

# AN EXAMINATION OF THE INDIANA SUPREME COURT DOCKET, DISPOSITIONS, AND VOTING IN 1993\*

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This is the third annual examination of the Indiana Supreme Court's docket, dispositions, and voting. It is apparent from this year's review that the court has finished a period of transition from the days of direct criminal appeals clogging the court's docket to a more stable apportionment of dispositions under its modern jurisdiction.<sup>1</sup>

During the past two years (1992 and 1993), the court's docket has been very similar: sixty-five compared to fifty-six opinions on petitions to transfer of civil cases; five to four direct appeals of civil cases; twenty-eight to twenty-one opinions on petitions to transfer of criminal matters; and fifty-eight to fifty-six direct appeals of criminal matters. One hundred eighty-five opinions were issued by the court in 1992 and 202 in 1993, including matters under the court's original jurisdiction, such as writs of mandamus or prohibition, attorney or judicial discipline cases, and certified questions.

Now that the new era is here, the present differs from the past in that there are far more opinions on petitions to transfer of civil matters.<sup>2</sup> This is primarily

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

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1. See Chief Justice Randall T. Shepard, *Changing the Constitutional Jurisdiction of the Indiana Supreme Court: Letting a Court of Last Resort Act Like One*, 63 IND. L.J. 669 (1988); see also Randall T. Shepard, *Foreword: Indiana Law, the Supreme Court, and a New Decade*, 24 IND. L. REV. 499 (1991); Randall T. Shepard, *The New Indiana Supreme Court*, 35 RES GESTAE 341 (1992); George T. Patton, Jr., *Recent Developments in Indiana Appellate Procedure: Reforming the Procedural Path to the Indiana Supreme Court*, 25 IND. L. REV. 1105 (1992); Kevin W. Betz, *An Examination of the Indiana Supreme Court Docket, Dispositions, and Voting in 1992*, 26 IND. L. REV. 691 (1993).

2. In 1984, the court only wrote 19 opinions on 239 petitions to transfer of civil matters. In 1989, the court wrote 40 such opinions out of 304 petitions to transfer civil cases, and in 1993

because the court has cleared its backlog. It is also an indication that the court now has more time to consider the matters and cases that come before it.<sup>3</sup> The court also handed down fifty-seven attorney discipline opinions or orders in 1993 compared to only twenty in 1992 and nine in 1991. Although twenty of these attorney discipline matters were in order form, thirty-seven were full opinions. This is primarily because of a more energetic Disciplinary Commission<sup>4</sup> and more room on the court's docket.

These trends provide an insight about the court that cannot be over-emphasized to the practitioner: The Indiana Supreme Court is a court that now thinks of itself as a "law-giving" court and not an "error-correcting" court.<sup>5</sup> The implications of this new self-perception are significant and include the fundamental precept that an argument before the Indiana Supreme Court should be based less on the applicable rule of law and more on the rationale underlying the applicable rule of law and its appropriateness for this State.

there were 60 out of 280 petitions. See SUPREME COURT OF INDIANA PROGRESS REPORT, 1984, 1989, 1993.

3. "One of the really healthy changes of the last few years is that the court has increased pretty dramatically the amount of time that the five justices sit in a room together and debate a particular appeal," according to Chief Justice Shepard. See Eric Hromadka, *Indiana Supreme Court Shapes State's Practice of Law*, 37 RES GESTAE 407 (Mar. 1994).

4. See *Indiana Supreme Court Disciplinary Commission Annual Report* 37 RES GESTAE 365 (Feb. 1994).

5. Kimberly A. Bradford, Administrator of the Indiana Supreme Court, provided a list at a March, 1994 ICLEF Seminar, titled: *How Do You Pique the Interest of the Indiana Supreme Court?* It listed areas likely to attract the court's attention and areas unlikely to do so. The subjects listed which "often attract" the court's attention were:

- State constitutional questions, particularly if they relate to a subject on which the federal constitution is most often cited
- Questions of first impression in any area
- Family law questions
- Environmental cases
- Cases which question the interpretation of trial rules
- Comparative fault because it is a relatively new area of the law
- U.C.C. cases
- Tort immunity
- Cases which clearly fall within IND. APP. R. 4(A)(9)
- Cases which will educate the bar about a particular area of law

The subjects unlikely to attract the court's attention were:

- Cases with conflicting facts and discretionary calls by the trial court which have been affirmed by the Court of Appeals
- Cases which duplicate arguments previously rejected by the current Court
- Cases which are poorly briefed
- Cases where the record is inadequate
- Cases where error by the lower courts did not change the result or confuse the law

Other than an understanding of the court's overall work, this examination also provides the voting behavior of individual justices. The following is a brief description of the highlights from each Table.

Table A. The court issued 182 opinions in 1993, exclusive of twenty attorney discipline orders, which, like an opinion, require a three-justice majority vote, but are not issued with a full discussion of the court's reasoning. This number of opinions is comparable to the 185 opinions handed down in 1992. The court again in 1993 wrote on more civil issues than criminal with seventy-nine criminal opinions and 103 civil opinions.

Justice Givan was the author of the most opinions: thirty-six criminal and nine civil. Justice Krahulik, who left the court in November, wrote the second most opinions overall and the highest number of civil opinions—twenty. The greatest increase was in the number of per curiam opinions—from twenty-seven in 1992 to forty-six in 1993, primarily because of the increase in attorney discipline opinions.

As usual, Justice Givan wrote the most dissents with thirty-five, but tied with Justice Dickson for the most dissents in civil matters with sixteen. This is a large increase for Justice Dickson who wrote only four dissents in civil cases in 1992. Justice Dickson wrote the second most dissents overall in 1993 with twenty-four, after dissenting only nine times in 1992 and eleven times in 1991. Justice DeBruler was the third most dissenting justice with twenty-one and was the author of the highest number of concurrences in 1993, with eleven.

Table B-1. Justices Krahulik and Shepard were the two justices most aligned in civil cases with a 92.4% agreement percentage. Justices Givan and DeBruler had been the least aligned in the past, but in 1993 Justices Givan and Dickson were the least aligned, with an agreement percentage of 73.2%. Whereas Justices Givan and DeBruler's alignment jumped from 58.8% in 1992 to 87.9% in 1993.

Justice Dickson was also the least aligned with all justices, on average, at 79.4%. Last year, he was one of the most aligned. Another change was that Justice DeBruler was the most aligned on average at 88.8%. Overall, the Court's average alignment was 84.2% in civil cases.

Table B-2. In criminal matters, Justices Shepard and Krahulik were again the two most aligned at 95.7%. As usual, Justices Givan and DeBruler were the least aligned on criminal cases at 58.2%. Interestingly, Justice Givan, who wrote the most criminal opinions, was also the least aligned with fellow justices on average at 69.8% in criminal cases. This alignment is achievable because of the high number of direct criminal appeals—in which the court is usually unanimous—authored by Justice Givan. Justices Shepard and Krahulik were also the most aligned with fellow justices on average at 86.5% and 86.7%, respectively. Overall, the court was aligned on average 81.3% in criminal cases.

Table B-3. For all cases, the two most aligned were Justices Shepard and Krahulik at 93.7%. Justices Dickson and Givan were the least aligned at 71.2%, just behind Justices DeBruler and Givan at 76.2%. The most aligned with all

justices were Shepard and Krahulik at 86.6% and 86.2%, respectively. Justice Givan was the least aligned at 76%. Overall, the court was aligned on average 83.4% in all cases.

Table C. The court was unanimous or had a concurrence in about 60% of its opinions, a record similar to past years. The court had at least one dissent in 39.6% of its opinions which is also similar to past years.

Table D. The court has consistently had about twenty-five of its opinions each year turn on a 3-2 vote. This year twenty-four were split opinions with Justices Shepard and Krahulik each being part of the three-justice majority in eighteen cases. They were followed by Justice Givan who was in the majority fourteen times. He authored the most 3-2 opinions at nine. Justice Dickson was in the majority of split opinions the least number of times at nine. Whereas, in 1991 Justice Dickson was in the majority of split opinions more than any other justice.

Table E. In 1993, the court wrote 137 opinions on cases coming from a trial court or the court of appeals. The Court handled sixty-five other cases under its original jurisdiction. It ruled on fifty-seven attorney discipline cases, and issued opinions in four writs of mandamus or prohibition, three certified questions, and one court reporter discipline matter.

Overall, the trial court or court of appeals was affirmed 42% of the time by the Supreme Court, and either reversed or vacated, at least in part, in 58% of the cases. If a petition to transfer of a civil case was granted, the case was reversed or vacated at least in part about 86% of the time in 1993. As for criminal cases on transfer, the court reversed or vacated the ruling in 80% of these cases while doing so only 20% of the time in direct appeals of criminal matters.<sup>6</sup>

Table F. The court had a large increase in its attorney discipline case load. It also handled four corporate law cases. Previously, it has seldom written in this area. The court also continues to show interest in the Indiana Constitution with ten cases in this area. The court reviewed six cases in which the death penalty was imposed, affirming three and reversing three. For the first time in three years, and after affirming all eleven previous transferred cases from the Tax Court, the court reversed a case from the Tax Court.

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6. According to the 1993 SUPREME COURT OF INDIANA PROGRESS REPORT, the court acted upon 280 petitions to transfer of civil matters, denying or dismissing 218 (78%) while assigning 61 (22%) for opinions in 1993. For petitions to transfer of criminal cases, the court acted upon 300, denying or dismissing 274 (91%) and assigning 24 (8%) for opinions. The court also conducted 21 oral arguments in 1993.

**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.	12	15*	27	1	4	5	2	4	6
DeBruler	9	3*	12	8	3	11	13	8	21
Givan	36	9	45	0	1	1	19	16	35
Dickson	8	12	20	3	1	4	8	16	24
Krahulik <sup>e</sup>	11	20	31	2	0	2	1	4	5
Sullivan <sup>e</sup>	0	1	1	0	0	0	0	1	1
per curiam	3	43	46	---	---	---	---	---	---
<b>Total</b>	<b>79</b>	<b>103</b>	<b>182</b>	<b>14</b>	<b>9</b>	<b>23</b>	<b>43</b>	<b>49</b>	<b>92</b>

<sup>a</sup> These are opinions and votes on opinions by each justice and in per curiam in the 1993 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 (1990). The order of discussion and voting is started by the most junior member of the court and follows reverse seniority. *Id.* at 210.

<sup>b</sup> Plurality opinions that announce the judgment of the court are counted as opinions of the court. This is only a counting of full opinions written by each justice. It includes opinions on civil, criminal, and original actions and disciplinary matters. It does not include rehearing opinions, nor does it include the per curiam opinions given credit to each justice by the SUPREME COURT OF INDIANA PROGRESS REPORT. The per curiam opinions are released publicly with no justice named as the author, but the Report gives credit to the justice who actually wrote the opinion. For the purposes of this Table, per curiam opinions are not counted for an individual justice because the public has no method of knowing which justice wrote the opinion.

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

<sup>d</sup> This 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> Former Justice Krahulik left the court on November 1, 1993, and Justice Sullivan joined the court on the same day. Justice Krahulik did not participate in two opinions. *Riggs v. Burell*, 619 N.E.2d 562 (Ind. 1993); *Indiana Carpenters Pension v. Seaboard Sur.*, 615 N.E.2d 892 (Ind. 1993). Justice Sullivan did not participate in four opinions. *In re E.H.*, 624 N.E.2d 471 (Ind. 1993); *In re Coffey*, 624 N.E.2d 465 (Ind. 1993); *In re Oates*, 624 N.E.2d 469 (Ind. 1993); *In re Schumate*, 626 N.E.2d 459 (Ind. 1993).

\* In addition, Chief Justice Shepard signed 18 orders of Attorney Discipline. Justice DeBruler signed two orders of Attorney Discipline. These orders, however, are included in other Tables because they are matters upon which the entire court votes and members write dissents or concurrences.

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

		Krahulik	Dickson	Givan	DeBruler	Shepard	Sullivan
Shepard	O	96	98	102	109		10
	S	1	1	2	1		0
	D	97	99	104	110		10
	N	105	123	123	123	---	12
	P	92.4%	73.2%	84.5%	89.4%		83.3%
DeBruler	O	93	105	107		109	9
	S	0	5	1		1	0
	D	93	110	108		110	9
	N	105	123	123	---	123	12
	P	88.6%	89.4%	87.9%		89.4%	75.0%
Givan	O	85	89		107	102	11
	S	0	1		1	2	0
	D	85	90		108	104	11
	N	105	123	---	123	123	12
	P	81.0%	73.2%		87.9%	84.5%	91.7%
Dickson	O	86		89	105	98	9
	S	0		1	5	1	2
	D	86		90	110	99	11
	N	105	---	123	123	123	12
	P	82.0%		73.2%	89.4%	73.2%	91.7%
Krahulik	O		86	85	93	96	
	S		0	0	0	1	
	D		86	85	93	97	
	N	---	105	105	105	105	---
	P		82.0%	81.0%	88.6%	92.4%	
Sullivan	O		9	11	9	10	
	S		2	0	0	0	
	D		11	11	9	10	
	N	---	12	12	12	12	---
	P		91.7%	91.7%	75.0%	83.3%	

<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. 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 times that the two justices agreed in opinions of the court or opinions announcing the judgment of the court.

"S" represents the number of times 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>§</sup>**

		Krahulik	Dickson	Givan	DeBruler	Shepard	Sullivan
Shepard	O	67	69	60	67		8
	S	0	0	1	1		0
	D	67	69	61	68		8
	N	70	79	79	79	---	9
	P	95.7%	87.3%	77.2%	86.0%		88.8%
DeBruler	O	57	65	46		67	8
	S	3	5	0		1	0
	D	60	70	46		68	8
	N	70	79	79	---	79	9
	P	85.7%	88.6%	58.2%		86.0%	88.8%
Givan	O	53	53		46	60	5
	S	0	1		0	1	1
	D	53	54		46	61	6
	N	70	79	---	79	79	9
	P	75.7%	68.3%		58.2%	77.2%	66.6%
Dickson	O	62		53	65	69	8
	S	1		1	5	0	0
	D	63		54	70	69	8
	N	70	---	79	79	79	9
	P	90.0%		68.3%	88.6%	87.3%	88.8%
Krahulik	O		62	53	57	67	
	S		1	0	3	0	
	D		63	53	60	67	
	N	---	70	70	70	70	---
	P		90.0%	75.7%	85.7%	95.7%	
Sullivan	O		8	5	8	8	
	S		0	1	0	0	
	D		8	6	8	8	
	N	---	9	9	9	9	---
	P		88.8%	66.6%	88.8%	88.8%	

<sup>§</sup> This Table records the number of times that one justice voted with another in full-opinion decisions, including per curiam, for all cases. 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 times that the two justices agreed in opinions of the court or opinions announcing the judgment of the court.

"S" represents the number of times 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>**

		Krahulik	Dickson	Givan	DeBruler	Shepard	Sullivan
Shepard	O	163	167	162	176		18
	S	1	1	3	2		0
	D	164	168	165	178		18
	N	175	202	202	202	---	21
	P	<b>93.7%</b>	<b>83.1%</b>	<b>81.6%</b>	<b>88.1%</b>		<b>85.7%</b>
DeBruler	O	150	170	153		176	17
	S	3	10	1		2	0
	D	153	180	154		178	17
	N	175	202	202	---	202	21
	P	<b>87.4%</b>	<b>89.1%</b>	<b>76.2%</b>		<b>88.1%</b>	<b>80.9%</b>
Givan	O	138	142		153	162	16
	S	0	2		1	3	1
	D	138	144		154	165	17
	N	175	202	---	202	202	21
	P	<b>78.8%</b>	<b>71.2%</b>		<b>76.2%</b>	<b>81.6%</b>	<b>80.9%</b>
Dickson	O	148		142	170	167	17
	S	1		2	10	1	2
	D	149		144	180	168	19
	N	175	---	202	202	202	21
	P	<b>85.1%</b>		<b>71.2%</b>	<b>89.1%</b>	<b>83.1%</b>	<b>90.5%</b>
Krahulik	O		148	138	150	163	
	S		1	0	3	1	
	D		149	138	153	164	
	N	---	175	175	175	175	---
	P		<b>85.1%</b>	<b>78.8%</b>	<b>87.4%</b>	<b>93.7%</b>	
Sullivan	O		17	16	17	18	
	S		2	1	0	0	
	D		19	17	17	18	
	N	---	21	21	21	21	---
	P		<b>90.5%</b>	<b>80.9%</b>	<b>80.9%</b>	<b>85.7%</b>	

<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. 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 times that the two justices agreed in opinions of the court or opinions announcing the judgment of the court.

"S" represents the number of times 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<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	
34	74	108 (53.4 %)	9	5	14 (6.9%)	36	44	80 (39.6%)	202

<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 concur, it is still considered unanimous. It also tracks the percent of opinions with concurrence and 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>

Justices Constituting the Majority	Number of Opinions <sup>m</sup>
1. Shepard, DeBruler, Givan	3
2. Shepard, DeBruler, Dickson	1
3. Shepard, DeBruler, Krahulik	2
4. Shepard, Givan, Dickson	1
5. Shepard, Givan, Krahulik	9
6. Shepard, Dickson, Krahulik	1
7. DeBruler, Givan, Krahulik	1
8. DeBruler, Dickson, Krahulik	3
9. Givan, Dickson, Krahulik	2
10. Givan, DeBruler, Dickson	1
<b>Total<sup>n</sup></b>	<b>24</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. The order of the justices' names is based on the tradition of the court, which is placing the Chief Justice first and then following the seniority of the justices.

<sup>m</sup> This column lists the number of times each three-justice group constituted the majority in a 3-2 decision. (Justice Sullivan did not join in any three-justice majority.)

<sup>n</sup> The 1993 term's 3-2 decisions were:

1. **Shepard, DeBruler, Givan**: Brewer v. State, 605 N.E.2d 181 (Ind. 1993) [Givan]. In re Gary McPheeters, 1993 Ind. Lexis 207 (Ind. 1993) [per curiam]. In re Zumrun, 1993 Ind. Lexis 211 (Ind. 1993) [Shepard].

2. **Shepard, DeBruler, Dickson**: Wickizer v. State, 1993 Ind. Lexis 205 (Ind. 1993) [Dickson].

3. **Shepard, DeBruler, Krahulik**: Miller Brewing v. Best Beers, 608 N.E.2d 975 (Ind. 1993) [Krahulik]; Price v. State, 622 N.E.2d 954 (Ind. 1993) [Shepard].

4. **Shepard, Givan, Dickson**: Dausch v. State, 616 N.E.2d 13 (Ind. 1993) [Dickson].

5. **Shepard, Givan, Krahulik**: McCaslin v. Insurance Co. of State of Pa., 605 N.E.2d 760 (Ind. 1993) [Givan]; Clemens v. State, 610 N.E.2d 236 (Ind. 1993) [Givan]; Cash v. State, 610 N.E.2d 228 (Ind. 1993) [Givan]; Hawkins v. Auto-Owners Ins. Co., 608 N.E.2d 1358 (Ind. 1993) [Givan]; City of Gary, v. Allstate Ins., 612 N.E.2d 115 (Ind. 1993) [Krahulik]; In re Estate of Chiesi v. First Citizens Bank N.A., 613 N.E.2d 14 (Ind. 1993) [Shepard]; Magers v. State, 621 N.E.2d 323 (Ind. 1993) [Givan]; Walker v. State, 621 N.E.2d 627 (Ind. 1993) [Givan]; Reed v. Central Soya, 621 N.E.2d 1069 (Ind. 1993) [Krahulik].

6. **Shepard, Dickson, Krahulik**: Kelly v. Smith, 611 N.E.2d 118 (Ind. 1993) [Krahulik].

7. **DeBruler, Givan, Krahulik**: In re Withers, 619 N.E.2d 923 (Ind. 1993) [per curiam].

8. **DeBruler, Dickson, Krahulik**: Kenney v. State, 620 N.E.2d 17 (Ind. 1993) [Krahulik]; La Pulme, v. Romero, 621 N.E.2d 1102 (Ind. 1993) [DeBruler]; Quakenbush v. Lackey, 622 N.E.2d 1284 (Ind. 1993) [Krahulik].

9. **Givan, Dickson, Krahulik**: Office of Utility Consumer Counselor v. PSI, 608 N.E.2d 1362 (Ind. 1993) [Dickson]; McConz v. State, 622 N.E.2d 504 (Ind. 1993) [Givan].

10. **Givan, DeBruler, Dickson**: State ex rel. Masariu v. Marion Superior Court, 621 N.E.2d 1097 (Ind. 1993) [Givan].

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

	Reversed		Vacated <sup>P</sup>		Affirmed		Total
Civil Opinions Accepted for Transfer	11	(19.6%)	37	(66.1%)	8	(14.3%)	56
Direct Civil Appeals	3	(75.0%)	1	(25.0%)	0	(0.0%)	4
Criminal Opinions Accepted for Transfer	6	(28.6%)	11	(52.4%)	4	(19.0%)	21
Direct Criminal Appeals	9	(16.1%)	2	(3.6%)	45	(80.3%)	56
<b>Total</b>	<b>29</b>	<b>(21.2%)</b>	<b>51</b>	<b>(37.2%)</b>	<b>57</b>	<b>(42.0%)</b>	<b>137<sup>q</sup></b>

<sup>o</sup> Direct criminal appeals are cases in which the trial court imposed a sentence of greater than 50 years. *See* IND. CONST. art. 7, § 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. 4(A). All other Indiana Supreme Court opinions are accepted for transfer from the Indiana Court of Appeals. *See* IND. APP. R. 11(B). The court's transfer docket, especially civil cases, has substantially increased in the past four years. *See* Chief Justice Randall T. Shepard, *Indiana Law, the Supreme Court, and a New Decade*, 24 IND. L. REV. 499 (1991).

<sup>P</sup> Generally, the term "vacate" is used by the Indiana Supreme Court when it is reviewing a court of appeals opinion, while 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. 11(B)(3). The court used App. R. 11(B)(3) 21 times in 1993 to either adopt in whole or in part the opinion by the court of appeals.

<sup>q</sup> This does not include 57 attorney discipline opinions/orders, four writs of mandamus or prohibition, one court reporter disciplinary action and three opinions on certified questions that are matters under the original jurisdiction of the court.

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

	Number
<b>Original Actions</b>	
• Writs of Mandamus or Prohibition	4 <sup>s</sup>
• Attorney Discipline	57 <sup>t</sup>
• Judicial Discipline	1 <sup>u</sup>
<b>Criminal</b>	
• Death Penalty	6 <sup>v</sup>
• Fourth Amendment or Search and Seizure	5 <sup>w</sup>
• Reserved Questions of Law	0
<b>Emergency Appeals to the Supreme Court</b>	0
<b>Trusts, Estates, or Probate</b>	6 <sup>x</sup>
<b>Real Estate or Real Property</b>	0
<b>Landlord-Tenant</b>	0
<b>Divorce or Child Support</b>	6 <sup>y</sup>
<b>Children In Need of Services (CHINS)</b>	3 <sup>z</sup>
<b>Paternity</b>	1 <sup>aa</sup>
<b>Product Liability or Strict Liability</b>	2 <sup>bb</sup>
<b>Negligence or Personal Injury</b>	5 <sup>cc</sup>
<b>Indiana Tort Claims Act</b>	4 <sup>dd</sup>
<b>Statute of Limitations or Statute of Repose</b>	5 <sup>ee</sup>
<b>Tax, Department of State Revenue, or State Board of Tax Commissioners</b>	1 <sup>ff</sup>
<b>Contracts</b>	11 <sup>gg</sup>
<b>Corporate Law or the Indiana Business Corporation Law or Franchise Law</b>	4 <sup>hh</sup>
<b>Uniform Commercial Code</b>	2 <sup>ii</sup>
<b>Banking Law</b>	0
<b>Employment Law</b>	0
<b>First Amendment, Open Door Law, or Public Records Law</b>	2 <sup>jj</sup>
<b>Indiana Constitution</b>	10 <sup>kk</sup>

<sup>r</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 1993. 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. A citation list is provided in a footnote for each area.

<sup>s</sup> State ex rel. Gordon v. Vanderburgh Circuit Court, 616 N.E.2d 8 (Ind. 1993); Indiana ex rel. Firestone v. Parke Circuit Court, 621 N.E.2d 1113 (Ind. 1993); State In rel Masariu v. Marion Superior Court No. 1, 621 N.E.2d 1097 (Ind. 1993); State exrel. Whitehead v. Madison County Circuit Court, 1993 Ind. Lexis 208

<sup>t</sup> In re Bales, 608 N.E.2d 987 (Ind. 1993); In re Buker, 608 N.E.2d 701 (Ind. 1993); In re Vickery, 605 N.E.2d 184 (Ind. 1993); In re McCausland, 605 N.E.2d 185 (Ind. 1993); In re Kinney, 605 N.E.2d 172 (Ind. 1993); In re Shaul, 610 N.E.2d 253 (Ind. 1993); In re Marek, 609 N.E.2d 419 (Ind. 1993); In re Dahlberg, 611 N.E.2d 641 (Ind. 1993); In re Kristoff, 611 N.E.2d 116 (Ind. 1993); In re Schmitt, 611 N.E.2d 116 (Ind. 1993); In re Roberts, 613 N.E.2d 416 (Ind. 1993); In re Noble, 613 N.E.2d 415 (Ind. 1993); In re Kingma-Piper, 613 N.E.2d 843 (Ind. 1993); In re Bodine, 613 N.E.2d 415 (Ind. 1993); In re Christakis, 613 N.E.2d 414 (Ind. 1993); In re Sexson, 613 N.E.2d 841 (Ind. 1993); In re Schenk, 612 N.E.2d 1059 (Ind. 1993); In re Buker, 615 N.E.2d 436 (Ind. 1993); In re Dunnuck, 615 N.E.2d 431 (Ind. 1993); In re Blackwelder, 615 N.E. 2d 106 (Ind. 1993); In re LaCava, 615 N.E.2d 93 (Ind. 1993); In re Geisler, 614 N.E.2d 939 (Ind. 1993); In re Peoples, 614 N.E.2d 555 (Ind. 1993); In re Trueblood, 616 N.E.2d 8 (Ind. 1993); In re Sabato, 617 N.E.2d 548 (Ind. 1993); In re Garver, 619 N.E.2d 928 (Ind. 1993); In re Transki, 620 N.E.2d 16 (Ind. 1993); In re Withers, 619 N.E.2d 923 (Ind. 1993); In re Gallo, 619 N.E.2d 921 (Ind. 1993); In re Long, 619 N.E.2d 919 (Ind. 1993); In re McBride, 619 N.E.2d 911 (Ind. 1993); In re Clanin, 619 N.E.2d 269 (Ind. 1993); In re Ohlsen, 621 N.E.2d 1116 (Ind. 1993); In re Holmes, 621 N.E.2d 634 (Ind. 1993); In re Hamilton, 621 N.E.2d 633 (Ind. 1993); In re Astbury, 621 N.E.2d 632 (Ind. 1993); In re McLaughlin, 621 N.E.2d 634 (Ind. 1993); In re Noel, 622 N.E.2d 154 (Ind. 1993); In re Moore, 621 N.E.2d 1100 (Ind. 1993); In re Larkin, 621 N.E.2d 1099 (Ind. 1993); In re Bruney, 621 N.E.2d 1093 (Ind. 1993); In re Nicolini, 621 N.E.2d 1094 (Ind. 1993); In re Dearmond, 620 N.E.2d 698 (Ind. 1993); In re Peoples, 621 N.E.2d 1092 (Ind. 1993); In re Roemer, 620 N.E.2d 694 (Ind. 1993); In re Becker, 620 N.E.2d 691 (Ind. 1993); In re Roemer, 622 N.E.2d 524 (Ind. 1993); In re Higginson, 622 N.E.2d 513 (Ind. 1993); In re Heamon, 622 N.E.2d 484 (Ind. 1993); In re Shumate, 1993 Ind. Lexis 212; In re Roberts, 1993 Ind. Lexis 214; In re McGrath, 1993 Ind. Lexis 206; In re Massa, 624 N.E.2d 939 (Ind. 1993); In re Burton, 1993 Ind. Lexis 210; In re Peoples, 1993 Ind. Lexis 203; In re Oates, 624 N.E.2d 369 (Ind. 1993); In re Thompson, 624 N.E.2d 466 (Ind. 1993)

<sup>u</sup> In re Buker, 608 N.E.2d 701 (Ind. 1993)

<sup>v</sup> There were six death penalty cases, and three were affirmed while three were reversed; Averhart v. State, 614 N.E.2d 924 (Ind. 1993); Fleenor v. State, 622 N.E.2d 140 (Ind. 1993); James v. State, 613 N.E.2d 15 (Ind. 1993); Kennedy v. State, 620 N.E.2d 17 (Ind. 1993); Lockhart v. State, 609 N.E.2d 1093 (Ind. 1993); Miller v. State, 623 N.E.2d 403 (Ind. 1993).

<sup>w</sup> Fair v. State, 1993 Ind. Lexis 216; Hawkins v. State, 626 N.E.2d 436 (Ind. 1993); Vance v. State, 620 N.E.2d 687 (Ind. 1993); Shane v. State, 615 N.E.2d 425 (Ind. 1993); Bradley v. State, 609 N.E.2d

420 (Ind. 1993)

<sup>x</sup> Estate of Banko v. The Nat'l City Bank of Evansville, 622 N.E.2d 476 (Ind. 1993); In re Adoption of T.B. v. T.B., 622 N.E.2d 921 (Ind. 1993); Dodd v. Estate of James Yanan, 1993 Ind. Lexis 195; Estate of Chiesi v. First Citizens Bank, NA, 613 N.E.2d 14 (Ind. 1993); Frank Shounek in his capacity as Successor Administrator of the Estate of Lillian Jonas v. Suzanne Stirlin, 621 N.E.2d 1107; Alwilda Walter v. Mark Balogh, 619 N.E.2d 566 (Ind. 1993)

<sup>y</sup> Bartrom v. Adjustment Bureau, Inc., 618 N.E.2d 1 (Ind. 1993); Leisure v. Leisure, 605 N.E.2d 755 (Ind. 1993); Dodd v. Estate of James Yanan, 625 N.E.2d 456 (Ind. 1993); Womack v. Womack, 622 N.E.2d 481 (Ind. 1993); In re the Marriage of Richardson and Morgan, 622 N.E.2d 178 (Ind. 1993); In re the Marriage of Pettit, 626 N.E.2d 444 (Ind. 1993)

<sup>z</sup> In re the Adoption of T.B. v. T.B., 622 N.E.2d 921 (Ind. 1993); In re E.M. & L.M. v. Marion County Dept. of Pub. Welfare, 624 N.E.2d 471 (Ind. 1993); Shaw v. Shelby County Dept. of Pub. Welfare, 612 N.E.2d 557 (Ind. 1993)

<sup>aa</sup> Shaw v. State, 612 N.E.2d 557 (Ind. 1993)

<sup>bb</sup> Reed v. Central Soya, 621 N.E.2d 1069 (Ind. 1993); Martin Rispens & Son v. Hall Farms, Inc., 621 N.E.2d 1078 (Ind. 1993)

<sup>cc</sup> Martin Rispens & Son, et al. v. Hall Farms, Inc., 621 N.E.2d 1078 (Ind. 1993); LaPalme v. Romero, 621 N.E.2d 1102 (Ind. 1993); Templin v. Fobes, 617 N.E.2d 541 (Ind. 1993); Jordan v. Deery, 609 N.E.2d 1104 (Ind. 1993); Ross v. Lowe, 619 N.E.2d 911 (Ind. 1993)

<sup>dd</sup> Hinshaw v. Board of Comm'rs of Jay County, 611 N.E.2d 637 (Ind. 1993); Greathouse v. Armstrong, 616 N.E.2d 364 (Ind. 1993); South Bend Community Sch. Corp. v. Widawski, 622 N.E.2d 160 (Ind. 1993); Quakenbush v. Lackey, 622 N.E.2d 1284 (Ind. 1993)

<sup>ee</sup> Boostrom v. Bach, 622 N.E.2d 175 (Ind. 1993); Schultz-Lewis Child & Family Serv., Inc. v. Jane Doe, 614 N.E.2d 559 (Ind. 1993); South Bend Community Sch. Corp. v. Widawski, 622 N.E.2d 160 (Ind. 1993)

<sup>ff</sup> Indiana Dept. of Revenue v. Hardware Wholesalers, Inc., 622 N.E.2d 930 (Ind. 1993)

<sup>gg</sup> Miller Brewing v. Best Beers, 608 N.E.2d 975 (Ind. 1993); FGS Enterprises v. Shimala, 625 N.E.2d 1226 (Ind. 1993); Erie Ins. Co. v. Hichman, 622 N.E.2d 515 (Ind. 1993); Martin Rispens &

Son v. Hall Farms, Inc., 621 N.E.2d 1078 (Ind. 1993); Reed v. Central Soya, 621 N.E.2d 1069 (Ind. 1993); Walter v. Balogh, 619 N.E.2d 566 (Ind. 1993); Bartrom v. Adjustment Bureau, Inc., 618 N.E.2d 1 (Ind. 1993); Rosi v. Business Furniture Corp., 615 N.E.2d 431 (Ind. 1993); Insul-Mark Midwest, Inc. v. Modern Materials, Inc., 612 N.E.2d 550 (Ind. 1993); Kelly v. J.B. Smith, 611 N.E.2d 118 (Ind. 1993); City of Gary v. Allstate Ins., 612 N.E.2d 115 (Ind. 1993)

hh Knauf Fibre Glass v. Stein, Trustee of Ashcraft Trucking, Inc., 622 N.E.2d 163 (Ind. 1993); FGS Enterprises v. Shimala, 625 N.E.2d 1226 (Ind. 1993); Enservco, Inc. v. Indiana Sec. Div., 623 N.E.2d 416 (Ind. 1993); Amoco Prod. Co. v. Laird, 622 N.E.2d 912 (Ind. 1993)

ii Martin Rispens & Son v. Hall Farms, Inc., 621 N.E.2d 1078 (Ind. 1993); Insul-Mark Midwest, Inc. v. Modern Materials, Inc., 612 N.E.2d 550 (Ind. 1993)

jj State Bd. of Health v. Journal-Gazette Co., 619 N.E.2d 273 (Ind. 1993); Price v. State, 622 N.E.2d 954 (Ind. 1993)

kk Holmes v. Randolph, 610 N.E.2d 839 (Ind. 1993); Price v. State, 622 N.E.2d 954 (Ind. 1993); State v. Owings, 622 N.E.2d 948 (Ind. 1993); Fair v. State, 1993 Ind. Lexis 216; In re Gary McPheeters, 1993 Ind. Lexis 207; In re Zumrun, 1993 Ind. Lexis 211; FGS Enterprises v. Shimala, 625 N.E.2d 1226 (Ind. 1993); Canbell v. State, 622 N.E.2d 495 (Ind. 1993); Fleenor v. State, 622 N.E.2d 140 (Ind. 1993)

