 1980, the percentage of majority opinions issued by the Supreme Court which cited federal authority has consistently risen. In the five year period from 9/1/1980 to 8/31/1985, 20.9% of the majority opinions issued by the Court cited federal authority. This tendency nearly doubled, to 39.96%, for the five year period of time from 9/1/2000 to 8/31/2005.¹⁹

It seems that the term of the Court ending 8/31/1989 marked a watershed year in the Court's tendency to issue majority opinions which cited federal authority. The following observations all reflect that the Court's tendency to issue majority opinions which cited federal authority really took off in the terms of Court beginning with the term ending 8/31/1989:

- in the eight terms of Court prior to the term ending 8/31/1989, the percentage of majority opinions citing federal authority only rose above 23% twice, and never

exceeded 27%;

- the percentage of majority opinions citing federal authority first broke 27% in the term of the Court ending 8/31/1989, when 32% of the majority opinions of the Court cited federal authority;

- in each of the sixteen terms from 8/31/1989 forward (with one exception as to the term ended 8/31/1992), the Court has cited federal authority in at least 30% of its majority opinions;

- in the five year period ending 8/31/1995, the percentage of majority opinions citing federal authority increased by nearly 50% over the percentage of such opinions issued in the prior five year period;

- in three of the five year periods covered by the study (including the first two of those periods), the Court issued roughly the same number of majority opinions:

--9/1/1980-8/31/1985 (650 majority

¹⁹ See Appendix Three for data.

opinions);
--9/1/1985-8/31/1990 (616 majority opinions); and
--9/1/1995-8/31/2000 (603 majority opinions).

Yet the number of majority opinions citing federal authority issued in the most recent of these periods (228) exceeded by 60%-70% the majority opinions citing federal authority issued by the Court in either of the first two of those five year periods (136 and 149, respectively);

--39% (i.e., nearly 2 out of 5) or more of the majority opinions of the Court cited federal authority:
--in five of the last ten years of the study; and
--in three of the last five years of the study.

The increased tendency of the Supreme Court of Texas over the last twenty five years to issue majority opinions citing federal authority is real, measurable, and significant.

2. The Tendency of the Supreme Court to Issue Majority Opinions Citing Authority From Other States.

This study next measures the tendency of the Supreme Court of Texas cite legal authority from other states in its majority opinions over the last twenty five years. In this regard, this study searched for majority opinions of the Supreme Court which cited law from other states, including case law, statutes, and the various Restatements of Law. As with the federal portion of this study, this study makes no effort to distinguish between authority from another state which the Supreme Court relied on to dispose of an issue, as compared to a such authority which the Supreme Court cited in mere dicta. This study also makes no effort to distinguish between majority opinions which mentioned only one authority from another state, and those majority opinions which exhausted the existing authority from one or all the other states on one or several points. Finally, this study makes

no distinctions between majority opinions which cited the court of last resort of another state, as opposed to those majority opinions which cited a single opinion from the lowest court in another state. If a majority opinion of the Supreme Court of Texas cited an authority from another state for legal reasoning of any type, no matter how minimal or ministerial,²⁰ this study counted it.

a. The Tendency of the Court to Issue Majority Opinions Which Cited Authority from Other States Has Increased Nearly 66%.

Appendix Two to this paper sets for the raw data gathered while doing this study concerning the tendency of the Court, and the individual Justices on the Court, to issue majority opinions which cite authority from other states. Studying those numbers will undoubtedly help the reader see, analyze, and appreciate the increasing tendency of the Court to issue majority opinions which cited authority from other states, but the following charts provide a more easily visualized snapshot of that trend:

²⁰ As with the federal portion of this study, this study eliminates, and does not count, those majority opinions in which a court in another state certified a question to the Supreme Court of Texas, and vice versa, and the only authority from another state cited in the opinion has to do with that certification order.

Chart C.3 Percentage of Majority Opinions of the Supreme Court Citing Authority from Other States, Five Year Averages, 9/1/1980-8/31/2005.

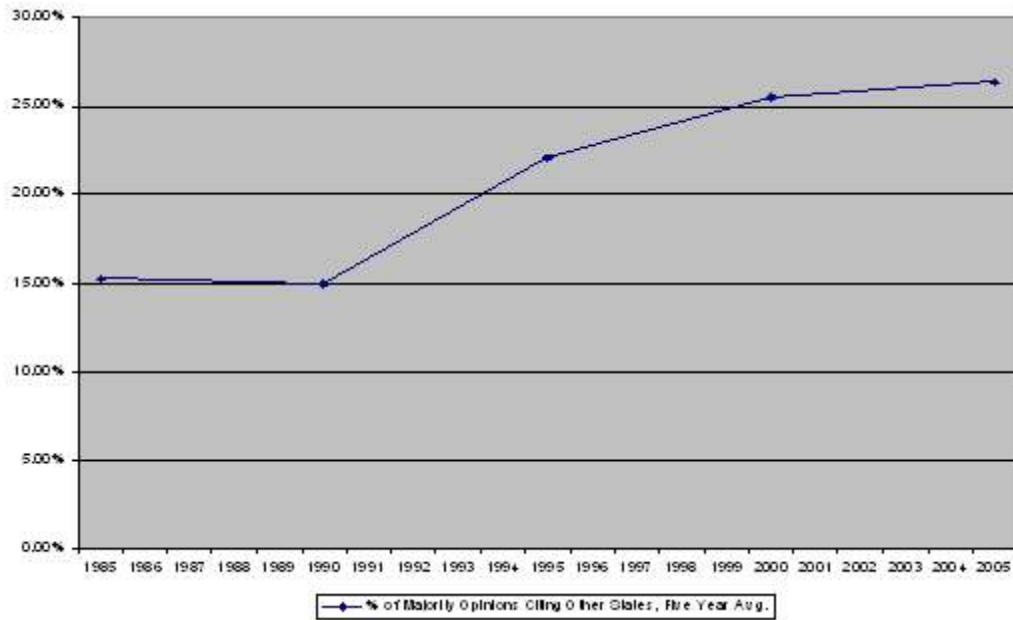
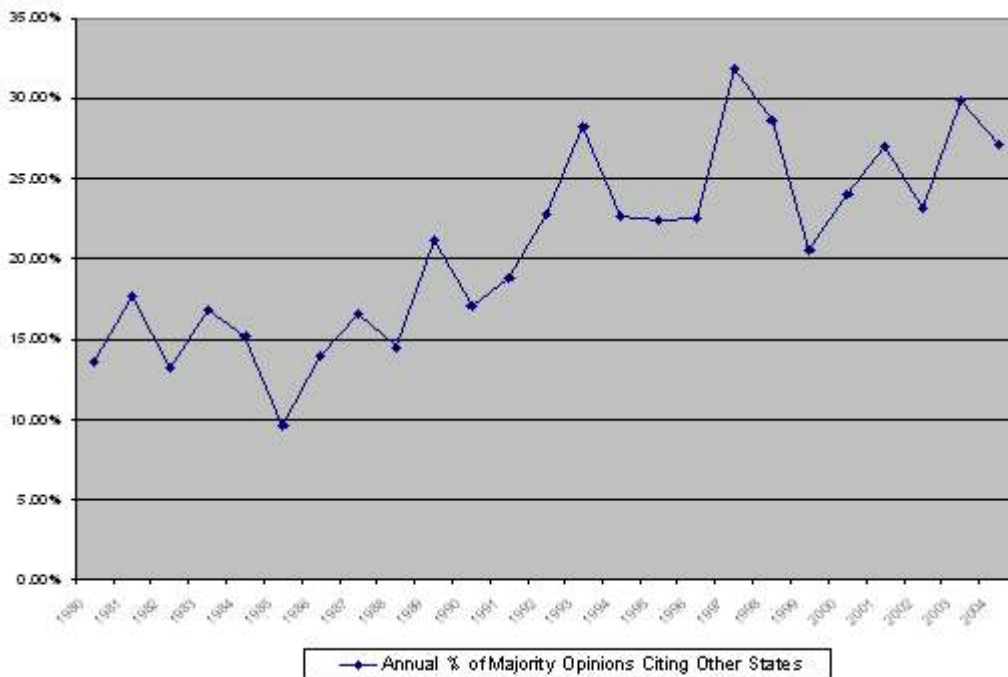


Chart C.4. . Percentage of Majority Opinions of the Supreme Court Citing Authority from Other States, Annual Analysis, 9/1/1980-8/31/2005.



In the five terms of the Court ending August 31, 1985, and in the five terms of the Court ending August 31, 1990, the Court cited authorities from other states in about 15% of its majority opinions.²¹ But over the next fifteen years, the Court’s tendency in that regard trended decidedly upward. In the five terms ending in the year 2005, the Court had cited authority from other states in a little over 26% of its majority opinions, a rate about 66% higher than in the first two five year periods in the study.²²

To the extent one year in this progression marks the beginning of the upward trend, one would point to the term of the Court which ended 8/31/1990:

- ! That term marked the first time in the twenty five year period in which more than 20% of the Court’s majority opinions cited authority from another state.²³
- ! Prior to that term, the majority opinions of the Court which cited authority from other states only once exceeded 17% of the total majority opinions of the Court, in four terms was less than 14%, and in one term was less than 10%.

At the latest, the upward trend in the Court’s issuance of majority opinions which cited authority from other states began in 1992. The term of the Court ending 8/31/1992 marked the last time the Court cited authority from other states in less than 20% of its majority opinions. In five of the last eight terms of the Court covered by the

²¹ 15.23% of the majority opinions of the Court cited authority from other states during the five terms of the Court ending in 1985, and 14.94% of the majority opinions of the Court issued during the five terms of the Court ending in 1990 cited such authority.

²² See Appendix Two for data.

²³ In that term, 21.19% of the majority opinions of the Court cited authority from other states.

study (9/1/1997-8/31/2005), at least 27% of the Court’s majority opinions cited authority from other states.

Once again, we see a real, measurable, and significant upward trend in the Court’s majority opinions over the last twenty-five years—the increased tendency of those majority opinions to cite authority from other states.

3. Unless the Newest Justices on the Court Reverse the Trend, We Can Expect a Continued Reliance by the Court in its Majority Opinions on Federal Authority and Authority From Other States.

a. Nearly Half of the Court Had Less Than One Year of Service on the Court as of the End of the Study.

The following table shows the names of the current Justices on the Supreme Court of Texas as of August 31, 2005, when this study ended, and the date on which they began services as Justices on that Court:

Table C.1. Current Justices and Their Respective Lengths of Service on Court as of 8/31/05.²⁴

Place	Justice	Service Began	No. of Years Served as of 8/31/05
6	Hecht, Nathan	1/1/89	16.7
3	O’Neill, Narriet	1/1/99	6.7
4/1	Jefferson, Wallace	4/18/01	4.7
7	Wainwright, Dale	1/1/03	2.7
9	Brister, Scott	11/21/03	1.8

²⁴ All information in this table came from the website of the Supreme Court of Texas. <http://www.supreme.courts.state.tx.us>.

4	Medina, David M.	11/10/04	.8
5	Green, Paul W.	1/1/05	.8
8	Johnson, Phil	4/11/05	.3
2	Willet, Don E.	8/24/05	0

As the foregoing table reflects, as of August 31, 2005, four of the nine Justices had served less than one full year on the Court; another two of the Justices had served less than three full years on the Court. Three of these six relatively new Justices did have prior experience as Justices on various courts of appeals in Texas.²⁵ As of August 31, 2005, two of the sitting Justices on the Court had served more than five full years on the Court.

b. The Five Most Senior Justices Have Authored Majority Opinions Which Cite Federal Authority and Authority from Other States at a Rate Higher Than the Court as a Whole.

As of the end of the study, three of the sitting Justices had served on the Court more than four full years,²⁶ and two more had served more than a year.²⁷ When we examine the tendencies exhibited by these Justices in the majority opinions they have written, we see that their tendencies have at least equaled or, in some respects, greatly exceeded the tendencies of the Court as a whole to issue majority opinions which cite federal authority or authority from other states. These tendencies would suggest a continued upward trend in the Court’s majority opinions in both those respects, especially if they influence the relatively new Justices on the Court.

i. The Most Senior Sitting Justices

²⁵ Justice Brister served on both the First Court of Appeals and the Fourteenth Court of Appeals in Houston, Justice Green served on the Fourth Court of Appeals in San Antonio, and Justice Johnson served on the Seventh Court of Appeals in Amarillo. *See* their respective profiles on the website of the Supreme Court of Texas at <http://www.supreme.courts.state.tx.us>.

²⁶ Chief Justice Jefferson, Justices Hecht and O’Neill. *See* Table C.1, *supra*.

²⁷ Justices Wainwright and Brister. *See* Table C.1, *supra*.

Have Tended to Write Majority Opinions Which Cite Federal Authority At a Rate Exceeding the Tendency of the Court as a Whole.

Three Justices currently on the Court had served more than four years on the Court as of the end of the study: Chief Justice Jefferson, Justice Hecht, and Justice O’Neill. For those three Justices:

- ! Chief Justice Jefferson: with the exception of his third full year on the Court (in which he only authored one majority opinion), at least half of the majority opinions written by him in any term of the Court cited federal authority.
- ! Justice Hecht: in eight of the last ten years, more than half the majority opinions written by Justice Hecht cited federal authority.
- ! Justice O’Neill: in the last five of her seven years on the Court, the percentage of majority opinions written by Justice O’Neill which cited federal authority:
 - always equaled or exceeded the percentage of such opinions authored by the Court as a whole; and
 - in three of those five years the percentage of majority opinions written by Justice O’Neill which cited federal authority exceeded 60%.

With regard to their tendency to author majority opinions citing federal authority, all five of the sitting Justices who have served on the Court more than one full year as of the end of the study fall in the top third of the Justices who began service on the Court since 9/1/1980. The following table reflects this ranking:

Table C.2: Justices Who Began Service on the Court after 9/1/1980 (and Per Curiam Opinions), Ranked by Tendency to Author Majority Opinions Which Cite Federal Authority (Bold Entries Indicate a Sitting Justice as of 8/31/2005).

Rank	Name of Justice	% of Justice's Maj. Ops. Citing Fed. Auth.
1	Smith	75
2	Wainwright	73
3	Jefferson	66
4	Phillips	65
5	Cornyn	63
6	Baker	63
7	Hecht	58
8	Gammage	57
9	Brister	53
10	Owen	53
11	O'Neill	53
12	Cook	52
13	Abbott	51
14	Enoch	48
15	Spector	46
16	Gonzales	43
17	Gonzalez	42
18	Doggett	41
	WHOLE COURT 9/1/2000-8/31/2005	39.96
19	Mauzy	39
20	Hankinson	36
21	Hightower	35
22	Rodriguez	33
23	Ray	33
24	Kilgarlin	31
25	Schneider	29
26	Hill	24
27	Robertson	21
28	Wallace	17
29	Per Curiam	12
30	Culver	0
31	Sondock	0
32	Medina	0
33	Green	No Maj. Ops.
34	Johnson	No Maj. Ops.
35	Willett	No Maj. Ops.

The four sitting Justices with less than one full year on the Court as of the end of the study rank at the bottom of this list, but because of their short lengths of service at the end of this study, this place on the ranking cannot mean very much in evaluating their future tendencies. Three of those four Justices assumed office only shortly before the end of the study and understandably had authored no majority opinions

as of the end of the study.²⁸ The fourth Justice in this the group, with only slightly longer service on the Court, had understandably authored only two majority opinions.²⁹

²⁸ Justices Green, Johnson, and Willett.

²⁹ Justice Medina.

ii. The Tendencies of the Most Senior Sitting Justices to Write Majority Opinions Which Cite Authority from Other States.

Chief Justice Jefferson, in no year have fewer than 33% of Justice O’Neill’s majority opinions cited authority from other states.³²

While not to the same extent as their tendencies with regard to federal authority, the tendencies of the three most senior sitting Justices on the Court indicates we can expect them to write majority opinions citing authority from other states at a rate that equals or exceeds the tendency of the Court as a whole.

With regard to the remaining two sitting Justices who have more than one year’s experience on the Court as of the end of the study:

With regard to the three most senior Justices on the Court as of the end of the study, we can say the following:

! The percentage of Chief Justice Jefferson’s majority opinions which cited authority from other states has always exceeded the percentage of such opinions by the Court as a whole. In three of his five years of service on the Court, he has written majority opinions citing authority from other states at a rate more than double the that of the Court as a whole. At least 33% of the majority opinions he wrote in any given year cited authority from other states.³⁰

! Justice Wainwright wrote no majority opinions in his first two years on the Court which cited authority from other states, but in his third year on the Court 75% of his majority opinions cited such authority.

! Over the two years he had served by the end of the study, the percentage of Justice Brister’s majority opinions which cited authority from other states has about equaled the recent percentage of such majority opinions by the Court as a whole.

The following table ranks the Justices who have joined the Supreme Court since September 1, 1980, in terms of the percentage of majority opinions which they authored that cited authority from other states (with a **bold** font identifying Justices on the Supreme Court as of August 31, 2005):

! The percentage of Justice Hecht’s majority opinions which cited authority from other states has varied over the years. The percentage of majority opinions written by Justice Hecht over the length of his service on the Court has slightly exceeded the percentage of the Court as a whole over the last ten years.³¹

! The percentage of Justice O’Neill’s majority opinions which cited authority from other states has always exceeded the percentage of such opinions by the Court as a whole, and in two years the percentage of such opinions by her has nearly doubled that of the Court as a whole. Like

³⁰ See Appendix Two.

³¹ See Appendix Two.

³² See Appendix Two.

Table C.3: Justices Who Began Service on the Court after 9/1/1980 (and Per Curiam Opinions), Ranked by Tendency to Author Majority Opinions Which Cite Authority from Other States.

Rank	Name of Justice	% of Justice's Maj. Ops. which cited authority from other states
1	Jefferson	53
2	Phillips	51
3	Owen	51
4	Cornyn	50
5	Smith	50
6	Medina	50
7	Enoch	43
8	Schneider	43
9	O'Neill	41
10	Cook	41
11	Hightower	39
12	Abbott	38
13	Hankinson	36
14	Gonzales	36
15	Baker	35
16	Spector	33
17	Rodriguez	33
18	Gonzalez	28
19	Hecht	27
20	Wainwright	27
21	Brister	27
22	Kilgarlin	27
	<i>COURT AS A WHOLE 9/1/2000-8/31/2005</i>	<i>26.31</i>
23	Doggett	25
24	Gammage	23
25	Sondock	20
26	Mauzy	20
27	Ray	19
28	Robertson	16
29	Wallace	8
30	Hill	4
31	Per Curiam	3
32	Culver	0
33	Green	No Majority Opinions
34	Johnson	No Majority Opinions
35	Willett	No Majority Opinions

As shown in this table, one third of of the Justices still on the Court as of August 31, 2005, ranked in the top third of Justices tending to cite authority from other states, another third of them were in the second third of Justices tending to cite authority from other states, and a third of the Justices had not, at the end of the study, authored any majority opinions (not surprising, since those three Justices had only just begun serving on the Court). But even those sitting Justices falling in the second third of the ranking wrote majority opinions

which cited authority from other states at about the same frequency as the Court as a whole over the last five years of the study.

- iii. **We Should Monitor the Propensity of the Newer Justices on the Court to Cite Federal Authority and Authority from Other States in Their Majority Opinions.**

The four newest Justices on the Court have not shown, as of the end of the study, whether or to what extent they will tend to cite federal authority or authority from other states in their majority opinions.

The Justices with two to three years of experience on the Court, as of the end of the study, have exhibited a propensity that greatly exceeds the tendency of the Court as a whole to write majority opinions which cite federal authority. Their past opinions also suggest that they might write majority opinions which cite authority from other states at a rate higher than the Court as a whole. We do not know what propensity they will exhibit in these regards in the future. But, assuming that they will follow the tendencies of their predecessors who joined the Court in the last twenty five years, we would expect at least an even chance that their tendencies to author majority opinions which cite federal authority or authority from other states will increase. For example:

! Of the ten Justices who served seven or eight years on the Court, half of them authored the highest number of majority opinions citing federal authority in their last three years on the Court,³³ and nearly half of them had their greatest percentage of majority opinions citing federal authority in those final three years on the Court.³⁴

! Of the seven Justices who served more than seven years of the Court,³⁵ three of them authored their highest number of majority opinions citing authority from other states after that seventh

year.³⁶ Of the ten Justices who served seven or eight years on the Court,³⁷ five of them authored their highest number of majority opinions citing authority from other states in last term of Court or next to last year of Court in which they served.³⁸

We should monitor the newer Justices on the Court to see if they follow the trends of their predecessors as to their tendency to cite federal authority and authority from other states in their majority opinions. Given that these Justices with less than three years of experience comprise two thirds of the members of the Court, their tendencies could dominate the tendencies of the Court as a whole in this regard.

c. When They Have Written Majority Opinions Citing Federal Authority, The Five Most Senior Justices Have Tended to Issue Opinions Citing the U.S. Supreme Court and the Fifth Circuit, and, to a Lesser and Mixed Extent, Some Other Federal Courts.

For the current members of the Court, five had authored majority opinions by the end of the study which cited federal authority.³⁹ A review of those majority opinions identified the various federal courts which they cited. Tallying, for each of those five Justices, the number of cases in which each of those five Justices had authored a majority opinion which cited specific federal courts allowed an evaluation of the likelihood that a majority opinion by any of these five Justices would cite a case from a particular federal court.

³³ In alphabetical order: Justices Baker, Doggett, Hightower, Spector, and Mauzy.

³⁴ In alphabetical order: Justices Doggett, Hightower, Kilgarlin, and O'Neill. Justice O'Neill still serves on the Court. Additionally, Justice Baker came within 1 percentage point of having his highest percentage of majority opinions citing federal authority in his last year on the Court.

³⁵ In order of total numbers of Court terms of service, as of August 31, 2005: Justices Phillips, Hecht, Gonzalez, Enoch, Owen, Ray, and Wallace.

³⁶ In order of total numbers of Court terms of service, as of August 31, 2005: Justices Hecht, Enoch, and Ray.

³⁷ In order of total numbers of Court terms of service, as of August 31, 2005: Justices Wallace, Robertson, Doggett, Spector, O'Neill, Hightower, Kilgarlin, Comyn, Mauzy, and Baker.

³⁸ In order of total numbers of Court terms of service, as of August 31, 2005: Justices Wallace, O'Neill, Hightower, Mauzy, and Baker.

³⁹ Chief Justice Jefferson, Justices Hecht, O'Neill, Wainwright, and Brister.

As the following chart reflects, when these five Justices write majority opinions which cite federal authority, their majority opinions reflect citations to some federal courts more than others:

- ! All these Justices have exhibited a strong tendency to cite opinions from the United States Supreme Court—for four of the five of these Justices, over 80% of their majority opinions which cite federal authority cite authority from the U.S. Supreme Court, and for the fifth Justice, his percentage is over 70%.
- ! All these Justices have exhibited a strong tendency to cite opinions from the Fifth Circuit—for all five of these Justices, over 50% (and for three of the Justices, over 60%) of their majority opinions which cite federal authority cite authority from the Fifth Circuit.

In a legal system in which the United States Supreme Court is the Court of ultimate federal jurisdiction, and in which the State of Texas lies in the Fifth Circuit of the federal court system, these two tendencies should not surprise us. While no other federal courts provide as much guidance to these five Justices as do the United States Supreme Court or the Fifth Circuit, some other federal courts appear more frequently in the majority opinions of these five Texas Supreme Court Justices than do others. For example:

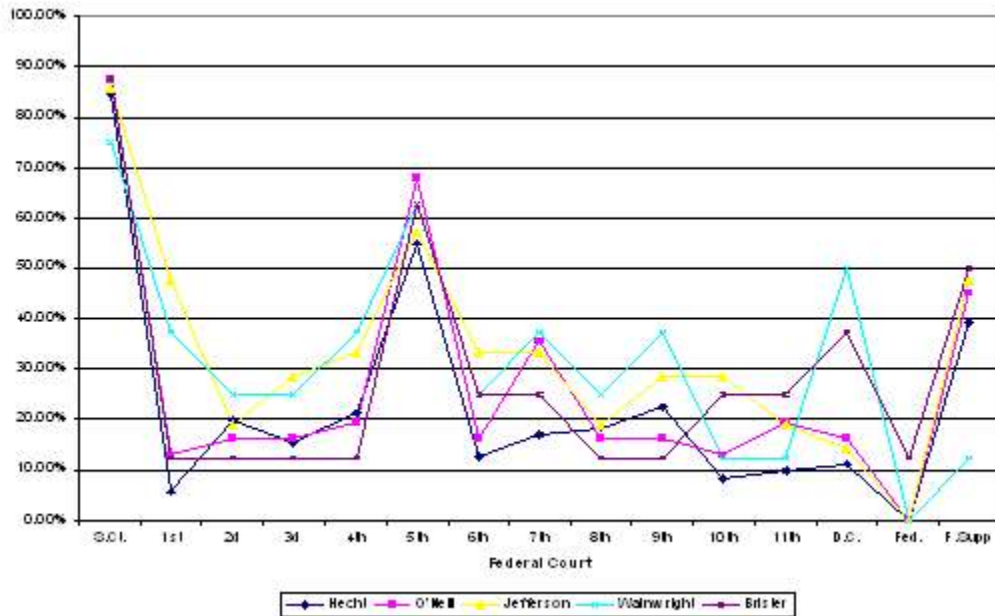
- ! Four of these Justices have exhibited a marked tendency to cite opinions from federal district courts⁴⁰--for these four Justices, 40%- 50% of their majority opinions which cite federal authority cite authority from the federal district courts (this study did not try to identify if the Justices focused on specific district courts).
- ! Other federal courts attracted the attention of various of these five Justices to some minor extent, such that individual Justices cited them in at least 30% of their majority opinions

which cited federal authority, to wit:

- ! the Seventh Circuit: in majority opinions by Chief Justice Jefferson, Justice O’Neill, and Wainwright;
- ! the First and Fourth Circuits: in majority opinions by Chief Justice Jefferson and Justice Wainwright;
- ! the Ninth Circuit: in majority opinions by Justice Wainwright; and
- ! the D.C. Circuit: in majority opinions by Justices Wainwright and Brister.

⁴⁰ Chief Justice Jefferson, Justices Hecht, O’Neill, and Brister.

Chart C.5. Majority Opinions Citing Federal Authority: Specific Federal Courts Cited by the Five Most Senior Sitting Justices (See Appendix Five, for Data, Tables C.8-9).



In a system where the Court has discretionary jurisdiction, and the initial challenge for the practitioner lies in trying to attract the interest of at least one, and perhaps four, of the Justices, invoking the writings of the appropriate federal authority in one’s Petition for Review or Brief might make a difference, and hence the most cited federal courts mentioned above bear noting.

One other interesting observation—if every federal court identified above were mentioned in an equal number of majority opinions authored by these Justices, then we would take that as some evidence that these Justices had fully surveyed all existing federal courts every time they chose to invoke federal authority on a given issue. As the foregoing comments indicate, and the foregoing chart confirms, the majority opinions authored by these Justices do not always reflect such a survey when they invoke federal authority. The failure of every majority opinion citing federal authority to cite authority from every federal court might be a function of any number of factors—not all federal courts might write on every issue, the parties might have emphasized the importance of only one or two federal courts in their briefs, or the Court may favor one or more federal courts over others on various issues. This might indicate another reason to keep track of the happenings in those federal courts

which appear more frequently in the Justices’ majority opinions.

- d. **When They Have Written Majority Opinions Citing Authority from Other States, the Five Most Senior Justices Have Tended to Issue Opinions Which Cite Authority from New York, California, and New Jersey, but Their Majority Opinions Do Not Consistently Cite Authority From Any Other State.**

Assume the following happily monolithic legal world: the courts of last resort in every state have written on every legal issue, including those not yet addressed by the Supreme Court of Texas. Each time the Supreme Court of Texas addresses an issue of first impression, or an issue on which it has decided to reconsider the law, it merrily surveys the law in all the other states, and then issues an opinion which recounts that survey. In this opinion, the Court rejects the law of some states, follows the law of other states, and comments on the law of the remainder. And if one plotted the tendency of the authors of these majority opinions to survey the law of every other state, the resulting chart would have several straight lines superimposed on top of each other running

perpendicular to the “100%” mark along the top of the graph. We could have High Tea on the mesa created by plotting those results.

But if you want to see what the world really looks like on this issue, take a look at Chart C.6, found in Appendix Six to this paper. This Chart reflects the states which the five most senior Justices (i.e., Chief Justice Jefferson, and Justices Hecht, O’Neill, Wainwright, and Brister) tend to cite when they issue majority opinions citing authority from other states. When you review this Chart you do not see the horizontal, overlapped straight lines at the top of the graph described in the preceding paragraph; instead, you find a mess of tangled wire jumbled mostly below the thirty percent mark, interspersed with a few errant sparks where a specific Justices has broken ranks to cite to the law of a particular state. And when you consider that most of those sparks reflect the tendency of the newest of the five Justices with the fewest opinions of the five (i.e., Chief Justice Jefferson, Justice Wainwright, and Justice Brister), you realize that, with the passage of time and the issuance of more opinions by these three Justices, it is entirely likely that most of these sparks will become smothered in the tangle at the thirty percent level. You can see the data supporting Chart C.6 in the tables preceding that Chart, found in Appendix Six to this paper.

We already know, from Section C.2., above, that the Court has shown a increasing tendency to cite law from other states in its majority opinions; but Section C.2. also shows us that in about seventy percent of its majority opinions the Court does not cite the law of any other state. Chart C.6 also shows us certain things when the five Justices mentioned above write majority opinions which cite authority from other specific states. Chart C.6 shows us that, solely in the majority opinions written by the five Justices mentioned above which cite authority from other states, those five Justices:

- ! All cite the law of only the following state in at least half of these majority opinions: New York.
- ! In addition to the law of New York, four of the five Justices (Chief Justice Jefferson, Justices Hecht, O’Neill, and Wainwright) cite the law of only one additional state in at least half of these majority opinions they write: California.

- ! In addition to the law of New York, they all cite the law of only one additional state in at least 40% of these majority opinions they write: New Jersey.
- ! In addition to the law of New York, California, and New Jersey, all five of these Justices cite the law of only the following five states in at least 20% of these majority opinions they write: Alabama, Arizona, Georgia, Michigan, Missouri.
- ! In addition to the laws of the states mentioned in the immediately preceding subparagraph, four of these five Justices (though not necessarily the same four in each instance) cite the law of the following 12 states in at least 20% of these majority opinions they write: Colorado, Illinois, Indiana, Kansas, Kentucky, Massachusetts, Minnesota, North Carolina, Pennsylvania, Tennessee, Washington, and Wisconsin.
- ! for the rest of the states, these five Justices do not (collectively) cite them much.

When we analyze the extent to which these five Justices have actually followed authority from other states, our search for a Rosetta Stone or trump to ensure victory before the Court on an issue of first impression comes to an end. Chart C.7, found in Appendix Six to this paper, starts with the universe of majority opinions in which one of these five Justices cite authority from other states, and graphs the percentage of those opinions in which each Justice chose to actually follow (as opposed to merely cite) the law of a given state. As you can see from Chart C.7.:

- ! There is no single state which all five of these Justices, or any four of these Justices, or even any three of these Justices, followed in at least 50% of these opinions.
- ! Two of the Justices (though not always the same two, and usually two of the newer Justices) followed the law of these few states in at least 50%

of these opinions: California, Illinois, Minnesota, and New York.

- ! As many as four of the Justices followed the law of just the following one state in at least 40% of these opinions: California.
- ! In addition to the law of California, at least three of the Justices (though not the same Justices as for California) followed the law of just the following one state in at least 40% of these opinions: New York.
- ! In addition to the laws of California and New York, the same three Justices that followed New York law in 40% of these opinions followed the law of just this one additional state in at least 30% of these opinions: New Jersey.
- ! All these five Justices followed the law of just these two states in at least 20% of these opinions: California and New York.
- ! Four of these five Justices (always the same four) followed the law of just these two additional states in at least 20% of these opinions: Missouri and Washington.

As mentioned with regard to federal authority, in a system where the Court has discretionary jurisdiction, the initial job of the practitioner lies in trying to attract the interest of at least one, and perhaps four, of the Justices. If that can happen by invoking authority from other states in one's Petition for Review or Brief, then each individual Justice's particular tendencies as reflected by the Tables and Charts in Appendix Six to this paper might bear noting. But it also seems that searching authority from another state for a cogent argument would make for a more meaningful strategy than trying to identify one or two states for which the Justices have an affinity.

4. Institutional Factors Which May Have Contributed to the Increased Tendency of the Court to Issue Majority Opinions Which Cite Federal Authority and Authority from Other States.

Putting aside any effect which judicial

philosophy and political affiliation may have had on the Court, some institutional factors may have influenced the tendency of authors of majority opinions to cite federal authority and authority from other states over the twenty five year period ending August 31, 2005. Consider the following, all of which came into play at or about the time the Supreme Court began to increase its tendency to issue majority opinions which cite federal authority and authority from other states:

a. The Advent of Discretionary Jurisdiction in 1987.

For judgments that became final on or after June 20, 1987,⁴¹ the Government Code gave the Supreme Court of Texas the discretion to not exercise its jurisdiction over cases involving error by the courts of appeals unless such an error was "of such importance to the jurisprudence of the state that, in the opinion of the supreme court, it requires correction...."⁴² As one former Supreme Court Justice put it:

The Supreme Court of Texas also has jurisdiction over matters of importance to the jurisprudence of the state. This jurisdiction is discretionary and concerns the public interest more so than the private right.⁴³

We cannot know from this study whether discretionary jurisdiction affected, either directly or indirectly, the tendency of the Supreme Court to issue majority opinions which cite federal authority or authority from

⁴¹ V.T.C.A., Government Code §22.001, Historical and Statutory Notes.

⁴² V.T.C.A., Government Code §22.001(a)(6)); see James A. Vaught, *Getting Aggressive on Appeal: Making New Law, Changing Old Law, and Other Acts of Civil Disobedience. Demographics of a Successful Appeal to the Supreme Court of Texas*, Fifth Annual Advanced Civil Appellate Practice Course, Chapter W, Page 1 (1991).

⁴³ Honorable Craig T. Enoch and Michael S. Truesdale, *Issues and Petitions: The Impact on Supreme Court Practice*, 31 ST. MARY'S L. J. 565, 571 (2000), citing Hon. Ted. Z. Robertson & James W. Paulson, *Rethinking the Texas Writ of Error System*, 17 TEX. TECH L. REV. 1, 13 (1986) (describing the jurisprudential goals of the Section 6 jurisdiction).

other states. But the advent of that discretionary jurisdiction did correlate with the increased tendency of the Court to cite those authorities, and thus bears notice.

b. Additional Legal Staff in 1982 and 1989.

Beginning in about the term of the Court ending August 31, 1982, all Justices on the Supreme Court of Texas were assigned two Briefing Attorneys.⁴⁴ While there apparently was at least one year in which this complement of Briefing Attorneys (or, as they have now been designated, Law Clerks) was not filled,⁴⁵ that one year appears the exception rather than the rule.

Of perhaps equal, or more, import in this analysis is the assignment of a Staff Attorney to each Supreme Court Justice beginning in about the summer of 1989.⁴⁶

⁴⁴ Confirmation of this change came by way of a very pleasant trip down memory lane, through a conversation with Chief Justice John Cayce of the Second Court of Appeals, also a former Supreme Court Briefing Attorney for former Supreme Court Justice Charles Barrow, and through an exchange of e-mails on February 8-10, 2006, with Osler McCarthy, current Staff Attorney for Public Information for the Court. Many thanks to Chief Justice Cayce for his memories, and to Osler for the independent research he did by checking with former Chief Justice Tom Phillips' executive assistant.

⁴⁵ In the Annual Statistical Reports of the Office of Court Administration, found on its website at www.courts.states.tx.us/oca, and their respective sections entitled "Demographic Profiles of Law Clerks and Attorneys in Appellate Courts", there were some years the Supreme Court had fewer than 18 Briefing Attorneys— for example, in the term of the Court ending 8/31/1997, the Court had 17 Briefing Attorneys.

⁴⁶ Thanks to Osler McCarthy for confirming this piece of information through Bill Willis, Chuck Lord, and Bill Hill, all former Staff Attorneys for the Supreme Court of Texas when the Central Staff Attorney Office existed, and then subsequently Staff Attorneys assigned to individual Supreme Court Justices.

These additions to the legal staff available to each Justice might have affected the tendency of the Court to cite federal authority and authority from other states in several ways:

- ! On the most basic level, the more lawyers available to work on something, the more thorough a job they can do in surveying the law, and in looking beyond the law in Texas to see if authorities outside Texas might shed light on a particular analysis.
- ! With more fresh faces coming to the Court each year in the way of Briefing Attorneys or Law Clerks, that would seem to increase the likelihood that the Court would find itself exposed to authorities from other jurisdictions either discussed or considered in law school environments (either in the classroom or in law review operations), or to which the prior clerking experiences of those Briefing Attorneys or Law Clerks exposed them.
- ! The existence of a Staff Attorney assigned to a particular Justice would probably help bolster continuity in the research and writing of a particular Justice's office, in much the same way that lawyers in a law firm who work together come to understand each other's likes, dislikes, and philosophies. If a particular Justice had the inclination to cite federal authority or authority from another state, or had a favorite federal circuit or state to look to when wanting to see how others approach a particular legal issue, a Staff Attorney who had served that Justice for several years would know of that inclination and could enhance and expedite the consideration and use of such authorities.

Once again, we do not know whether these additional lawyers affected the tendency of the Court to cite federal authorities or authorities from other states. But we do know that, more so with the addition of individualized Staff Attorneys than with the increase in the number of Briefing Attorneys, the timing of the

increase of legal personnel did coincide with the increased tendency of the Court to issue majority opinions which cited federal authority and authorities from other states.

c. Conversion from Applications for Writ of Error to Petitions for Review in 1997.

Effective September 1, 1997, the Court replaced the 50-page Application for Writ Error practice with the 15-page Petition for Review practice. Petitions for review were to “concentrate on the reasons the Supreme Court should exercise jurisdiction to hear the case.”⁴⁷ The term of the Court which ended August 31, 1998, marked the last time an application for writ of error was filed with the Court, and the term of the Court which ended August 31, 1999, saw the Court dispose of the last applications for writ of error which had been filed with it.⁴⁸ The first case which a Lexis search revealed as one in which a majority opinion of the Court cited federal authority in deciding a case brought by a petition for review (as opposed to an application for writ of error) occurred in 1998.⁴⁹ The Court issued this opinion as a Per Curiam opinion.⁵⁰ By the term beginning September 1, 1999, the overwhelming majority of the opinions of the Court which a Lexis search revealed as citing federal authority dealt with cases brought by a petitions for review (in fact, a cursory review of those opinions did not reveal a single case brought by application for writ of error).

We do not know whether, or to what extent, this conversion to the petition for review system affected the Court’s tendency to cite federal authority and authority from other states in its majority opinions. One would not suspect much of an effect on that tendency from the implementation of the petition for

review system, because we assume that in most cases under that system the Court would have the benefit of a brief of up to 50 pages from all parties,⁵¹ so it would have the benefit of as much, or perhaps more, briefing from the parties as it would have had under the application for writ of error system. We do know that:

- ! The percentage of majority opinions the Court issued which cited authority from other states continued to increase in the successive five year periods following the Court’s adoption of the Petition for Review procedure.⁵²
- ! The greatest percentage of the Court’s majority opinions citing authority from other states occurred in the year immediately following the implementation of the Petition for Review system.⁵³ and
- ! The six highest percentages of majority opinions citing federal authority occurred in the eight years after the Court implemented the Petition for Review system.⁵⁴

We also know this: by the advent of the Petition for Review system, the Court also exercised discretionary jurisdiction. If you are a Justice and trying to determine whether a case interests you enough for you to vote to invoke the discretionary jurisdiction of the Court to hear it, it is easier and quicker to see if a 15-page petition interests you than a 50-page application. And that 15-page limit makes it more important than ever to the practitioner to identify what kinds of things interest the Justices, and to bring those things front and center.

d. Turnover on the Court: a Change in the Average and Median Length of Service of Justices on the Court Coincided With a Change in the

⁴⁷ Tex. R. App. P. 53, Notes and Comments.

⁴⁸ See the section entitled “Summary of Reported Activity” found in the 2005 Annual Statistical Report of the Office of Court Administration, found on its website at www.courts.states.tx.us/oca.

⁴⁹ *State of Texas v. Roland*, 968 S.W.2d 357 (Tex. 1998).

⁵⁰ *Id.*, at 358.

⁵¹ TRAP 55.6.

⁵² See TableC.3, *infra*.

⁵³ In the term ended 8/31/1998, 32% of the majority opinions issued by the Court cited authority from other states. See Table C.3, above.

⁵⁴ See TableC.1, *infra*.

Court's Tendencies.

To gain some perspective on gradual changes in continuity and subtle turnover on the Court, you can measure and compare the Justices' collective experience on the Court at routine intervals. For example, you can average their respective lengths of service on the Court (i.e., add up the number of years of service on the Court each of the sitting Justices has, and divide by nine). You can also determine the median length of service for those Justices (i.e., pick the Justice whose length of service on the Court exceeds four other Justices, and is also less than four other Justices).

If, for each year in the study, we calculate both the average length of service on the Court and the median length of service on the Court for the Justices at the beginning of each term of Court, we notice a couple of coincidences:

- ! The greatest average length of service and median length of service on the Court occurred at the beginning of the first term in this study—the term beginning September 1, 1980.

- ! The six lowest average lengths of service, and five of the seven lowest median lengths of service, occurred in the five consecutive terms of the Court which ran from September 1, 1988, through August 31, 1993—the same time frame which saw the emergence of the Court's increased tendency to issue majority opinions which cited federal authority and authority from other states.

The following chart shows this pattern of average and median lengths of service, and reflects the data shown in the table in Appendix Four.

Chart C.6. Average and Median Lengths of Service for Justices Sitting on the Supreme Court—9/1/1980-9/1/2004.



One cannot cite this study for the proposition that newer Justices have a greater likelihood to rely on federal authority or authority from other states than do more experienced Justices. But one can point to this aspect of this study as an example of why we should take note of a shift, especially gradual shifts, in the average and median experience of Justices on a Court, and watch the tendencies of the Court, and the individual Justices on the Court, as these shifts take place.

In that regard, the following bears attention for future consideration: for the term of Court following the end of this study—i.e., the term beginning September 1, 2005—both the average and median length of service on the Court of the sitting Justices dropped to 3.82 years and 1.8 years, respectively—lower in both respects than all but two years in the twenty five years covered by this study, and the most precipitous one-year drop in both since—you probably guessed it—1989. See the table in Appendix Four.

e. Other Factors.

We can speculate about other influences which might have affected the extent to which Justices cited federal authority or authority from other states in majority opinions. For example:

i. The Advent and Expanded Use of Electronic Legal Search Databases by the Court in 1990 or 1991.

The advent and expansion of the electronic legal search engines undoubtedly made finding such authority easier. And while Westlaw and Lexis made their way into the various levels of the legal profession at different times, another informal polling of some people associated with the Court suggests that the Court started using such search engines in about 1990 or 1991.⁵⁵ The introduction of law students (who eventually become Briefing Attorneys, Law Clerks, and Justices) and the Bar as a whole to such search engines does dovetail with the increased tendency of the Court to issue majority opinions which cited

⁵⁵ Thanks to James A. Vaught, former Briefing Attorney to Justice Maurice Campbell in 1980-1981, and former Staff Attorney to Justice Jack Hightower beginning in 1989, for providing this estimate via e-mail in May, 2006. Also thanks to Osler McCarthy for providing a similar estimate through Bill Hill, a former Staff Attorney for the Supreme Court of Texas, via e-mail in May, 2006.

federal authority and authority from other states.⁵⁶

ii. Membership of the Justices in Various Organizations Which Encourage Awareness of Developments in Other Jurisdictions.

We also need to keep in mind, not only for historical purposes but also for predicting future tendencies of the Court, that the Justices do belong to organizations which increase their opportunities to keep abreast of what goes on in the federal courts and in other state courts. Consider, for example, the American Law Institute. The ALI has the following stated purpose, as revealed in Section 1.01 of its Bylaws, in its Certificate of Incorporation, and as set forth on the home page of its website:

The particular business and objects of the society are educational, and are to promote the clarification and simplification of the law and its better adaptation to social needs, to secure the better administration of justice, and

⁵⁶ Given the ephemeral nature of the entries on the Wikipedia site on the internet, one has to take those entries with a grain of salt. But the following appeared on the Wikipedia entry for Lexis on March 8, 2006: “Only in the early 1970s did the West Publishing Company recognize the pent-up demand for computerization of legal research. It responded by developing its own service, called Westlaw, which launched in 1975 but did not offer true full-text searching like LEXIS until December of 1976.” See <http://en.wikipedia.org/wiki/LexisNexis>.

Furthermore, the following appeared on the Wikipedia entry for Westlaw on March 8, 2006: “Both Westlaw and LexisNexis started in the 1970s as dial-up services with dedicated terminals. The earliest versions used acoustic couplers or key phones; then smaller terminals with internal modems (Westlaw’s was known as WALT[2]).”

“Around 1989, both started offering programs for personal computers that emulated the terminals, and when Internet access became available, an Internet address (such as westlaw.westlaw.com) became an alternative that could be selected within the “Communications Setup” option in the client program, instead of a dial-up number.” See <http://en.wikipedia.org/wiki/Westlaw>.

to carry on scholarly and scientific legal work.⁵⁷

To that end, the ALI has, through its members from the United States and the rest of the world, published various Restatements of Law, which the ALI says were intended to inform the bench and bar “what the law was.” It has furthermore published many model codes and done extensive work concerning the development and monitoring of the Uniform Commercial Code, in conjunction with the National Conference of Commissioners on Uniform State Laws.⁵⁸

Apocrypha from several sources who will remain unnamed suggests that, following his appointment and then re-election to the Chief Justice position on the Court, Chief Justice Phillips encouraged and promoted membership in the ALI among the members of the Court. In support of these reports, consider that, as of March 8, 2006, the ALI listed the following Texas Supreme Court Justices and former Justices of that Court among its members:

Former Texas Supreme Court Justices Who Are Members of the ALI (in alphabetical order):

The Honorable Gregg Abbott
The Honorable James A. Baker
The Honorable Craig T. Enoch
The Honorable William L. Garwood
The Honorable Deborah G. Hankinson
The Honorable Priscilla R. Owen
The Honorable Thomas R. Phillips
The Honorable Xavier Rodriguez

Current Texas Supreme Court Justices Who Are Members of the ALI (in alphabetical order):

The Honorable Scott A. Brister
The Honorable Paul W. Green
The Honorable Nathan L. Hecht
The Honorable Wallace B. Jefferson
The Honorable Harriet O’Neill
The Honorable Dale Wainwright

⁵⁷ See the ALI’s website at <http://www.ali.org/>.

⁵⁸ From “About the American Law Institute” on the portion of ALI’s website called “This is ALI”, at <http://www.ali.org>, as of March 8, 2006.

Other than Justice Green, who was admitted to the ALI on or about December 8, 2005,⁵⁹ I have no idea when any of the Justices and former Justices became members of ALI. But it does appear that with the exception of one Justice whose service on the Court was limited to a little over one year in 1979-1980,⁶⁰ none of the Justices who served on the Court between 1980 and 1987 remain members of the ALI; we do not know if they were members of the ALI while on the Court. We do know that, for Justices who joined the Court in 1987 and later, nearly half are now members of the ALI,⁶¹ and just over half are not⁶²—though three of the most recently added Justices to the Court⁶³ could shift that virtual parity if they become members of ALI. But the 1987 watershed mentioned above, in terms of possible ALI membership, does coincide with the tendency of the Court to issue more majority opinions which cited federal authority and authority from other states. Whether this amounts to anything other than a mere possible coincidence, we cannot know.

I tried to look at the membership of other organizations (the National Conference of Commissioners on Uniform State Laws and the Federalist Society, to name two) to see which, if any, of the current members of the Court belonged to those organizations. I could not figure out how to identify the members of those organizations. But it does

⁵⁹ 28 THE ALI REPORTER 8, Number 2, Winter 2006.

⁶⁰ Justice Will Garwood, who served a little over a year, from November 15, 1979, until December 31, 1980. See portion of website of Supreme Court of Texas, "Court History, Lines of Succession of Supreme Court of Texas Justices, Place 8", at <http://www.supreme.courts.state.tx.us/history/j8.asp>.

⁶¹ Former Chief Justice Phillips, Chief Justice Jefferson, and (in order of Place on the Court and date service began) Justices Owen, O'Neill, Abbott, Rodriguez, Green, Hecht, Hankinson, Wainwright, Garwood, Baker, Enoch, and Brister.

⁶² In order of Place on the Court and date service began: Justices Doggett, Willett, Cook, Spector, Gonzalez, Gonzales, Medina, Culver, Hightower, Smith, Cornyn, Gammage, Schneider, Johnson, and Mauzy.

⁶³ Justices Medina, Johnson, and Willett.

probably bear considering that Justices of the Court might belong to organizations which prompt, promote, or increase the likelihood that the Justices will consider legal authority from outside the state of Texas. This may inform our choice of authority to cite to the Court.

D. Conclusion.

The decision making process of the Supreme Court, as reflected in its majority opinions, results from myriad influences: the law, the facts, reasoning, argument, predisposition, philosophy, personalities, and so on. A mechanical analysis, such as provided by this study, cannot predict the outcome of any one case, nor the authority which the Court will find persuasive or important in deciding any one case.

Having said that, the increased tendency of the Supreme Court of Texas over the last quarter century to issue majority opinions which rely on federal authority and authority from other states constitutes a real, measurable, and significant phenomena which we should not ignore. On one level, this phenomena suggests that those with matters before the Supreme Court of Texas should not hesitate to rely on federal authorities and authorities from other states and in the Restatements of Law—in fact, maybe practitioners have done so for the last twenty five years, and it is this very practice which has prompted the trends we see reflected in the opinions of the Supreme Court. Only an analysis of the authority cited in the briefs in the cases in which the Supreme Court issued majority opinions could confirm or rebut that possibility. On this same level, that phenomena further suggests that lawyers should consider those sources of authorities as they structure and develop their lawsuits, at least when they anticipate a case might find its way to the Supreme Court.

On another level, this phenomena suggests that the appellate practitioner should take advantage of available tools to monitor, measure, and determine, as they occur, the tendencies of the Court as a whole, and the individual Justices on that Court. In addition to monitoring the ongoing tendencies of that Court to rely on federal authority and authority from other states, for example, we might consider:

- ! attempting to identify which, if any, federal circuits the Court, or individual members of the Court, find most helpful, either generally or with respect to given issues;

- ! attempting to identify individual justices and judges in other jurisdictions whose opinions seem most helpful to the Court, or its individual members, either generally or on specific issues; and

- ! attempting to identify other sources of authority, such as the Restatements and Principles of Law issued by the American Law Institute, which the Court, or its individual members might find helpful.

Finally, the phenomena confirms that when practitioners see structural changes on the Court that suggest a change in the air—significant turnover on the Court, a change in the support staff and structure for the Court, the advent of new technologies which the Court can take advantage of, a change in the Court’s jurisdiction (whether actively sought by the Court or not), a broadening of the exposure of the Court’s members to law outside this jurisdiction, and the like—those same practitioners should heighten their awareness of how these structural changes will affect advocacy before the Court, including the sources of authority which that Court will entertain.

And we suspect that these lessons have equal applicability to any appellate court in the country, not just the Supreme Court of Texas.

APPENDIX ONE.
PROTOCOL

Protocol

1. Search Engine

When searching for federal authorities, and authorities from other states, cited by the Supreme Court of Texas, we used LexisNexis® Total Research System (herein “Lexis™”). Unless, for a reason set forth below, the use of Lexis simply did not allow a consistent measure of the number of opinions falling in any particular category, we used Lexis to determine every number used in this study. We did so in an effort to compare apples to apples, all generated by the same search engine.

a. Source

Once we opened Lexis™, we chose “Tx Supreme Court Cases Since 1840” as the Source for all our searches.

b. Search String—Federal Authorities and State Authorities

When searching for federal authorities cited by the Supreme Court of Texas in its majority opinions, we used the following search string (including quotations):

“U.S.” or “S.Ct.” or “S. Ct.” or “F.3d” or “F. 3d” or “F.2d” or “F. 2d” or “F.R.D.” or “F.Supp.” or “F. Supp.”⁶⁴

In order to eliminate those cases in which only the concurring or dissenting opinions referred to federal authority, we ran a search for each year through FYE 8/31/1993 in which we added the phrase “and concur! or dissent! w/3 opinion”; for FYE after 8/31/1993, we ran a search in which we added the phrase “and concur: or dissent:”.⁶⁵ We reviewed the resulting opinions to make sure that the majority opinions in those cases referred to federal authorities, and eliminated from our count those which did not.

When searching for non-federal authorities from other states cited by the Supreme Court of Texas in its majority opinions, we used the following search string (including periods):

A.L.R. or Ala. or Alaska or Ariz. or Ark. or Cal. or Colo. or Conn. or Del. or D.C. or Fla. or Ga. or Haw. or Idaho or Ill. or Ind. or Iowa or Kan. or Ky. or La. or Maine or Md. or Mass. or Mich. or Minn. or Miss. or Mo. or Mont. or Neb. or Nev. or N.M. or N.H. or N.J. or N.Y. or N.C. or N.D. or Ohio or Okla. or Ore. or Pa. or R.I. or S.C. or S.D. or Tenn. or Utah or Vt. or Va. or Wash. or “W.Va.” or Wis. or Wyo.

Once we obtained a search result for a given fiscal year of non-federal authorities from other states cited by the Supreme Court, we would review each resulting case to eliminate any false positives—i.e., cases in which the reference to a state had nothing to do with legal authority, and cases in which the only reference to non-federal authorities from another state only appeared in concurring or dissenting opinions.

c. Law Review Articles From Other States

We did not purposefully search for law review articles, but if our search resulted in locating

⁶⁴ Since completing this study, others have suggested this list is incomplete, in that it omits searches for the term “F.”. Since cases from the “F.” series of reporters were no more recent than 1924, and because adding the term “F.” to the search phrase would produce every case in which F was a stand alone letter, I consciously did not include that designation in the study.

⁶⁵ Apparently, the language used in opinions, or at least the language as reported by Lexis in those cases, no longer used the word “opinion” in conjunction with introducing a concurring or dissenting opinion, hence making it necessary to change the search phrase.

opinions which cited law review articles, we included those opinions in our survey as citing state authorities. If searches resulted in locating opinions that cited cases or statutes from other states, we included those opinions in our survey as citing state authorities. If our search for cases citing authority from other states located an opinion which cited solely federal authority, we did not include that opinion in our survey as a case citing state authorities.

d. Restrictions

When trying to identify the total number of cases in which the Supreme Court had cited federal authorities for a given calendar period, or the total number of cases in which the Supreme Court had cited non-federal authorities from another state in a given calendar period, we did not use the “Restrict by Segment” tool offered by Lexis™. When searching for cases written by a particular Justice, or issued by the Court Per Curiam, we used the “Restrict by Segment” tool called “Opinion by”, and adapted that tool by filling in the name of the pertinent Justice, or filling in the phrase “Per Curiam.” An exception to this protocol for Per Curiam opinions issued after 9/1/95 is described below under the heading “Quirky Stuff.”

When using the “Restrict by Date” tool offered by Lexis™, we would use time frames beginning with September 1 of a given year and ending on August 31 of a give year, to match the terms of the Court.

f. Strength of federal authority, or authority from other states

I made no attempt to evaluate the strength of the authority cited by the Supreme Court in its opinions, other than to try to make sure that in citing federal authority, or authority from another state, the Court actually cited it as authority (as opposed to, for example, merely mentioning the citation of the opinion where a federal circuit had certified a question to the Court).⁶⁶

e. Quirky Stuff

A disclaimer concerning the search engine bears mentioning here. In the “Restrict by Segment” portion of its Search page, Lexis has this disclaimer: “**Note:** Segment availability differs between sources. Segments may not be applied consistently across sources.” While not all the following may exemplify what Lexis means by this Note, the following occurrences do signify some quirky stuff that anyone trying to replicate this study would need to know:

i) Per Curiam Opinions– For each year through the Fiscal Year Ending 8/31/1994, and in fact for searches through the period ending 12/31/1994, if we searched using the “Restrict by Segment” function, and entered “Opinionby” “Per Curiam” in the search, we got a result which listed cases in which the Court issued Per Curiam opinions. Beginning with January 1, 1995, however, similar searches resulted in no identified cases; using the “Restrict by Segment” function “Writtenby” produced the same null results. We identified the cases identified as Per Curiam opinions citing federal authority for the years beginning with the FYE 8/31/95⁶⁷ by using either the “Opinion” or “Opinions” options in the “Restrict by Segment” function, and then physically reviewing the search results produced thereby to identify such Per Curiam opinions.

ii) Discrepancies between the sum of opinions authored by individual Justices, and the total opinions issued by the Court.

⁶⁶ See, e.g., *Doody v. Ameriquest Mortg. Co.*, 49 S.W.3d 342 (Tex. 2001); *Stringer v. Dendant Mortg. Corp.* 23 S.W.3d 353 (Tex. 2000); *American Home Assur. Co. v. Stephens*, 982 S.W.2d 370 (Tex. 1998); *Canavati De Checa v. Diagnostic Ctr. Hosp., Inc.*, 852 S.W.2d 935 (Tex. 1993); *Exxon Co. U.S.A., Div. of Exxon Corp. v. Banque de Paris Et Des Bas*, No. C-8684, 1989 Tex. Lexis 103 (Sept. 20, 1989).

⁶⁷ This is correct, we implemented the new protocol with the fiscal year ending in 1995—we went backward in time one fiscal year from the year we first noted the null results.

For some years, the number of opinions of the Court citing federal authorities written by individual Justices (i.e., the number of opinions of the Court identified as written by specific Justices when using the “Restrict by Segment” option “Opinion by”) did not add up to the total opinions citing federal authorities issued by the Court for that fiscal year. Several reasons explain that phenomena:

(a) **Understandable mistakes, unique opinions:** For the Fiscal Year End (FYE) 8/31/90, while a Lexis search produced 38 opinions written by the Court citing federal authorities, adding the opinions citing federal authorities which Lexis identified as “Opinions by” individual Justices (and Per Curiam opinions) resulted in only 37 opinions. For FYE 8/31/90, this discrepancy results from the fact that the search for “Opinions by” individual Justices (and Per Curiam opinions) produced only majority opinions written by specific individual Justices. It failed to produce: (1) one case in which Justice Raul Gonzalez wrote the majority opinion, but his last name was misspelled (we adjusted for this discrepancy in the table we compiled—though the adjustment is complicated by the fact that Justice Gonzales did not cite any federal authority in his majority opinion, but Justice Ray did in his dissent);⁶⁸ and (2) a case in which the Court declined to answer a federal question certified to it by the Fifth Circuit, but issued an Order which Lexis designated as an opinion, but which was not ascribed to any individual Justice or designated as a Per Curiam opinion.⁶⁹ We performed a search to confirm that Justice Gonzalez’s name was not similarly incorrectly spelled in any opinions written by him during his tenure on the Court.

(b) **Someone besides a regular sitting justice wrote the opinion.** In some years, Review Tribunals, comprised of specially appointed justices not among the nine regular sitting justices, issued opinions which a Lexis search showed as opinions of the Supreme Court.⁷⁰ Needless to say, a Lexis search did not produce those cases when we restricted the search to the names of specific justices.

(c) **Occasions when a search for “OpinionsBy” a specific Justice did not result in all the opinions of the Court written by that Justice.** We have mentioned the misspelling of a Justice’s name, above. But there were occasions when the Opinion correctly spelled the authoring Justice’s name, and yet the search for all opinions of the Court authored by that Justice failed to produce an opinion or two.⁷¹ I suspect the answer to this phenomena lies in cyberspace somewhere.

⁶⁸ Lexis spelled the Justice’s last name with an “s”, to with, “Gonzales.” *Brown v. Meyer*, 787 S.W.2d 42 (Tex. 1990).

⁶⁹ *Exxon Company, U.S.A., a Division of Exxon Corporation v. Banque De Paris etes Pays-Bas*, No. C-8684, 1989 Tex. LEXIS 103 (Sept. 20, 1989); for a later example of this type of opinion, see *Meyerland Co. v. FDIC*, 848 S.W.2d 82 (Tex. 1993) [in which the Court did not actually cite federal authority in its decision].

⁷⁰ See, e.g., *St. Joseph Hosp. v. Wolff*, 94 S.W.3d 513 (Tex. 2002), opinion by Justice Jim Moseley, sitting by Commission of Governor Rick Perry; *In re Barr*, 13 S.W.3d 525 (Tex. Rev. Trib. 1999, no appeal); *In re Barr*, 13 S.W.3d 525 (Tex. 1998); *In re Lowery*, 999 S.W.2d 639 (Tex. Rev. Trib. 1998, no appeal); *In re Bell*, 894 S.W.2d 119 (Tex. Rev. Trib. 1995, no appeal); *In re Thoma*, 873 S.W.2d 477 (Tex. Rev. Trib. 1994, no appeal); and *In re Jimenez*, 841 S.W.2d 572 (Tex. Rev. Trib. 1992, no appeal).

⁷¹ *Miga v. Jensen*, 96 S.W.3d 207 (Tex. 2002), opinion by Justice Enoch; E.g., *Long Distance v. Telefonos de Mexico*, 49 S.W.3d 347 (Tex. 2001), opinion by Justice Baker; and *General Servs. Comm’n v. Little-Tex Insulation Co.*, 39 S.W.3d 591 (Tex. 2001), opinion by Justice Baker. We adjusted the entries in our database to reflect these specific cases; we did not check all years to see when such discrepancies might exist.

iii. Difficulties in determining total number of opinions issued by Court.

For the fiscal years up through the fiscal year ending 8/31/2001, searches on Lexis seemed to produce a number of opinions issued by the Court which made sense, and which (when reviewing search results) seemed accurate and seemed to be governed by a consistent logic. Beginning with the next fiscal year, however (FYE 8/31/2002), that cannot be said. So for years beginning with FYE 8/31/2002, the numbers used for total opinions issued by the Court came from the “Opinions of the Supreme Court” section of the Annual Statistical Reports, published by the Office of Court Administration, as found on its website (www.courts.state.tx.us/oca/PublicInfo). Depending on the format of that section of the Annual Statistical Reports, the numbers used for those total opinions consisted of the sum of Majority Opinions and Per Curiam Opinions.

f. Inability to efficiently quantify concurring or dissenting opinions citing federal authority or authority from other states.

We did not find an efficient way to perform searches which would identify non-majority opinions written by a given Justice which cited federal authority or state authority. When we tried to use the “Written By” Restrictor offered by Lexis, in conjunction with the federal search string, the result identified all cases in which the Justice wrote any kind of opinion and in which at least one opinion written in the case included federal authority; it did not limit the result to only those cases written by the Justice in question in which that Justice cited federal authority. Using this search approach produced “false positives” that ranged from 10% to 80% of the cases identified. For example, using The “Written By” Restrictor to restrict the result to those opinions authored by Justice Gonzalez in FYE 8/31/90 in which Justice Gonzalez cited federal authority, did produce at least one opinion by Justice Gonzalez in which he did not cite federal authority,⁷² though other opinions in the case did cite federal authority. In the other nine opinions produced by this search intended to be restricted to those in which Justice Gonzalez cited federal authority, Justice Gonzalez did cite federal authorities and did author the opinion in question. Similarly, in FYE 8/31/98, of the ten cases Lexis identified as authored by Justice Hecht either in dissent or in concurrence and citing federal authority, in at least three of them Justice Hecht did not refer to federal authority (though other Justices writing in the case did).⁷³ In a search for opinions authored by Justice Baker in FYE 8/31/2001 in which he cited federal authority, Lexis identified twelve such cases; of those twelve such cases, seven saw Justice Baker author the majority opinion. In the five cases in which he authored something other than a majority opinion, Justice Baker did not cite federal authority in four of them.⁷⁴

⁷² Dissent authored by Justice Gonzalez in *Sun Exploration & Production Co. v. Jackson*, 783 S.W.2d 202, 207 (Tex. 1989).

⁷³ *In re Bristol-Myers Squibb Co.*, 975 S.W.2d 601, 605 (Tex. 1998); *Childs v. Haussecker*, 974 S.W.2d 31, 48 (Tex. 1998); *Shepherd v. Ledford*, 962 S.W.2d 28, 35 (Tex. 1998).

⁷⁴ *City of Harlingen v. Estate of Sharboneau*, 48 S.W.3d 177, 187 (Tex. 2001); *Lawrence v. CDB Servs.*, 44 S.W.3d 544, 554 (Tex. 2001); *Lozano v. Lozano*, 52 S.W.3d 141, 165, et seq (Tex. 2003); and *Lehman v. Har-Con Corp.*, 39 S.W.3d 191, 208 (Tex. 2001). In *Turner v. KTRK TV, Inc.*, 38 S.W.3d 103, 134 (Tex. 2001), Justice Baker authored an opinion in which he concurred in part and dissented in part and in which he cited federal authority.

APPENDIX TWO.

MAJORITY OPINIONS OF THE SUPREME COURT OF TEXAS
WHICH CITED AUTHORITY FROM OTHER STATES—DATA

Trends in the Use of Federal and State Authority by the Supreme Court of Texas

A- Beginning Date of Term	B-Ending Date of Term	C- Number of Cases With Citations from Other States (sum of columns)	D- Number of Cases With Citations from Other States (sum of columns)	E- Number of Total Opinions (sum of columns)	F-Number of Total Opinions (sum of columns)	Percent of Opinions citing Other State Authority (C divided by E)	Percent of Opinions citing Other State Authority (D divided by F)
9/1/1980	8/31/1981		17		125		13.60%
9/1/1981	8/31/1982		20		113		17.70%
9/1/1982	8/31/1983		18		135		13.33%
9/1/1983	8/31/1984		20		119		16.81%
9/1/1984	8/31/1985		24		158		15.19%
9/1/1980	8/31/1985	99		650		15.23%	
9/1/1985	8/31/1986		14		145		9.66%
9/1/1986	8/31/1987		18		129		13.95%
9/1/1987	8/31/1988		20		121		16.53%
9/1/1988	8/31/1989		15		103		14.56%
9/1/1989	8/31/1990		25		118		21.19%
9/1/1985	8/31/1990	92		616		14.94%	
9/1/1990	8/31/1991		24		141		17.02%
9/1/1991	8/31/1992		27		144		18.75%
9/1/1992	8/31/1993		39		171		22.81%
9/1/1993	8/31/1994		43		152		28.29%
9/1/1994	8/31/1995		35		154		22.73%
9/1/1990	8/31/1995	168		762		22.05%	
9/1/1995	8/31/1996		31		138		22.46%
9/1/1996	8/31/1997		26		115		22.61%
9/1/1997	8/31/1998		44		138		31.88%
9/1/1998	8/31/1999		33		115		28.70%
9/1/1999	8/31/2000		20		97		20.62%
9/1/1995	8/31/2000	154		603		25.54%	
9/1/2000	8/31/2001		21		87		24.14%
9/1/2001	8/31/2002		30		111		27.03%
9/1/2002	8/31/2003		23		99		23.23%
9/1/2003	8/31/2004		26		87		29.89%
9/1/2004	8/31/2005		31		114		27.19%
9/1/2000	8/31/2005	131		498		26.31%	

Trends in the Use of Federal and State Authority by the Supreme Court of Texas

Beginning Date of Term	Ending Date of Term	Greenhill, CJ *	TOTAL OPS	% State	Pope, CJ*	TOTAL OPS	% State	Hill, CJ*	TOTAL OPS	% State	Phillips, CJ *	TOTAL OPS	% State	Jefferson, CJ*	TOTAL OPS	% State	PERTCUIAS M*	TOTAL OPS	% State	PERTALOPS	TOTAL OPS	% State
9/1/1980	8/31/1981	0	9	0%													0	32	0%	5	13	38%
9/1/1981	8/31/1982	1	10	10%													1	31	3%	5	11	45%
9/1/1982	8/31/1983	0	0	0%	2	8	25%										1	39	3%	2	4	50%
9/1/1983	8/31/1984				2	9	22%										0	26	0%			
9/1/1984	8/31/1985				2	2	100%	1	6	17%							0	53	0%			
9/1/1985	8/31/1986							0	11	0%							0	59	0%			
9/1/1986	8/31/1987							0	4	0%							1	37	3%			
9/1/1987	8/31/1988							0	4	0%	1	4	25%				1	36	3%			
9/1/1988	8/31/1989										3	8	38%				1	36	3%			
9/1/1989	8/31/1990										4	9	44%				2	43	5%			
9/1/1990	8/31/1991										4	12	33%				0	54	0%			
9/1/1991	8/31/1992										1	5	20%				2	70	3%			
9/1/1992	8/31/1993										9	9	100%				2	77	3%			
9/1/1993	8/31/1994										7	11	64%				0	62	0%			
9/1/1994	8/31/1995										3	7	43%				2	78	3%			
9/1/1995	8/31/1996										7	9	78%				3	73	4%			
9/1/1996	8/31/1997										3	7	43%				3	60	5%			
9/1/1997	8/31/1998										6	10	60%				6	51	12%			
9/1/1998	8/31/1999										6	9	67%				2	47	4%			
9/1/1999	8/31/2000										4	9	44%				2	34	6%			
9/1/2000	8/31/2001										3	7	43%				0	28	0%			
9/1/2001	8/31/2002										3	4	75%				0	33	0%			
9/1/2002	8/31/2003										2	11	18%				1	37	3%			
9/1/2003	8/31/2004										7	11	64%				2	33	6%			
9/1/2004	8/31/2005										0	0	0%	7	12	58%	3	49	6%			

* Numbers in this column indicate majority opinions by Justice citing authority from other states.

Trends in the Use of Federal and State Authority by the Supreme Court of Texas

Beginning Date of Term	Ending Date of Term	R O B E R T O S P O S I O N *	T % State	D O G G E L T O P S	T % State	O W E N * L O P S	T % State	W I L L E T T *	T % State	S T E A K L O P S *	T % State	W A L L A C E *	T % State	C O K * L O P S	T % State	S P E C T A C L O P S *	T % State	O N T E I L L O P S *	T % State				
9/1/1980	8/31/1981									1	4	25%	2	8	25%								
9/1/1981	8/31/1982												0	12	0%								
9/1/1982	8/31/1983	1	9	11%									1	11	9%								
9/1/1983	8/31/1984	0	6	0%									0	15	0%								
9/1/1984	8/31/1985	2	14	14%									0	13	0%								
9/1/1985	8/31/1986	1	7	14%									2	13	15%								
9/1/1986	8/31/1987	5	17	29%									2	14	14%								
9/1/1987	8/31/1988	1	7	14%									1	9	11%								
9/1/1988	8/31/1989	0	2	0%	1	6	17%									3	7	43%					
9/1/1989	8/31/1990				2	10	20%									1	5	20%					
9/1/1990	8/31/1991				0	6	0%									4	9	44%					
9/1/1991	8/31/1992				1	3	33%									5	1	36%					
																4							
9/1/1992	8/31/1993				4	11	36%									3	4	75%	1	5	20%		
9/1/1993	8/31/1994				3	8	38%											4	7	57%			
9/1/1994	8/31/1995				0	0		5	7	71%								2	6	33%			
9/1/1995	8/31/1996							3	4	75%								2	7	29%			
9/1/1996	8/31/1997							3	6	50%								4	9	44%			
9/1/1997	8/31/1998							7	12	58%								3	12	25%			
9/1/1998	8/31/1999							5	11	45%								0	2	0%	2	4	50%
9/1/1999	8/31/2000							2	6	33%											3	7	43%
9/1/2000	8/31/2001							0	4	0%											3	9	33%
9/1/2001	8/31/2002							3	3	100%											4	11	36%
9/1/2002	8/31/2003							3	4	75%											3	9	33%
9/1/2003	8/31/2004							3	6	50%											5	9	56%
9/1/2004	8/31/2005							3	10	30%											5	12	42%

* Numbers in this column indicate majority opinions by Justice citing authority from other states.

Trends in the Use of Federal and State Authority by the Supreme Court of Texas

Beginning Date of Term	Ending Date of Term	B A R O L W O * P S	T O R A L O P S	% State	R T G O N Z A L E S *	T O P S	% State	A G O N Z A L E S *	T O P S	% State	J E F F E R S O N *	T O P S	% State	M E D I A N O P S	T O P S	% State	C A M P B E L L *	T O P S	% State	C U L V E R *	T O P S	% State	H I G H T O W E R *	T O P S	% State	A B O T T O P S	T O P S	% State		
9/1/1980	8/31/1981	1	13	8%													1	12	8%											
9/1/1981	8/31/1982	2	7	29%													4	11	36%											
9/1/1982	8/31/1983	1	14	7%													0	11	0%											
9/1/1983	8/31/1984	1	12	8%													3	15	20%											
9/1/1984	8/31/1985	0	0	0%	3	11	27%										4	10	40%											
9/1/1985	8/31/1986				1	7	14%										2	8	25%											
9/1/1986	8/31/1987				1	8	13%										0	6	0%											
9/1/1987	8/31/1988				1	10	10%										0	4	0%	0	2	0%								
9/1/1988	8/31/1989				1	8	13%												0	2	0%	0	2	0%						
9/1/1989	8/31/1990				3	3	100%																	2	13	15%				
9/1/1990	8/31/1991				6	14	43%																	1	9	11%				
9/1/1991	8/31/1992				3	10	30%																	3	8	38%				
9/1/1992	8/31/1993				1	10	10%																	5	11	45%				
9/1/1993	8/31/1994				4	11	36%																	5	10	50%				
9/1/1994	8/31/1995				4	13	31%																	8	9	89%				
9/1/1995	8/31/1996				2	7	29%																				3	3	100%	
9/1/1996	8/31/1997				2	6	33%																				3	5	60%	
9/1/1997	8/31/1998				2	6	33%																				5	11	45%	
9/1/1998	8/31/1999				1	2	50%	2	5	40%																	2	6	33%	
9/1/1999	8/31/2000							1	7	14%																	2	10	20%	
9/1/2000	8/31/2001							2	2	100%																	0	5	0%	
9/1/2001	8/31/2002										2	5	40%																	
9/1/2002	8/31/2003										3	9	33%																	
9/1/2003	8/31/2004										4	5	80%																	
9/1/2004	8/31/2005										1	1	100%	1	2	50%														

* Numbers in this column indicate majority opinions by Justice citing authority from other states.

Trends in the Use of Federal and State Authority by the Supreme Court of Texas

Beginning Date of Term	Ending Date of Term	X T R O A D L R O P I G S U E Z	% State	S T M I T L H O P S	% State	G R E E N	T O A L O P S	% State	D E N T O N O P S	% State	S O N D A C O K P S	% State	K I L G A L A R L I N	% State	H E C H T A L O P S	% State	S P E A R S	% State	C O R N Y N	% State				
9/1/1980	8/31/1981								1	10							3	9	33%					
9/1/1981	8/31/1982								1	5	0	0	0%				2	7	29%					
9/1/1982	8/31/1983										1	5	20%	2	6	33%		4	9	44%				
9/1/1983	8/31/1984												5	10	50%			5	11	45%				
9/1/1984	8/31/1985												2	15	13%			5	12	42%				
9/1/1985	8/31/1986												1	11	9%			5	9	56%				
9/1/1986	8/31/1987												4	15	27%			3	12	25%				
9/1/1987	8/31/1988												4	11	36%			6	14	43%				
9/1/1988	8/31/1989												1	2	50%	0	0	0%	2	10	20%			
9/1/1989	8/31/1990															2	4	50%	3	10	30%			
9/1/1990	8/31/1991															1	9	11%	1	4	25%	2	4	50%
9/1/1991	8/31/1992															2	11	18%				6	10	60%
9/1/1992	8/31/1993															2	11	18%				7	15	47%
9/1/1993	8/31/1994															4	11	36%				9	16	56%
9/1/1994	8/31/1995															1	7	14%				5	11	45%
9/1/1995	8/31/1996															1	7	14%				3	8	38%
9/1/1996	8/31/1997															1	7	14%				3	6	50%
9/1/1997	8/31/1998															7	16	44%						0
9/1/1998	8/31/1999															5	9	56%						
9/1/1999	8/31/2000															0	2	0%						
9/1/2000	8/31/2001															1	4	25%						
9/1/2001	8/31/2002	3	9	33%												2	7	29%						
9/1/2002	8/31/2003	1	3	33%	0	1	0%									2	7	29%						
9/1/2003	8/31/2004				0	3	0%									1	5	20%						
9/1/2004	8/31/2005				4	4	100%									2	10	20%						

* Numbers in this column indicate majority opinions by Justice citing authority from other states.

Trends in the Use of Federal and State Authority by the Supreme Court of Texas

Beginning Date of Term	Ending Date of Term	H A N T K A I L N O S P O S N *	% State	W T A O I T N A W L R O P I G S H T *	% State	G T A O R W O L O P S *	% State	R T A O Y * A L O P S	% State	G T A O M T M A L G O P S *	% State	B T A O K T E R L O P S *	% State	S T C H N A E I L D O P E R S *	% State	J T O H T N A L S L O P S *	% State	M T C O G T E A L O P S *	% State	
9/1/1980	8/31/1981					0 0	0%	0 6	0%										3 9	33%
9/1/1981	8/31/1982							0 10	0%										4 9	44%
9/1/1982	8/31/1983							3 12	25%										0 7	0%
9/1/1983	8/31/1984							1 6	17%										3 9	33%
9/1/1984	8/31/1985							2 11	18%										3 11	27%
9/1/1985	8/31/1986							0 8	0%										2 12	17%
9/1/1986	8/31/1987							2 9	22%										0 1	0%
9/1/1987	8/31/1988							4 10	40%											
9/1/1988	8/31/1989							1 12	8%											
9/1/1989	8/31/1990							5 14	36%											
9/1/1990	8/31/1991							2 8	25%	1 3	33%									
9/1/1991	8/31/1992									2 7	29%									
9/1/1992	8/31/1993									1 9	11%									
9/1/1993	8/31/1994									3 7	43%									
9/1/1994	8/31/1995									0 4	0%									
9/1/1995	8/31/1996											3 7	43%							
9/1/1996	8/31/1997											1 5	20%							
9/1/1997	8/31/1998	2 4	50%									1 6	17%							
9/1/1998	8/31/1999	3 7	43%									1 4	25%							
9/1/1999	8/31/2000	3 6	50%									2 10	20%							
9/1/2000	8/31/2001	2 8	25%									6 11	55%							
9/1/2001	8/31/2002	2 9	22%									7 17	41%							
9/1/2002	8/31/2003	1 2	50%	0 2	0%									1 3	33%					
9/1/2003	8/31/2004			0 5	0%									2 4	50%					
9/1/2004	8/31/2005			3 4	75%											0 0				

* Numbers in this column indicate majority opinions by Justice citing authority from other states.

Trends in the Use of Federal and State Authority by the Supreme Court of Texas

Beginning Date of Term	Ending Date of Term	M T A O U T Z A Y L O P S *	% State	E T N O C A H L O P S *	% State	B R I S T E R *	T O A L O P S	% State
9/1/1980	8/31/1981							
9/1/1981	8/31/1982							
9/1/1982	8/31/1983							
9/1/1983	8/31/1984							
9/1/1984	8/31/1985							
9/1/1985	8/31/1986							
9/1/1986	8/31/1987	0	6	0%				
9/1/1987	8/31/1988	1	10	10%				
9/1/1988	8/31/1989	2	8	25%				
9/1/1989	8/31/1990	1	7	14%				
9/1/1990	8/31/1991	2	9	22%				
9/1/1991	8/31/1992	2	6	33%				
9/1/1992	8/31/1993	2	5	40%	2	4	50%	
9/1/1993	8/31/1994				4	9	44%	
9/1/1994	8/31/1995				6	12	50%	
9/1/1995	8/31/1996				4	13	31%	
9/1/1996	8/31/1997				3	4	75%	
9/1/1997	8/31/1998				5	10	50%	
9/1/1998	8/31/1999				4	9	44%	
9/1/1999	8/31/2000				1	6	17%	
9/1/2000	8/31/2001				4	9	44%	
9/1/2001	8/31/2002				4	13	31%	
9/1/2002	8/31/2003				6	11	55%	
9/1/2003	8/31/2004				0	1	0	2 5 40%
9/1/2004	8/31/2005						2 10 20%	

* Numbers in this column indicate majority opinions by Justice citing authority from other states.

APPENDIX THREE.

MAJORITY OPINIONS OF THE SUPREME COURT OF TEXAS
WHICH CITED FEDERAL AUTHORITY—DATA

Trends in the Use of Federal and State Authority by the Supreme Court of Texas

A- Beginnin g Date	B-Ending Date of Term	C- Number of Cases With Maj. Op. citing Federal Authorit y (sum of columns)	D- Number of Cases With Maj. Op. citing Federal Authority (sum of columns)	E- Number of Opinions (sum of columns)	F- Number of Opinions (sum of columns)	Percent of Opinion s citing Federal Authorit y (C divided by E)	Percent of Opinions citing Federal Authority (D divided by F)
9/1/1980	8/31/1981		32		125		26%
9/1/1981	8/31/1982		30		113		27%
9/1/1982	8/31/1983		19		135		14%
9/1/1983	8/31/1984		27		119		23%
9/1/1984	8/31/1985		28		158		18%
9/1/1980	8/31/1985	136		650		20.92%	
9/1/1985	8/31/1986		30		145		21%
9/1/1986	8/31/1987		24		129		19%
9/1/1987	8/31/1988		23		121		19%
9/1/1988	8/31/1989		33		103		32%
9/1/1989	8/31/1990		39		118		33%
9/1/1985	8/31/1990	149		616		24.18%	
9/1/1990	8/31/1991		48		141		34%
9/1/1991	8/31/1992		45		144		31%
9/1/1992	8/31/1993		61		171		36%
9/1/1993	8/31/1994		63		152		41%
9/1/1994	8/31/1995		54		154		35%
9/1/1990	8/31/1995	271		762		35.56%	
9/1/1995	8/31/1996		51		138		37%
9/1/1996	8/31/1997		40		115		35%
9/1/1997	8/31/1998		59		138		43%
9/1/1998	8/31/1999		40		115		35%
9/1/1999	8/31/2000		38		97		39%
9/1/1995	8/31/2000	228		603		37.81%	
9/1/2000	8/31/2001		32		87		37%
9/1/2001	8/31/2002		44		111		40%
9/1/2002	8/31/2003		35		99		35%
9/1/2003	8/31/2004		39		87		45%
9/1/2004	8/31/2005		49		114		43%
9/1/2000	8/31/2005	199		498		39.96%	

Trends in the Use of Federal and State Authority by the Supreme Court of Texas

Beginning Date of Term	Ending Date of Term	Greenhill, CJ*	TOTAL	% FEDERAL	Pope, CJ*	TOTAL	% FEDERAL	Hill, CJ*	TOTAL	% FEDERAL	Phillips, CJ*	TOTAL	% FEDERAL	JEFFERSON, CJ*	TOTAL	% FEDERAL	PERCURIAM*	TOTAL	% FEDERAL
9/1/1980	8/31/1981	1	9	11%													3	32	9%
9/1/1981	8/31/1982	4	10	40%													1	31	3%
9/1/1982	8/31/1983	0	0	0%	2	8	25%										1	39	3%
9/1/1983	8/31/1984				2	9	22%										2	26	8%
9/1/1984	8/31/1985				1	2	50%	2	6	33%							0	53	0%
9/1/1985	8/31/1986							2	11	18%							5	59	8%
9/1/1986	8/31/1987							1	4	25%							3	37	8%
9/1/1987	8/31/1988							1	4	25%	1	4	25%				2	36	6%
9/1/1988	8/31/1989										2	8	25%				4	36	11%
9/1/1989	8/31/1990										2	9	22%				8	43	19%
9/1/1990	8/31/1991										5	12	42%				4	54	7%
9/1/1991	8/31/1992										3	5	60%				9	70	13%
9/1/1992	8/31/1993										9	9	100%				10	77	13%
9/1/1993	8/31/1994										9	11	82%				9	62	15%
9/1/1994	8/31/1995										5	7	71%				6	78	8%
9/1/1995	8/31/1996										8	9	89%				13	73	18%
9/1/1996	8/31/1997										5	7	71%				10	60	17%
9/1/1997	8/31/1998										8	10	80%				15	51	29%
9/1/1998	8/31/1999										6	9	67%				5	47	11%
9/1/1999	8/31/2000										6	9	67%				5	34	15%
9/1/2000	8/31/2001										4	7	57%				2	28	7%
9/1/2001	8/31/2002										2	4	50%				1	33	3%
9/1/2002	8/31/2003										6	11	55%				3	37	8%
9/1/2003	8/31/2004										7	11	64%				7	33	21%
9/1/2004	8/31/2005										0	0	0%	6	12	50%	16	49	33%

* Numbers in this column indicate majority opinions by Justice citing federal authority.

Trends in the Use of Federal and State Authority by the Supreme Court of Texas

Beginning Date of Term	Ending Date of Term	P O P E*	T O T A L	% F E D E R A L	R O B E R T S O N*	T O T A L	% F E D E R A L	D O G G E T*	T O T A L	% F E D E R A L	O W E N*	T O T A L	% F E D E R A L	W I L L E T*	T O T A L	% F E D E R A L	S T E A K L E Y*	T O T A L	% F E D E R A L
9/1/1980	8/31/1981		7	13	54%												3	4	75%
9/1/1981	8/31/1982		6	11	55%														
9/1/1982	8/31/1983		2	4	50%	0	9	0%											
9/1/1983	8/31/1984					3	6	50%											
9/1/1984	8/31/1985					4	14	29%											
9/1/1985	8/31/1986					2	7	29%											
9/1/1986	8/31/1987					3	17	18%											
9/1/1987	8/31/1988					1	7	14%											
9/1/1988	8/31/1989					0	2	0%	2	6	33%								
9/1/1989	8/31/1990								2	10	20%								
9/1/1990	8/31/1991								3	6	50%								
9/1/1991	8/31/1992								1	3	33%								
9/1/1992	8/31/1993								6	11	55%								
9/1/1993	8/31/1994								4	8	50%								
9/1/1994	8/31/1995								0	0	0%	4	7	57%					
9/1/1995	8/31/1996											3	4	75%					
9/1/1996	8/31/1997											3	6	50%					
9/1/1997	8/31/1998											6	12	50%					
9/1/1998	8/31/1999											8	11	73%					
9/1/1999	8/31/2000											4	6	67%					
9/1/2000	8/31/2001											2	4	50%					
9/1/2001	8/31/2002											2	3	67%					
9/1/2002	8/31/2003											2	4	50%					
9/1/2003	8/31/2004											2	6	33%					
9/1/2004	8/31/2005											3	10	30%	0	0	0		

* Numbers in this column indicate majority opinions by Justice citing federal authority.

Trends in the Use of Federal and State Authority by the Supreme Court of Texas

Beginning Date of Term	Ending Date of Term	W A L L A C E*	T O T A L	% F E D E R A L	C O O K*	T O T A L	% F E D E R A L	S P E C T O R*	T O T A L	% F E D E R A L	O ' N E I L*	T O T A L	% F E D E R A L	B A R R O W*	T O T A L	% F E D E R A L	R. G O N Z A L E Z*	T O T A L	% F E D E R A L	A. G O N Z A L E S*	T O T A L	% F E D E R A L	
9/1/1980	8/31/1981	1	8	13%										3	13	23%							
9/1/1981	8/31/1982	5	12	42%										3	7	43%							
9/1/1982	8/31/1983	1	11	9%										2	14	14%							
9/1/1983	8/31/1984	0	15	0%										4	12	33%							
9/1/1984	8/31/1985	1	13	8%										0	0	0%	3	11	27%				
9/1/1985	8/31/1986	4	13	31%													0	7	0%				
9/1/1986	8/31/1987	3	14	21%													0	8	0%				
9/1/1987	8/31/1988	1	9	11%													2	10	20%				
9/1/1988	8/31/1989				5	7	71%										4	8	50%				
9/1/1989	8/31/1990				3	5	60%										3	3	100%				
9/1/1990	8/31/1991				3	9	33%										9	14	64%				
9/1/1991	8/31/1992				7	14	50%										6	10	60%				
9/1/1992	8/31/1993				2	4	50%	3	5	60%							5	10	50%				
9/1/1993	8/31/1994							5	7	71%							4	11	36%				
9/1/1994	8/31/1995							3	6	50%							10	13	77%				
9/1/1995	8/31/1996							3	7	43%							2	7	29%				
9/1/1996	8/31/1997							5	9	56%							1	6	17%				
9/1/1997	8/31/1998							2	12	17%							4	6	67%				
9/1/1998	8/31/1999							1	2	50%	1	4	25%				0	2	0%	0	5	0%	
9/1/1999	8/31/2000										2	7	29%							4	7	57%	
9/1/2000	8/31/2001										6	9	67%							2	2		
9/1/2001	8/31/2002										7	11	64%										
9/1/2002	8/31/2003										4	9	44%										
9/1/2003	8/31/2004										6	9	67%										
9/1/2004	8/31/2005										6	12	50%										

* Numbers in this column indicate majority opinions by Justice citing federal authority.

Trends in the Use of Federal and State Authority by the Supreme Court of Texas

Beginning Date of Term	Ending Date of Term	JEFFERSON*	TOTAL	% FEDERAL	MEDIA*	TOTAL	% FEDERAL	CAMPBELL*	TOTAL	% FEDERAL	CULVER*	TOTAL	% FEDERAL	HIGHTOWER*	TOTAL	% FEDERAL	ABBOTT*	TOTAL	% FEDERAL	X. RODRIGUEZ*	TOTAL	% FEDERAL
9/1/1980	8/31/1981							3	12	25%												
9/1/1981	8/31/1982							4	11	36%												
9/1/1982	8/31/1983							0	11	0%												
9/1/1983	8/31/1984							4	15	27%												
9/1/1984	8/31/1985							3	10	30%												
9/1/1985	8/31/1986							3	8	38%												
9/1/1986	8/31/1987							1	6	16%												
9/1/1987	8/31/1988							1	4	25%	0	2	0%									
9/1/1988	8/31/1989										0	2	0%	0	2	0%						
9/1/1989	8/31/1990													1	13	8%						
9/1/1990	8/31/1991													3	9	33%						
9/1/1991	8/31/1992													2	8	25%						
9/1/1992	8/31/1993													5	11	45%						
9/1/1993	8/31/1994													4	10	40%						
9/1/1994	8/31/1995													7	9	78%						
9/1/1995	8/31/1996													0	0	0%	3	3	100%			
9/1/1996	8/31/1997																4	5	80%			
9/1/1997	8/31/1998																4	11	36%			
9/1/1998	8/31/1999																4	6	67%			
9/1/1999	8/31/2000																5	10	50%			
9/1/2000	8/31/2001																0	5	0%			
9/1/2001	8/31/2002	3	5	60%																3	9	33%
9/1/2002	8/31/2003	7	9	78%																1	3	33%
9/1/2003	8/31/2004	5	5	100%																		
9/1/2004	8/31/2005	0	1	0%	0	2	0%															

* Numbers in this column indicate majority opinions by Justice citing federal authority.

Trends in the Use of Federal and State Authority by the Supreme Court of Texas

Beginning Date of Term	Ending Date of Term	S. S. I. T. H*	T. T. A. L.	% F. E. D. E. R. A. L.	G. R. E. E. N*	T. O. F. F. E. R. A. L.	% F. E. D. E. R. A. L.	D. E. N. T. O. N.*	T. O. T. A. L.	% F. E. D. E. R. A. L.	S. O. N. D. O. C. K*	T. O. T. A. L.	% F. E. D. E. R. A. L.	K. I. L. G. A. R. L. I. N.*	T. O. T. A. L.	% F. E. D. E. R. A. L.	H. E. C. H. T.*	T. O. T. A. L.	% F. E. D. E. R. A. L.	S. P. E. A. R. S*	T. O. T. A. L.	% F. E. D. E. R. A. L.
9/1/1980	8/31/1981							1	10	10%										5	9	56%
9/1/1981	8/31/1982							2	5	40%	0	0	0%							1	7	14%
9/1/1982	8/31/1983										0	5	0%	2	6	33%				2	9	22%
9/1/1983	8/31/1984													5	10	50%				2	11	18%
9/1/1984	8/31/1985													4	15	27%				5	12	42%
9/1/1985	8/31/1986													3	11	27%				4	9	44%
9/1/1986	8/31/1987													3	15	20%				6	12	50%
9/1/1987	8/31/1988													3	11	27%				6	14	43%
9/1/1988	8/31/1989													2	2	100%	0	0	0%	5	10	50%
9/1/1989	8/31/1990																3	4	75%	4	10	40%
9/1/1990	8/31/1991																6	9	67%	3	4	75%
9/1/1991	8/31/1992																4	11	36%			
9/1/1992	8/31/1993																5	11	45%			
9/1/1993	8/31/1994																5	11	45%			
9/1/1994	8/31/1995																4	7	57%			
9/1/1995	8/31/1996																5	7	71%			
9/1/1996	8/31/1997																3	7	43%			
9/1/1997	8/31/1998																9	16	56%			
9/1/1998	8/31/1999																9	9	100%			
9/1/1999	8/31/2000																2	2	100%			
9/1/2000	8/31/2001																2	4	50%			
9/1/2001	8/31/2002																5	7	71%			
9/1/2002	8/31/2003	0	1	0%													3	7	43%			
9/1/2003	8/31/2004	3	3	100%													2	5	40%			
9/1/2004	8/31/2005	3	4	75%	0	0	0%										6	10	60%			

* Numbers in this column indicate majority opinions by Justice citing federal authority.

Trends in the Use of Federal and State Authority by the Supreme Court of Texas

Beginning Date of Term	Ending Date of Term	C O R N Y N*	T O T A L	% F E D E R A L	H A N K I N S O N*	T O T A L	% F E D E R A L	W A I N W R I G H T*	T O T A L	% F E D E R A L	G A R W O O D*	T O T A L	% F E D E R A L	R A Y*	T O T A L	% F E D E R A L	G A M M A G E*	T O T A L	% F E D E R A L	B A K E R*	T O T A L	% F E D E R A L	
9/1/1980	8/31/1981										0	0	0%	1	6	17%							
9/1/1981	8/31/1982													1	10	10%							
9/1/1982	8/31/1983													5	12	42%							
9/1/1983	8/31/1984													3	6	50%							
9/1/1984	8/31/1985													3	11	27%							
9/1/1985	8/31/1986													1	8	13%							
9/1/1986	8/31/1987													0	9	0%							
9/1/1987	8/31/1988													3	10	30%							
9/1/1988	8/31/1989													5	12	42%							
9/1/1989	8/31/1990													10	14	71%							
9/1/1990	8/31/1991	3	4	75%										3	8	38%	2	3	67%				
9/1/1991	8/31/1992	7	10	70%													4	7	57%				
9/1/1992	8/31/1993	7	15	47%													6	9	67%				
9/1/1993	8/31/1994	14	16	88%													3	7	43%				
9/1/1994	8/31/1995	6	11	55%													2	4	50%				
9/1/1995	8/31/1996	3	8	38%																	4	7	57%
9/1/1996	8/31/1997	4	6	67%																	3	5	60%
9/1/1997	8/31/1998				2	4															5	6	83%
9/1/1998	8/31/1999				5	7															0	4	0%
9/1/1999	8/31/2000				3	6															4	10	40%
9/1/2000	8/31/2001				1	8															8	11	73%
9/1/2001	8/31/2002				2	9															14	17	82%
9/1/2002	8/31/2003				0	2		2	2	100%													
9/1/2003	8/31/2004							3	5	60%													
9/1/2004	8/31/2005							3	4	75%													

* Numbers in this column indicate majority opinions by Justice citing federal authority.

Trends in the Use of Federal and State Authority by the Supreme Court of Texas

Beginning Date of Term	Ending Date of Term	S C H E N E I D E R*	T O T A L	% F E D E R A L	J O H N S O N*	T O T A L	% F E D E R A L	M C G E E*	T O T A L	% F E D E R A L	M A U Z Y*	T O T A L	% F E D E R A L	E N O C H*	T O T A L	% F E D E R A L	B R I S T E R*	T O T A L	% F E D E R A L
9/1/1980	8/31/1981						4	9	44%										
9/1/1981	8/31/1982						3	9	33%										
9/1/1982	8/31/1983						2	7	29%										
9/1/1983	8/31/1984						2	9	22%										
9/1/1984	8/31/1985						2	11	18%										
9/1/1985	8/31/1986						6	12	50%										
9/1/1986	8/31/1987						1	1	100%	3	6	50%							
9/1/1987	8/31/1988									2	10	20%							
9/1/1988	8/31/1989									4	8	50%							
9/1/1989	8/31/1990									3	7	43%							
9/1/1990	8/31/1991									4	9	44%							
9/1/1991	8/31/1992									2	6	33%							
9/1/1992	8/31/1993									2	5	40%	1	4	25%				
9/1/1993	8/31/1994												6	9	67%				
9/1/1994	8/31/1995												7	12	58%				
9/1/1995	8/31/1996												7	13	54%				
9/1/1996	8/31/1997												2	4	50%				
9/1/1997	8/31/1998												4	10	40%				
9/1/1998	8/31/1999												1	9	11%				
9/1/1999	8/31/2000												3	6	50%				
9/1/2000	8/31/2001												5	9	56%				
9/1/2001	8/31/2002												5	13	38%				
9/1/2002	8/31/2003	1	3										6	11	55%				
9/1/2003	8/31/2004	1	4										1	1	100%	2	5	40%	
9/1/2004	8/31/2005	0	0		0	0										6	10	60%	

* Numbers in this column indicate majority opinions by Justice citing federal authority.

APPENDIX FOUR.

LENGTH OF SERVICE ON THE SUPREME COURT OF TEXAS
FOR OCCUPANTS OF EACH PLACE ON THE COURT
AT THE BEGINNING OF EACH TERM OF COURT—DATA.

Trends in the Use of Federal and State Authority by the Supreme Court of Texas

Justices:	Greenhill, Pope, Hill, Phillips	Pope, Robertson, Doggett, Owen, Willett	Steakley, Cook, Spector, O'Neill	Barrow, Gonzalez, Gonzales, Jefferson, Medina	Campbell, Culver, Hightower , Abbott, Rodriguez, Smith, Green	Denton, Sondock, Kilgarlin, Hecht	Spears, Cornyn, Hankinson, Wainwright	Garwood, Ray, Gammage, Baker, Schneider, Johnson	McGee, Mauzy, Enoch, Brister		
Beginning Date of Term	Longevity of Justice on Ct.*-- Place 1	Longevity of Justice on Court*-- Place 2	Longevity of Justice on Ct.*-- Place 3	Longevity of Justice on Ct.*-- Place 4	Longevity of Justice on Court*-- Place 5	Longevity of Justice on Court*-- Place 6	Longevity of Justice on Court*-- Place 7	Longevity of Justice on Court*-- Place 8	Longevity of Justice on Ct.*-- Place 9	Avg. Service Beg. of Term	Median Service, Begin of Term
9/1/1980	22.8	15.7	19.7	3.1	2.8	9.8	1.8	0.8	11.8	9.81	9.8
9/1/1981	23.8	16.7	0.7	4.1	3.8	10.8	2.8	0.8	12.8	8.48	4.1
9/1/1982	24.8	17.7	1.7	5.1	4.8	0.2	3.8	1.8	13.8	8.19	4.8
9/1/1983	18.7	0.8	2.7	6.1	5.8	0.8	4.8	2.8	14.8	6.37	4.8
9/1/1984	19.7	1.8	3.7	7.1	6.8	1.8	5.8	3.8	15.8	7.37	5.8
9/1/1985	0.7	2.8	4.7	0.9	7.8	2.8	6.8	4.8	16.8	5.34	4.7
9/1/1986	1.7	3.8	5.7	1.9	8.8	3.8	7.8	5.8	17.8	6.34	5.7
9/1/1987	2.7	4.8	6.7	2.9	9.8	4.8	8.8	6.8	0.8	5.34	4.8
9/1/1988	0.7	5.8	0	3.9	0.6	5.8	9.8	7.8	1.8	4.02	3.9
9/1/1989	1.7	0.7	1	4.9	0.8	0.8	10.8	8.8	2.8	3.59	1.7
9/1/1990	2.7	1.7	2	5.9	1.8	1.8	11.8	9.8	3.8	4.59	2.7
9/1/1991	3.7	2.7	3	6.9	2.8	2.8	0.8	0.8	4.8	3.14	2.8
9/1/1992	4.7	3.7	4	7.9	3.8	3.8	1.8	1.8	5.8	4.14	3.8
9/1/1993	5.7	4.7	0.7	8.9	4.8	4.8	2.8	2.8	0.8	4.00	4.7
9/1/1994	6.7	5.7	1.7	9.9	5.8	5.8	3.8	3.8	1.8	5.00	5.7
9/1/1995	7.7	0.7	2.7	10.9	6.8	6.8	4.8	0	2.8	4.80	4.8
9/1/1996	8.7	1.7	3.7	11.9	0.8	7.8	5.8	1	3.8	5.02	3.8
9/1/1997	9.7	2.7	4.7	12.9	1.8	8.8	6.8	2	4.8	6.02	4.8
9/1/1998	10.7	3.7	5.7	13.9	2.8	9.8	0.8	3	5.8	6.24	5.7
9/1/1999	11.7	4.7	0.7	0.7	3.8	10.8	1.8	4	6.8	5.00	4
9/1/2000	12.7	5.7	1.7	1.7	4.8	11.8	2.8	5	7.8	6.00	5
9/1/2001	13.7	6.7	2.7	0.4	5.8	12.8	3.8	6	8.8	6.74	6
9/1/2002	14.7	7.7	3.7	1.4	1	13.8	4.8	0	9.8	6.32	4.8
9/1/2003	15.7	8.7	4.7	2.4	0.8	14.8	0.8	1	10.8	6.63	4.7
9/1/2004	16.7	9.7	5.7	3.4	1.8	15.8	1.8	2	0.8	6.41	3.4
9/1/2005	4.4	0	6.7	0.8	0.7	16.8	2.8	0.4	1.8	3.82	1.8

*Numbers in each column indicate the length of service on the Court by the Justice sitting in this Place on the Court as of the beginning of the term of the Court. **Bold** indicates a turnover in this Place since the beginning of the prior term.

APPENDIX FIVE.

FEDERAL COURTS CITED BY
CERTAIN SITTING JUSTICES ON
THE SUPREME COURT OF TEXAS.

Table C.8. Majority Opinions by Certain Justices: Number of Majority Opinions by Certain Justices Which Cited Specific Federal Courts

Federal Circuit	Hecht	O'Neill	Jefferson	Wainwright	Brister
1st	4	4	10	3	1
2d	14	5	4	2	1
3d	11	5	6	2	1
4th	15	6	7	3	1
5th	39	21	12	5	5
6th	9	5	7	2	2
7th	12	11	7	3	2
8th	13	5	4	2	1
9th	16	5	6	3	1
10th	6	4	6	1	2
11th	7	6	4	1	2
D.C.	8	5	3	4	3
Fed.	0	0	0	0	1
S.Ct.	58	26	18	6	7
F.Supp	28	14	10	1	4
Total*	71	31	21	8	8

* “Total” as used above, means the total majority opinions written by the specific Justice which cited to any federal authority; because most such majority opinions cited more than one federal authority, this “Total” will not equal the sum of the number of times a certain Justice cited specific federal authorities.

Table C.9. For Majority Opinions by Certain Justices Which Cited Federal Authority, Percent Which Cited Specific Federal Courts

Federal Circuit	Hecht	O'Neill	Jefferson	Wainwright	Brister
1st	5.63%	12.90%	47.62%	37.50%	12.50%
2d	19.72%	16.13%	19.05%	25.00%	12.50%
3d	15.49%	16.13%	28.57%	25.00%	12.50%
4th	21.13%	19.35%	33.33%	37.50%	12.50%
5th	54.93%	67.74%	57.14%	62.50%	62.50%
6th	12.68%	16.13%	33.33%	25.00%	25.00%
7th	16.90%	35.48%	33.33%	37.50%	25.00%
8th	18.31%	16.13%	19.05%	25.00%	12.50%
9th	22.54%	16.13%	28.57%	37.50%	12.50%
10th	8.45%	12.90%	28.57%	12.50%	25.00%
11th	9.86%	19.35%	19.05%	12.50%	25.00%
D.C.	11.27%	16.13%	14.29%	50.00%	37.50%
Fed.	0.00%	0.00%	0.00%	0.00%	12.50%
S.Ct.	81.69%	83.87%	85.71%	75.00%	87.50%
F.Supp	39.44%	45.16%	47.62%	12.50%	50.00%

APPENDIX SIX.

AUTHORITY FROM OTHER STATES CITED BY
CERTAIN SITTING JUSTICES ON
THE SUPREME COURT OF TEXAS.

Table C.10. Number of Majority Opinions by Certain Justices Citing Authority from Specific States.

State	Hecht	O'Neill	Jefferson	Wainwright	Bristor
Al	10	9	2	0	1
Ak	5	4	1	1	2
Az	13	7	2	1	1
Ar	9	2	1	1	1
Ca	21	15	8	2	1
Co	13	8	3	0	1
Ct	6	9	1	1	1
De	4	3	0	0	1
D.C.	2	0	0	0	0
Fl	14	8	3	0	0
Ga	11	8	4	1	1
Ha	2	2	1	0	0
Id	4	2	0	0	1
Il	17	6	7	0	2
In	9	4	2	1	2
Io	6	7	1	0	2
Ks	10	7	2	0	1
Ky	9	5	2	1	0
La	4	3	6	0	0
Me	0	1	1	0	0
Md	5	2	2	1	2
Ma	11	8	6	0	1
Mi	9	9	2	1	2
Mn	14	7	6	0	2
Ms	7	2	1	0	0
Mo	9	7	2	1	2
Mt	6	4	0	0	1
Ne	4	5	1	0	1
Nv	6	1	1	0	0
NH	7	3	0	0	0
NM	6	5	0	1	1
NJ	13	7	3	1	4
NY	14	11	4	3	2
NC	4	8	2	1	2
ND	4	2	2	0	1
Oh	14	7	1	0	1
Ok	8	3	1	0	1
Or	11	6	1	0	0
Pa	13	5	4	0	2
RI	7	0	1	0	0
SC	5	4	2	0	0
SD	2	4	1	0	0
Tn	8	6	0	1	3
Ut	2	1	1	1	3
Vt	2	0	0	0	1

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Va	6	4	4	1	1
Wa	11	6	6	1	1
WV	8	3	1	0	1
Wi	13	6	1	1	1
Wy	3	5	2	0	0
Total*	34	25	10	3	4

“Total*” means total majority opinions by each Justice citing authority from other states, not the sum of the preceding column.

Table C.11. Majority Opinions Citing Authority from Other States: Percentage of Such Opinions in Which Certain Justices Cited Authority from Specific States.

State	Hecht	O'Neill	Jefferson	Wainwright	Brister
Al	29.4%	36.0%	20.0%	0.0%	25.0%
Ak	14.7%	16.0%	10.0%	33.3%	50.0%
Az	38.2%	28.0%	20.0%	33.3%	25.0%
Ar	26.5%	8.0%	10.0%	33.3%	25.0%
Ca	61.8%	60.0%	80.0%	66.7%	25.0%
Co	38.2%	32.0%	30.0%	0.0%	25.0%
Ct	17.6%	36.0%	10.0%	33.3%	25.0%
De	11.8%	12.0%	0.0%	0.0%	25.0%
D.C.	5.9%	0.0%	0.0%	0.0%	0.0%
Fl	41.2%	32.0%	30.0%	0.0%	0.0%
Ga	32.4%	32.0%	40.0%	33.3%	25.0%
Ha	5.9%	8.0%	10.0%	0.0%	0.0%
Id	11.8%	8.0%	0.0%	0.0%	25.0%
Il	50.0%	24.0%	70.0%	0.0%	50.0%
In	26.5%	16.0%	20.0%	33.3%	50.0%
Io	17.6%	28.0%	10.0%	0.0%	50.0%
Ks	29.4%	28.0%	20.0%	0.0%	25.0%
Ky	26.5%	20.0%	20.0%	33.3%	0.0%
La	11.8%	12.0%	60.0%	0.0%	0.0%
Me	0.0%	4.0%	10.0%	0.0%	0.0%
Md	14.7%	8.0%	20.0%	33.3%	50.0%
Ma	32.4%	32.0%	60.0%	0.0%	25.0%
Mi	26.5%	36.0%	20.0%	33.3%	50.0%
Mn	41.2%	28.0%	60.0%	0.0%	50.0%
Ms	20.6%	8.0%	10.0%	0.0%	0.0%
Mo	26.5%	28.0%	20.0%	33.3%	50.0%
Mt	17.6%	16.0%	0.0%	0.0%	25.0%
Ne	11.8%	20.0%	10.0%	0.0%	25.0%
Nv	17.6%	4.0%	10.0%	0.0%	0.0%
NH	20.6%	12.0%	0.0%	0.0%	0.0%
NM	17.6%	20.0%	0.0%	33.3%	25.0%
NJ	38.2%	28.0%	30.0%	33.3%	100.0%
NY	41.2%	44.0%	40.0%	100.0%	50.0%
NC	11.8%	32.0%	20.0%	33.3%	50.0%
ND	11.8%	8.0%	20.0%	0.0%	25.0%
Oh	41.2%	28.0%	10.0%	0.0%	25.0%
Ok	23.5%	12.0%	10.0%	0.0%	25.0%
Or	32.4%	24.0%	10.0%	0.0%	0.0%
Pa	38.2%	20.0%	40.0%	0.0%	50.0%
RI	20.6%	0.0%	10.0%	0.0%	0.0%
SC	14.7%	16.0%	20.0%	0.0%	0.0%
SD	5.9%	16.0%	10.0%	0.0%	0.0%
Tn	23.5%	24.0%	0.0%	33.3%	75.0%

Trends in the Use of Federal and State Authority by the Supreme Court of Texas

Ut	5.9%	4.0%	10.0%	33.3%	75.0%
Vt	5.9%	0.0%	0.0%	0.0%	25.0%
Va	17.6%	16.0%	40.0%	33.3%	25.0%
Wa	32.4%	24.0%	60.0%	33.3%	25.0%
WV	23.5%	12.0%	10.0%	0.0%	25.0%
Wi	38.2%	24.0%	10.0%	33.3%	25.0%
Wy	8.8%	20.0%	20.0%	0.0%	0.0%

Table C.12. Number of Majority Opinions by Certain Justices Following Authority from Specific States.

State	Hecht	O'Neill	Jefferson	Wainwright	Bristert
Al	7	5	1	0	1
Ak	1	1	1	0	1
Az	6	4	1	1	0
Ar	4	0	0	0	0
Ca	15	8	4	1	0
Co	6	2	1	0	0
Ct	3	6	0	0	0
De	3	3	0	0	1
D.C.	1	0	0	0	0
Fl	6	4	2	0	0
Ga	4	4	4	1	0
Ha	1	1	0	0	0
Id	2	1	0	0	1
Il	9	4	4	0	2
In	1	0	2	0	1
Io	3	5	1	0	1
Ks	4	5	1	0	0
Ky	3	4	1	1	0
La	2	2	6	0	0
Me	0	0	0	0	0
Md	4	1	1	0	1
Ma	6	3	4	0	0
Mi	3	4	2	1	1
Mn	7	3	2	0	1
Ms	3	0	0	0	0
Mo	5	6	1	0	1
Mt	1	1	0	0	0
Ne	3	2	0	0	0
Nv	3	1	1	0	0
NH	2	1	0	0	0
NM	2	2	0	1	0
NJ	6	2	2	1	3
NY	7	6	2	2	1
NC	0	4	1	0	1
ND	0	1	0	0	0
Oh	4	3	1	0	0
Ok	5	1	0	0	0
Or	5	2	1	0	0
Pa	9	3	1	0	0
RI	4	0	1	0	0
SC	3	1	0	0	0
SD	0	1	0	0	0
Tn	3	3	0	0	1
Ut	0	0	0	1	1
Vt	1	0	0	0	0

Trends in the Use of Federal and State Authority by the Supreme Court of Texas

Va	3	2	2	1	1
Wa	6	5	5	1	1
WV	3	0	0	0	0
Wi	7	1	0	1	1
Wy	0	4	1	0	0
Total*	34	25	10	3	4

“Total*” means total majority opinions by each Justice citing authority from other states, not the sum of the preceding column.

Table C.13. Majority Opinions Citing Authority from Other States: Percentage of Such Opinions in Which Certain Justices Followed Authority from Specific States.

State	Hecht	O'Neill	Jefferson	Wainwright	Brister
Al	20.6%	20.0%	10.0%	0.0%	25.0%
Ak	2.9%	4.0%	10.0%	0.0%	25.0%
Az	17.6%	16.0%	10.0%	33.3%	0.0%
Ar	11.8%	0.0%	0.0%	0.0%	0.0%
Ca	44.1%	32.0%	40.0%	33.3%	0.0%
Co	17.6%	8.0%	10.0%	0.0%	0.0%
Ct	8.8%	24.0%	0.0%	0.0%	0.0%
De	8.8%	12.0%	0.0%	0.0%	25.0%
D.C.	2.9%	0.0%	0.0%	0.0%	0.0%
Fl	17.6%	16.0%	20.0%	0.0%	0.0%
Ga	11.8%	16.0%	40.0%	33.3%	0.0%
Ha	2.9%	4.0%	0.0%	0.0%	0.0%
Id	5.9%	4.0%	0.0%	0.0%	25.0%
Il	26.5%	16.0%	40.0%	0.0%	50.0%
In	2.9%	0.0%	20.0%	0.0%	25.0%
Io	8.8%	20.0%	10.0%	0.0%	25.0%
Ks	11.8%	20.0%	10.0%	0.0%	0.0%
Ky	8.8%	16.0%	10.0%	33.3%	0.0%
La	5.9%	8.0%	60.0%	0.0%	0.0%
Me	0.0%	0.0%	0.0%	0.0%	0.0%
Md	11.8%	4.0%	10.0%	0.0%	25.0%
Ma	17.6%	12.0%	40.0%	0.0%	0.0%
Mi	8.8%	16.0%	20.0%	33.3%	25.0%
Mn	20.6%	12.0%	20.0%	0.0%	25.0%
Ms	8.8%	0.0%	0.0%	0.0%	0.0%
Mo	14.7%	24.0%	10.0%	0.0%	25.0%
Mt	2.9%	4.0%	0.0%	0.0%	0.0%
Ne	8.8%	8.0%	0.0%	0.0%	0.0%
Nv	8.8%	4.0%	10.0%	0.0%	0.0%
NH	5.9%	4.0%	0.0%	0.0%	0.0%
NM	5.9%	8.0%	0.0%	33.3%	0.0%
NJ	17.6%	8.0%	20.0%	33.3%	75.0%
NY	20.6%	24.0%	20.0%	66.7%	25.0%
NC	0.0%	16.0%	10.0%	0.0%	25.0%
ND	0.0%	4.0%	0.0%	0.0%	0.0%
Oh	11.8%	12.0%	10.0%	0.0%	0.0%
Ok	14.7%	4.0%	0.0%	0.0%	0.0%
Or	14.7%	8.0%	10.0%	0.0%	0.0%
Pa	26.5%	12.0%	10.0%	0.0%	0.0%
RI	11.8%	0.0%	10.0%	0.0%	0.0%
SC	8.8%	4.0%	0.0%	0.0%	0.0%
SD	0.0%	4.0%	0.0%	0.0%	0.0%
Tn	8.8%	12.0%	0.0%	0.0%	25.0%
Ut	0.0%	0.0%	0.0%	33.3%	25.0%

Trends in the Use of Federal and State Authority by the Supreme Court of Texas

Vt	2.9%	0.0%	0.0%	0.0%	0.0%
Va	8.8%	8.0%	20.0%	33.3%	25.0%
Wa	17.6%	20.0%	50.0%	33.3%	25.0%
WV	8.8%	0.0%	0.0%	0.0%	0.0%
Wi	20.6%	4.0%	0.0%	33.3%	25.0%
Wy	0.0%	16.0%	10.0%	0.0%	0.0%

Chart C.6: Majority Opinions Citing Authority from Other States: Authority from Specific States Cited by Certain Justices (for Data, see Tables C.10 and C.11, above).

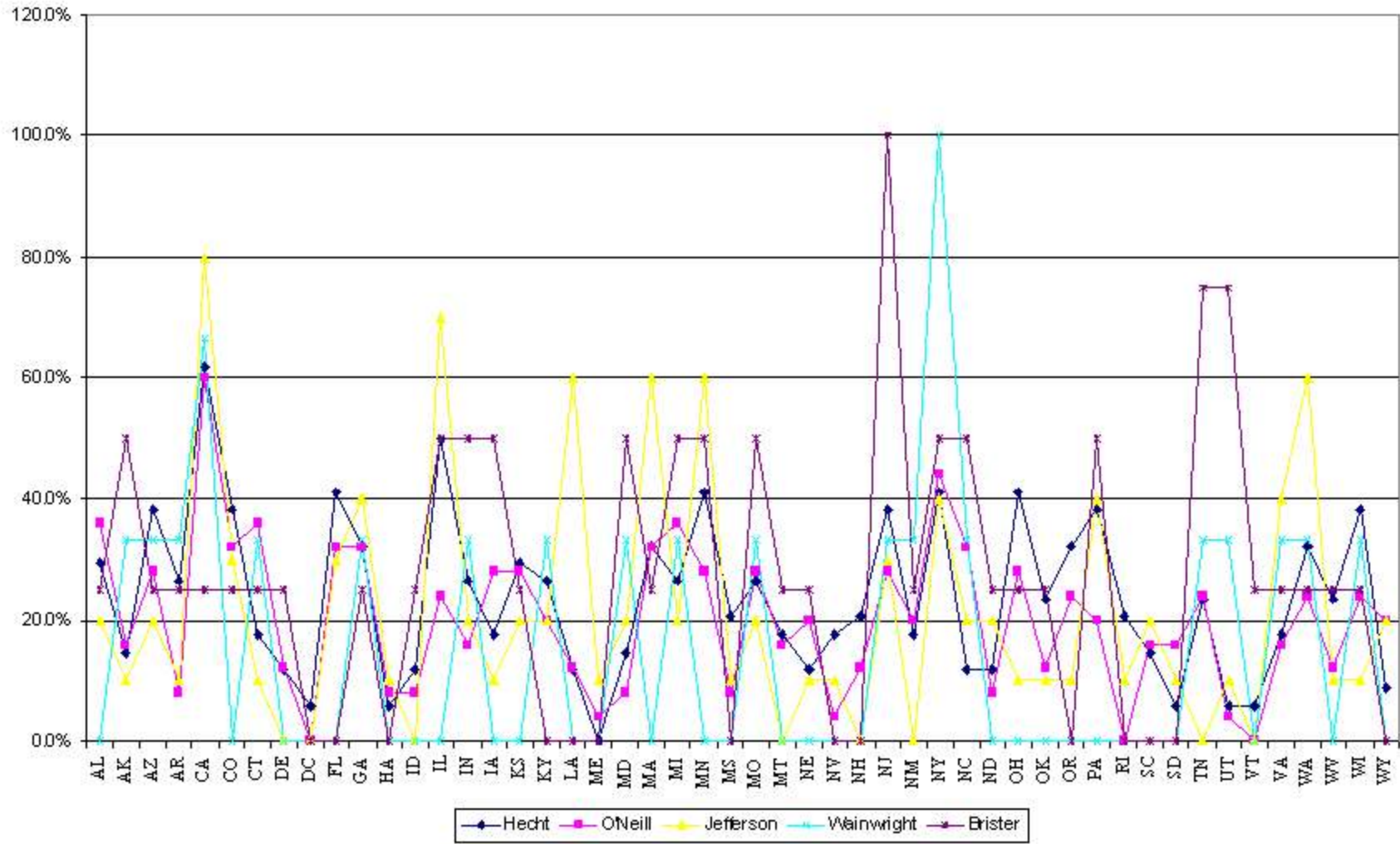


Chart C.7: Majority Opinions Citing Authority from Other States: Authority from Specific States Followed by Certain Justices (for Data, see Tables C.12 and C.13, above).

