

# AN EXAMINATION OF THE INDIANA SUPREME COURT DOCKET, DISPOSITIONS, AND VOTING IN 2004\*

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The Indiana Supreme Court experienced an atypical year in 2004 in a number of noteworthy respects. The year saw an atypical amount of agreement among the justices, an atypical number of companion cases, an atypical number of cases that came to the court through unusual procedural devices and at least two atypical uses of the court's power to summarily affirm.

First, the justices demonstrated a remarkable level of agreement in 2004. The court issued 68 unanimous opinions, which amounted to almost 75% of all of its cases. Of the 46 civil opinions the court handed down, there were only 7 cases that drew a dissent. In fact, the court had the lowest percentage of dissenting opinions since a constitutional amendment revised the court's jurisdiction as of January 1, 2001. Between 2001 and 2003, the justices dissented in an average of 23.2% of all cases. In 2004, the justices dissented in only 14.3% of the court's cases. In fact, Justices Rucker and Dickson each authored nearly as many dissents in 2003 as the entire court did in 2004.

Another barometer of the agreement of the justices in 2004 is a corresponding decrease in the number of 3-2 opinions. The court handed down only 10 split opinions in 2004, which was by far the fewest since the change in the court's jurisdiction. In 2001, 2002, and 2003, the court handed down 28, 26, and 18 split decisions respectively.

Second, the level of agreement among the justices is at least partially explained by the number of companion cases issued in 2004. The court issued a sizeable number of companion opinions in 2004 and the justices' votes tended

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

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to be the same across those opinions. The court handed down 16 opinions that were related to at least one other case. Put slightly differently, 20% of the court's opinions in 2004 were related to at least one companion case.

This total included a particularly noteworthy cluster of cases dealing with Indiana's death penalty statute. On May 25, 2004, the court handed down five opinions addressing interrelated issues under Indiana's death penalty statute, including Indiana's response to recent United States Supreme Court jurisprudence on the jury's role in sentencing. In essence, the court issued five opinions in one day that affected actual or potential death sentences, which certainly qualifies as an atypical experience.

Third, the court heard a number of cases through atypical procedural devices. The court controls its docket through the classic transfer procedure familiar to any Indiana lawyer.<sup>1</sup> The remainder of the court's caseload is usually comprised of attorney discipline cases or direct appeals of death sentences and sentences for life in prison without parole. However, the Indiana Appellate Rules short-circuit this standard procedure in certain rare instances when public policy demands it. In 2004, the court was called on to hear cases under several of these procedures. For instance, the court granted an emergency petition to transfer under Indiana Appellate Rule 56(A), which by its very terms will be granted only in "rare cases."<sup>2</sup> This rule allows an appeal to bypass the court of appeals when it "involves a substantial question of law of great public importance" and when "an emergency exists requiring a speedy determination."<sup>3</sup> In *Board of School Commissioners v. Walpole*, the court invoked this procedure in a case involving a teacher's attempt to conduct discovery prior to an administrative hearing on his suspension.<sup>4</sup> This appears to be the first decision in a Rule 56(A) case since that rule was revised and re-codified from the former Rule 4(A)(9). In fact, it has been more than four years since the court handed down an opinion in a case that bypassed the court of appeals under the emergency power granted by either of these rules.<sup>5</sup> The court also heard a direct appeal of a trial court's declaration that a state statute was unconstitutional.<sup>6</sup> The court has "mandatory and exclusive jurisdiction" over such an appeal.<sup>7</sup> Although less unusual, the court also addressed a certified question in 2004.<sup>8</sup>

Fourth, and perhaps most significantly for practicing attorneys, the court showed a willingness to use its power to summarily affirm the court of appeals in atypical ways in 2004. In the usual case, the court takes jurisdiction over an

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1. IND. APP. R. 4(A).

2. See IND. APP. R. 56(A).

3. *Id.*

4. *Bd. of Sch. Comm'rs v. Walpole*, 801 N.E.2d 622 (Ind. 2004).

5. *City Chapel Evangelical Free Inc. v. City of South Bend ex rel. Dep't of Redev.*, 744 N.E.2d 443, 444 (Ind. 2001) (noting that court had granted transfer under the former Rule 4(A)(9)).

6. *Ind. Dep't of Natural Res. v. Newton County*, 802 N.E.2d 430 (Ind. 2004).

7. IND. APP. R. 4(A)(1)(b).

8. *Simon v. United States*, 805 N.E.2d 798 (Ind. 2004).

entire appeal and will address all of the dispositive issues raised by the appeal.<sup>9</sup> When the court takes transfer over an appeal, the court of appeals opinion is automatically vacated. However, the court has two devices that allow the court to defer elaborate discussion of discrete issues within a case by leaving parts of the court of appeals opinion intact. Known as its powers to “summarily affirm” or “expressly adopt” a court of appeals opinion,<sup>10</sup> the court used these powers at least 16 times in 2004.<sup>11</sup> Two of these opinions are particularly noteworthy because the court appears to have granted transfer specifically to correct an isolated, discrete error within the case and did not issue an opinion that engaged in its typical discussion of the facts and other dispositive issues of the case. These cases are in a sense the opposite of the way the court has summarily affirmed in the past and the court in essence “summarily reversed” the court of appeals.

For instance, the court issued a three-paragraph opinion in *State v. Berryman*<sup>12</sup> that summarily affirmed the court of appeals but only after explicitly *modifying* a quote in the court of appeals opinion. The court of appeals stated that “[h]ad there been such an order compelling Berryman’s cooperation, and a hearing advising him that the testimony of his experts could be excluded if he failed to cooperate with the court-appointed experts, *the result in this case may have been different.*”<sup>13</sup> The supreme court rewrote this quote:

Pursuant to Ind. Appellate Rule 58(A), we grant the State’s petition seeking transfer of jurisdiction and modify the previously quoted statement to read as follows: “Had there been such an order compelling Berryman’s cooperation, and a hearing advising him that the testimony

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9. IND. APP. R. 56(B) (stating that petition to transfer must “request[] that *the case* be transferred to the Supreme Court”) (emphasis added).

10. *Martin v. Amoco Oil Co.*, 696 N.E.2d 383, 386 n.4 (Ind. 1998) (quoting IND. APP. R. 11(B)(3)). When the court “summarily affirms an opinion, it “decline[s] to review the remainder of the opinion” and in essence “partially den[ies] transfer on these issues.” *Id.* The court can also “expressly adopt” the court of appeals’ opinion, which “indicates that [the court] accept[s] the reasoning of a Court of Appeals’ opinion as [its] own.” *Id.*

11. The court summarily affirmed at least part of the court of appeals opinion in the following cases: *Pugh v. State* 819 N.E.2d 375 (Ind. 2004), *Escobedo v. BHM Health Assocs., Inc.*, 818 N.E.2d 930 (Ind. 2004); *Merlington v. State*, 814 N.E.2d 269 (Ind. 2004); *Bojrab v. Bojrab*, 810 N.E.2d 1008 (Ind. 2004); *Patton v. State*, 810 N.E.2d 690 (Ind. 2004); *Penrod v. State*, 810 N.E.2d 345 (Ind. 2004); *Riggs v. State*, 809 N.E.2d 322 (Ind. 2004); *Endres v. Ind. State Police*, 809 N.E.2d 320 (Ind. 2004); *In re Termination of Parent-Child Relationship of E.T.*, 808 N.E.2d 639 (Ind. 2004); *In re K.G.*, 808 N.E.2d 631 (Ind. 2004); *Schlosser v. Rock Indus., Inc.*, 804 N.E.2d 1140 (Ind. 2004); *Daugherty v. Indus. Contracting & Erecting*, 802 N.E.2d 912 (Ind. 2004); *MPACT Constr. Group, LLC v. Superior Concrete Constructors, Inc.*, 802 N.E.2d 901 (Ind. 2004); *Time Warner Entm’t Co. v. Whiteman*, 802 N.E.2d 886 (Ind. 2004); *Hines v. State*, 801 N.E.2d 634 (Ind. 2004); *State v. Berryman*, 801 N.E.2d 170 (Ind. 2004).

12. 801 N.E.2d 170 (Ind. 2004).

13. *Id.* (quoting *State v. Berryman*, 796 N.E.2d 741 (Ind. Ct. App. 2003)) (emphasis added).

of his experts could be excluded if he failed to cooperate with the court-appointed experts, *the State would have prevailed on this issue.*" In all other respects, we summarily affirm the opinion of the Court of Appeals.<sup>14</sup>

In all other respects, the court simply left the court of appeals opinion as it was.

Similarly, in *Hines v. State*,<sup>15</sup> the court granted transfer explicitly because it found that "[t]here are two aspects of the opinion of the court of appeals worthy of particular mention."<sup>16</sup> After quoting, analyzing, and approving two passages of the court of appeals opinion, the court invoked its power to expressly adopt that opinion and did not otherwise discuss the remainder of the case.

*Hines* was a 5-0 opinion, while *Berryman* was a per curiam opinion that drew a dissent from Justice Dickson.

It remains to be seen whether the methods these opinions employed were a result of their particular facts and circumstances or whether they are a harbinger of a creative new practice through which the court can make pinpoint corrections to or expressions of approval of a lower court's opinion. Especially in light of the court's expanded power to control its own docket, these cases make the court's power to summarily affirm or expressly adopt an area to watch in upcoming years.

The following is a description of the highlights from each table.

**Table A.** The supreme court issued 92 opinions in 2004. This continues a downward trend in the raw number of opinions since the time its jurisdiction was revised. In 2001, 2002, and 2003, the court handed down 211, 190, and 108 opinions respectively. Since the change in the court's jurisdiction, it has averaged 150 opinions per year.

The court continues to decide a mix of civil and criminal appeals. In 2004, the court's docket was split evenly between civil and criminal cases, as it decided 46 criminal cases and 46 civil cases. However, the raw numbers do not take into account (1) the sheer size and importance of the number of death penalty opinions issued by the court in 2004; and (2) the fact that many of the companion cases arose in the criminal context. As such, it is difficult to gauge exactly how much of the court's work in 2004 was geared toward either type of case. In any event, the nearly even split between criminal and civil cases is a departure from 2003, during which 63.9% of the opinions were civil.

Justice Sullivan delivered the most opinions in 2004 with 20, but was trailed closely by Justice Boehm with 19. The two justices were almost exactly opposite in the *types* of opinions they issued. Justice Boehm handed down 11 civil and 8 criminal opinions, while Justice Sullivan handed down 13 criminal and 7 civil opinions. Chief Justice Shepard issued 16 opinions; Justice Rucker handed down 14; and Justice Dickson had 12 opinions, including most of the majority opinions

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14. *Id.* (emphasis added).

15. 801 N.E.2d 634 (Ind. 2004).

16. *Id.* at 635.

in the complex death penalty appeals discussed herein. The court also issued 11 per curiam opinions, down from an average of 22 in the previous three years.

As discussed above, the raw number of dissents issued this year declined as the justices wrote a total of only 13 dissenting opinions. Only 14.1% of all of the court's opinions drew a dissent. This number is a decline in the percentage of dissenting opinions from previous years, as 32 and 44% of all cases contained a dissent in 2002 and 2003. Justice Dickson dissented the most with 6 dissents, nearly half of the court's total.

**Table B-1.** For civil cases, Chief Justice Shepard and Justice Boehm were the two justices most aligned at 87.8%. Justices Shepard and Sullivan were also aligned in 87% of the civil cases. Conversely, Justices Sullivan and Dickson were least aligned with 78.3%. By contrast, the two justices least aligned in civil cases in 2003 were Chief Justices Shepard and Justice Rucker, who were aligned in only 61.5% of the cases.

**Table B-2.** Chief Justice Shepard and Justice Boehm were also the most aligned in criminal cases, as they were in agreement in 90.1% of those cases. Justice Dickson and Justice Rucker were in agreement in only 80.4% of the court's criminal cases, the lowest of any two justices.

**Table B-3.** For all cases, Chief Justice Shepard and Justice Boehm were the most aligned and agreed in 89.4% of all cases. Chief Justice Shepard and Justice Sullivan were second with 87.9%. Justice Rucker agreed with Justice Sullivan and Chief Justice Shepard in 81% of all cases, which was tied for the least. The same was true in 2003, as Justice Rucker agreed with Justice Sullivan and Chief Justice Shepard less than any other pairing of justices.

Overall, Chief Justice Shepard was the most aligned with his fellow justices, and Justice Rucker was the least aligned.

**Table C.** As discussed above, the percentage of unanimous opinions rose in 2004. In all, 72.7% of the court's opinions were unanimous, compared to 66.1% in 2003. The percentage of cases with at least one dissent dropped accordingly. In 2004, only 14.3% of all cases drew at least one dissent. In 2003, 2002, and 2001, the percentage of cases with at least one dissent was 27.8, 23.2, and 18.5% respectively.

**Table D.** Both the raw number and percentage of 3-2 decisions dropped in 2004. The court issued only 10 3-2 decisions in 2004. In 2003, 2002, and 2001, the court handed down 18, 26, and 27 split decisions respectively.

As in previous years, Chief Justice Shepard continued to be a pivotal vote in 3-2 cases. The Chief Justice was in the majority of all but two of the court's 3-2 decisions. In fact, he authored more half of the 3-2 opinions he joined. This result is consistent with previous years. From 2001 to 2003, the court handed down 72 decisions in which the justices split 3-2. The Chief Justice was in the majority in all but 13 of those cases.

Justice Sullivan's vote also appears to be pivotal in recent 3-2 cases. In

2004, he joined all but two of the court's 3-2 opinions. In 2003, he joined 14 of the court's 18 split decisions.

**Table E-1.** Overall, the court affirmed cases only 23.5% of the time. Civil appeals were affirmed 13.9% of the time and nonmandatory criminal appeals were affirmed 24.2% of the time.

**Table E-2.** In 2004, the court granted fewer petitions for transfer in civil cases. The court granted transfer in 16.4% of the civil cases. This percent is a decrease from 2003 and 2002, where the court granted transfer 21.2 and 23.4% of the time.

The percentage of transfer petitions granted in criminal cases remained consistent with previous years. In 2004, the court granted 7.7% of all petitions to transfer in criminal cases. In 2003, 2002, and 2001, the court granted 9.8, 7.5, and 6.6% of transfer petitions in criminal cases respectively.

**Table F.** The court continued to hear a diverse spectrum of cases in 2004. As mentioned, the court addressed several important death penalty issues in 2004, and its workload in those cases is reflected in the fact that 10 of its 91 opinions came in cases where the sentence was either death or life without parole. However, the court also addressed several areas important to commercial law practitioners. For instance, the court handed down 6 opinions that addressed contract, corporation, or insurance law. On the other hand, the court only handed down 2 opinions in the divorce or child support category. In the past 3 years, the court averaged 6 opinions a year on these topics.

**TABLE A**  
**OPINIONS<sup>a</sup>**

	OPINIONS OF COURT <sup>b</sup>			CONCURRENCES <sup>c</sup>			DISSENTS <sup>d</sup>		
	Criminal	Civil	Total	Criminal	Civil	Total	Criminal	Civil	Total
Shepard, C.J.	7	9	16	0	0	0	1	0	1
Dickson, J. <sup>e</sup>	8	4	12	0	0	0	3	3	6
Sullivan, J. <sup>e</sup>	13	7	20	3	0	3	0	1	1
Boehm, J. <sup>e</sup>	8	11	19	2	2	4	1	1	2
Rucker, J. <sup>e</sup>	9	5	14	4	1	5	1	2	3
Per Curiam	1	10	11						
Total	46	46	92	9	3	12	6	7	13

<sup>a</sup> These are opinions and votes on opinions by each justice and in per curiam in the 2004 term. The Indiana Supreme Court is unique because it is the only supreme court to assign each case to a justice by a consensus method. Cases are distributed by a consensus of the justices in the majority on each case either by volunteering or nominating writers. The chief justice does not have any power to control the assignments other than as a member of the majority. See Melinda Gann Hall, *Opinion Assignment Procedures and Conference Practices in State Supreme Courts*, 73 JUDICATURE 209, 213 (1990). The order of discussion and voting is started by the most junior member of the court and follows reverse seniority. See *id.* at 210.

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

<sup>c</sup> This category includes both written concurrences, joining in written concurrence, and votes to concur in result only.

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

<sup>e</sup> Justices declined to participate in the following cases: *Baker v. Marion County Office of Family & Children & Child Advocates, Inc.*, 810 N.E.2d 1035 (Ind. 2004) (Sullivan, J.); *State v. Boles*, 810 N.E.2d 1016 (Ind. 2004) (Shepard, C.J.); *In re Termination of the Parent-Child Relationship of E.T.*, 808 N.E.2d 639 (Ind. 2004) (Sullivan, J.); *In re K.G.*, 808 N.E.2d 631 (Ind. 2004) (Sullivan, J.).

**TABLE B-1**  
**VOTING ALIGNMENTS FOR CIVIL CASES<sup>f</sup>**

		Shepard	Dickson	Sullivan	Boehm	Rucker
Shepard, C.J.	O		39	40	42	40
	S		0	0	1	0
	D	---	39	40	43	40
	N		49	46	49	49
	P		79.6%	87.0%	87.8%	81.6%
Dickson, J.	O	39		36	38	38
	S	0		0	1	1
	D	39	---	36	39	39
	N	49		46	49	49
	P	79.6%		78.3%	79.6%	81.6%
Sullivan, J.	O	40	36		38	37
	S	0	0		1	0
	D	40	36	---	39	37
	N	46	46		46	46
	P	87.0%	78.3%		84.6%	80.4%
Boehm, J.	O	42	38	38		39
	S	1	1	1		0
	D	43	39	39	---	39
	N	49	49	46		49
	P	87.8%	79.6%	84.6%		79.6%
Rucker, J.	O	40	38	37	39	
	S	0	1	0	0	
	D	40	39	37	39	---
	N	49	49	46	49	
	P	81.6%	79.6%	81.6%	79.6%	

<sup>f</sup> This Table records the number of times that one justice voted with another in full-opinion decisions, including per curiam, for only civil cases. For example, in the top set of numbers for Chief Justice Shepard, 39 is the number of times Chief Justice Shepard and Justice Dickson agreed in a full majority opinion in a civil case. Two justices are considered to have agreed whenever they joined the same opinion, as indicated by either the reporter or the explicit statement of a justice in the body of his or her own opinion. The Table does not treat two justices as having agreed if they did not join the same opinion, even if they agreed only in the result of the case or wrote separate opinions revealing little philosophical disagreement.

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

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

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

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

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

**TABLE B-2**  
**VOTING ALIGNMENTS FOR CRIMINAL CASES<sup>8</sup>**

		Shepard	Dickson	Sullivan	Boehm	Rucker
Shepard, C.J.	O		40	40	40	37
	S		0	0	1	0
	D	---	40	40	41	37
	N		45	45	45	45
	P		88.0%	88.9%	90.1%	82.2%
Dickson, J.	O	40		40	39	37
	S	0		0	0	0
	D	40	---	40	39	37
	N	45		46	46	46
	P	88.9%		87.0%	84.8%	80.4%
Sullivan, J.	O	40	40		39	38
	S	0	0		0	0
	D	40	40	---	39	38
	N	45	46		46	46
	P	88.9%	87.0%		84.8%	82.6%
Boehm, J.	O	40	39	39		38
	S	1	0	0		2
	D	41	39	39	---	40
	N	45	46	46		46
	P	90.1%	84.8%	84.8%		87.0%
Rucker, J.	O	37	37	38	38	
	S	0	0	0	2	
	D	37	37	38	40	---
	N	45	46	46	46	
	P	82.2%	80.4%	82.6%	87.0%	

<sup>8</sup> This Table records the number of times that one justice voted with another in full-opinion decisions, including per curiam, for only criminal cases. For example, in the top set of numbers for Chief Justice Shepard, 40 is the number of times Chief Justice Shepard and Justice Dickson agreed in a full majority opinion in a criminal case. Two justices are considered to have agreed whenever they joined the same opinion, as indicated by either the reporter or the explicit statement of a justice in the body of his or her own opinion. The Table does not treat two justices as having agreed if they did not join the same opinion, even if they agreed only in the result of the case or wrote separate opinions revealing little philosophical disagreement.

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

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

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

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

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

**TABLE B-3**  
**VOTING ALIGNMENTS FOR ALL CASES<sup>h</sup>**

	Shepard	Dickson	Sullivan	Boehm	Rucker	
Shepard, C.J.	O		79	80	82	77
	S		0	0	2	0
	D	---	79	80	84	77
	N		94	91	94	94
	P		84.0%	87.9%	89.4 %	81.9 %
Dickson, J.	O	79		76	77	75
	S	0		0	1	1
	D	79	---	76	78	76
	N	94		92	95	95
	P	94.0%		82.6%	82.1 %	80.0 %
Sullivan, J.	O	80	76		77	75
	S	0	0		1	0
	D	80	76	---	78	75
	N	91	92		92	92
	P	87.9%	82.6%		84.8 %	81.5 %
Boehm, J.	O	82	77	77		77
	S	2	1	1		2
	D	84	78	78	---	79
	N	94	95	92		95
	P	89.4%	82.1 %	84.8%		83.2 %
Rucker, J.	O	77	75	75	77	
	S	0	1	0	2	
	D	77	76	75	79	--
	N	94	95	92	95	
	P	81.9%	80.0%	81.5 %	83.2%	

<sup>h</sup> This Table records the number of times that one justice voted with another in full-opinion decisions, including per curiam, for all cases. For example, in the top set of numbers for Chief Justice Shepard, 79 is the total number of times Chief Justice Shepard and Justice Dickson agreed in all full majority opinions written by the court in 2004. Two justices are considered to have agreed whenever they joined the same opinion, as indicated by either the reporter or the explicit statement of a justice in the body of his or her own opinion. The Table does not treat two justices as having agreed if they did not join the same opinion, even if they agreed only in the result of the case or wrote separate opinions revealing little philosophical disagreement.

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

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

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

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

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

**TABLE C**  
**UNANIMITY**  
**NOT INCLUDING JUDICIAL OR ATTORNEY DISCIPLINE CASES<sup>i</sup>**

Unanimous <sup>j</sup>			Unanimous with Concurrence <sup>k</sup>			Opinions with Dissent			Total
Criminal	Civil	Total	Criminal	Civil	Total	Criminal	Civil	Total	
32	36	68 (74.7%)	8	2	10 (11.0%)	6	7	13 (14.3%)	91

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

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

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

**TABLE D**  
**3-2 DECISIONS<sup>1</sup>**

<b>Justices Constituting the Majority</b>	<b>Number of Opinions<sup>m</sup></b>
1. Shepard, C.J., Sullivan, J., Boehm, J.	2
2. Shepard, C.J., Dickson, J., Sullivan, J.	3
3. Shepard, C.J., Rucker, J., Sullivan, J.	1
4. Shepard, C.J., Dickson, J., Boehm, J.	1
5. Shepard, C.J., Dickson, J., Rucker, J.	1
6. Dickson, J., Sullivan, J., Rucker, J.	2
<b>Total<sup>n</sup></b>	<b>10</b>

<sup>1</sup> This Table concerns only decisions rendered by full opinion. An opinion is counted as a 3-2 decision if two justices voted to decide the case in a manner different from that of the majority of the court.

<sup>m</sup> This column lists the number of times each three-justice group constituted the majority in a 3-2 decision.

<sup>n</sup> The 2004 term's 3-2 decisions were:

1. Shepard, C.J., Sullivan, J., Boehm, J.: *Infinity Prods., Inc. v. Quandt*, 810 N.E.2d 1028 (Ind. 2004) (Shepard, C.J.); *Breitweiser v. Ind. Office of Env'tl. Adjudication*, 810 N.E.2d 699 (Ind. 2004) (Shepard, C.J.).

2. Shepard, C.J., Dickson, J., Sullivan, J.: *Escobedo v. BHM Health Assocs., Inc.*, 818 N.E.2d 930 (Ind. 2004) (Sullivan, J.); *Helsley v. State*, 809 N.E.2d 292 (Ind. 2004) (Dickson, J.); *Stroud v. State*, 809 N.E.2d 274 (Ind. 2004) (Sullivan, J.).

3. Shepard, C.J., Rucker, J., Sullivan, J.: *Kennedy v. Guess Inc.*, 806 N.E.2d 776 (Ind. 2004) (Shepard, C.J.).

4. Shepard, C.J., Dickson, J., Boehm, J.: *State v. Barker*, 809 N.E.2d 312 (Ind. 2004) (Dickson, J.).

5. Shepard, C.J., Dickson, J., Rucker, J.: *Pabey v. Pastrick*, 816 N.E.2d 1138 (Ind. 2004) (Dickson, J.).

6. Dickson, J., Sullivan, J., Rucker, J.: *MPACT Constr. Group, LLC v. Superior Concrete Constructors, Inc.*, 802 N.E.2d 901 (Ind. 2004) (Sullivan, J.); *State v. Bulington*, 802 N.E.2d 435 (Ind. 2004) (Sullivan, J.).

**TABLE E-1**  
**DISPOSITION OF CASES REVIEWED BY TRANSFER**  
**AND DIRECT APPEALS<sup>o</sup>**

	Reversed or Vacated <sup>p</sup>	Affirmed	Total
Civil Appeals Accepted for Transfer	27 (84.4%)	5 (15.6%)	32
Direct Civil Appeals	4 (100%)	0 (0%)	4
Criminal Appeals Accepted for Transfer	25 (75.8%)	8 (24.2%)	33
Direct Criminal Appeals	6 (50.0%)	6 (50.0%)	12
<b>Total</b>	<b>62 (76.5%)</b>	<b>19 (23.5%)</b>	<b>81<sup>q</sup></b>

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

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

<sup>q</sup> This does not include 8 attorney discipline opinions, 1 judicial discipline opinion, 1 order on rehearing, and 1 opinion related to certified questions. This also does not include 6 opinions which considered petitions for post-conviction relief.

**TABLE E-2**  
**DISPOSITION OF PETITIONS TO TRANSFER**  
**TO SUPREME COURT IN 2004<sup>r</sup>**

	Denied or Dismissed	Granted	Total
Petitions to Transfer			
Civil <sup>s</sup>	234 (83.6%)	46 (16.4%)	280
Criminal <sup>t</sup>	480 (92.3%)	40 (7.7%)	520
Juvenile	36 (92.3%)	3 (7.7%)	39
<b>Total</b>	<b>750 (89.4%)</b>	<b>89 (10.6%)</b>	<b>839</b>

<sup>r</sup> This Table analyzes the disposition of petitions to transfer by the court. See IND. APP. R. 58(A).

<sup>s</sup> This also includes petitions to transfer in tax cases and workers' compensation cases.

<sup>t</sup> This also includes petitions to transfer in post-conviction relief cases.

**TABLE F**  
**SUBJECT AREAS OF SELECTED DISPOSITIONS**  
**WITH FULL OPINIONS<sup>u</sup>**

<b>Original Actions</b>	<b>Number</b>
• Certified Questions	1 <sup>v</sup>
• Writs of Mandamus or Prohibition	0
• Attorney Discipline	7 <sup>w</sup>
• Judicial Discipline	1 <sup>x</sup>
<b>Criminal</b>	
• Death Penalty	10 <sup>y</sup>
• Fourth Amendment or Search and Seizure	2 <sup>z</sup>
• Writ of Habeas Corpus	0
Emergency Appeals to the Supreme Court	1 <sup>aa</sup>
Trusts, Estates, or Probate	0
Real Estate or Real Property	2 <sup>bb</sup>
Personal Property	0
Landlord-Tenant	0
Divorce or Child Support	2 <sup>cc</sup>
Children in Need of Services (CHINS)	1 <sup>dd</sup>
Paternity	1 <sup>ee</sup>
Product Liability or Strict Liability	0
Negligence or Personal Injury	5 <sup>ff</sup>
Invasion of Privacy	0
Medical Malpractice	0
Indiana Tort Claims Act	1 <sup>gg</sup>
Statute of Limitations or Statute of Repose	0
Tax, Department of State Revenue, or State Board of Tax Commissioners	3 <sup>hh</sup>
Contracts	4 <sup>ii</sup>
Corporate Law or the Indiana Business Corporation Law	1 <sup>jj</sup>
Uniform Commercial Code	0
Banking Law	0
Employment Law	4 <sup>kk</sup>
Insurance Law	1 <sup>ll</sup>
Environmental Law	2 <sup>mm</sup>
Consumer Law	0
Workers' Compensation	4 <sup>nn</sup>
Arbitration	0
Administrative Law	6 <sup>oo</sup>
First Amendment, Open Door Law, or Public Records Law	0
Full Faith and Credit	0
Eleventh Amendment	0
Civil Rights	0
Indiana Constitution	2 <sup>pp</sup>

<sup>u</sup> This Table is designed to provide a general idea of the specific subject areas upon which the court ruled or discussed and how many times it did so in 2004. It is also a quick-reference guide to court rulings for practitioners in specific areas of the law. The numbers corresponding to the areas of law reflect the number of cases in which the court substantively discussed legal issues about these subject areas. Also, any attorney discipline case resolved by order (as opposed to an opinion) was not considered in preparing this Table.

- <sup>v</sup> Simon v. United States, 805 N.E.2d 798 (Ind. 2004).
- <sup>w</sup> *In re Anonymous*, 819 N.E.2d 376 (Ind. 2004); *In re Small*, 818 N.E.2d 466 (Ind. 2004); *In re Davidson*, 814 N.E.2d 266 (Ind. 2004); *In re Cassady*, 814 N.E.2d 247 (Ind. 2004); *In re Roberts*, 809 N.E.2d 841 (Ind. 2004); *In re Kendall*, 804 N.E.2d 1152 (Ind. 2004); *In re Allen*, 802 N.E.2d 922 (Ind. 2004).
- <sup>x</sup> *In re Kouros*, 816 N.E.2d 21 (Ind. 2004).
- <sup>y</sup> *Manus v. State*, 814 N.E.2d 253 (Ind. 2004); *State v. Barker*, 809 N.E.2d 312 (Ind. 2004); *State v. Ben-Yisrayl*, 809 N.E.2d 309 (Ind. 2004); *Helsley v. State*, 809 N.E.2d 292 (Ind. 2004); *Stroud v. State*, 809 N.E.2d 274 (Ind. 2004); *Ritchie v. State*, 809 N.E.2d 258 (Ind. 2004); *Clark v. State*, 808 N.E.2d 1183 (Ind. 2004); *Williams v. State*, 808 N.E.2d 652 (Ind. 2004); *Saylor v. State*, 808 N.E.2d 646 (Ind. 2004); *Washington v. State*, 808 N.E.2d 617 (Ind. 2004).
- <sup>z</sup> *Black v. State*, 810 N.E.2d 713 (Ind. 2004); *Gee v. State*, 810 N.E.2d 338 (Ind. 2004).
- <sup>aa</sup> *Bd. of Sch. Comm'rs v. Walpole*, 801 N.E.2d 622 (Ind. 2004).
- <sup>bb</sup> *Story Bed & Breakfast, LLP v. Brown County Area Plan Comm'n*, 819 N.E.2d 55 (Ind. 2004); *Fulton County Advisory Planning Comm'n v. Groninger*, 810 N.E.2d 704 (Ind. 2004).
- <sup>cc</sup> *Bojrab v. Bojrab*, 810 N.E.2d 1008 (Ind. 2004); *Gamas-Castellanos v. Gamas*, 803 N.E.2d 665 (Ind. 2004).
- <sup>dd</sup> *In re Termination of Parent-Child Relationship of E.T.*, 808 N.E.2d 639 (Ind. 2004).
- <sup>ee</sup> *In re Paternity of A.B.*, 813 N.E.2d 1173 (Ind. 2004).
- <sup>ff</sup> *Passmore v. Multi-Mgmt. Servs., Inc.*, 810 N.E.2d 1022 (Ind. 2004); *Kennedy v. Guess, Inc.*, 806 N.E.2d 776 (Ind. 2004); *Rhodes v. Wright*, 805 N.E.2d 382 (Ind. 2004); *Schlosser v. Rock Indus., Inc.*, 804 N.E.2d 1140 (Ind. 2004); *Peters v. Forster*, 804 N.E.2d 736 (Ind. 2004).
- <sup>gg</sup> *Niksich v. Cotton*, 810 N.E.2d 1003 (Ind. 2004).
- <sup>hh</sup> *Ind. Dep't of Revenue v. Trump Ind., Inc.*, 814 N.E.2d 1017 (Ind. 2004); *Ind. Dep't of Revenue v. 1 Stop Auto Sales, Inc.*, 810 N.E.2d 686 (Ind. 2004); *Lake County Auditor v. Burks*, 802 N.E.2d 896 (Ind. 2004).
- <sup>ii</sup> *Theising v. ISP.com, LLC*, 805 N.E.2d 778 (Ind. 2004); *ISP.com LLC v. Theising*, 805 N.E.2d 767 (Ind. 2004); *MPACT Constr. Group, LLC v. Superior Concrete Constructors, Inc.*, 802 N.E.2d 901 (Ind. 2004); *Time Warner Entm't Co. v. Whiteman*, 802 N.E.2d 886 (Ind. 2004).
- <sup>jj</sup> *Escobedo v. BHM Health Assocs., Inc.*, 818 N.E.2d 930 (Ind. 2004).
- <sup>kk</sup> *Infinity Prods., Inc. v. Quandt*, 810 N.E.2d 1028 (Ind. 2004); *Endris v. Ind. State Police*, 809 N.E.2d 320 (Ind. 2004); *Highhouse v. Midwest Orthopedic Inst., P.C.*, 807 N.E.2d 737 (Ind. 2004); *Bd. of Sch. Comm'rs v. Walpole*, 801 N.E.2d 622 (Ind. 2004).
- <sup>ll</sup> *M-Plan, Inc. v. Ind. Comprehensive Ins. Ass'n*, 809 N.E.2d 834 (Ind. 2004).
- <sup>mmm</sup> *Huffman v. Ind. Office of Env'tl. Adjudication*, 811 N.E.2d 806 (2004); *Breitweiser v. Ind. Office of Env'tl. Adjudication*, 810 N.E.2d 699 (Ind. 2004).
- <sup>nn</sup> *Knoy v. Cary*, 813 N.E.2d 1170 (Ind. 2004); *Global Constr. Inc. v. March*, 813 N.E.2d 1163 (Ind. 2004); *Bertoch v. NBD Corp.*, 813 N.E.2d 1159 (Ind. 2004); *Daugherty v. Indus. Contracting & Erecting*, 802 N.E.2d 912 (Ind. 2004).
- <sup>oo</sup> *Knoy v. Cary*, 813 N.E.2d 1170 (Ind. 2004); *Global Constr. Inc. v. March*, 813 N.E.2d 1163 (Ind. 2004); *Bertoch v. NBD Corp.*, 813 N.E.2d 1159 (Ind. 2004); *Huffman v. Ind. Office of Env'tl. Adjudication*, 811 N.E.2d 806 (Ind. 2004); *M-Plan, Inc. v. Ind. Comprehensive Health Ins. Ass'n*, 809 N.E.2d 834 (Ind. 2004); *Worman Enters., Inc. v. Boone County Solid Waste Mgmt. Dist.*, 805 N.E.2d 369 (Ind. 2004).
- <sup>pp</sup> *Endres v. Ind. State Police*, 809 N.E.2d 320 (Ind. 2004); *Ind. Dep't of Natural Res. v. Newton County*, 802 N.E.2d 430 (Ind. 2004).