

**ORAL ARGUMENT BEFORE THE SECOND DISTRICT COURT OF APPEALS:
THE RULES, AND AN ANALYSIS OF FIFTY-SEVEN CASES**

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Hood County Bar Association, 2003; Denton County Bar Association, 2003; Appellate Section of the Tarrant County Bar Association, 2003.

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ORAL ARGUMENT BEFORE THE SECOND DISTRICT COURT OF APPEALS: THE RULES AND AN ANALYSIS OF FIFTY-SEVEN CASES

By Steven K. Hayes

A. Introduction

For reasons stated below, we begin this paper on oral argument in the Second Court of Appeals by focusing on the role of the Supreme Court of Texas in appellate matters. Recently, commentators have emphasized that the Supreme Court does not now focus on merely correcting errors made by the courts of appeals. As noted by one appellate practitioner:

“Today, the court no longer sees its primary function as correcting errors committed by the courts of appeal. Instead, the court’s role is that of defining and clarifying legal issues important to the jurisprudence of the state.”

See Alex Wilson Albright, *Supreme Court Jurisdiction*, Practice Before the Supreme Court of Texas, Chapter 2, page 3 (2002). Statistics maintained by the Court further confirm that it addresses the merits of only a small percentage of cases. In fact, for the nine years ending in August, 2002, the Court granted 12% of the Petitions for Review which were filed (111 out of 1018 petitions for review filed in fiscal year 2001 [10.9%], and 116 of the 1001 petitions filed in fiscal year 2002 [11.5%]. *See* Chief Justice Tom Phillips, *Thinking Inside the Box: A Review of the Supreme Court’s Caseload Statistics and What Those Numbers Mean in Real Life*, Practice Before the Supreme Court of Texas, Chapter 1 (2002); and Richard R. Orsinger, *Texas Supreme Court Trends*, Practice Before the Supreme Court of Texas, Chapter 15 (2003).

Since you cannot count on the Supreme Court to address the merits of your case, even if the court of appeals makes a mistake, it becomes clear that your oral argument before the court of appeals may mark the last time you can effectively advocate for your client solely on the merits of your case. This makes the oral argument an important event that you should prepare for intelligently and diligently.

When preparing for oral argument, we all wonder about the impending questioning by the court—will they ask any questions, how much time will I have to

talk, what will they ask me about. It's worse than trying to decide what to wear before a first date. We decided to look at the questions asked by the Second District Court of Appeals – for us old timers, the Fort Worth Court – in the oral arguments in 57 separate cases. We hoped that this exercise would help us notice any helpful trends or tendencies. This paper addresses what we have gleaned so far.

Before we look at the actual analysis of the arguments, we think it useful to examine the rules governing oral argument, because they provide the requirements on how to approach oral argument. So let us review Rule 39, Texas Rules of Appellate Procedure, and Rule 3, Local Rules for the Second Court of Appeals. Appendix One to this paper contains the text of these rules.

B. Rules Governing Oral Argument Before the Second District Court of Appeals

1. Rule 39, Texas Rules of Appellate Procedure, and by Rule 3, Local Rules for the Second Court of Appeals, govern oral argument.
 - a. If you do not request oral argument, you may have waived it.

Whatever your preference for oral argument (even if you do not wish to have oral argument), you must announce that preference on the outside of your brief (Rule 39.7, Texas Rules of Appellate Procedure, and Rules 3.A. and 3.B., Local Rules for the Second Court of Appeals). If you want oral argument and do not so announce that preference, your request is deemed waived (Rule 39.7, Texas Rules of Appellate Procedure, and Rule 3.A., Local Rules for the Second Court of Appeals). If unsure about whether you want oral argument or not, or your request might depend on what the other side announces, make a conditional request for oral argument (e.g., “Appellant requests oral argument only if oral argument is requested by appellee.”). (Rule 3.A., Local Rules for Second Court of Appeals).

Make sure that you **ONLY** request oral argument if you intend to appear for it. As the Local Rules point out, disfavor accompanies the failure of “lead counsel for each party or his or her designee” to appear for oral argument. (Rule 3.F., Local Rules for the Second Court of Appeals). In fact, if you request oral argument and do not appear, you will in all likelihood receive a letter from the

Court asking you to explain your absence.¹ If you decide to waive an oral argument that you have requested or the Court has scheduled, you can do so. Just notify the clerk and all opposing counsel at least 7 days prior to the scheduled submission date (Rule 3.E., Local Rules for the Second Court of Appeals).

b. The Court decides whether to grant your request for oral argument

Once the Court receives a request for oral argument, a staff attorney for the Court recommends whether the case should or should not have oral argument. The Court decides whether to follow the recommendations of the staff attorney in this regard. As a rule, the Court does not usually grant oral argument on cases involving *pro se* litigants or summary judgment cases,² and the Court does not usually set cases for oral argument in habeas proceedings, in criminal cases involving a plea of guilty, when the case only involves a couple of issues, or when only one party requests oral argument.³

Each court of appeals has the discretion to decide a case without oral argument if argument would not significantly aid the court in determining the legal and factual issues presented in the appeal. (Rule 39.8, Texas Rules of Appellate Procedure). One case has confirmed that an internal decision of a court of appeals to grant, deny or require oral argument is absolutely discretionary and not subject to review. *Polasek v. State*, 16 S.W.3d 82, 84 (Tex.App.-Houston [1st Dist.] 2000, pet. ref.).

Having said that, if the Court does not set your case for oral argument despite the request reflected on your brief, and if you still want oral argument, file a motion asking for oral argument. Currently, the Court will almost always allow

¹ Justice Anne Gardner, Remarks at a Meeting of the Appellate Law Section of the Tarrant County Bar Association concerning Procedures for the Second Court of Appeals (September 26, 2002).

² Justice Anne Gardner, *supra*.

³ Paula Perkins, Senior Staff Attorney, comments at “The Appellate Roadshow, or Everything Trial Lawyers Need to Know About Appellate Law (But Were Afraid to Ask)” (May 27, 2004).

oral argument under these circumstances.⁴

If the Court grants you oral argument, you will have an opportunity to argue. (Rule 39.1, Texas Rules of Appellate Procedure).

C. Before Preparing Your Oral Argument.

It probably pays for most people to develop a comfort level with the courtroom and the audience before turning their attention to the specifics of their presentation. If this would help you, consider these rather mundane steps before preparing your oral argument.

1. Know the physical environment.

a. Visit the courtroom and become familiar with the podium and such.

If you have not argued in front of the Court recently, you should do a few things that have nothing to do with the kinds of questions you can expect. Try to visit the courtroom and stand behind the podium before the day of the argument (go to the Court's website for a picture of the courtroom. <http://www.2ndcoa.courts.state.tx.us/vital.htm>). Take note of the warning lights on the podium. Green means go, yellow means you have two minutes left, and red means stop. (<http://www.2ndcoa.courts.state.tx.us/faq.htm>).

Two counsel tables face the bench. As a rule, Appellants sit at the table to the left of the podium (and to the Panel's right), and Appellees sit at the table to the right of the podium (which is to the Panel's left).

The three Briefing Clerks, who comprise half of your audience during the argument, will sit behind the desk against the wall to the right of the podium. Three Briefing Clerks regularly attend the oral arguments.

The Clerk and Bailiff will sit at the bench next to the wall to the left of the

⁴ Justice Anne Gardner, *supra*. Chief Justice John Cayce, comments at "The Appellate Roadshow, or Everything Trial Lawyers Need to Know About Appellate Law (But Were Afraid to Ask)" (May 27, 2004). Chief Justice John Cayce and Justice Lee Ann Dauphinot, comments at "The Relentless Pursuit of Preservation: What Matters on Appeal" (February 25, 2005).

podium (to the Panel's right). You check in with them before the oral argument, and make sure that their records reflect the same amount of time you think you have for oral argument.

b. Start thinking about your visual aids.

Sometimes, you might have a document you really want the Court to focus on during oral argument. This document may be an exhibit, a statute or something else important to your case. If so, you have to decide whether you want the members of your Panel to have this document in front of them during the oral argument. If so, you have to decide whether to use a handout of that document or an enlargement of that document. Start thinking about that choice when you make your initial visit to the courtroom, because several practical considerations will affect this decision, especially if you decide to use an enlargement.

If you decide that a handout best suits your purpose, then provide six copies to the Clerk when you check in with her, and ask her to put one on the bench in front of each of the Justices' seats and one in front of each of the Briefing Clerks' seats. Ask her to do this before the Panel comes into the courtroom. At the same time, give all opposing counsel a copy. You don't want to wander around the courtroom playing mailman after your argument begins, which wastes valuable argument time and makes you look like someone trying to blindside opposing counsel.

If you plan to use an enlargement of your visual aid, decide where you will place it. Either make sure an easel is available or plan on bringing your own. Decide where you will place the easel (you might want to discuss this location with the clerk to make sure it is alright) and determine the distance from the enlargement to the Justices and the Briefing Clerks. Chances are, at least some of the Justices and Clerks will find your enlargement hard to see. For that reason, we recommend using a handout unless you can assure yourself that an enlargement will work better. If you plan to use a projection-type device, let us know about your experience. There is not a real good wall in the courtroom on which to project an image (and the Court might not dim the lights, either).

From time to time, it might tempt you to use some type of Power Point presentation or computer generated slide show during your oral argument. I have attended three appellate practice seminars which discussed the use of that tool in oral argument; no one has endorsed that tool for oral argument. At one such

seminar in the Spring of 2003, the current Clerk of the Supreme Court commented that he had never seen such a presentation used in oral arguments at the Supreme Court, and he confirmed through former Staff Attorneys that none of them had seen such a presentation in the last decade or so. Absent hearing to the contrary, the question and answer format for oral argument makes the use of a Power Point or slide show presentation either highly risky or very clumsy, at best.⁵ But if you try such a tool and have a good experience, please let us know so we can spread the word.

And remember— make sure the record contains any evidentiary visual aid you intend to use (and stand ready to tell the Court where in the record the Court can find it).

2. Know your audience.

In addition to having a comfort level for the courtroom, you should know who will comprise your audience. Your audience will obviously consist of all members of the Panel hearing your case, together with the Briefing Clerks for that Panel.⁶ The Clerk’s office (817/884-1900) can tell you which Panel will hear your case and the members on that Panel. It would not hurt to reacquaint yourself with the Panel members’ backgrounds and appearance. You can find pictures and biographies for the Justices on the Court’s website at <http://www.2ndcoa.courts.state.tx.us/judicial.htm>.

The Panel will be cordial, but direct. Briefs go both to the Panel and the Panel’s Briefing Clerks three weeks before argument. The Panel will have read

⁵ Charles “Chip” G. Orr of Haynes and Boone, and a former staff attorney for the Supreme Court of Texas, confirmed these sentiments in an e-mail in October, 2003. In nearly three years of attending oral arguments at the Court (1997-2000), he never saw a Power Point presentation used. He did see such a presentation attempted in an oral argument before a Court of Appeals, and it was a disaster—the computer/projector never functioned.

⁶ Please remember that, while the Briefing Clerks will attend the argument and will work as directed by the Court, your audience is the Court, whose members will decide the case. Direct your argument to the Court, and not the Briefing Clerks. The late Justice Sam Day, “Dinosaur Tracks,” Remarks at a Meeting of the Appellate Law Section of the Tarrant County Bar Association (September 25, 2003).

the briefs on all cases.⁷

3. Know the status of the decision making process.

As a rule, the Panels do not have any type of formal pre-argument conference. However, the Panels do conduct a post-argument conference, usually immediately following oral argument. This conference will include a preliminary vote on the result in the case and the reasoning to follow in the opinion. While this result and reasoning may change over time, this vote will direct the progress of the opinion for some period of time. The immediacy of these decisions following oral argument emphasizes the importance of a persuasive oral argument.⁸

One other thing to keep in mind about the Court's decision making process. From the arguments we have reviewed, it appears clear that the Panel will want you to cut to the chase, and to help them focus on and address the dispositive issues in the case. For each of five years ending August, 2004, the Justices have cleared over 1,000 cases on appeal plus all the motions associated with those cases. This clearance rate means that each of the seven Justices produces the equivalent of 3 term papers a week.⁹ The Court will appreciate anything you can do to simplify and streamline the decision making process.

D. Preparing for the Oral Argument

When you begin preparing your oral argument, you should keep several parameters keep in mind. These parameters range from the mundane (e.g., length of your presentation and how long you can expect to make scripted remarks) to the esoteric (e.g., trying to predict the types of questions you will have to respond to). Our review of the oral arguments in 57 cases revealed the following tendencies concerning these issues. If you find yourself running short on time, and would like to cut straight to the chase, *see* Appendix Seven for four tools we suggest you consider in preparing for your oral argument.

In Appendix Eight, below, we set forth the data on which we draw our conclusions

⁷ Justice Anne Gardner, *supra*.

⁸ Justice Anne Gardner, *supra*.

⁹ Justice Anne Gardner, *supra*.

set forth in this section. We gleaned that data from 28 oral arguments in September and October, 2002, 14 oral arguments in June, 2003, and 15 oral arguments after August, 2004. While we feel the data is accurate, please keep in mind that we do not claim the conclusions we reach will pass a *Robinson* or *Daubert* challenge. In fact, the data underscore a recurring theme of this paper— that your challenge, in preparing for oral argument, lies in putting yourself in the shoes of the Panel members in an attempt to anticipate their questions and address their concerns. As you will see, we tend to think the data for the 2002 and post-August, 2004, oral arguments probably serve as a more accurate indicator of what to expect during most times of the year than the June, 2003, data. This bias on our part implies that arguments during the two time periods had at least slightly different characteristics, and they did so impress us. For example, the arguments we reviewed in June, 2003, reflected Panels which asked fewer questions, on average, to appellants and appellees than did the Panels in the other oral arguments;¹⁰ similarly, those June, 2003, arguments witnessed Panels which tended to not ask questions as quickly as did the Panels in the other arguments.¹¹ Furthermore, the Panels in the June, 2003, arguments were twice as likely to not question appellants and appellees as were the panels involved in the other arguments.¹²

We can speculate on the reasons for these distinct trends and tendencies: (1) the types of cases set for oral argument during the two periods may have differed (a possibility—the Clerk of the Court confirmed that, because of a dearth of settings in June, 2003, the Court gave cases with few issues the opportunity, on relatively short notice, to

¹⁰ In June, 2003, Panels asked appellants 3.69 questions per argument, as compared to the 5.16 questions per argument Panels asked appellants in other oral arguments; Panels in the June, 2003, arguments asked appellees 3.54 questions on average, compared to 5.1 questions asked of appellees by Panels in other oral arguments.

¹¹ In at least half the oral arguments in June, 2003, the Panels took nearly twice as long to ask appellants their first question as they did in the non-2003 oral arguments—i.e., 5 and a half minutes, as compared to three minutes and seventeen seconds. The same comparison applies to questions asked of appellees. Panels in June, 2003, had asked their first question of half the appellees five minutes and four seconds into the arguments, while the Panels in the non-June, 2003, cases had asked their first questions of appellees no later than three minutes and twenty two seconds into the arguments.

¹² In 2 of the 14 cases (14.28%) argued in June, 2003, Panels asked appellants no questions, as compared to 4 of the 43 (9.3%) non-June, 2003, oral arguments. Appellees in 4 of the 14 (i.e., 28.6%) June, 2003, cases received no questions, while 7 of the 43 (16.28%) appellees in the non June, 2003, case received no questions.

accelerate oral argument into June, 2003); (2) the tendency of hot summer weather to sap us all; and (3) the fact that the June arguments were the last arguments for the Court for that fiscal year; and so on. But while we can point to distinctions between the June, 2003, oral arguments, and those occurring at other times, we find those distinctions overshadowed by the consistent tendencies and trends indicated by the Panels we listened to in all the arguments, to wit:

- the Court will tend to allow you some time to introduce your case;
- the Court will ask questions of you;
- the briefs and the record in the case will inform those questions; and
- you can do certain things to anticipate and prepare for those questions.

So consider the following dynamics to help you prepare for the oral argument.

1. Know how long you have to make your presentation.

This statement distinguishes between allotted argument time, and time for prepared statements—a distinction which makes a difference, and for which you can prepare.

- a. How much time does the Court allow for my argument?

Unless the Presiding Justice of the Panel allows additional time, the Local Rules allow 15 minutes for the appellant's opening argument, 15 minutes for the appellee's argument and 5 minutes for the appellant's rebuttal. If you want more time, file a motion to that effect at least 10 days prior to the scheduled submission date (Rule 3.C., Local Rules for the Second Court of Appeals). Based on the oral arguments we reviewed, if the Court allows you more time, it probably will not all you more than about five minutes additional time. Once, on a particularly thorny case, the Chief Justice gave both sides an additional five minutes *sua sponte*. But you cannot count on that happening.

- b. How many questions will the Panel ask me?

The number, and timing, of questions the Panel asks you will directly affect the time available for your prepared statement. And that brings us to the first quantitative analysis we made concerning the oral arguments we reviewed.

On average, the non-June, 2003, Panels asked appellants 5.16 questions during their opening arguments. Four times, a Panel asked no questions of the appellant; on another occasion, a Panel asked the appellant 25 questions.

Since extremes, and even sometimes averages, can mislead, we thought it might help to identify how many questions the Panels asked of attorneys at least half the time. We figured that, if something happens in at least half the oral arguments, it makes sense to plan for that event. We also noted that a case's position on the docket seemed to affect the questioning tendencies of the Court, or at least the questioning tendencies of the Court tended to correlate with the position of the case on the oral argument docket.

The diagrams in Appendix Four to this paper show in graphic form the questioning tendencies we observed in the non-June, 2003 cases, including how long at least half the appellants and appellees had to make prepared comments before receiving their first question, how many questions at least half the appellants and appellees received, and how long at least half the appellants and appellees to wrap up between receiving their last question and when their time expired. We have prepared separate graphic representations for Civil Cases and Criminal Cases, and have further distinguished between cases appearing first, second, third, fourth, fifth and sixth on the docket in preparing those graphic representations. For an example of what those graphic representations look like, consider the following table which relates to the experiences of those arguing a civil case first on the docket:

On Average, for Civil Cases Argued First on the Docket:

-----Total Argument Time (15 Minutes?)-----

Opening	Questions and Answers	Closing
First Question was asked, 50% of time: to Appellants, after 2:22 mins. to Appellees after 3:06 mins.	50% of the time: 8+ questions for Appellants 6+questions for Appellees (one-third had 10+ questions)	Appellants:50% had no questions in last minute. Appellees: half had last question by 9:58, and half had last question after 13:14

To see what we found for a case such as yours, find your case in the listings below, and go to that page in Appendix Four of the paper:

Appendix 4.A. Civil Cases 39

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 On Average, for Criminal Cases Argued Fourth on the Docket (excluding arguments in June, 2003) 44

 On Average, for Criminal Cases Argued Fifth or Sixth on the Docket (excluding arguments in June, 2003) 44

For both appellants and appellees, keep this in mind: sometimes the Panel members are so careful to lay out the predicates to their question that the question lasts for a minute or a minute and a half. So, depending on the length of the questions, you could spend a third to a half of your argument time listening to questions.

On a purely subjective note, the Panels seemed to ask fewer questions on cases which appeared cut and dried, with clear facts and law.

c. How long before the Panel starts to question me?

As you might suspect, the answer to this question varies from argument to argument. On one occasion, a Panel member asked an appellant a question eighteen (18) seconds into the oral argument; one appellee received the first question six (6) seconds into the presentation. In our opinion, counsel provoked at least one of these obviously extreme examples.

The graphic representations in Appendix Four reflect what we observed on this topic, in terms of tendencies. Appendices Two and Three to this paper show the percentage of times that a Panel first questioned appellants and appellees. It makes sense to keep these tendencies in mind when you are preparing your opening statement. If you assume you will have more time to talk than the above-described tendencies indicate, you buck the odds.

d. What, if anything, affects how quickly the Panel will start to question me?

Other than as set forth above, no real good marker predicts an answer to this question (i.e., we noticed no trends based on the day of the week the Court heard argument on a case, nor did we notice any trends associated with the composition of the Panels or the type of case, in civil proceedings). Clear, direct facts and law seemed to elicit less questioning from Panels. Insinuating the Panel may not have read the briefs, or that it already had its mind made up, or making a presentation as though making a sales pitch you intended to ram down the Panel's throat did seem to trigger fairly immediate questioning from Panels.

2. Try to predict the questions the Court will ask you.

By now, you should have embraced the nearly inescapable conclusion that, in all likelihood, you will face a well-informed Panel, and the members of that Panel will question you. But you should go beyond that recognition; you should welcome and hope for questions from the Panel. As noted by more than one writer on the topic of appellate argument, questions are your friends.¹³ Questions tell you what concerns the Panel, and give you the opportunity to have some impact on how the Panel addresses and resolves those concerns. If anything, you should try to quickly transition the Panel to the questioning phase so that you will have more time to deal with the Panel's areas of uncertainty or concern.

Once you decide that questioning by the Panel is a good thing for your client, you of course want to know if you can predict the questions you will hear. If you want a cast-in-stone assurance, we have a simple answer—"Of course not." But you can do some things to predict the types of questions you will hear. For example, you can take note of the types of questions asked by the Panels we listened. This can help you get in the right frame of mind to prepare for those questions. Furthermore, you can think about your audience and where they find themselves in the decision making process. This might also help you identify some likely areas of inquiry. Some other ideas you might consider in your efforts to predict and prepare for the question you will hear.

a. Conduct your own appellate focus group.

Trial lawyers love focus groups. As we all know, a focus group consists of a cross-section of the community recruited by recently wealthy jury consultants. Focus groups listen to a couple of arguments, usually made by two lawyers who actually represent the same client. The focus group members then tell the lawyers everything that Oprah, Phil, Judge Judy and the soaps have led them to believe must be important about the case.

Actually, focus groups are pretty helpful, because they remind us to pay attention to the things that will catch the attention of people who have not lived with this set of facts for two years, but who hear the facts for the first time.

The same is true in preparing for your oral argument. It makes a lot of sense to find one or more seasoned lawyers whose judgment you trust and who

¹³ Justice Harriet O'Neill and Richard R. Orsinger, *Supreme Court Jurisdiction, Practice Before the Supreme Court of Texas*, Chapter 10, page 7 (2002).

know nothing about your case (and maybe a young lawyer or two—remember the Briefing Clerks) to read all the appellate briefs and to put in writing the questions they have about the case. You have lived with your case for a couple of years. These lawyers you recruit to read the briefs for the first time are probably closer to the Justices on your Panel in ways that count than you are. If more than one of these folks asks you the same questions, or if any of them ask questions that you have not thought of before, take note and think long and hard before you decide to ignore those questions.

- b. Determine what kinds of questions the Court has asked in cases similar to yours.

The Second District Court of Appeals writes a lot of opinions every year, and those opinions cover a wide variety of topics. The Court may have written in the recent past on one or more issues involved in your case. It goes without saying you will familiarize yourself with the opinions in those cases. You should also familiarize yourself with the oral arguments in those cases, especially if the Panel in your case includes Justices from those prior cases.

The Second Court of Appeals records its oral arguments, and has done so since September, 1998. This practice provides you with a resource somewhat rare among Texas courts of appeals.¹⁴ You may obtain a copy of these taped oral arguments by calling the Clerk of the Court at 817/884-1900. As of December 26, 2005, the Second Court charged one dollar for a tape containing all the oral arguments conducted on a given day.¹⁵

Identifying and obtaining a copy of oral arguments on reported cases is

¹⁴ In a recent poll of the clerks of the Texas courts of appeals, only the following five courts of appeals record their oral arguments and make those recordings available to the public: the Second (Fort Worth), Fourth (San Antonio), Sixth Court (Texarkana), Eighth (El Paso) and Twelfth (Tyler). The Thirteenth Court (Corpus Christi) will allow you to record oral arguments, but you have to do so yourself. The Fifth Court (Dallas) records oral arguments, but does not make those recordings available to anyone else. The remainder of the courts of appeals do not record oral arguments.

¹⁵ The Court does, from time to time, review the tape recordings of oral arguments to confirm the Justices' memories as to what a give counsel said. Chief Justice John Cayce, comments at "The Appellate Roadshow, or Everything Trial Lawyers Need to Know About Appellate Law (But Were Afraid to Ask)"(May 27, 2004).

fairly straightforward. But suppose you want to know if case similar to your own has been argued before but not yet decided by the Second District Court of Appeals. For civil cases, you can check a compilation we update on our website on a monthly basis reflecting issues presented in briefs in pending cases.¹⁶ We have not discovered how to identify other cases. If anyone has an idea about how to identify these argued but undecided cases, or if you have suggestions for a system which would efficiently and economically help identify these cases, please let us know.

c. Consider the general tendencies the Court shows in its questioning.

The Court does seem to show some general tendencies in the types of questions it asks, based on the oral arguments we reviewed. The tendencies may not surprise you, but analyzing the questions in those oral arguments do reinforce some widely-held beliefs and emphasize the need for basic preparation. For a listing of all the types of questions asked, and their frequency, see the Tables at Appendix Six in this paper.

i. Questions concerning the facts of your case and the record in your case.

Over thirty percent of the questions fall in the category of dealing with the facts of the case, and nearly twenty percent of the questions dealt with the state of the record—i.e., what was filed, when was it filed, was everything properly served, what was before the trial court when it ruled, who was served, how much notice was given of hearings, and the like. Do not underestimate the need for familiarity with the record, or the Panel’s tendency to pay attention to the record. During one oral argument, one of the Justices flipped through either the record or an appendix to a brief and uncovered the facsimile header on a document showing the date of its fax-filing in Denton County; the lawyers had spent a good deal of time during the oral argument disputing when that fax arrived at the courthouse.

This advice – to know the facts and the record – may seem like the most mundane thing in the world. But consider this analogy: you try to bring the

¹⁶ *Issues in Some Civil Cases Pending Before the Second Court of Appeals.* Go to www.cottenschmidt.com, click on “Partners”, click on “Steven K. Hayes”, and scroll down the page until you come to the “Issues Pending” paper, which you can click on. Or just go to <http://www.cottenschmidt.com/SKH%20pending%20cases%20list%202001.pdf>.

Justices into your room to have them admire the neat model you built, or the wonderful poem you wrote, or the beautiful picture you drew. But they will find it hard to admire your work when they trip over the toys you left lying around; of course, you have become so familiar with those toys that you just ignore them. Getting those loose toys out of the way might help the Justices appreciate your more important handiwork. A thorough knowledge of the facts and the record, in conjunction with the questions you receive from other lawyers who have read the briefs, might go a long way in helping you decide the best way to get those loose toys out of the way in the first few minutes of the oral argument.

Having said this, you should not go overboard on a lengthy recitation of the facts. This apparently occurs frequently enough to have drawn an admonition from one prior member of the Court in public comments, accompanied by confirmation from that Justice that the Court is usually familiar with the facts, and will question you as needed about facts that remain in dispute.¹⁷ So, prepare to answer fact questions, but don't presume that the Court's needs or wants a long discourse about the facts of the case. The Panel members will let you know if they feel that discourse necessary.

- ii. Questions concerning whether your arguments dovetail with reality.

Over twenty percent of the questions fell in a category we referred to as "Reality Check." These include the "so what" questions, together with those questions that focused on whether the counsel's position made sense in the greater scheme of things, or was logical when considered in the context of the facts, statutes, practical factors, procedural rules and case law applicable to the case. In Appendix Five to this paper, we set forth a number of samples of questions we categorized as "Reality Check" questions. These kinds of questions come from a fresh perspective, and from thinking outside the box. We also suspect these questions come from a concern about how the final opinion will look and that it contain a viable, rational, reasonable holding not subject to the criticism that it ignores common sense or is not intellectually honest. If you want to really make use of the lawyers you have read the briefs and question you, tell them to focus on these types of questions.

- iii. Questions concerning the positions you have taken.

¹⁷ The late Justice Sam Day, *supra*.

Nearly thirty percent of the questions inquired about the lawyer's position—either asking for a clarification of that position (“Counsel, are you telling us...”, “Counsel, is it your position that ...”, etc.), asking how far that position would extend and trying to make sure that the Panel correctly understood the lawyer's position. And we found it surprising how many lawyers—obviously good lawyers—stumbled at least a little bit when asked to commit to a proposition. So before the oral argument, know your positions and articulate them out loud to other people so you can make them comfortably during oral argument.

iv. Questions concerning procedure and existing case law

Yep, the Justices ask about cases. About ten percent of the questions related to existing law (the holdings and fact patterns in existing cases, and the text of statutes and rules), and another eight percent involved applying existing law (both case law and statutes) to the facts of the case at hand. Happily, it seemed that the Justices did not intend these questions as memory tests on obscure cases, but rather focused on cases which were central to the parties' briefing. One attorney provided a valuable lesson for what to do if you are asked about a case and you draw a blank: diplomatically tell the Panel that you have had a brain backfire, and ask the Panel to refresh your memory about the particular case in question. It seemed obvious the Panels were not playing stump the chumps, and really wanted to get the lawyers' insight on how to deal with the reasoning, results and facts of pertinent cases.

The Panels also seem equally interested in procedure—that is, the posture of the case when the trial court dealt with it, how it came to that posture, and how the Rules deal with that posture. To some extent this questioning related to the questions having to do with the record. So make sure to know what happened below, and that what happened dovetails with the Rules.

v. Questions concerning applicable statutes

If your case involves the applicability or meaning of statutes, codes, charters and constitutions, you need to prepare to answer such questions. Familiarize yourself with the wording of the statutes. If the interpretation of the statute involves a question of first impression, prepare for questions concerning the legislative history surrounding the statute and how that history can or should affect its interpretation. In terms of gathering the legislative history about a given statute, we have had good luck for a reasonable fee when we used Legislative

Intent Research (3308 Harris Park Ave., Austin, Texas 78705-2534, 888.474.0813-toll free, 512.474.0813 - voice, 512.477.9144 - fax, e-mail: lir@io.com, website: <http://www.io.com/~lir/>). For a thumbnail sketch of Texas case law discussing the use of legislative history in interpreting statutes, see Dorsaneo, Texas Litigation Guide, Section 4.04. If it better suits your interests, certain law review articles question the value of using legislative history to determine statutory meaning.

vi. Questions falling in other categories.

It goes without saying that the Court will always have an interest in whether a party preserved error and whether the Court has jurisdiction over the case. If your case arguably has such issues, prepare for questions on these issues. Always expect the Court to probe the bases for your contentions and whether you take consistent positions on these issues. As we mentioned above, for a list of all the categories we used to try to describe the questions which asked in the oral arguments we reviewed, and the percentage of questions which seemed to fall into each category, see the tables in Appendix Six to this paper.

3. Your Prepared Statements

a. Prepare your opening

You have done what you can to predict the questions, you have some idea how long the Court typically lets someone in your shoes talk before questioning begins, and now you have to actually prepare the last argument you may make solely about the merits of this case. So what do you do?

First of all, put yourself in the place of your audience. You face three Justices with lots of legal experience and three pretty bright young briefing clerks who have read the briefs, and maybe done some additional background work on the case, as well. The Justices have not yet had a formal discussion amongst themselves to determine what questions or beliefs they all have; more important than that, none of them know what you will say or how you will say it. Put another way, the Justices cannot read your mind. So it would not hurt to provide the Justices and the clerks with an idea of how you intend to approach this argument; the best time to do that is right up front.

So we suggest that you select the things which your preparations show as most important. In doing so, pick those things that you can present in two or three

minutes, get them organized and develop a clear, cogent and succinct introduction to those issues. Then consider beginning your argument as follows, after intoning “May it please the Court,” and having the Court indicate you should proceed:

“In this argument, we would like to address the issues raised in points ____, ____, and ____ of our brief, which relate to [describe the points succinctly]; we will submit the remainder of the points raised in our brief on the briefing currently before the Court. We would like to spend the first two (three? four?) minutes of our argument today doing two things: first, going over the facts we feel are most important, and then setting out the holdings we requesting from the Court and why we think those holdings justified. From questions that other lawyers have told us they have after reading the briefs, we also hope to clear up some questions that the briefs may have left unanswered.”

Following this approach, or something similar to it, will tell the Panel that in two or three minutes you just might address the questions they have. It also tells them whether, and in what order, you plan on addressing the points that interest them. Then use that two or three minutes wisely, to address the issues and facts which your preparation thus far has indicated will be important.

Yet another approach to the opening in oral argument is to announce to the Panel the holdings you request that they make, and the reason you make that request. Using this approach means that, even if the Panel begins questioning you immediately, you will have at least informed the Justices of what you want and why.

Of course, any “cut to the chase” approach has another feature you have to anticipate. After you say what you find important, the Court may direct you to the points they want you to address. But even if that rather awkward event occurs, you at least have not wasted valuable time talking about stuff that does not interest the Court, which means you still have that time to regroup and address the issues which the Court raises.

b. Prepare your closing

Unless you do not have a lot to say, you will face the yellow light, meaning you have two minutes left. Appellants will probably face that yellow light twice. For the football enthusiasts, these yellow lights present the opportunity to

implement a two-minute drill, though you have no timeouts for anything.

Since you know you will face these warnings, it probably makes some sense to prepare appropriate two minute closings, or one minute closings, or thirty second closings or—well, you get the idea. Due to questioning, you may not get to use these closings, but an analysis of the arguments shows that in non-June, 2003, oral arguments the Panels did not ask questions of about half of the appellants for the last minute and a half, and did not question about half the appellees for the last three minutes of argument.

On rebuttal, the Court does not question a little over half of appellants (30 appellants, or 53%, received no questions on rebuttal). Fourteen appellants, or nearly 25%, received their last question in rebuttal with at least one minute and twenty four seconds remaining. The remaining appellants received their last question in rebuttal in that last minute and twenty four seconds of oral argument. When we distinguish between civil cases and criminal cases, we see some real distinctions in questioning during rebuttal.

Practice/Tendency	Civil Cases	Criminal Cases
No questions asked	44%	63%
At least one minute following last question	35%	20%
Last question with less than one minute left	21%	17%

With these tendencies, you ought to have two kinds of closing ready: (1) the first one, that you can invoke in just a couple of sentences; and (2) another one that wraps you up in a minute or two.

c. Prepare answers to expected questions

We cannot add much here. Take the questions suggested by those who read the briefs, take the questions that come to your mind as you prepare for oral argument, take the questions which you gleaned from listening to oral arguments on similar cases and the questions which may have arisen from opinions handed down by the Court since you wrote your brief, and make sure you have answers for them.

- d. Prepare to present your case if the Panel does not ask you many questions.

Just like most lawyers will hear five or more questions, nearly half the lawyers will hear fewer questions than that. While you have to prepare for the questions you will face, you also need to have a presentation prepared that will present the points you think are important if you do not receive many—or any—questions. Because we wanted to focus on the role played by the Court’s questioning in the oral argument process, we really did not address this issue.

4. Some other suggestions based on the oral arguments:
 - a. Handle yourself professionally

Or, as my mother admonished me, act like you know what you’re doing. After intoning the time honored and absolutely required “May it please the Court,” and awaiting the invitation to continue by the Presiding Justice (thanks to Jim Barlow for the reminder to include this nicety), you might consider voicing your appreciation to the Panel for the opportunity to present them with oral argument in the case. Members of the Court have also indicated an appreciation for counsel introducing their co-counsel and, if present, their clients.¹⁸ Many counsel do none of these things, probably because the clerk introduces counsel right before argument begins. But this little courtesy shows you know how to act.

Everyone has a different speaking style, and there is a limited amount you can or should do to change your style. But to the extent that you can, try to convey a calm, measured approach to the argument. The arguments we reviewed left us with an impression – purely subjective – that counsel who were more hurried, impatient or strident seemed to prompt their Panel to exhibit some of those same characteristics. By the same token, counsel who had a calm demeanor seemed to enhance the normal tendencies of the Panels to be circumspect and measured.

¹⁸ You should be aware that at least one member of the Court has told the Appellate Section of the Tarrant County Bar Association that you should not let your clients come to the oral argument, and that if you cannot dissuade them from attending, you should do everything you can to make sure that they will have no physical reaction (e.g., facial or body language) to the argument made by their opponent's counsel or the questions of the Court. The late Justice Sam Day, *supra*.

When one of the Justices starts asking you a question, stop talking and listen. Wait for the Justice to finish his or her question before you try to answer it. This is hard to do sometimes, because some questions last a minute or more. But in asking these longer questions, the Justices often conveyed to counsel the concern that led them to ask the question in the first place. Encourage that tendency by waiting for the end of the question. You may benefit.

Once you have the entire question in front of you, answer it. If you try to avoid it, the Court will bring you back to it, and you will have only wasted valuable argument time. If the question points out a weakness in your case, admit that the Justice has posed “a hard question for my client to answer” or “a difficult issue for me to address” or the like, but then show that an answer exists or show why that the issue does not affect an outcome or holding unfavorable to your client. As drove to work one day, one of the talk shows dealt with “spin doctors” who had worked on presidential and congressional campaigns. The press had been polled as to the best “spin doctor” from the last thirty years, and James Baker was named as one of the best, because of his disarming candor. When addressing the press, if there an issue presented a problem for the White House, he would admit up front that it was “troubling” or “of great concern.” Having raised his credibility by admitting the obvious, he would then give the White House position on the subject. Consider making use of this same technique. Keep in mind, however, that it did appear from the arguments we reviewed that, in asking questions, the Panel members often looking for concessions on points that will help them resolve the case. While you should be candid, don’t fall too quickly or too gratuitously on your sword.

Keep track of how much time you have left. When the yellow light on the podium illuminates, you have two minutes left. So start to wind up your argument with your planned closing.

When the red light goes off, finish your thought as quickly as you can and sit down. At that point, you are on the Court’s time, not yours.

b. Finally, things you really shouldn’t do.

For lack of a better phrase, don’t poke the Justices with a stick. They will poke back. Here are a couple of examples:

“I assume the Court has at least a cursory familiarity with the briefs,

but please let me know if I misspeak.”

If you say something like this, expect a question shortly that demonstrates in painful clarity that the Panel has read and fully understands your case, though you may not. This specific example came from the case in which the Panel asked its first question about six seconds after the statement was made, and inquired whether the lawyer’s client had standing.

“If I can respond to a question [from the Panel] with a question, what is it that you see as missing there? I realize it’s your prerogative to ask the questions and not me.”

This lawyer was right, it is the Court’s prerogative to ask questions, not his. Not mine. Not yours. If a question from the Panel leaves you a little befuddled, diplomatically request the questioning Justice to provide you some clarification so that you can provide a more helpful or informative answer. But it seems a little impertinent to jab at the Panel just because they may not have gotten your point on the first reading.

Make sure everyone seated with you at the counsel table knows that only the person at the podium has authority to communicate with the Court during oral argument. Also make sure that everyone with you knows to not interrupt opposing counsel while that counsel addresses the Court.

Do not try to talk over a Justice who asks you a question. Let them have the floor. It’s their courtroom.

Do not mislead the Court, overstate the facts in your favor or misstate the law. This is not a talk show or a political pitch. The Court will not be fooled.

On occasion, your client is not the most savory entity in the world. While you should not try to make your client into something he or she is not, you also shouldn’t cut your client’s throat in the name of candor. For example, there might be something less critical you could say about your client than “About the best thing you can say about my decedent that day was that he was in need of a good killing,” or “I would almost just as soon be here trying to represent the terrorists.”

5. Predicting the Author of the Opinion in Your Case

I do not know how fruitful you will find this exercise, but Appendix Nine to this paper correlates the number of questions asked by each Justice when he or she authored opinions in the cases we profiled, as compared to the number of questions each Justice asked in those cases when that Justice did not author the opinion. Whether this comparison provides a tool of any real use depends on a lot of factors (e.g., do we have a sufficient random sample of cases; can a sample which does not analyze an equal number of cases for each Justice accurately predict the author of an opinion based on questioning tendencies; etc.). But for those who want to play the guessing game, you can find the comparisons in Appendix Nine.

6. Finis

As many ways exist to conduct oral argument as there are lawyers, and most of them work pretty well. We hope that you can make use of what we observed from our review of oral arguments before the Second District Court of Appeal. If you try something we suggested in this paper and it backfires, let us know so we will not continue wallowing in our own ignorance. If you try something, or see something tried, that really works, let us know. We will keep track of it and work it into future papers, with credit to you.

Suggested Reading:

See Justice Harriet O’Neill and Richard Orsinger, *Oral Argument*, Practice Before the Supreme Court of Texas, Chapter 10 (2002), and materials cited therein, including the website at http://www.law.wfu.edu-u/lrwfrontpage/oral_argument_checklist.htm for a checklist published by Wake Forest Law School to grade students in oral arguments. To get a copy of the O’Neill and Orsinger article, go to The Online Library at www.TexasBarCLE.com.

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Appendix One. Rules Governing Oral Argument

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From Lexis.com:

Texas Rules of Appellate Procedure: Rule 39 Oral Argument; Decision Without Argument

39.1 Right to Oral Argument.

Except as provided in 39.8, any party who has filed a brief and who has timely requested oral argument may argue the case to the court when the case is called for argument.

39.2 Purpose of Argument.

Oral argument should emphasize and clarify the written arguments in the briefs. Counsel should not merely read from prepared text. Counsel should assume that all members of the court have read the briefs before oral argument and counsel should be prepared to respond to questions. A party should not refer to or comment on matters not involved in or pertaining to what is in the record.

39.3 Time Allowed.

The court will set the time that will be allowed for argument. Counsel must complete argument in the time allotted and may continue after the expiration of the allotted time only with permission of the court. Counsel is not required to use all the allotted time. The appellant must be allowed to conclude the argument.

39.4 Number of Counsel.

Generally, only one counsel should argue for each side. Except on leave of court, no more than two counsel on each side may argue. Only one counsel may argue in rebuttal.

39.5 Argument by Amicus.

With leave of court obtained before the argument and with a party's consent, an amicus curiae may share allotted time with that party. Otherwise, counsel for amicus may not argue.

39.6 When Only One Party Files a Brief.

If counsel for only one party has filed a brief, the court may allow that party to argue.

39.7 Request and Waiver.

A party desiring oral argument must note that request on the front cover of the party's brief. A party's failure to request oral argument waives the party's right to argue. But even if a party has waived oral argument, the court may direct the party to appear and argue.

39.8 Cases Advanced Without Oral Argument.

In its discretion, the court of appeals may decide a case without oral argument if argument would not significantly aid the court in determining the legal and factual issues presented in the appeal.

39.9 Clerk's Notice.

The clerk must send to the parties--at least 21 days before the date the case is set for argument or submission without argument--a notice telling the parties:

- (a) whether the court will allow oral argument or will submit the case without argument;
- (b) the date of argument or submission without argument;
- (c) if argument is allowed, the time allotted for argument; and
- (d) the names of the members of the panel to which the case will be argued or submitted, subject to the change by the court.

A party's failure to receive the notice does not prevent a case's argument or submission on the scheduled date.

Second Court of Appeals Local Rules

Table of Rules

Rule 3. Oral Argument.

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RULE 3. ORAL ARGUMENT

Oral argument shall be governed by Rule 39 of the Texas Rules of Appellate Procedure and this rule.

A. Request.

A request for oral argument shall be printed on the outside cover of the party's brief. Oral argument must be requested at the time the brief is filed, or it will be deemed waived. Oral argument shall not be requested unless the party requesting argument intends to appear for argument on the date set for submission. Conditional requests for argument (e.g., "Appellant requests oral argument only if oral argument is requested by appellee.") are acceptable.

B. Notice.

(1) When Argument Requested. In the event one or more parties request argument in the manner prescribed by Rule 39 and this rule, the clerk shall send to the parties -- at least 21 days before the case is set for argument or submission without argument -- the notice required under Rule 39.9.

(2) When Argument Not Requested. Any party who wishes that the case be submitted without oral argument should state that argument is not requested on the cover of their brief. If all parties request that the case be submitted without oral argument, or if no party requests oral argument, and the court decides that oral argument will not significantly aid the court in determining the issues presented in

the appeal, the clerk shall send the parties a notice stating the case will be submitted without oral argument and the names of the members of the panel to which the case will be submitted, subject to change by the court.

C. Time Allowed.

Unless additional time is granted by the presiding justice of the panel to which the case is assigned, oral argument will be limited to fifteen (15) minutes for the appellant's opening argument, fifteen (15) minutes for the appellee's argument, and five (5) minutes for the appellant's rebuttal. Requests for additional time must be made by motion filed at least ten (10) days prior to the scheduled submission date.

D. Continuance.

After a case has been set for argument, oral argument may be continued only by an order of the court for good cause. It may not be continued by agreement of the parties.

E. Waiver.

A party who desires to waive an oral argument that has been previously requested or scheduled must notify the clerk and all opposing parties at least seven (7) days prior to the scheduled submission date.

F. Failure to Appear.

Unless argument is continued or waived under these rules, lead counsel for each party or his or her designee scheduled for oral argument shall appear in the courtroom at the time set for oral argument. Failure to appear will be looked upon with disfavor.

From the Website for the Second Court of Appeals (<http://www.2ndcoa.courts.state.tx.us/RulesOrds.htm#ORAL>)

Appendix Two. When Panels Asked the First Question

Appendix Two. When Panels Asked the First Question

Table 2.A. First Questions to Appellants (38 Civil Cases, 9 of which had argument in June, 2003, and 29 of which did not; 19 Criminal Cases, 5 of which had argument in June, 2003, and 14 of which did not). (**Bold indicates when tendency crossed 50%**)

The first question was asked of Appellant before the following number of minutes elapsed...	...in this percent of civil cases (analyzed by All Cases, Cases not in 6/03, and the 6/03 cases).			...in this percent of criminal cases (analyzed by All Cases, Cases not in 6/03, and the 6/03, cases).		
	All	Non-6/03	6/03	All	Non-6/03	6/03
XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX						
1	13	17	0	16	21	0
2	29	41	0	21	29	0
3	39	48	11	21	29	0
3 mins, 11 sec	47	55	22	21	29	0
4	47	55	22	32	43	0
4 mins, 37 sec	50	55	33	42	50	20
5	52	57	33	42	50	20
5 mins, 54 sec	63	66	44	58	64	40
6	66	66	56	58	64	40
7	71	69	67	68	79	40
8	82	79	78	68	79	40
9	84	86	78	68	79	40
10	87	90	78	68	79	60
11	87	90	78	79	86	60
12	89	93	78	79	86	60
14	97	97	89	79	86	60

Table 2.B. First Questions to Appellees (38 Civil Cases, 9 of which had argument in June, 2003, and 29 of which did not; 19 Criminal Cases, 5 of which had argument in June, 2003, and 14 of which did not). **(Bold indicates when tendency crossed 50%)**.

The first question was asked of Appellees before the following number of minutes elapsed...	...in this percent of civil cases (analyzed by All Cases, Cases not in 6/03, and the 6/03, cases).			...in this percent of criminal cases (analyzed by All Cases, Cases not in 6/03, and the 6/03, cases).		
	All	Non-6/03	6/03	All	Non-6/03	6/03
XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX						
1	16	14	22	5	7	0
2	29	31	22	26	29	20
3	42	45	33	42	43	40
3 mins, 25 sec	50	55	33	47	50	40
4	50	55	33	53	57	40
5	66	66	67	53	57	40
6	79	79	78	53	57	60
7	84	86	78	63	64	60
8	87	90	78	58	64	60
9	89	93	78	68	64	60

**Appendix Three. First Question to Advocate,
Organized by Order of Case on Docket**

Appendix Three. First Question to Advocate, Organized by Order of Case on Docket

The following tables show the percentages cases in which the Court first questioned advocates before a given number of minutes elapsed in the oral argument. The table displays the percentages in terms of cases argued first, second, third, fourth, or (if applicable) fifth or sixth on the docket for any given day. If a table gives no percentage for any given minute, that means the Court asked no first questions during that minute of the oral argument. **(Bold indicates when tendency crossed 50%).**

Table 3.A. Civil Cases: First Questions to Appellants, Organized by Order of Case on Docket

Before this many minutes elapsed...	...the Court first Questioned Appellants in this percent of the Civil cases argued as this case on the docket.											
	first			second			third			fourth		
XXXXX XXXXX	All	Non 6/03	6/03	All	Non 6/03	6/03	All	Non 6/03	6/03	All	Non 6/03	6/03
1	7	8		9	12		33	43				
2	27	33		36	50							
3	47	60		54	63	67						
4	53	75					44	57				
5			33	72	75							
6	73		67	81	88		56	71				
7							86	86	50	33	33	
8	93	91	100							67	67	
9												
10							100	100				
11												
12										100	100	
13												
14				100	100	100						

Table 3.B. Civil Cases: First Questions to Appellees, Organized by Order of Case on Docket. **(Bold indicates when tendency crossed 50%).**

Before this many minutes elapsed...	...the Court first Questioned Appellees in this percent of the Civil cases argued as this case on the docket.											
	XXXXX	first			second			third			fourth	
XXXXX XXXXX	All	Non 6/03	6/03	All	Non 6/03	6/03	All	Non 6/03	6/03	All	Non 6/03	6/03
1	20	17	33	9		33	22	29				
2	33	33		27	25					33	33	
3	47	50		45	38	67	44	57				
4	53	58					55	71				
5	73	75	67	55	50		67			67	67	
6	93	92	100					86	50	100	100	
7	100	100		64	83		77					
8				73	75		88	100				
9												

Table 3.C. Criminal Cases: First Questions to Appellants in Criminal Cases, Organized by Order of Case on Docket. **(Bold indicates when tendency crossed 50%).**

Before this many minutes elapsed...	...the Court first Questioned Appellants in this percent of the Criminal cases argued as this case on the docket.											
XXXXX	first			second			third			fourth		
XXXXX XXXXX	All	Non 6/03	6/03	All	Non 6/03	6/03	All	Non 6/03	6/03	All	Non 6/03	6/ 0 3
1				25	33		33	50		20	25	
2				50	67							
3												
3 mins. 17 secs	67	100										
4												
5			100							40	50	
6										80	75	1 0 0
7							67	100		100	100	
8												
9												
10							100		100			

When criminal cases were argued Fifth or Sixth on the docket, the Court did not appear as active on questioning. Appellants in half of the cases had their first question before 11 minutes had expired; one third of appellants in such non-June, 2003 cases had their first question by the time 6 minutes had expired, and two-thirds of appellants in such cases had their first question by the time 11 minutes had expired. The Court asked no questions of appellants in such cases argued in June, 2003.

Table 3.D. Criminal Cases: First Questions to Appellees in Criminal Cases, Organized by Order of Case on Docket. **(Bold indicates when tendency crossed 50%).**

Before this many minutes elapsed...	...the Court first Questioned Appellees in this percent of the Criminal cases argued as this case on the docket.											
XXXXX	first			second			third			fourth		
XXXXX XXXXX	All	Non 6/03	6/03	All	Non 6/03	6/03	All	Non 6/03	6/03	All	Non 6/03	6/ 0 3
1							33	50				
2	33	50		25	33					40	25	1 0 0
3	67		100	75	100							
4	100	100										
5												
6				100		100						

When criminal cases were argued Fifth or Sixth on the docket, the Court did not appear as active on questioning. Appellees in half of such cases had their first question before 7 minutes had expired; one third of appellant in such non-June, 2003, cases had their first question by the time 3 and a half minutes had expired, and two-thirds of appellants in such cases had their first question by the time 6 minutes had expired. The Court did not question appellees in cases argued Fifth or Sixth on the docket in June, 2003.

Appendix Four. Diagrams of Argument Time (Excluding Arguments June, 2003)

Appendix Four. Diagrams of Argument Time (Excluding Arguments June, 2003)

Appendix 4.A. Civil Cases

On Average, for All Civil Cases (excluding arguments in June, 2003):

-----Total Argument Time (15 Minutes?)-----

Opening	Questions and Answers	Closing
First Question was asked, 50% of time: to Appellants for 3:10 mins. to Appellees for 3:22 mins.	50% of the time: 5+ questions for Appellants (>9 questions 28% of the time) 5+ questions for Appellees (>9 questions 31% of the time)	50% of the time, no questions in last minute and a half for Appellants and last three minutes for Appellees

On Average, for Civil Cases Argued First or Second on the Docket (excluding arguments in June, 2003):

-----Total Argument Time (15 Minutes?)-----

Opening	Questions and Answers	Closing
First Question was asked, 50% of time: to Appellants, after 2:22 mins. to Appellees after 3:22 mins.	50% of the time: 8+ questions for Appellants 5+questions for Appellees	50% of time, no questions in last minute for Appellants and in last 1:46 for Appellees

On Average, for Civil Cases Argued First on the Docket (excluding arguments in June, 2003):

-----Total Argument Time (15 Minutes?)-----

Opening	Questions and Answers	Closing
<p>First Question was asked, 50% of time:</p> <p>to Appellants, after 2:22 mins.</p> <p>to Appellees after 3:06 mins.</p>	<p>50% of the time:</p> <p>8+ questions for Appellants</p> <p>6+questions for Appellees (one-third had 10+ questions)</p>	<p>Appellants:50% had no questions in last minute.</p> <p>Appellees: half had last question by 9:58, and half had last question after 13:14</p>

On Average, for Civil Cases Argued Second on the Docket (excluding arguments in June, 2003):

-----Total Argument Time (15 Minutes?)-----

Opening	Questions and Answers	Closing
<p>First Question was asked:</p> <p>to 50% of Appellants, after 1:50 mins. (other 50% after 4:50)</p> <p>to 50% of Appellees after 5 mins. (but 38% of time within 2:21)</p>	<p>50% of the time:</p> <p>9+ questions for Appellants</p> <p>5+questions for Appellees</p>	<p>50% of the time:</p> <p>No questions in last 1:10 for Appellants and in last 1:32 for Appellees</p>

On Average, for Civil Cases Argued Third on the Docket (excluding arguments in June, 2003):

-----Total Argument Time (15 Minutes?)-----

Opening	Questions and Answers	Closing
<p>First Question was asked, 60% of time:</p> <p>to Appellants, within 3:00 (43% of time within 1:00)</p> <p>to Appellees within 3 mins. (30% of the time, within one minute)</p>	<p>50% of the time:</p> <p>4+ questions for Appellants</p> <p>6+questions for Appellees (57% of Appellees have 2 or fewer questions, 43% have 5 or more questions).</p>	<p>No questions in last 4:45 for 50% of Appellants and in the last 4:00 for 43% of Appellees</p>

On Average, for Civil Cases Argued Fourth on the Docket (excluding arguments in June, 2003):

-----Total Argument Time (15 Minutes?)-----

Opening	Questions and Answers	Closing
<p>100% of the time, no questions to Appellants for nearly 6:43 mins.</p> <p>67% of the time, questions to Appellees after 4:48 mins.; 33% of the time, questions to Appellees by 1:27</p>	<p>50% of the time, 4+ questions for Appellants</p> <p>67% of the time, 6 questions for the Appellees</p>	<p>No questions in last 4:30 for 66% of Appellants and in the last 1:45 for 67% of Appellees</p>

Appendix 4.B. Criminal Cases

On Average, for All Criminal Cases (excluding arguments in June, 2003):

-----Total Argument Time (15 Minutes?)-----

Opening	Questions and Answers	Closing
50% of the time, no questions: to Appellants for 4:17 mins. to Appellees for 3:14 mins.	50% of the time: 5+ questions for Appellants (18+ questions 21% of the time 3+ questions for Appellees	50% of the time, no questions in last 2:40 for Appellants and in last 11:21 for Appellees

On Average, for Criminal Cases Argued First or Second on the Docket (excluding arguments in June, 2003):

-----Total Argument Time (15 Minutes?)-----

Opening	Questions and Answers	Closing
First Question was asked: 40% of time to Appellants by 1:32, 80% of time by 3:17 60% of time to Appellees by 2:24	50% of the time: 18+ questions for Appellants 9+questions for Appellees (40% had 25+ questions)	No questions: for 50% of Appellants in last 1:12 and for 60% of Appellees in last 9:44 (40% of Appellees had last question in last 1:20)

On Average, for Criminal Cases Argued First on the Docket (excluding arguments in June, 2003):

-----Total Argument Time (15 Minutes?)-----

Opening	Questions and Answers	Closing
First Question was asked: 100% of time to Appellants, by 3:16. 50% of time to Appellees after 1:12.	50% of the time: 18+ questions for Appellants 25+questions for Appellees	Questions in last minute for 100% of Appellants and in last 1:20 for 100% of Appellees

On Average, for Criminal Cases Argued Second on the Docket (excluding arguments in June, 2003):

-----Total Argument Time (15 Minutes?)-----

Opening	Questions and Answers	Closing
First Question was asked: 67% of time to Appellants, by 1:32. 100% of time to Appellees by 2:36.	50% of the time: 12+ questions for Appellants 5+questions for Appellees	No questions in last 1:45 for 50% of Appellants. 100% of Appellees have last question with 9:44 left

On Average, for Criminal Cases Argued Third on the Docket (excluding arguments in June, 2003):

-----Total Argument Time (15 Minutes?)-----

Opening	Questions and Answers	Closing
<p>First Question was asked, 50% of time:</p> <p>to Appellants and Appellees, within one minute</p>	<p>100% of the time:</p> <p>4+ questions for Appellants</p> <p>6+questions for Appellees</p>	<p>Appellants' last questions at 5:06 & 15:09;</p> <p>Appellees' last question at 7:24</p>

On Average, for Criminal Cases Argued Fourth on the Docket (excluding arguments in June, 2003):

-----Total Argument Time (15 Minutes?)-----

Opening	Questions and Answers	Closing
<p>50% of the time, first question to Appellants by 4:17.</p> <p>25% of the time, questions to Appellees by 1:30;</p> <p>75% of the time, no questions to Appellees.</p>	<p>50% of the time, 2+ questions for Appellants</p> <p>67% of the time, no questions for Appellees; 33% of the time, 6 questions for the Appellees</p>	<p>No questions in last 8:00 for 50% of Appellants.</p> <p>67% of Appellees not questioned;</p> <p>33% last question with 2:00 left</p>

On Average, for Criminal Cases Argued Fifth or Sixth on the Docket (excluding

arguments in June, 2003):

|-----Total Argument Time (15 Minutes?)-----|

Opening	Questions and Answers	Closing
100% of the time, no questions to Appellants for 5:50. For Appellees, 33% of the time: –no questions; –no questions until 3:33; and –no questions until 6:10.	50% of the time, 5+ questions for Appellants 100% of the time, not more than one question for Appellees	No questions in last 2:30 for 50% of Appellants; No questions in last 8:50 for 100% of Appellees

Appendix Five. Sample “Reality Check” Questions

Appendix Five. Sample “Reality Check” Questions

Here are examples of these types of questions, preceded by a brief introduction as to what was at issue. With apologies to all if we did not accurately transcribe the questions.

In response to an argument that certain witnesses offered as experts on various phases of testamentary capacity had not qualified under Robinson/Daubert:

Isn't it quite often that in these will contests, non-expert testimony is offered as to testamentary capacity?

In conjunction with a case which involved the interpretation of a divorce decree when one of the ex-spouses started living with a person of the same sex in the former family home:

Is the definition of cohabitation in the divorce decree affected by the fact that the two persons who are cohabiting are not allowed to be married legally in Texas?

But doesn't your interpretation require us to read into the agreement the phrase “unless the cohabitation becomes permanent or unless the residence sells before the 12 month period has expired?”

In a sovereign immunity case, where one of the issues was whether the use of property caused the injury:

Isn't it a stretch to say that it's the plastic bag that causes suffocation, when what causes suffocation was the decedent placing the plastic bag over her head and suffocating herself in the bag?

As an example that the Court will critically evaluate its prior decisions:

With regard to the ----- case (citation removed), couldn't it be argued that the portion of the opinion on which you are relying that discusses the voidness issue is dicta? Right before that portion of the opinion, the court holds that Judge ----- (name removed) did not have the authority to unilaterally transfer the case back to his court, which I think we misspoke because he was not transferring it back to his court with it still in his court? So could it not be said the remainder of that opinion was dicta?

In a medical malpractice case where the standard of care was in dispute:

Suppose that this were sent back, if it turned out that no hospital in Texas has a protocol for administering TPA to stroke victims, what would be the standard of care that would be applicable in this case?

Everybody would agree that we're talking about a medical standard of care. How do you arrive at that standard, if some doctor at Harvard says this is what the standard should be, but it is not what is commonly practiced throughout the nation in the best hospitals and within the best clinics, then wouldn't you have a hard time arguing that the one professor at Harvard establishes the standard that everybody follows and that this doctor or hospital failed to meet that standard?

[So you think the Hospital is winning and then...]

If one of the most widely read, widely recognized and esteemed medical journals has published an article that would support what you say is just a conclusory opinion about the need for TPA protocol in stroke patients, how can you say that those opinions are merely conclusory?

To show the Court sees both sides of the issue:

My question is why is this (the trial court's order amending the return of process) not simply the correction of a clerical error? I have not had an opportunity to review the record in this case, but it could be that the officer just failed to fill out that part of the return and/or attach the order for substituted service just by accident, and what makes that not a clerical error and more in the nature of a judicial error, which is the rule for nunc pro tunc?

The trial court has the discretion in this instance to make a finding one way or the other. If that is true, then the trial court's correction of the record in this case is merely the trial court fulfilling a ministerial duty in the sense that the court does in a nunc pro tunc situation, and therefore because the trial court has discretion, the trial court's action arguably is a judicial action rather than just a ministerial act. What do you say to that proposition?

In a case involving the building of a house into an easement:

If the house has been used, including the part in the easement, then has there been a loss of use?

When you haven't served everyone:

Haven't you settled with the only appellee that was before this Court?

Doesn't it seem to fly in the face of fairness for us to give relief against someone who has not had any opportunity or notice to appear here?

And one that's pretty obvious:

Without a court reporter's record, how do we determine whether the trial court abused its discretion in denying the continuance?

Appendix Six. Categorization of Questions Asked

Appendix Six. Categorization of Questions Asked

Table 1. Ranked by Frequency

Category of Question	# of Questions so categorized	Percentage of Questions Asked
Facts	234	31.75%
Counsel's Position	216	29.31%
Reality Check	161	21.85%
Record	134	18.18%
Existing Law	75	10.18%
Procedure	73	9.91%
Statute	58	7.87%
Applying Existing Law to Facts	51	6.92%
Preservation of Error	37	5.02%
Consistency	28	3.80%
Contract Interpretation	28	3.80%
Basis for Counsel's Position	23	3.12%
Evidence	22	2.99%
Pleadings	20	2.71%
Holding Required	17	2.31%
Response to Opponent	17	2.31%
Standard of Review	15	2.04%
Clarification	14	1.90%
Jurisdiction	14	1.90%
Legislative History	13	1.76%
Basis for Expert Opinion	10	1.36%
Experts	10	1.36%
Judgment	8	1.09%
Trial Strategy	8	1.09%
Basis for Trial Court Ruling	7	0.95%
Consistency with Existing Law	5	0.68%
Waiver	4	0.54%
Discovery	3	0.41%
Standing	3	0.41%
Trial Court's Discretion	3	0.41%
Mootness	2	0.27%
Need for a Decision	2	0.27%
Rules	2	0.27%
Advisory Opinion	1	0.14%
Dicta	1	0.14%
Jury Instructions	1	0.14%
On Remand	1	0.14%
Parties	1	0.14%
Support for Court's Decision	1	0.14%
Total Questions Asked	737	

Table 2. Ranked Alphabetically

Category of Question	# of Questions so categorized	Percentage of Questions Asked
Advisory Opinion	1	0.14%
Applying Existing Law to Facts	51	6.92%
Basis for Counsel's Position	23	3.12%
Basis for Expert Opinion	10	1.36%
Basis for Trial Court Ruling	7	0.95%
Clarification	14	1.90%
Consistency	28	3.80%
Consistency with Existing Law	5	0.68%
Contract Interpretation	28	3.80%
Counsel's Position	216	29.31%
Dicta	1	0.14%
Discovery	3	0.41%
Evidence	22	2.99%
Existing Law	75	10.18%
Experts	10	1.36%
Facts	234	31.75%
Holding Required	17	2.31%
Judgment	8	1.09%
Jurisdiction	14	1.90%
Jury Instructions	1	0.14%
Legislative History	13	1.76%
Mootness	2	0.27%
Need for a Decision	2	0.27%
On Remand	1	0.14%
Parties	1	0.14%
Pleadings	20	2.71%
Preservation of Error	37	5.02%
Procedure	73	9.91%
Reality Check	161	21.85%
Record	134	18.18%
Response to Opponent	17	2.31%
Rules	2	0.27%
Standard of Review	15	2.04%
Standing	3	0.41%
Statute	58	7.87%
Support for Court's Decision	1	0.14%
Trial Court's Discretion	3	0.41%
Trial Strategy	8	1.09%
Waiver	4	0.54%
Total Questions Asked	737	

Appendix Seven. Four Tools

ORAL ARGUMENT: FOUR TOOLS TO MAKE IT MORE PREDICTABLE FOR YOU AND THE COURT

- 1) Listen to audiotapes of oral arguments before the Fort Worth Court on cases with two characteristics:
 - a) the issues significantly overlap the issues in your case; and
 - b) the panel members significantly overlap the panel members on your case
- 2) find a lawyer with two characteristics to read all the briefs and outline their questions, opinions, concerns, your strong and weak points, your opponents' strong and weak points, cases they would like to read. The two characteristics for this lawyer:
 - a) you trust his or her experience, judgment and abilities; and
 - b) he or she knows nothing about your case
- 3) Review the Court's questioning tendencies set forth in Appendix Six to this paper.
- 4) Allocate the time in your oral argument for a scripted/planned introduction and a scripted/planned closing based on the Court's listening tendencies, set forth in Appendix Four to the paper.

Appendix Eight. Data

(obtain from downloadable version of this paper at
<http://www.cottenschmidt.com/hayes.htm>)

First Question Asked Appellants–Regardless of Order of Argument–Ranked by Elapsed Time Before First Question

In Civil Cases (June, 2003, Cases in **Bold**):

Date of Oral Argument	Order in Which Case Argued That Day (1, 2, 3, etc.)	Order of question asked	Question asked of	Time Question Asked	First Question Asked Appellant	Last Question Asked Appellant	Time Question Asked Appellant	First Question Asked Appellee	Last Question Asked Appellee	Time Question Asked Appellee
9/10/2002	3	1	Appellant	0:31	0:31		0:31			
9/11/2002	1	1	Appellant	0:35	0:35		0:35			
10/8/2002	3	1	Appellant	0:48	0:48		0:48			
9/25/2002	3	1	Appellant	0:55	0:55		0:55			
9/11/2002	2	1	Appellant	1:00	1:00		1:00			
2/14/2005	1	1	Appellant	1:10	1:10		1:10			
9/24/2002	2	1	Appellant	1:11	1:11		1:11			
9/18/2002	2	1	Appellant	1:24	1:24		1:24			
10/8/2002	1	1	Appellant	1:30	1:30		1:30			
9/24/2002	1	1	Appellant	1:44	1:44		1:44			
9/17/2002	2	1	Appellant	1:50	1:50		1:50			
9/25/2002	1	1	Appellant	2:07	2:07		2:07			
3/15/2005	1	1	Appellant	2:22	2:22		2:22			
12/21/2004	1	1	Appellant	2:51	2:51		2:51			
6/3/2003	2	1	Appellant	2:53	2:53		2:53			
6/10/2003	2	1	Appellant	3:04	3:04		3:04			
9/10/2002	1	1	Appellant	3:10	3:10		3:10			
9/11/2002	3	1	Appellant	3:11	3:11		3:11			
6/4/2003	1	1	Appellant	4:37	4:37		4:37			
9/10/2002	2	1	Appellant	4:59	4:59		4:59			
10/8/2002	2	1	Appellant	5:06	5:06		5:06			
9/8/2004	3	1	Appellant	5:22	5:22		5:22			
6/10/2003	1	1	Appellant	5:26	5:26		5:26			
9/25/2002	2	1	Appellant	5:31	5:31		5:31			
6/3/2003	1	1	Appellant	5:54	5:54		5:54			
9/10/2002	4	1	Appellant	6:43	6:43		6:43			
6/3/2003	3	1	Appellant	6:49	6:49		6:49			
10/8/2002	4	1	Appellant	7:18	7:18		7:18			

9/8/2004	1	1	Appellant	7:33	7:33		7:33			
3/1/2005	3	1	Appellant	7:33	7:33		7:33			
6/11/2003	1	1	Appellant	7:48	7:48		7:48			
9/17/2002	1	1	Appellant	8:09	8:09		8:09			
9/17/2002	3	1	Appellant	9:21	9:21		9:21			
9/24/2002	4	1	Appellant	11:54	11:54		11:54			
9/8/2004	2	1	Appellant	13:25	13:25	13:25	13:25			
6/4/2003	2	1	Appellant	13:31	13:31	13:31	13:31			
9/18/2002	1	0	Appellant							
6/10/2003	3	0	Appellant							

In Criminal Cases (June, 2003, Cases in **Bold**):

Date of Oral Argument	Order in Which Case Argued That Day (1, 2, 3, etc.)	Order of question asked	Question asked of	Time Question Asked	First Question Asked Appellant	Last Question Asked Appellant	Time Question Asked Appellant	First Question Asked Appellee	Last Question Asked Appellee	Time Question Asked Appellee
10/9/2002	4	1	Appellant	0:18	0:18		0:18			
3/1/2005	2	1	Appellant	0:36	0:36		0:36			
9/18/2002	3	1	Appellant	0:58	0:58		0:58			
3/8/2005	2	1	Appellant	1:32	1:32		1:32			
3/1/2005	1	1	Appellant	3:16	3:16		3:16			
3/8/2005	1	1	Appellant	3:17	3:17		3:17			
9/11/2002	4	1	Appellant	4:17	4:17		4:17			
6/17/2003	1	1	Appellant	4:39	4:39		4:39			
6/3/2003	4	1	Appellant	5:22	5:22		5:22			
9/17/2002	4	1	Appellant	5:50	5:50	5:50	5:50			
9/8/2004	5	1	Appellant	5:50	5:50		5:50			
9/8/2004	4	1	Appellant	6:23	6:23		6:23			
9/24/2002	3	1	Appellant	6:35	6:35		6:35			
6/4/2003	3	1	Appellant	10:03	10:03		10:03			
9/8/2004	6	1	Appellant	10:21	10:21		10:21			
9/17/2002	5	0	Appellant							
6/11/2003	2	0	Appellant							
6/3/2003	5	0	Appellant							
12/21/2004	2	0	Appellant							

First Question Asked Appellants–First or Second Case Argued–Ranked by Elapsed Time Before First Question

In Civil Cases (June, 2003, Cases in **Bold**):

Date of Oral Argument	Order in Which Case Argued That Day (1, 2, 3, etc.)	Order of question asked	Question asked of	Time Question Asked	First Question Asked Appellant	Last Question Asked Appellant	Time Question Asked Appellant	First Question Asked Appellee	Last Question Asked Appellee	Time Question Asked Appellee
9/11/2002	1	1	Appellant	0:35	0:35		0:35			
9/11/2002	2	1	Appellant	1:00	1:00		1:00			
2/14/2005	1	1	Appellant	1:10	1:10		1:10			
9/24/2002	2	1	Appellant	1:11	1:11		1:11			
9/18/2002	2	1	Appellant	1:24	1:24		1:24			
10/8/2002	1	1	Appellant	1:30	1:30		1:30			
9/24/2002	1	1	Appellant	1:44	1:44		1:44			
9/17/2002	2	1	Appellant	1:50	1:50		1:50			
9/25/2002	1	1	Appellant	2:07	2:07		2:07			
3/15/2005	1	1	Appellant	2:22	2:22		2:22			
12/21/2004	1	1	Appellant	2:51	2:51		2:51			
6/3/2003	2	1	Appellant	2:53	2:53		2:53			
6/10/2003	2	1	Appellant	3:04	3:04		3:04			
9/10/2002	1	1	Appellant	3:10	3:10		3:10			
6/4/2003	1	1	Appellant	4:37	4:37		4:37			
9/10/2002	2	1	Appellant	4:59	4:59		4:59			
10/8/2002	2	1	Appellant	5:06	5:06		5:06			
6/10/2003	1	1	Appellant	5:26	5:26		5:26			
9/25/2002	2	1	Appellant	5:31	5:31		5:31			
6/3/2003	1	1	Appellant	5:54	5:54		5:54			
9/8/2004	1	1	Appellant	7:33	7:33		7:33			
6/11/2003	1	1	Appellant	7:48	7:48		7:48			
9/17/2002	1	1	Appellant	8:09	8:09		8:09			
9/8/2004	2	1	Appellant	13:25	13:25	13:25	13:25			
6/4/2003	2	1	Appellant	13:31	13:31	13:31	13:31			
9/18/2002	1	0	Appellant							

In Criminal Cases (June, 2003, Cases in **Bold**):

Date of Oral Argument	Order in Which Case Argued That Day (1, 2, 3, etc.)	Order of question asked	Question asked of	Time Question Asked	First Question Asked Appellant	Last Question Asked Appellant	Time Question Asked Appellant	First Question Asked Appellee	Last Question Asked Appellee	Time Question Asked Appellee
3/1/2005	2	1	Appellant	0:36	0:36		0:36			
3/8/2005	2	1	Appellant	1:32	1:32		1:32			
3/1/2005	1	1	Appellant	3:16	3:16		3:16			
3/8/2005	1	1	Appellant	3:17	3:17		3:17			
6/17/2003	1	1	Appellant	4:39	4:39		4:39			
6/11/2003	2	0	Appellant							
12/21/2004	2	0	Appellant							

First Question Asked Appellants–First Case Argued–Ranked by Elapsed Time Before First Question

In Civil Cases (June, 2003, Cases in **Bold**):

Date of Oral Argument	Order in Which Case Argued That Day (1, 2, 3, etc.)	Order of question asked	Question asked of	Time Question Asked	First Question Asked Appellant	Last Question Asked Appellant	Time Question Asked Appellant	First Question Asked Appellee	Last Question Asked Appellee	Time Question Asked Appellee
9/11/2002	1	1	Appellant	0:35	0:35		0:35			
2/14/2005	1	1	Appellant	1:10	1:10		1:10			
10/8/2002	1	1	Appellant	1:30	1:30		1:30			
9/24/2002	1	1	Appellant	1:44	1:44		1:44			
9/25/2002	1	1	Appellant	2:07	2:07		2:07			
3/15/2005	1	1	Appellant	2:22	2:22		2:22			
12/21/2004	1	1	Appellant	2:51	2:51		2:51			
9/10/2002	1	1	Appellant	3:10	3:10		3:10			
6/4/2003	1	1	Appellant	4:37	4:37		4:37			
6/10/2003	1	1	Appellant	5:26	5:26		5:26			
6/3/2003	1	1	Appellant	5:54	5:54		5:54			
9/8/2004	1	1	Appellant	7:33	7:33		7:33			
6/11/2003	1	1	Appellant	7:48	7:48		7:48			
9/17/2002	1	1	Appellant	8:09	8:09		8:09			
9/18/2002	1	0	Appellant							

In Criminal Cases (June, 2003, Cases in **Bold**):

Date of Oral Argument	Order in Which Case Argued That Day (1, 2, 3, etc.)	Order of question asked	Question asked of	Time Question Asked	First Question Asked Appellant	Last Question Asked Appellant	Time Question Asked Appellant	First Question Asked Appellee	Last Question Asked Appellee	Time Question Asked Appellee
3/1/2005	1	1	Appellant	3:16	3:16		3:16			
3/8/2005	1	1	Appellant	3:17	3:17		3:17			
6/17/2003	1	1	Appellant	4:39	4:39		4:39			

First Question Asked Appellants–Second Case Argued–Ranked by Elapsed Time Before First Question

In Civil Cases (June, 2003, Cases in **Bold**):

Date of Oral Argument	Order in Which Case Argued That Day (1, 2, 3, etc.)	Order of question asked	Question asked of	Time Question Asked	First Question Asked Appellant	Last Question Asked Appellant	Time Question Asked Appellant	First Question Asked Appellee	Last Question Asked Appellee	Time Question Asked Appellee
9/11/2002	2	1	Appellant	1:00	1:00		1:00			
9/24/2002	2	1	Appellant	1:11	1:11		1:11			
9/18/2002	2	1	Appellant	1:24	1:24		1:24			
9/17/2002	2	1	Appellant	1:50	1:50		1:50			
6/3/2003	2	1	Appellant	2:53	2:53		2:53			
6/10/2003	2	1	Appellant	3:04	3:04		3:04			
9/10/2002	2	1	Appellant	4:59	4:59		4:59			
10/8/2002	2	1	Appellant	5:06	5:06		5:06			
9/25/2002	2	1	Appellant	5:31	5:31		5:31			
9/8/2004	2	1	Appellant	13:25	13:25	13:25	13:25			
6/4/2003	2	1	Appellant	13:31	13:31	13:31	13:31			

In Criminal Cases (June, 2003, Cases in **Bold**):

Date of Oral Argument	Order in Which Case Argued That Day (1, 2, 3, etc.)	Order of question asked	Question asked of	Time Question Asked	First Question Asked Appellant	Last Question Asked Appellant	Time Question Asked Appellant	First Question Asked Appellee	Last Question Asked Appellee	Time Question Asked Appellee
3/1/2005	2	1	Appellant	0:36	0:36		0:36			
3/8/2005	2	1	Appellant	1:32	1:32		1:32			
6/11/2003	2	0	Appellant							
12/21/2004	2	0	Appellant							

First Question Asked Appellants–Third Case Argued–Ranked by Elapsed Time Before First Question

In Civil Cases (June, 2003, Cases in **Bold**):

Date of Oral Argument	Order in Which Case Argued That Day (1, 2, 3, etc.)	Order of question asked	Question asked of	Time Question Asked	First Question Asked Appellant	Last Question Asked Appellant	Time Question Asked Appellant	First Question Asked Appellee	Last Question Asked Appellee	Time Question Asked Appellee
9/10/2002	3	1	Appellant	0:31	0:31		0:31			
10/8/2002	3	1	Appellant	0:48	0:48		0:48			
9/25/2002	3	1	Appellant	0:55	0:55		0:55			
9/11/2002	3	1	Appellant	3:11	3:11		3:11			
9/8/2004	3	1	Appellant	5:22	5:22		5:22			
6/3/2003	3	1	Appellant	6:49	6:49		6:49			
3/1/2005	3	1	Appellant	7:33	7:33		7:33			
9/17/2002	3	1	Appellant	9:21	9:21		9:21			
6/10/2003	3	0	Appellant							

In Criminal Cases (June, 2003, Cases in **Bold**):

Date of Oral Argument	Order in Which Case Argued That Day (1, 2, 3, etc.)	Order of question asked	Question asked of	Time Question Asked	First Question Asked Appellant	Last Question Asked Appellant	Time Question Asked Appellant	First Question Asked Appellee	Last Question Asked Appellee	Time Question Asked Appellee
9/18/2002	3	1	Appellant	0:58	0:58		0:58			
9/24/2002	3	1	Appellant	6:35	6:35		6:35			
6/4/2003	3	1	Appellant	10:03	10:03		10:03			

First Question Asked Appellants–Fourth Case Argued–Ranked by Elapsed Time Before First Question

In Civil Cases (June, 2003, Cases in **Bold**):

Date of Oral Argument	Order in Which Case Argued That Day (1, 2, 3, etc.)	Order of question asked	Question asked of	Time Question Asked	First Question Asked Appellant	Last Question Asked Appellant	Time Question Asked Appellant	First Question Asked Appellee	Last Question Asked Appellee	Time Question Asked Appellee
9/10/2002	4	1	Appellant	6:43	6:43		6:43			
10/8/2002	4	1	Appellant	7:18	7:18		7:18			
9/24/2002	4	1	Appellant	11:54	11:54		11:54			

In Criminal Cases (June, 2003, Cases in **Bold**):

Date of Oral Argument	Order in Which Case Argued That Day (1, 2, 3, etc.)	Order of question asked	Question asked of	Time Question Asked	First Question Asked Appellant	Last Question Asked Appellant	Time Question Asked Appellant	First Question Asked Appellee	Last Question Asked Appellee	Time Question Asked Appellee
10/9/2002	4	1	Appellant	0:18	0:18		0:18			
9/11/2002	4	1	Appellant	4:17	4:17		4:17			
6/3/2003	4	1	Appellant	5:22	5:22		5:22			
9/17/2002	4	1	Appellant	5:50	5:50	5:50	5:50			
9/8/2004	4	1	Appellant	6:23	6:23		6:23			

First Question Asked Appellants–Fifth and Sixth Cases Argued–Ranked by Elapsed Time Before First Question

In Civil Cases (June, 2003, Cases in **Bold**):

No Cases

In Criminal Cases (June, 2003, Cases in **Bold**):

Date of Oral Argument	Order in Which Case Argued That Day (1, 2, 3, etc.)	Order of question asked	Question asked of	Time Question Asked	First Question Asked Appellant	Last Question Asked Appellant	Time Question Asked Appellant	First Question Asked Appellee	Last Question Asked Appellee	Time Question Asked Appellee
9/8/2004	5	1	Appellant	5:50	5:50		5:50			
9/8/2004	6	1	Appellant	10:21	10:21		10:21			
9/17/2002	5	0	Appellant							
6/3/2003	5	0	Appellant							

Last Question Asked Appellants–Regardless of Order of Argument–Ranked by Elapsed Time Before Last Question

In Civil Cases (June, 2003, Cases in **Bold**):

Date of Oral Argument	Order in Which Case Argued That Day (1, 2, 3, etc.)	Order of question asked	Question asked of	Time Question Asked	First Question Asked Appellant	Last Question Asked Appellant	Time Question Asked Appellant	First Question Asked Appellee	Last Question Asked Appellee	Time Question Asked Appellee
9/24/2002	1	2	Appellant	2:43		2:43	2:43			
6/3/2003	2	3	Appellant	4:31		4:31	4:31			
9/11/2002	3	3	Appellant	5:01		5:01	5:01			
9/8/2004	3	2	Appellant	7:24		7:24	7:24			
9/10/2002	3	8	Appellant	7:48		7:48	7:48			
9/10/2002	1	6	Appellant	8:17		8:17	8:17			
9/11/2002	2	7	Appellant	8:41		8:41	8:41			
9/25/2002	1	5	Appellant	9:07		9:07	9:07			
12/21/2004	1	8	Appellant	10:06		10:06	10:06			
9/25/2002	3	4	Appellant	10:11		10:11	10:11			
9/10/2002	4	4	Appellant	10:13		10:13	10:13			
9/17/2002	3	2	Appellant	10:33		10:33	10:33			
10/8/2002	4	4	Appellant	10:36		10:36	10:36			
6/11/2003	1	4	Appellant	11:12		11:12	11:12			
6/10/2003	1	3	Appellant	11:20		11:20	11:20			
9/24/2002	2	13	Appellant	11:33		11:33	11:33			
10/8/2002	3	5	Appellant	12:42		12:42	12:42			
6/10/2003	2	9	Appellant	12:58		12:58	12:58			
6/3/2003	3	4	Appellant	13:10		13:10	13:10			
9/8/2004	2	1	Appellant	13:25	13:25	13:25	13:25			
6/4/2003	2	1	Appellant	13:31	13:31	13:31	13:31			
9/17/2002	2	10	Appellant	13:50		13:50	13:50			
9/10/2002	2	4	Appellant	13:55		13:55	13:55			
9/25/2002	2	9	Appellant	13:56		13:56	13:56			
3/15/2005	1	5	Appellant	13:58		13:58	13:58			
6/4/2003	1	4	Appellant	14:01		14:01	14:01			
6/3/2003	1	10	Appellant	14:14		14:14	14:14			
9/18/2002	2	13	Appellant	14:22		14:22	14:22			

10/8/2002	2	4	Appellant	14:42		14:42	14:42			
3/1/2005	3	9	Appellant	15:08		15:08	15:08			
10/8/2002	1	9	Appellant	15:36		15:36	15:36			
9/8/2004	1	6	Appellant	16:18		16:18	16:18			
9/11/2002	1	11	Appellant	16:52		16:52	16:52			
2/14/2005	1	14	Appellant	17:44		17:44	17:44			
9/24/2002	4	5	Appellant	18:06		18:06	18:06			
9/17/2002	1	16	Appellant	21:13		21:13	21:13			

In Criminal Cases (June, 2003, Cases in **Bold**):

Date of Oral Argument	Order in Which Case Argued That Day (1, 2, 3, etc.)	Order of question asked	Question asked of	Time Question Asked	First Question Asked Appellant	Last Question Asked Appellant	Time Question Asked Appellant	First Question Asked Appellee	Last Question Asked Appellee	Time Question Asked Appellee
9/18/2002	3	4	Appellant	5:06		5:06	5:06			
9/17/2002	4	1	Appellant	5:50	5:50	5:50	5:50			
6/3/2003	4	3	Appellant	6:09		6:09	6:09			
9/11/2002	4	2	Appellant	7:01		7:01	7:01			
9/8/2004	4	2	Appellant	7:36		7:36	7:36			
6/17/2003	1	4	Appellant	9:05		9:05	9:05			
3/1/2005	2	11	Appellant	12:13		12:13	12:13			
9/8/2004	6	3	Appellant	12:39		12:39	12:39			
6/4/2003	3	3	Appellant	12:53		12:53	12:53			
3/8/2005	2	25	Appellant	13:48		13:48	13:48			
3/1/2005	1	21	Appellant	14:53		14:53	14:53			
9/24/2002	3	4	Appellant	15:09		15:09	15:09			
9/8/2004	5	5	Appellant	16:10		16:10	16:10			
10/9/2002	4	7	Appellant	16:59		16:59	16:59			
3/8/2005	1	18	Appellant	18:41		18:41	18:41			

Last Question Asked Appellants–First or Second Case Argued–Ranked by Elapsed Time Before Last Question

In Civil Cases (June, 2003, Cases in **Bold**):

Date of Oral Argument	Order in Which Case Argued That Day (1, 2, 3, etc.)	Order of question asked	Question asked of	Time Question Asked	First Question Asked Appellant	Last Question Asked Appellant	Time Question Asked Appellant	First Question Asked Appellee	Last Question Asked Appellee	Time Question Asked Appellee
9/24/2002	1	2	Appellant	2:43		2:43	2:43			
6/3/2003	2	3	Appellant	4:31		4:31	4:31			
9/10/2002	1	6	Appellant	8:17		8:17	8:17			
9/11/2002	2	7	Appellant	8:41		8:41	8:41			
9/25/2002	1	5	Appellant	9:07		9:07	9:07			
12/21/2004	1	8	Appellant	10:06		10:06	10:06			
6/11/2003	1	4	Appellant	11:12		11:12	11:12			
6/10/2003	1	3	Appellant	11:20		11:20	11:20			
9/24/2002	2	13	Appellant	11:33		11:33	11:33			
6/10/2003	2	9	Appellant	12:58		12:58	12:58			
9/8/2004	2	1	Appellant	13:25	13:25	13:25	13:25			
6/4/2003	2	1	Appellant	13:31	13:31	13:31	13:31			
9/17/2002	2	10	Appellant	13:50		13:50	13:50			
9/10/2002	2	4	Appellant	13:55		13:55	13:55			
9/25/2002	2	9	Appellant	13:56		13:56	13:56			
3/15/2005	1	5	Appellant	13:58		13:58	13:58			
6/4/2003	1	4	Appellant	14:01		14:01	14:01			
6/3/2003	1	10	Appellant	14:14		14:14	14:14			
9/18/2002	2	13	Appellant	14:22		14:22	14:22			
10/8/2002	2	4	Appellant	14:42		14:42	14:42			
10/8/2002	1	9	Appellant	15:36		15:36	15:36			
9/8/2004	1	6	Appellant	16:18		16:18	16:18			
9/11/2002	1	11	Appellant	16:52		16:52	16:52			
2/14/2005	1	14	Appellant	17:44		17:44	17:44			
9/17/2002	1	16	Appellant	21:13		21:13	21:13			

In Criminal Cases (June, 2003, Cases in **Bold**):

Date of Oral Argument	Order in Which Case Argued That Day (1, 2, 3, etc.)	Order of question asked	Question asked of	Time Question Asked	First Question Asked Appellant	Last Question Asked Appellant	Time Question Asked Appellant	First Question Asked Appellee	Last Question Asked Appellee	Time Question Asked Appellee
6/17/2003	1	4	Appellant	9:05		9:05	9:05			
3/1/2005	2	11	Appellant	12:13		12:13	12:13			
3/8/2005	2	25	Appellant	13:48		13:48	13:48			
3/1/2005	1	21	Appellant	14:53		14:53	14:53			
3/8/2005	1	18	Appellant	18:41		18:41	18:41			

Last Question Asked Appellants–First Case Argued–Ranked by Elapsed Time Before Last Question

In Civil Cases (June, 2003, Cases in **Bold**):

Date of Oral Argument	Order in Which Case Argued That Day (1, 2, 3, etc.)	Order of question asked	Question asked of	Time Question Asked	First Question Asked Appellant	Last Question Asked Appellant	Time Question Asked Appellant	First Question Asked Appellee	Last Question Asked Appellee	Time Question Asked Appellee
9/24/2002	1	2	Appellant	2:43		2:43	2:43			
9/10/2002	1	6	Appellant	8:17		8:17	8:17			
9/25/2002	1	5	Appellant	9:07		9:07	9:07			
12/21/2004	1	8	Appellant	10:06		10:06	10:06			
6/11/2003	1	4	Appellant	11:12		11:12	11:12			
6/10/2003	1	3	Appellant	11:20		11:20	11:20			
3/15/2005	1	5	Appellant	13:58		13:58	13:58			
6/4/2003	1	4	Appellant	14:01		14:01	14:01			
6/3/2003	1	10	Appellant	14:14		14:14	14:14			
10/8/2002	1	9	Appellant	15:36		15:36	15:36			
9/8/2004	1	6	Appellant	16:18		16:18	16:18			
9/11/2002	1	11	Appellant	16:52		16:52	16:52			
2/14/2005	1	14	Appellant	17:44		17:44	17:44			
9/17/2002	1	16	Appellant	21:13		21:13	21:13			

In Criminal Cases (June, 2003, Cases in **Bold**):

Date of Oral Argument	Order in Which Case Argued That Day (1, 2, 3, etc.)	Order of question asked	Question asked of	Time Question Asked	First Question Asked Appellant	Last Question Asked Appellant	Time Question Asked Appellant	First Question Asked Appellee	Last Question Asked Appellee	Time Question Asked Appellee
6/17/2003	1	4	Appellant	9:05		9:05	9:05			
3/1/2005	1	21	Appellant	14:53		14:53	14:53			
3/8/2005	1	18	Appellant	18:41		18:41	18:41			

Last Question Asked Appellants–Second Case Argued–Ranked by Elapsed Time Before Last Question

In Civil Cases (June, 2003, Cases in **Bold**):

Date of Oral Argument	Order in Which Case Argued That Day (1, 2, 3, etc.)	Order of question asked	Question asked of	Time Question Asked	First Question Asked Appellant	Last Question Asked Appellant	Time Question Asked Appellant	First Question Asked Appellee	Last Question Asked Appellee	Time Question Asked Appellee
6/3/2003	2	3	Appellant	4:31		4:31	4:31			
9/11/2002	2	7	Appellant	8:41		8:41	8:41			
9/24/2002	2	13	Appellant	11:33		11:33	11:33			
6/10/2003	2	9	Appellant	12:58		12:58	12:58			
9/8/2004	2	1	Appellant	13:25	13:25	13:25	13:25			
6/4/2003	2	1	Appellant	13:31	13:31	13:31	13:31			
9/17/2002	2	10	Appellant	13:50		13:50	13:50			
9/10/2002	2	4	Appellant	13:55		13:55	13:55			
9/25/2002	2	9	Appellant	13:56		13:56	13:56			
9/18/2002	2	13	Appellant	14:22		14:22	14:22			
10/8/2002	2	4	Appellant	14:42		14:42	14:42			

In Criminal Cases (June, 2003, Cases in **Bold**):

Date of Oral Argument	Order in Which Case Argued That Day (1, 2, 3, etc.)	Order of question asked	Question asked of	Time Question Asked	First Question Asked Appellant	Last Question Asked Appellant	Time Question Asked Appellant	First Question Asked Appellee	Last Question Asked Appellee	Time Question Asked Appellee
3/1/2005	2	11	Appellant	12:13		12:13	12:13			
3/8/2005	2	25	Appellant	13:48		13:48	13:48			

Last Question Asked Appellants–Third Case Argued–Ranked by Elapsed Time Before Last Question

In Civil Cases (June, 2003, Cases in **Bold**):

Date of Oral Argument	Order in Which Case Argued That Day (1, 2, 3, etc.)	Order of question asked	Question asked of	Time Question Asked	First Question Asked Appellant	Last Question Asked Appellant	Time Question Asked Appellant	First Question Asked Appellee	Last Question Asked Appellee	Time Question Asked Appellee
9/11/2002	3	3	Appellant	5:01		5:01	5:01			
9/8/2004	3	2	Appellant	7:24		7:24	7:24			
9/10/2002	3	8	Appellant	7:48		7:48	7:48			
9/25/2002	3	4	Appellant	10:11		10:11	10:11			
9/17/2002	3	2	Appellant	10:33		10:33	10:33			
10/8/2002	3	5	Appellant	12:42		12:42	12:42			
6/3/2003	3	4	Appellant	13:10		13:10	13:10			
3/1/2005	3	9	Appellant	15:08		15:08	15:08			

In Criminal Cases (June, 2003, Cases in **Bold**):

Date of Oral Argument	Order in Which Case Argued That Day (1, 2, 3, etc.)	Order of question asked	Question asked of	Time Question Asked	First Question Asked Appellant	Last Question Asked Appellant	Time Question Asked Appellant	First Question Asked Appellee	Last Question Asked Appellee	Time Question Asked Appellee
9/18/2002	3	4	Appellant	5:06		5:06	5:06			
6/4/2003	3	3	Appellant	12:53		12:53	12:53			
9/24/2002	3	4	Appellant	15:09		15:09	15:09			

Last Question Asked Appellants–Fourth Case Argued–Ranked by Elapsed Time Before Last Question

In Civil Cases (June, 2003, Cases in **Bold**):

Date of Oral Argument	Order in Which Case Argued That Day (1, 2, 3, etc.)	Order of question asked	Question asked of	Time Question Asked	First Question Asked Appellant	Last Question Asked Appellant	Time Question Asked Appellant	First Question Asked Appellee	Last Question Asked Appellee	Time Question Asked Appellee
9/10/2002	4	4	Appellant	10:13		10:13	10:13			
10/8/2002	4	4	Appellant	10:36		10:36	10:36			
9/24/2002	4	5	Appellant	18:06		18:06	18:06			

In Criminal Cases (June, 2003, Cases in **Bold**):

Date of Oral Argument	Order in Which Case Argued That Day (1, 2, 3, etc.)	Order of question asked	Question asked of	Time Question Asked	First Question Asked Appellant	Last Question Asked Appellant	Time Question Asked Appellant	First Question Asked Appellee	Last Question Asked Appellee	Time Question Asked Appellee
9/17/2002	4	1	Appellant	5:50	5:50	5:50	5:50			
6/3/2003	4	3	Appellant	6:09		6:09	6:09			
9/11/2002	4	2	Appellant	7:01		7:01	7:01			
9/8/2004	4	2	Appellant	7:36		7:36	7:36			
10/9/2002	4	7	Appellant	16:59		16:59	16:59			

Last Question Asked Appellants–Fifth and Sixth Case Argued–Ranked by Elapsed Time Before Last Question

In Civil Cases (June, 2003, Cases in **Bold**):

No Cases

In Criminal Cases (June, 2003, Cases in **Bold**):

Date of Oral Argument	Order in Which Case Argued That Day (1, 2, 3, etc.)	Order of question asked	Question asked of	Time Question Asked	First Question Asked Appellant	Last Question Asked Appellant	Time Question Asked Appellant	First Question Asked Appellee	Last Question Asked Appellee	Time Question Asked Appellee
9/8/2004	6	3	Appellant	12:39		12:39	12:39			
9/8/2004	5	5	Appellant	16:10		16:10	16:10			

First Question Asked Appellees–Regardless of Order of Argument–Ranked by Elapsed Time Before First Question

In Civil Cases (June, 2003, Cases in **Bold**):

Date of Oral Argument	Order in Which Case Argued That Day (1, 2, 3, etc.)	Order of question asked	Question asked of	Time Question Asked	First Question Asked Appellant	Last Question Asked Appellant	Time Question Asked Appellant	First Question Asked Appellee	Last Question Asked Appellee	Time Question Asked Appellee
2/14/2005	1	1	Appellee	0:04				0:04		0:04
6/10/2003	2	1	Appellee	0:17				0:17		0:17
3/1/2005	3	1	Appellee	0:32				0:32		0:32
9/11/2002	1	1	Appellee	0:36				0:36		0:36
6/4/2003	1	1	Appellee	0:37				0:37		0:37
10/8/2002	3	1	Appellee	0:48				0:48		0:48
9/17/2002	2	1	Appellee	1:24				1:24		1:24
9/10/2002	4	1	Appellee	1:27				1:27		1:27
9/18/2002	2	1	Appellee	1:52				1:52		1:52
12/21/2004	1	1	Appellee	1:52				1:52		1:52
3/15/2005	1	1	Appellee	1:57				1:57		1:57
9/11/2002	2	1	Appellee	2:21				2:21		2:21
9/24/2002	1	1	Appellee	2:22				2:22		2:22
6/4/2003	2	1	Appellee	2:26				2:26		2:26
9/8/2004	3	1	Appellee	2:48				2:48		2:48
9/17/2002	3	1	Appellee	2:59				2:59		2:59
9/8/2004	1	1	Appellee	3:06				3:06		3:06
9/25/2002	1	1	Appellee	3:22				3:22	3:22	3:22
9/11/2002	3	1	Appellee	3:25				3:25		3:25
9/17/2002	1	1	Appellee	4:18				4:18		4:18
6/11/2003	1	1	Appellee	4:24				4:24		4:24
10/8/2002	4	1	Appellee	4:48				4:48		4:48
10/8/2002	2	1	Appellee	5:00				5:00		5:00
6/3/2003	1	1	Appellee	5:04				5:04		5:04
6/3/2003	3	1	Appellee	5:05				5:05		5:05
9/24/2002	4	1	Appellee	5:11				5:11		5:11

9/10/2002	1	1	Appellee	5:14				5:14	5:14	5:14
6/10/2003	1	1	Appellee	5:48				5:48		5:48
9/10/2002	3	1	Appellee	5:51				5:51	5:51	5:51
9/18/2002	1	1	Appellee	5:56				5:56		5:56
10/8/2002	1	1	Appellee	6:20				6:20		6:20
9/25/2002	2	1	Appellee	6:24				6:24	6:24	6:24
9/25/2002	3	1	Appellee	7:40				7:40		7:40
9/10/2002	2	1	Appellee	8:05				8:05		8:05
9/24/2002	2	0	Appellee							
6/10/2003	3	0	Appellee							
6/3/2003	2	0	Appellee							
9/8/2004	2	0	Appellee							

In Criminal Cases (June, 2003, Cases in **Bold**):

Date of Oral Argument	Order in Which Case Argued That Day (1, 2, 3, etc.)	Order of question asked	Question asked of	Time Question Asked	First Question Asked Appellant	Last Question Asked Appellant	Time Question Asked Appellant	First Question Asked Appellee	Last Question Asked Appellee	Time Question Asked Appellee
9/18/2002	3	1	Appellee	0:03				0:03		0:03
3/8/2005	1	1	Appellee	1:12				1:12		1:12
10/9/2002	4	1	Appellee	1:30				1:30		1:30
6/3/2003	4	1	Appellee	1:50				1:50		1:50
3/1/2005	2	1	Appellee	1:53				1:53		1:53
12/21/2004	2	1	Appellee	2:24				2:24		2:24
3/8/2005	2	1	Appellee	2:36				2:36		2:36
6/17/2003	1	1	Appellee	2:48				2:48		2:48
3/1/2005	1	1	Appellee	3:14				3:14		3:14
9/17/2002	5	1	Appellee	3:33				3:33	3:33	3:33
6/11/2003	2	1	Appellee	6:05				6:05		6:05
9/8/2004	5	1	Appellee	6:10				6:10	6:10	6:10
9/11/2002	4	0	Appellee							
9/17/2002	4	0	Appellee							
9/24/2002	3	0	Appellee							
6/3/2003	5	0	Appellee							
6/4/2003	3	0	Appellee							
9/8/2004	4	0	Appellee							
9/8/2004	6	0	Appellee							

First Question Asked Appellees–First or Second Case Argued–Ranked by Elapsed Time Before First Question

In Civil Cases (June, 2003, Cases in **Bold**):

Date of Oral Argument	Order in Which Case Argued That Day (1, 2, 3, etc.)	Order of question asked	Question asked of	Time Question Asked	First Question Asked Appellant	Last Question Asked Appellant	Time Question Asked Appellant	First Question Asked Appellee	Last Question Asked Appellee	Time Question Asked Appellee
2/14/2005	1	1	Appellee	0:04				0:04		0:04
6/10/2003	2	1	Appellee	0:17				0:17		0:17
9/11/2002	1	1	Appellee	0:36				0:36		0:36
6/4/2003	1	1	Appellee	0:37				0:37		0:37
9/17/2002	2	1	Appellee	1:24				1:24		1:24
9/18/2002	2	1	Appellee	1:52				1:52		1:52
12/21/2004	1	1	Appellee	1:52				1:52		1:52
3/15/2005	1	1	Appellee	1:57				1:57		1:57
9/11/2002	2	1	Appellee	2:21				2:21		2:21
9/24/2002	1	1	Appellee	2:22				2:22		2:22
6/4/2003	2	1	Appellee	2:26				2:26		2:26
9/8/2004	1	1	Appellee	3:06				3:06		3:06
9/25/2002	1	1	Appellee	3:22				3:22	3:22	3:22
9/17/2002	1	1	Appellee	4:18				4:18		4:18
6/11/2003	1	1	Appellee	4:24				4:24		4:24
10/8/2002	2	1	Appellee	5:00				5:00		5:00
6/3/2003	1	1	Appellee	5:04				5:04		5:04
9/10/2002	1	1	Appellee	5:14				5:14	5:14	5:14
6/10/2003	1	1	Appellee	5:48				5:48		5:48
9/18/2002	1	1	Appellee	5:56				5:56		5:56
10/8/2002	1	1	Appellee	6:20				6:20		6:20
9/25/2002	2	1	Appellee	6:24				6:24	6:24	6:24
9/10/2002	2	1	Appellee	8:05				8:05		8:05
9/24/2002	2	0	Appellee							
6/3/2003	2	0	Appellee							
9/8/2004	2	0	Appellee							

In Criminal Cases (June, 2003, Cases in **Bold**):

Date of Oral Argument	Order in Which Case Argued That Day (1, 2, 3, etc.)	Order of question asked	Question asked of	Time Question Asked	First Question Asked Appellant	Last Question Asked Appellant	Time Question Asked Appellant	First Question Asked Appellee	Last Question Asked Appellee	Time Question Asked Appellee
3/8/2005	1	1	Appellee	1:12				1:12		1:12
3/1/2005	2	1	Appellee	1:53				1:53		1:53
12/21/2004	2	1	Appellee	2:24				2:24		2:24
3/8/2005	2	1	Appellee	2:36				2:36		2:36
6/17/2003	1	1	Appellee	2:48				2:48		2:48
3/1/2005	1	1	Appellee	3:14				3:14		3:14
6/11/2003	2	1	Appellee	6:05				6:05		6:05

First Question Asked Appellees–First Case Argued–Ranked by Elapsed Time Before First Question

In Civil Cases (June, 2003, Cases in **Bold**):

Date of Oral Argument	Order in Which Case Argued That Day (1, 2, 3, etc.)	Order of question asked	Question asked of	Time Question Asked	First Question Asked Appellant	Last Question Asked Appellant	Time Question Asked Appellant	First Question Asked Appellee	Last Question Asked Appellee	Time Question Asked Appellee
2/14/2005	1	1	Appellee	0:04				0:04		0:04
9/11/2002	1	1	Appellee	0:36				0:36		0:36
6/4/2003	1	1	Appellee	0:37				0:37		0:37
12/21/2004	1	1	Appellee	1:52				1:52		1:52
3/15/2005	1	1	Appellee	1:57				1:57		1:57
9/24/2002	1	1	Appellee	2:22				2:22		2:22
9/8/2004	1	1	Appellee	3:06				3:06		3:06
9/25/2002	1	1	Appellee	3:22				3:22	3:22	3:22
9/17/2002	1	1	Appellee	4:18				4:18		4:18
6/11/2003	1	1	Appellee	4:24				4:24		4:24
6/3/2003	1	1	Appellee	5:04				5:04		5:04
9/10/2002	1	1	Appellee	5:14				5:14	5:14	5:14
6/10/2003	1	1	Appellee	5:48				5:48		5:48
9/18/2002	1	1	Appellee	5:56				5:56		5:56
10/8/2002	1	1	Appellee	6:20				6:20		6:20

In Criminal Cases (June, 2003, Cases in **Bold**):

Date of Oral Argument	Order in Which Case Argued That Day (1, 2, 3, etc.)	Order of question asked	Question asked of	Time Question Asked	First Question Asked Appellant	Last Question Asked Appellant	Time Question Asked Appellant	First Question Asked Appellee	Last Question Asked Appellee	Time Question Asked Appellee
3/8/2005	1	1	Appellee	1:12				1:12		1:12
6/17/2003	1	1	Appellee	2:48				2:48		2:48
3/1/2005	1	1	Appellee	3:14				3:14		3:14

First Question Asked Appellees–Second Case Argued–Ranked by Elapsed Time Before First Question

In Civil Cases (June, 2003, Cases in **Bold**):

Date of Oral Argument	Order in Which Case Argued That Day (1, 2, 3, etc.)	Order of question asked	Question asked of	Time Question Asked	First Question Asked Appellant	Last Question Asked Appellant	Time Question Asked Appellant	First Question Asked Appellee	Last Question Asked Appellee	Time Question Asked Appellee
6/10/2003	2	1	Appellee	0:17				0:17		0:17
9/17/2002	2	1	Appellee	1:24				1:24		1:24
9/18/2002	2	1	Appellee	1:52				1:52		1:52
9/11/2002	2	1	Appellee	2:21				2:21		2:21
6/4/2003	2	1	Appellee	2:26				2:26		2:26
10/8/2002	2	1	Appellee	5:00				5:00		5:00
9/25/2002	2	1	Appellee	6:24				6:24	6:24	6:24
9/10/2002	2	1	Appellee	8:05				8:05		8:05
9/24/2002	2	0	Appellee							
6/3/2003	2	0	Appellee							
9/8/2004	2	0	Appellee							

In Criminal Cases (June, 2003, Cases in **Bold**):

Date of Oral Argument	Order in Which Case Argued That Day (1, 2, 3, etc.)	Order of question asked	Question asked of	Time Question Asked	First Question Asked Appellant	Last Question Asked Appellant	Time Question Asked Appellant	First Question Asked Appellee	Last Question Asked Appellee	Time Question Asked Appellee
3/1/2005	2	1	Appellee	1:53				1:53		1:53
12/21/2004	2	1	Appellee	2:24				2:24		2:24
3/8/2005	2	1	Appellee	2:36				2:36		2:36
6/11/2003	2	1	Appellee	6:05				6:05		6:05

First Question Asked Appellees–Third Case Argued–Ranked by Elapsed Time Before First Question

In Civil Cases (June, 2003, Cases in **Bold**):

Date of Oral Argument	Order in Which Case Argued That Day (1, 2, 3, etc.)	Order of question asked	Question asked of	Time Question Asked	First Question Asked Appellant	Last Question Asked Appellant	Time Question Asked Appellant	First Question Asked Appellee	Last Question Asked Appellee	Time Question Asked Appellee
3/1/2005	3	1	Appellee	0:32				0:32		0:32
10/8/2002	3	1	Appellee	0:48				0:48		0:48
9/8/2004	3	1	Appellee	2:48				2:48		2:48
9/17/2002	3	1	Appellee	2:59				2:59		2:59
9/11/2002	3	1	Appellee	3:25				3:25		3:25
6/3/2003	3	1	Appellee	5:05				5:05		5:05
9/10/2002	3	1	Appellee	5:51				5:51	5:51	5:51
9/25/2002	3	1	Appellee	7:40				7:40		7:40
6/10/2003	3	0	Appellee							

In Criminal Cases (June, 2003, Cases in **Bold**):

Date of Oral Argument	Order in Which Case Argued That Day (1, 2, 3, etc.)	Order of question asked	Question asked of	Time Question Asked	First Question Asked Appellant	Last Question Asked Appellant	Time Question Asked Appellant	First Question Asked Appellee	Last Question Asked Appellee	Time Question Asked Appellee
9/18/2002	3	1	Appellee	0:03				0:03		0:03
9/24/2002	3	0	Appellee							
6/4/2003	3	0	Appellee							

First Question Asked Appellees–Fourth Case Argued–Ranked by Elapsed Time Before First Question

In Civil Cases (June, 2003, Cases in **Bold**):

Date of Oral Argument	Order in Which Case Argued That Day (1, 2, 3, etc.)	Order of question asked	Question asked of	Time Question Asked	First Question Asked Appellant	Last Question Asked Appellant	Time Question Asked Appellant	First Question Asked Appellee	Last Question Asked Appellee	Time Question Asked Appellee
9/10/2002	4	1	Appellee	1:27				1:27		1:27
10/8/2002	4	1	Appellee	4:48				4:48		4:48
9/24/2002	4	1	Appellee	5:11				5:11		5:11

In Criminal Cases (June, 2003, Cases in **Bold**):

Date of Oral Argument	Order in Which Case Argued That Day (1, 2, 3, etc.)	Order of question asked	Question asked of	Time Question Asked	First Question Asked Appellant	Last Question Asked Appellant	Time Question Asked Appellant	First Question Asked Appellee	Last Question Asked Appellee	Time Question Asked Appellee
10/9/2002	4	1	Appellee	1:30				1:30		1:30
6/3/2003	4	1	Appellee	1:50				1:50		1:50
9/11/2002	4	0	Appellee							
9/17/2002	4	0	Appellee							
9/8/2004	4	0	Appellee							

First Question Asked Appellees–Fifth and Sixth Case Argued–Ranked by Elapsed Time Before First Question

In Civil Cases (June, 2003, Cases in **Bold**):

No Cases

In Criminal Cases (June, 2003, Cases in **Bold**):

Date of Oral Argument	Order in Which Case Argued That Day (1, 2, 3, etc.)	Order of question asked	Question asked of	Time Question Asked	First Question Asked Appellant	Last Question Asked Appellant	Time Question Asked Appellant	First Question Asked Appellee	Last Question Asked Appellee	Time Question Asked Appellee
9/17/2002	5	1	Appellee	3:33				3:33	3:33	3:33
9/8/2004	5	1	Appellee	6:10				6:10	6:10	6:10
6/3/2003	5	0	Appellee							
9/8/2004	6	0	Appellee							

Last Question Asked Appellees–Regardless of Order of Argument–Ranked by Elapsed Time Before Last Question

In Civil Cases (June, 2003, Cases in **Bold**):

Date of Oral Argument	Order in Which Case Argued That Day (1, 2, 3, etc.)	Order of question asked	Question asked of	Time Question Asked	First Question Asked Appellant	Last Question Asked Appellant	Time Question Asked Appellant	First Question Asked Appellee	Last Question Asked Appellee	Time Question Asked Appellee
9/25/2002	1	1	Appellee	3:22				3:22	3:22	3:22
9/17/2002	3	2	Appellee	3:41					3:41	3:41
6/4/2003	2	2	Appellee	5:11					5:11	5:11
9/10/2002	1	1	Appellee	5:14				5:14	5:14	5:14
9/10/2002	3	1	Appellee	5:51				5:51	5:51	5:51
6/3/2003	3	2	Appellee	6:15					6:15	6:15
9/25/2002	2	1	Appellee	6:24				6:24	6:24	6:24
6/11/2003	1	2	Appellee	6:44					6:44	6:44
9/8/2004	3	2	Appellee	7:02					7:02	7:02
3/1/2005	3	7	Appellee	7:44					7:44	7:44
9/10/2002	2	2	Appellee	8:26					8:26	8:26
9/8/2004	1	8	Appellee	8:30					8:30	8:30
9/10/2002	4	5	Appellee	9:23					9:23	9:23
9/24/2002	1	6	Appellee	9:28					9:28	9:28
9/11/2002	1	9	Appellee	9:58					9:58	9:58
9/25/2002	3	2	Appellee	11:04					11:04	11:04
9/11/2002	2	5	Appellee	11:37					11:37	11:37
10/8/2002	2	6	Appellee	12:06					12:06	12:06
9/17/2002	1	8	Appellee	13:14					13:14	13:14
10/8/2002	4	6	Appellee	13:16					13:16	13:16
6/10/2003	2	9	Appellee	13:22					13:22	13:22
9/17/2002	2	12	Appellee	13:28					13:28	13:28
10/8/2002	1	11	Appellee	14:06					14:06	14:06
6/3/2003	1	10	Appellee	14:08					14:08	14:08
9/18/2002	2	10	Appellee	15:03					15:03	15:03
6/10/2003	1	8	Appellee	15:16					15:16	15:16

9/11/2002	3	5	Appellee	15:31					15:31	15:31
3/15/2005	1	5	Appellee	15:39					15:39	15:39
9/18/2002	1	6	Appellee	15:52					15:52	15:52
12/21/2004	1	16	Appellee	16:05					16:05	16:05
2/14/2005	1	21	Appellee	16:06					16:06	16:06
10/8/2002	3	9	Appellee	16:36					16:36	16:36
6/4/2003	1	2	Appellee	17:11					17:11	17:11
9/24/2002	4	12	Appellee	17:47					17:47	17:47

In Criminal Cases (June, 2003, Cases in **Bold**):

Date of Oral Argument	Order in Which Case Argued That Day (1, 2, 3, etc.)	Order of question asked	Question asked of	Time Question Asked	First Question Asked Appellant	Last Question Asked Appellant	Time Question Asked Appellant	First Question Asked Appellee	Last Question Asked Appellee	Time Question Asked Appellee
12/21/2004	2	3	Appellee	3:11					3:11	3:11
9/17/2002	5	1	Appellee	3:33				3:33	3:33	3:33
3/1/2005	2	9	Appellee	3:49					3:49	3:49
3/8/2005	2	5	Appellee	5:16					5:16	5:16
6/17/2003	1	5	Appellee	5:38					5:38	5:38
9/8/2004	5	1	Appellee	6:10				6:10	6:10	6:10
9/18/2002	3	6	Appellee	7:24					7:24	7:24
6/3/2003	4	2	Appellee	10:43					10:43	10:43
6/11/2003	2	4	Appellee	11:58					11:58	11:58
10/9/2002	4	6	Appellee	13:00					13:00	13:00
3/1/2005	1	27	Appellee	13:40					13:40	13:40
3/8/2005	1	25	Appellee	15:02					15:02	15:02

Last Question Asked Appellees–First or Second Case Argued–Ranked by Elapsed Time Before Last Question

In Civil Cases (June, 2003, Cases in **Bold**):

Date of Oral Argument	Order in Which Case Argued That Day (1, 2, 3, etc.)	Order of question asked	Question asked of	Time Question Asked	First Question Asked Appellant	Last Question Asked Appellant	Time Question Asked Appellant	First Question Asked Appellee	Last Question Asked Appellee	Time Question Asked Appellee
9/25/2002	1	1	Appellee	3:22				3:22	3:22	3:22
6/4/2003	2	2	Appellee	5:11					5:11	5:11
9/10/2002	1	1	Appellee	5:14				5:14	5:14	5:14
9/25/2002	2	1	Appellee	6:24				6:24	6:24	6:24
6/11/2003	1	2	Appellee	6:44					6:44	6:44
9/10/2002	2	2	Appellee	8:26					8:26	8:26
9/8/2004	1	8	Appellee	8:30					8:30	8:30
9/24/2002	1	6	Appellee	9:28					9:28	9:28
9/11/2002	1	9	Appellee	9:58					9:58	9:58
9/11/2002	2	5	Appellee	11:37					11:37	11:37
10/8/2002	2	6	Appellee	12:06					12:06	12:06
9/17/2002	1	8	Appellee	13:14					13:14	13:14
6/10/2003	2	9	Appellee	13:22					13:22	13:22
9/17/2002	2	12	Appellee	13:28					13:28	13:28
10/8/2002	1	11	Appellee	14:06					14:06	14:06
6/3/2003	1	10	Appellee	14:08					14:08	14:08
9/18/2002	2	10	Appellee	15:03					15:03	15:03
6/10/2003	1	8	Appellee	15:16					15:16	15:16
3/15/2005	1	5	Appellee	15:39					15:39	15:39
9/18/2002	1	6	Appellee	15:52					15:52	15:52
12/21/2004	1	16	Appellee	16:05					16:05	16:05
2/14/2005	1	21	Appellee	16:06					16:06	16:06
6/4/2003	1	2	Appellee	17:11					17:11	17:11

In Criminal Cases (June, 2003, Cases in **Bold**):

Date of Oral Argument	Order in Which Case Argued That Day (1, 2, 3, etc.)	Order of question asked	Question asked of	Time Question Asked	First Question Asked Appellant	Last Question Asked Appellant	Time Question Asked Appellant	First Question Asked Appellee	Last Question Asked Appellee	Time Question Asked Appellee
12/21/2004	2	3	Appellee	3:11					3:11	3:11
3/1/2005	2	9	Appellee	3:49					3:49	3:49
3/8/2005	2	5	Appellee	5:16					5:16	5:16
6/17/2003	1	5	Appellee	5:38					5:38	5:38
6/11/2003	2	4	Appellee	11:58					11:58	11:58
3/1/2005	1	27	Appellee	13:40					13:40	13:40
3/8/2005	1	25	Appellee	15:02					15:02	15:02

Last Question Asked Appellees–First Case Argued–Ranked by Elapsed Time Before Last Question

In Civil Cases (June, 2003, Cases in **Bold**):

Date of Oral Argument	Order in Which Case Argued That Day (1, 2, 3, etc.)	Order of question asked	Question asked of	Time Question Asked	First Question Asked Appellant	Last Question Asked Appellant	Time Question Asked Appellant	First Question Asked Appellee	Last Question Asked Appellee	Time Question Asked Appellee
9/25/2002	1	1	Appellee	3:22				3:22	3:22	3:22
9/10/2002	1	1	Appellee	5:14				5:14	5:14	5:14
6/11/2003	1	2	Appellee	6:44					6:44	6:44
9/8/2004	1	8	Appellee	8:30					8:30	8:30
9/24/2002	1	6	Appellee	9:28					9:28	9:28
9/11/2002	1	9	Appellee	9:58					9:58	9:58
9/17/2002	1	8	Appellee	13:14					13:14	13:14
10/8/2002	1	11	Appellee	14:06					14:06	14:06
6/3/2003	1	10	Appellee	14:08					14:08	14:08
6/10/2003	1	8	Appellee	15:16					15:16	15:16
3/15/2005	1	5	Appellee	15:39					15:39	15:39
9/18/2002	1	6	Appellee	15:52					15:52	15:52
12/21/2004	1	16	Appellee	16:05					16:05	16:05
2/14/2005	1	21	Appellee	16:06					16:06	16:06
6/4/2003	1	2	Appellee	17:11					17:11	17:11

In Criminal Cases (June, 2003, Cases in **Bold**):

Date of Oral Argument	Order in Which Case Argued That Day (1, 2, 3, etc.)	Order of question asked	Question asked of	Time Question Asked	First Question Asked Appellant	Last Question Asked Appellant	Time Question Asked Appellant	First Question Asked Appellee	Last Question Asked Appellee	Time Question Asked Appellee
6/17/2003	1	5	Appellee	5:38					5:38	5:38
3/1/2005	1	27	Appellee	13:40					13:40	13:40
3/8/2005	1	25	Appellee	15:02					15:02	15:02

Last Question Asked Appellees–Second Case Argued–Ranked by Elapsed Time Before Last Question

In Civil Cases (June, 2003, Cases in **Bold**):

Date of Oral Argument	Order in Which Case Argued That Day (1, 2, 3, etc.)	Order of question asked	Question asked of	Time Question Asked	First Question Asked Appellant	Last Question Asked Appellant	Time Question Asked Appellant	First Question Asked Appellee	Last Question Asked Appellee	Time Question Asked Appellee
6/4/2003	2	2	Appellee	5:11					5:11	5:11
9/25/2002	2	1	Appellee	6:24				6:24	6:24	6:24
9/10/2002	2	2	Appellee	8:26					8:26	8:26
9/11/2002	2	5	Appellee	11:37					11:37	11:37
10/8/2002	2	6	Appellee	12:06					12:06	12:06
6/10/2003	2	9	Appellee	13:22					13:22	13:22
9/17/2002	2	12	Appellee	13:28					13:28	13:28
9/18/2002	2	10	Appellee	15:03					15:03	15:03

In Criminal Cases (June, 2003, Cases in **Bold**):

Date of Oral Argument	Order in Which Case Argued That Day (1, 2, 3, etc.)	Order of question asked	Question asked of	Time Question Asked	First Question Asked Appellant	Last Question Asked Appellant	Time Question Asked Appellant	First Question Asked Appellee	Last Question Asked Appellee	Time Question Asked Appellee
12/21/2004	2	3	Appellee	3:11					3:11	3:11
3/1/2005	2	9	Appellee	3:49					3:49	3:49
3/8/2005	2	5	Appellee	5:16					5:16	5:16
6/11/2003	2	4	Appellee	11:58					11:58	11:58

Last Question Asked Appellees–Third Case Argued–Ranked by Elapsed Time Before Last Question

In Civil Cases (June, 2003, Cases in **Bold**):

Date of Oral Argument	Order in Which Case Argued That Day (1, 2, 3, etc.)	Order of question asked	Question asked of	Time Question Asked	First Question Asked Appellant	Last Question Asked Appellant	Time Question Asked Appellant	First Question Asked Appellee	Last Question Asked Appellee	Time Question Asked Appellee
9/17/2002	3	2	Appellee	3:41					3:41	3:41
9/10/2002	3	1	Appellee	5:51				5:51	5:51	5:51
6/3/2003	3	2	Appellee	6:15					6:15	6:15
9/8/2004	3	2	Appellee	7:02					7:02	7:02
3/1/2005	3	7	Appellee	7:44					7:44	7:44
9/25/2002	3	2	Appellee	11:04					11:04	11:04
9/11/2002	3	5	Appellee	15:31					15:31	15:31
10/8/2002	3	9	Appellee	16:36					16:36	16:36

In Criminal Cases (June, 2003, Cases in **Bold**):

Date of Oral Argument	Order in Which Case Argued That Day (1, 2, 3, etc.)	Order of question asked	Question asked of	Time Question Asked	First Question Asked Appellant	Last Question Asked Appellant	Time Question Asked Appellant	First Question Asked Appellee	Last Question Asked Appellee	Time Question Asked Appellee
9/18/2002	3	6	Appellee	7:24					7:24	7:24

Last Question Asked Appellees–Fourth Case Argued–Ranked by Elapsed Time Before Last Question

In Civil Cases (June, 2003, Cases in **Bold**):

Date of Oral Argument	Order in Which Case Argued That Day (1, 2, 3, etc.)	Order of question asked	Question asked of	Time Question Asked	First Question Asked Appellant	Last Question Asked Appellant	Time Question Asked Appellant	First Question Asked Appellee	Last Question Asked Appellee	Time Question Asked Appellee
9/10/2002	4	5	Appellee	9:23					9:23	9:23
10/8/2002	4	6	Appellee	13:16					13:16	13:16
9/24/2002	4	12	Appellee	17:47					17:47	17:47

In Criminal Cases (June, 2003, Cases in **Bold**):

Date of Oral Argument	Order in Which Case Argued That Day (1, 2, 3, etc.)	Order of question asked	Question asked of	Time Question Asked	First Question Asked Appellant	Last Question Asked Appellant	Time Question Asked Appellant	First Question Asked Appellee	Last Question Asked Appellee	Time Question Asked Appellee
6/3/2003	4	2	Appellee	10:43					10:43	10:43
10/9/2002	4	6	Appellee	13:00					13:00	13:00

Last Question Asked Appellees–Fifth and Sixth Case Argued–Ranked by Elapsed Time Before Last Question

In Civil Cases (June, 2003, Cases in **Bold**):

No Cases

In Criminal Cases (June, 2003, Cases in **Bold**):

Date of Oral Argument	Order in Which Case Argued That Day (1, 2, 3, etc.)	Order of question asked	Question asked of	Time Question Asked	First Question Asked Appellant	Last Question Asked Appellant	Time Question Asked Appellant	First Question Asked Appellee	Last Question Asked Appellee	Time Question Asked Appellee
9/17/2002	5	1	Appellee	3:33				3:33	3:33	3:33
9/8/2004	5	1	Appellee	6:10				6:10	6:10	6:10

**Appendix Nine. Propensities of Justices
to Ask Questions When Authoring Opinions
as Compared to When Not Authoring Opinion**

The following table shows the propensity of members of the Court to ask questions, depending on whether they end up authoring the majority opinion or not. The “Total Questions” columns include all questions asked of both appellants and appellees by the named Justice.

Justice	Author			Non-Author		
	Total Questions	Cases	Avg.	Total Questions	Cases	Avg.
Cayce	118	8	14.75	147	25	5.9
Dauphinot	69	6	11.5	98	18	5.4
Gardner	25	6	4.2	11	9	1.2
Holman	1	4	.25	2	14	.14
Livingston	17	6	2.8	43	17	2.5
McCoy	60	4	15	51	11	4.6
Walker	37	8	4.63	28	16	1.75
Per Curiam (49 questions/ 3 cases)		3			3	
Day (Dec'd.)	20	11	1.8	7	14	.5
Total		56*				

* The Court has not yet issued an opinion on one of the 57 cases profiled.