

AN EXAMINATION OF THE INDIANA SUPREME COURT DOCKET, DISPOSITIONS, AND VOTING IN 2001*

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Even though mandatory criminal appeals still overwhelmingly dominated the Indiana Supreme Court's docket in 2001,¹ the constitutional change that occurred in 2001 in the court's mandatory criminal appeals began to show its effects with far less consensus and unanimity in the court's opinions.² It was expected that

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

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1.

	MANDATORY	DISCRETIONARY	TOTAL
1991	109 (53%)	98 (47%)	207
1992	64 (41%)	93 (59%)	157
1993	60 (44%)	77 (56%)	137
1994	60 (45%)	73 (55%)	133
1995	46 (38%)	76 (62%)	122
1996	68 (59%)	48 (41%)	116
1997	100 (58%)	71 (42%)	171
1998	84 (63%)	50 (37%)	134
1999	101 (59%)	69 (41%)	170
2000	132 (69%)	60 (31%)	192
2001	97 (62%)	59 (38%)	156

2. Previously, article VII, section 4 of the Indiana Constitution provided that, in criminal cases, all appeals from judgments imposing a sentence of death, life imprisonment or imprisonment for a term greater than fifty years was to be taken directly to the supreme court. Because the Indiana General Assembly has increased the term of imprisonment for many crimes, the court's docket was filling with criminal appeals falling within the scope of article VII, section 4, notwithstanding that

this change would open the court to “people with ordinary family and business legal problems” and open the court to take a more significant role in providing law-giving criminal opinions.³

Apparently, the change in the court’s jurisdiction also has had another, unintended consequence—the consensus among the justices has decreased sharply. The number of split decisions by the court nearly doubled this year. The court issued only nine split decisions in 1999, 15 split decisions in 2000 but 28 split decisions in 2001. Among the split decisions were two plurality decisions, both involving civil issues.⁴ Two other split appeals garnered majorities only because one or more justices voted to concur in the result only.⁵ Overall, the justices were also less aligned on both civil and criminal appeals as compared to the 2000, 1999 or 1998 terms. This jurisdictional change to the court’s docket occurred in June 2001. The 2002 docket will have a full year of its new jurisdiction and will test whether the decreased unanimity is a result of the issues presented to the court.

The cause for the lack of consensus is not immediately clear. Some had hoped that the change in the court’s jurisdiction would bring more civil cases to its docket. If this had occurred, the logical result would have been less agreement because historically the justices have disagreed on civil cases more than on criminal cases. However, the court did not decide more civil cases in 2001—the court issued the same number of civil opinions in 2001 as it did in 2000 (excluding per curiam opinions) and actually issued more civil opinions in 1999. The more likely cause is the court’s ability to accept more criminal appeals with the potential for significant legal precedent, rather than the compulsory criminal appeals with little or no precedential value. Presumably, the more significant legal precedent brings less willingness to compromise by the justices because of the long-term impacts of the decision. The number of dissents in criminal opinions also increased dramatically in 2001 to 30. In 1999 and 2000, the court had only 17 dissents in criminal cases.

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

Table A. In 2001, the supreme court issued 211 opinions that were authored by an individual justice. This is a negligible increase from last year’s 192 opinions authored by an individual justice. Of the 211 issued in 2001, only 49 were civil

many of these cases did not involve significant legal questions as evidenced by the high percentage of direct appeal judgments affirmed. In June 2001, the court’s mandatory jurisdiction over criminal appeals changed because of an amendment to Indiana’s Constitution. Article 7, section 4 now provides a right of direct appeal to the court only for judgements imposing a penalty of death.

3. Randall T. Shepard, *Why Changing the Supreme Court’s Mandatory Jurisdiction Is Critical to Lawyers and Clients*, 33 IND. L. REV. 1101, 1104 (2001).

4. See *City Chapel Evangelical Free, Inc. v. City of South Bend*, 744 N.E.2d 443 (Ind. 2001); *Degussa Corp. v. Mullens*, 744 N.E.2d 407 (Ind. 2001).

5. *Osborne v. State*, 754 N.E.2d 916 (Ind. 2001) (Shepard, C.J., Boehm, J., Dickson, J., all concurring in result); *Sears Roebuck and Co. v. Manuilov*, 742 N.E.2d 453 (Ind. 2001) (Sullivan, J., concurring in result; Shepard, C.J. & Boehm, J., dissenting).

opinions—the same number of civil opinions issued in 2000. Justice Boehm authored the most opinions at 48. Those who hoped the change in the court's mandatory jurisdiction over criminal appeals would allow more civil cases to be heard by the court were disappointed in 2001, but it is still too early in the court's new docket. A sudden increase in civil appeals granted transfer was not expected since the court still must clear its docket of the mandatory criminal appeals that came before it prior to June 2001. Next year should be a watershed year in determining the real impact of the docket change in the court's mandatory jurisdiction.

The court as a whole issued 24 per curiam opinions—23 civil and 1 criminal. Almost all 23 civil opinions were attorney discipline matters. In 2000, this article reported that the court had issued 71 per curiam opinions. That number has declined this year because the court is issuing more attorney discipline decisions as orders rather than per curiam opinions. When considering both per curiam decisions and orders involving the discipline of attorneys, the court's number of cases in this area has remained about the same.

Continuing the trend of increases in dissents identified in last year's article, the court again increased its dissents to 56. For comparison purposes, the court issued 42 dissents in 2000 and 38 dissents in 1999. In an about face from previous years, Justice Sullivan had the least total dissents with 6. In the previous four years, Justice Sullivan led the court with the number of dissents. This year, Justice Dickson drafted the most dissents with a total of 22. Last year, Justice Sullivan had the most dissents with 13.

Table B-1. For civil cases, Chief Justice Shepard and Justice Sullivan were the two justices most aligned at 85.4%. Chief Justice Shepard and Justice Boehm were next at 82.5%. Justices Dickson and Boehm were the least aligned at 67.5%.

Chief Justice Shepard was the most aligned with other justices, and Justice Dickson was the least aligned.

Table B-2. For criminal cases, Chief Justice Shepard and Justice Sullivan are the most aligned pair of justices—in agreement 92.1% of the time. Justices Sullivan and Dickson were the least aligned at 78.4%. As for criminal cases, Justice Shepard was the most aligned with his fellow justices.

Table B-3. For all cases, Chief Justice Shepard and Justice Sullivan were the two justices most aligned at 90.5%. The two least aligned justices, the same as last year, were Justices Sullivan and Dickson at 76.1%.

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

Table C. Echoing the trend toward a lack of consensus among the court's justices, unanimity declined in 2001. The court was unanimous in 69.1% of its decisions in 2001, as compared to 81.3% in 2000 and 72.8% in 1999. The number of dissents increased in 2001 to 18.5% from 12.4% in 2000 and 1999.

Table D. Table D, more than any other table, demonstrates the increased divisions among the justices. The number of 3-2 split decisions doubled in 2001 from 2000. Last year, the court issued 15 split decisions and it issued only nine the year before. This year, however, the court issued 27 split decisions. The authors have counted two plurality decisions as split decisions.⁶ Neither of these cases, strictly speaking, are 3-2 decisions, but they certainly fall into the spirit of 3-2 decisions in demonstrating issues on which the court is deeply divided. The opinion in *City Chapel*, for example, spawned three separate dissenting opinions. Chief Justice Shepard was by far in the majority in the most number of split opinions. He was in the majority in 21 of the 27 split opinions. The next closest justice was in the majority in 14 such opinions.

Table E-1. The court affirmed over 77% of the mandatory criminal appeals, which were also still the majority of its docket. Overall, the court affirmed cases 55.8% of the time. This high percentage was driven by the large percentage of mandatory criminal appeals affirmed. In contrast, civil appeals were affirmed only 14.7% of the time and nonmandatory criminal appeals were affirmed only 28% of the time. The large percentage of cases affirmed by the court is likely to decline because of the change in the court's jurisdiction over mandatory criminal appeals, effective in June 2001, which will bring more discretionary criminal and civil issues on which the court has, historically, lacked consensus.

Table E-2. Expectations were high that the change in the court's mandatory jurisdiction would lead to an increase in the number of civil petitions granted transfer. The court's jurisdiction changed in June 2001. Nonetheless, the number of civil petitions granted transfer by the court declined from 61 in 2000 to only 34 in 2001. This change may also reflect the decline in petitions to transfer filed in 2001. During 2000, 825 petitions to transfer were filed but this year only 740 were filed. A civil petition to transfer stood about a 12.4% chance of being granted, and a criminal petition stood about a 6.6% chance of being granted. No juvenile petitions were granted transfer in 2001.

Table F. The court continues its vigorous interest in the Indiana Constitution with 26 opinions involving such issues. A review of these cases demonstrates that the court is especially interested in the double jeopardy provision of the Indiana Constitution. The number of attorney discipline cases listed in this table (23) appears to have drastically declined from the number of such cases last year (60). This decline is misleading. The court has begun to decide more attorney discipline cases in orders rather than per curiam opinions. The authors have determined that only per curiam opinions will be reflected in Table F. When accounting for the number of attorney discipline cases decided by order (53), the number of attorney discipline cases remains about the same as last year. The court also decided 10 death penalty cases, affirming eight and reversing two such cases.

6. See *City Chapel Evangelical Free, Inc.*, 744 N.E.2d at 443; *Degussa Corp.*, 744 N.E.2d at 407.

TABLE A
OPINIONS^a

	OPINIONS OF COURT ^b			CONCURRENCES ^c			DISSENTS ^d		
	Criminal	Civil	Total	Criminal	Civil	Total	Criminal	Civil	Total
Shepard, C.J.	32	7	39	2	1	3	2	7	9
Dickson, J. ^e	17	7	24	4	2	6	13	9	22
Sullivan, J. ^e	36	11	47	5	3	8	4	2	6
Boehm, J. ^e	32	16	48	10	4	14	7	4	11
Rucker, J. ^e	21	8	29	5	5	10	4	4	8
Per Curiam	1	23	24						
Total	139	72	211	26	15	41	30	26	56

^a These are opinions and votes on opinions by each justice and in per curiam in the 2001 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. See *id.* at 210.

^b This is only a counting of full opinions written by each justice. Plurality opinions that announce the judgment of the court are counted as opinions of the court. It includes opinions on civil, criminal, and original actions. Also, the following three miscellaneous cases are not included in the table: *Stanrail Corp. v. Unemployment Ins. Rev. Bd.*, 749 N.E.2d 483 (Ind. 2001) (dissent from denial of transfer); *In re Becker*, 743 N.E.2d 1115 (Ind. 2001) (dissent from order approving statement of circumstances and conditional agreement for discipline); *In re Shorter-Pifer*, 743 N.E.2d 115 (Ind. 2001) (dissent from order finding misconduct and imposing discipline).

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

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

^e Justices declined to participate in the following non-disciplinary cases: Justice Boehm (*State Bd. of Tax Comm’rs v. Town of St. John*, 751 N.E.2d 657 (Ind. 2001)); Justice Rucker (*Rheem Mfg. Co. v. Phelps Heating & Air Conditioning, Inc.*, 746 N.E.2d 941 (Ind. 2001)); *Degussa Corp. v. Mullens*, 744 N.E.2d 407 (Ind. 2001)); Justice Sullivan (*Forney v. State*, 742 N.E.2d 934 (Ind. 2001)); *State Employees Appeal Comm’n v. Bishop*, 741 N.E.2d 1229 (Ind. 2001); *Rogers v. R.J. Reynolds Tobacco Co.*, 745 N.E.2d 793 (Ind. 2001)).

TABLE B-1
VOTING ALIGNMENTS FOR CIVIL CASES^f
NOT INCLUDING JUDICIAL OR ATTORNEY DISCIPLINE CASES

		Shepard	Dickson	Sullivan	Boehm	Rucker
Shepard, C.J.	O		27	33	31	28
	S		3	2	2	1
	D	---	30	35	33	29
	N		42	41	40	40
	P		71.4%	85.4%	82.5%	72.5%
Dickson, J.	O	27		28	24	28
	S	3		0	3	4
	D	30	---	28	27	32
	N	42		41	40	40
	P	71.4%		68.3%	67.5%	80.0%
Sullivan, J.	O	33	28		29	27
	S	2	0		1	1
	D	35	28	---	30	28
	N	41	41		39	39
	P	85.4%	68.3%		76.9%	71.8%
Boehm, J.	O	31	24	29		26
	S	2	3	1		3
	D	33	27	30	---	29
	N	40	40	39		38
	P	82.5%	67.5%	76.9%		76.3%
Rucker, J.	O	28	28	27	26	
	S	1	4	1	3	
	D	29	32	28	29	---
	N	40	40	39	38	
	P	72.5%	80.0%	71.8%	76.3%	

^f 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, 27 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
NOT INCLUDING JUDICIAL OR ATTORNEY DISCIPLINE CASES⁸

		Shepard	Dickson	Sullivan	Boehm	Rucker
Shepard, C.J.	O		116	125	119	124
	S		1	3	1	0
	D	—	117	128	120	124
	N		140	139	140	140
	P		83.6%	92.1%	85.7%	88.6%
Dickson, J.	O	116		109	113	111
	S	1		0	5	1
	D	117	---	109	118	112
	N	140		139	140	140
	P	83.6%		78.4%	84.3%	80.0%
Sullivan, J.	O	125	109		112	119
	S	3	0		2	2
	D	128	109	---	114	121
	N	139	139		139	139
	P	92.1%	78.4%		82.0%	87.1%
Boehm, J.	O	119	113	112		114
	S	1	5	2		2
	D	120	118	114	-	116
	N	140	140	140		140
	P	85.7%	84.3%	80.0%		82.9%
Rucker, J.	O	124	111	119	114	
	S	0	1	2	2	
	D	124	112	121	116	---
	N	140	140	139	140	
	P	88.6%	80.0%	87.1%	82.9%	

⁸ 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, 116 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
NOT INCLUDING JUDICIAL OR ATTORNEY DISCIPLINE CASES^h

		Shepard	Dickson	Sullivan	Boehm	Rucker
Shepard, C.J.	O		143	158	150	152
	S		4	5	3	1
	D	---	147	163	153	153
	N		182	180	180	180
	P		80.7%	90.5%	85.0 %	85.0 %
Dickson, J.	O	143		137	137	139
	S	4		0	8	5
	D	147	---	137	145	144
	N	182		180	180	180
	P	80.7%		76.1%	80.5 %	80.0 %
Sullivan, J.	O	158	137		141	146
	S	5	0		3	3
	D	163	137	---	144	149
	N	179	180		178	178
	P	90.5%	76.1%		80.9 %	83.7 %
Boehm, J.	O	150	137	141		140
	S	3	8	3		5
	D	153	145	144	---	145
	N	180	180	178		178
	P	85.0%	80.5%	80.9%		81.5 %
Rucker, J.	O	152	139	146	140	
	S	1	5	3	5	
	D	153	144	148	145	--
	N	180	180	178	178	
	P	85.0%	80.0%	83.7 %	81.5%	

^h 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, 143 is the total number of times Chief Justice Shepard and Justice Dickson agreed in all full majority opinions written by the court in 2001. 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 CASESⁱ

Unanimous ^j			Unanimous with Concurrence ^k			Opinions with Dissent			Total
Criminal	Civil	Total	Criminal	Civil	Total	Criminal	Civil	Total	
100	23	123 (69.1%)	17	5	22 (12.4%)	18	15	33 (18.5%)	178

ⁱ 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 percent of overall opinions with concurrence and overall opinions with dissent.

^j 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.

^k 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 DECISIONS¹

Justices Constituting the Majority	Number of Opinions ^m
1. Shepard, C.J., Dickson, J., Boehm, J.	3
2. Shepard, C.J., Dickson, J., Sullivan, J.	4
3. Shepard, C.J., Sullivan, J., Boehm, J.	5
4. Shepard, C.J., Sullivan, J., Rucker, J.	8
5. Dickson, J., Boehm, J., Rucker, J.	2
6. Boehm, J., Sullivan, J., Rucker, J.	2
7. Sullivan, J., Rucker, J.	1
8. Dickson, J., Rucker, J.	2
9. Shepard, C.J., Sullivan, J.	1
Totalⁿ	28

¹ 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.

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

ⁿ The 2001 term's 3-2 decisions were:

1. Shepard, C. J., Dickson, J., Boehm, J.: *Sanchez v. State*, 749 N.E.2d 509 (Ind. 2001) (Boehm, J.); *Query v. State*, 745 N.E.2d 769 (Ind. 2001) (Boehm, J.); *Hughes v. City of Gary*, 741 N.E.2d 1168 (Ind. 2001) (Shepard, C.J.).

2. Shepard, C.J., Dickson, J., Sullivan, J.: *In re Capper*, 757 N.E.2d 138 (Ind. 2001) (per curiam); *Vitek v. State*, 750 N.E.2d 346 (Ind. 2001) (Sullivan, J.); *Zimmerman v. State*, 750 N.E.2d 337 (Ind. 2001) (Dickson, J.); *Daniels v. State*, 741 N.E.2d 1177 (Ind. 2001) (Shepard, C.J.).

3. Shepard, C.J., Sullivan, J., Boehm, J.: *Mangold ex rel. Mangold v. Dep't of Natural Res.*, 756 N.E.2d 970 (Ind. 2001) (Rucker, J.); *Hollowell v. State*, 753 N.E.2d 612 (Ind. 2001) (Sullivan, J.); *Fleetwood Enters., Inc. v. Progressive N. Ins. Co.*, 749 N.E.2d 492 (Ind. 2001) (Boehm, J.); *Progressive Ins. Co. v. Gen. Motors Corp.*, 749 N.E.2d 484 (Ind. 2001) (Boehm, J.); *Durham ex rel. Estate of Wade v. U-Haul Int'l*, 745 N.E.2d 755 (Ind. 2001) (Boehm, J.).

4. Shepard, C.J., Sullivan, J., Rucker, J.: *Francis v. State*, 758 N.E.2d 528 (Ind. 2001) (Rucker, J.); *Randolph v. State*, 755 N.E.2d 572 (Ind. 2001) (Rucker, J.); *Miller v. State*, 753 N.E.2d 1284 (Ind. 2001) (Sullivan, J.); *Wallace v. State*, 753 N.E.2d 568 (Ind. 2001) (Rucker, J.); *Wadsworth v. State*, 750 N.E.2d 774 (Ind. 2001) (Shepard, C.J.); *Holsinger v. State*, 750 N.E.2d 354 (Ind. 2001) (Sullivan, J.); *Pennycuff v. State*, 745 N.E.2d 804 (Ind. 2001) (Shepard, C.J.); *Noble County v. Rogers*, 745 N.E.2d 194 (Ind. 2001) (Sullivan, J.).

5. Dickson, J., Boehm, J., Rucker, J.: *Jiosa v. State*, 755 N.E.2d 605 (Ind. 2001) (Boehm, J.); *Segura v. State*, 749 N.E.2d 496 (Ind. 2001) (Boehm, J.).

6. Boehm, J., Sullivan, J., Rucker, J.: *Ashabraner v. Bowers*, 753 N.E.2d 662 (Ind. 2001) (Sullivan, J.); *In re Harshey*, 740 N.E.2d 851 (Ind. 2001) (per curiam).

7. Sullivan, J., Rucker, J.: *Osborne v. State*, 754 N.E.2d 916 (Ind. 2001) (Rucker, J.) (Shepard, C.J., Boehm, J., Dickson, J., concurring in result).

8. Dickson, J., Rucker, J.: *City Chapel Evangelical Free Inc. v. City of South Bend*, 744 N.E.2d 443 (Ind. 2001) (Dickson, J.) (Shepard, C.J., Sullivan, J., and Boehm, J., all dissenting with separate opinion); *Sears Roebuck & Co. v. Manuilov*, 742 N.E.2d 453 (Ind. 2001) (Dickson, J.) (Sullivan, J. concurring in result; Shepard, C.J. and Boehm, J., dissenting).

9. Shepard, C.J., Sullivan, J.: *Degussa Corp. v. Mullens*, 744 N.E.2d 407 (Ind. 2001) (Sullivan, J.) (plurality decision: Boehm, J., Dickson, J., dissenting).

TABLE E-1

DISPOSITION OF CASES REVIEWED BY TRANSFER
AND DIRECT APPEALS^o

	Reversed or Vacated ^p	Affirmed	Total
Civil Appeals Accepted for Transfer	29 (85.3%)	5 (14.7%)	34
Direct Civil Appeals	0	0	0
Criminal Appeals Accepted for Transfer	18 (72%)	7 (28%)	25
Direct Criminal Appeals	22 (22.7%)	75 (77.3%)	97
Total	69 (44.2%)	87 (55.8%)	156^q

^o 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. APPELLATE RULE 56 and also 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. APPELLATE RULE 57.

^p 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. APPELLATE RULE 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.

^q This does not include 23 attorney and judicial discipline opinions or one opinion related to certified questions. These opinions did not reverse, vacate, or affirm any other court’s decision. This also does not include 10 opinions which considered petitions for post conviction relief.

TABLE E-2

DISPOSITION OF PETITIONS TO TRANSFER
TO SUPREME COURT IN 2001^r

	Denied or Dismissed	Granted	Total
Petitions to Transfer			
Civil ^s	240 (87.6%)	34 (12.4%)	274
Criminal ^t	410 (93.4%)	29 (6.6%)	439
Juvenile	27 (100%)	0 (0%)	27
Total	677 (91.5%)	63 (8.5%)	740

^r This Table analyzes the disposition of petitions to transfer by the court. See IND. APPELLATE RULE 58(A).

^s This also includes petitions to transfer in tax cases and worker's compensation cases.

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

TABLE F
SUBJECT AREAS OF SELECTED DISPOSITIONS
WITH FULL OPINIONS^u

Original Actions	Number
• Certified Questions	1 ^v
• Writs of Mandamus or Prohibition	0
• Attorney Discipline	23 ^w
• Judicial Discipline	2 ^x
Criminal	
• Death Penalty	10 ^y
• Fourth Amendment or Search and Seizure	9 ^z
• Writ of Habeas Corpus	0
Emergency Appeals to the Supreme Court	0
Trusts, Estates, or Probate	0
Real Estate or Real Property	4 ^{aa}
Personal Property	0
Landlord-Tenant	0
Divorce or Child Support	3 ^{bb}
Children in Need of Services (CHINS)	0
Paternity	0
Product Liability or Strict Liability	1 ^{cc}
Negligence or Personal Injury	6 ^{dd}
Invasion of Privacy	1 ^{ee}
Medical Malpractice	0
Indiana Tort Claims Act	2 ^{ff}
Statute of Limitations or Statute of Repose	1 ^{gg}
Tax, Department of State Revenue, or State Board of Tax Commissioners	3 ^{hh}
Contracts	2 ⁱⁱ
Corporate Law or the Indiana Business Corporation Law	2 ^{jj}
Uniform Commercial Code	2 ^{kk}
Banking Law	1 ^{ll}
Employment Law	1 ^{mm}
Insurance Law	2 ⁿⁿ
Environmental Law	2 ^{oo}
Consumer Law	0
Worker's Compensation	2 ^{pp}
Arbitration	0
Administrative Law	3 ^{qq}
First Amendment, Open Door Law, or Public Records Law	0
Full Faith and Credit	0
Eleventh Amendment	0
Civil Rights	3 ^{rr}
Indiana Constitution	26 ^{ss}

^u 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 2001. 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, the following 53 miscellaneous attorney discipline cases are not in the table: *In re Relphorde*, 760 N.E.2d 172 (Ind. 2001) (order approving statement of circumstances and conditional agreement); *In re Smith*, 760 N.E.2d 171 (Ind. 2001) (order accepting resignation); *In re Lowry*, 760 N.E.2d 170 (Ind. 2001) (order suspending respondent); *In re Hoogland*, 760 N.E.2d 169 (Ind. 2001) (order approving statement of circumstances and conditional agreement); *In re Herthel*, 760 N.E.2d 155 (Ind. 2001) (order finding misconduct and imposing discipline); *In re Tudor*, 760 N.E.2d 154 (Ind. 2001) (order finding misconduct and imposing discipline); *In re Blackham*, 760 N.E.2d 153 (Ind. 2001) (order finding misconduct and imposing discipline); *In re Griffiths*, 760 N.E.2d 153 (Ind. 2001) (order finding misconduct and imposing discipline); *In re Evans*, 759 N.E.2d 1064 (Ind. 2001) (order approving statement of circumstances and conditional agreement); *In re Butler*, 759 N.E.2d 215 (Ind. 2001) (order to show cause); *In re Hardy*, 759 N.E.2d 214 (Ind. 2001) (order to show cause); *In re Graybill*, 759 N.E.2d 213 (Ind. 2001) (order to show cause); *In re Forgey*, 759 N.E.2d 212 (Ind. 2001) (order to show cause); *In re Caravelli*, 758 N.E.2d 930 (Ind. 2001) (order approving agreed resolution of objections to automatic reinstatement); *In re Sheldon*, 758 N.E.2d 929 (Ind. 2001) (order approving statement of circumstances and conditional agreement for discipline); *In re John*, 758 N.E.2d 929 (Ind. 2001) (order finding misconduct and imposing discipline); *In re Layson*, 758 N.E.2d 515 (Ind. 2001) (order suspending the respondent from the practice of law); *In re Watson*, 757 N.E.2d 1002 (Ind. 2001) (order finding misconduct and imposing discipline); *In re Headlee*, 756 N.E.2d 969 (Ind. 2001) (order finding misconduct and imposing sanction); *In re Benjamin*, 756 N.E.2d 967 (Ind. 2001) (order accepting resignation and concluding proceeding); *In re Starkes*, 756 N.E.2d 964 (Ind. 2001) (order approving statement of circumstances and conditional agreement for discipline); *In re Bean*, 756 N.E.2d 964 (Ind. 2001) (order approving statement of circumstances and conditional agreement for discipline); *In re Layson*, 755 N.E.2d 162 (Ind. 2001) (order to show cause); *In re Alvarez*, 755 N.E.2d 162 (Ind. 2001) (order approving statement of circumstances and conditional agreement for discipline); *In re Meek*, 755 N.E.2d 161 (Ind. 2001) (order approving statement of circumstances and conditional agreement for discipline); *In re Johnson*, 755 N.E.2d 160 (Ind. 2001) (order to show cause); *In re Caravelli*, 755 N.E.2d 160 (Ind. 2001) (order staying automatic reinstatement pending resolution of commission objections); *In re Atanga*, 754 N.E.2d 498 (Ind. 2001) (order revoking respondent's probation and imposing suspension); *In re Singleton*, 754 N.E.2d 498 (Ind. 2001) (order approving statement of circumstances and conditional agreement for discipline); *In re Holajter*, 754 N.E.2d 497 (Ind. 2001) (order approving consent to discipline and imposing suspension and order clarifying final order); *In re Harlowe*, 753 N.E.2d 1284 (Ind. 2001) (order suspending respondent due to disability); *In re Transki*, 753 N.E.2d 1283 (Ind. 2001) (order to show cause); *In re Coons*, 751 N.E.2d 678 (Ind. 2001) (order approving statement of circumstances and conditional agreement for discipline); *In re Silverman*, 750 N.E.2d 376 (Ind. 2001) (order approving statement of circumstances and conditional agreement for discipline); *In re Caravelli*, 750 N.E.2d 376 (Ind. 2001) (order finding misconduct and imposing discipline); *In re Wells*, 750 N.E.2d 369 (Ind. 2001) (order finding misconduct and imposing discipline); *In re Jones*, 750 N.E.2d 368 (Ind. 2001) (order accepting resignation and concluding proceeding); *In re Carl*, 748 N.E.2d 856 (Ind. 2001) (order to show cause); *In re Bowman*, 748 N.E.2d 364 (Ind. 2001) (order approving statement of circumstances and conditional agreement for discipline); *In re McQuillin*, 747 N.E.2d 563 (Ind. 2001) (order accepting resignation and concluding proceeding); *In re Johnson*, 747 N.E.2d 563 (Ind. 2001) (order accepting resignation and concluding proceeding); *In re Jones*, 747 N.E.2d 562 (Ind. 2001) (order of suspension upon notice of guilty finding); *In re Mysliwicz*, 747 N.E.2d 561 (Ind. 2001) (order approving statement of circumstances and conditional agreement for discipline); *In re Evans*, 747 N.E.2d 561 (Ind. 2001) (order of suspension upon notice of guilty finding); *In re Petrovic*, 747 N.E.2d 560 (Ind. 2001) (order accepting resignation and concluding proceeding); *In re Poole*, 747 N.E.2d 56 (Ind. 2001) (order accepting resignation and concluding proceeding); *In re Taylor*, 744 N.E.2d 431 (Ind. 2001) (order postponing effective date of suspension); *In re Haynes*, 744 N.E.2d 430 (Ind. 2001) (order approving statement of circumstances and conditional agreement for discipline); *In re Peters*, 742 N.E.2d 503 (Ind. 2001) (order approving statement of circumstances and conditional agreement for discipline); *In re Collins*, 741 N.E.2d 1246 (Ind. 2001) (order approving statement of circumstances and conditional

agreement for discipline); *In re Light*, 741 N.E.2d 1245 (Ind. 2001) (order finding misconduct and imposing discipline); *In re Cheslek*, 741 N.E.2d 1244 (Ind. 2001) (order approving statement of circumstances and conditional agreement for discipline); *In re Chovanec*, 741 N.E.2d 1244 (Ind. 2001) (order of reinstatement).

^v *Livingston v. Fast Cash USA, Inc.*, 753 N.E.2d 572 (Ind. 2001).

^w *In re Miller*, 759 N.E.2d 209 (Ind. 2001); *In re Baker*, 758 N.E.2d 56 (Ind. 2001); *In re Capper*, 757 N.E.2d 138 (Ind. 2001); *In re Moore*, 756 N.E.2d 506 (Ind. 2001); *In re Richards*, 755 N.E.2d 601 (Ind. 2001); *In re Hear*, 755 N.E.2d 579 (Ind. 2001); *In re McClellin*, 754 N.E.2d 500 (Ind. 2001); *In re Rodriguez*, 753 N.E.2d 1289 (Ind. 2001); *In re Caravelli*, 750 N.E.2d 376 (Ind. 2001); *In re Tsoutsouris*, 748 N.E.2d 856 (Ind. 2001); *In re Radford*, 746 N.E.2d 977 (Ind. 2001); *In re Thayer*, 745 N.E.2d 207 (Ind. 2001); *In re Galanis*, 744 N.E.2d 423 (Ind. 2001); *In re Wagner*, 744 N.E.2d 418 (Ind. 2001); *In re Spraker*, 744 N.E.2d 415 (Ind. 2001); *In re Haith*, 742 N.E.2d 940 (Ind. 2001); *In re Paras*, 742 N.E.2d 924 (Ind. 2001); *In re Luddington*, 742 N.E.2d 503 (Ind. 2001); *In re Taylor*, 741 N.E.2d 1293 (Ind. 2001); *In re Shull*, 741 N.E.2d 723 (Ind. 2001); *In re Murgatroyd*, 741 N.E.2d 719 (Ind. 2001); *In re Davis*, 740 N.E.2d 855 (Ind. 2001); *In re Harshey*, 740 N.E.2d 851 (Ind. 2001).

^x *In re Spencer*, 759 N.E.2d 1064 (Ind. 2001); *In re Funke*, 757 N.E.2d 1013 (Ind. 2001).

^y *Castor v. State*, 754 N.E.2d 506 (Ind. 2001) (affirming); *Ben-Yisrayl v. State*, 753 N.E.2d 649 (Ind. 2001) (affirming); *Timberlake v. State*, 753 N.E.2d 591 (Ind. 2001) (affirming); *Wrinkles v. State*, 749 N.E.2d 1179 (Ind. 2001) (affirming); *Allen v. State*, 749 N.E.2d 1158 (Ind. 2001) (affirming); *Ingle v. State*, 746 N.E.2d 927 (Ind. 2001) (reversing); *Lambert v. State*, 743 N.E.2d 719 (Ind. 2001) (affirming); *Stephenson v. State*, 742 N.E.2d 463 (Ind. 2001) (affirming); *Daniels v. State*, 741 N.E.2d 1177 (Ind. 2001) (affirming); *Prowell v. State*, 741 N.E.2d 704 (Ind. 2001) (reversing).

^z *Edwards v. State*, 759 N.E.2d 626 (Ind. 2001); *Gray v. State*, 758 N.E.2d 519 (Ind. 2001); *West v. State*, 758 N.E.2d 54 (Ind. 2001); *Crawford v. State*, 755 N.E.2d 565 (Ind. 2001); *Woodford v. State*, 752 N.E.2d 1278 (Ind. 2001); *Vitek v. State*, 750 N.E.2d 346 (Ind. 2001); *Lockett v. State*, 747 N.E.2d 539 (Ind. 2001); *Mitchell v. State*, 745 N.E.2d 775 (Ind. 2001); *Smith v. State*, 744 N.E.2d 437 (Ind. 2001).

^{aa} *Equicor Dev., Inc. v. Westfield-Washington Township Plan Comm'n*, 758 N.E.2d 34 (Ind. 2001); *City of New Haven v. Reichhart*, 748 N.E.2d 374 (Ind. 2001); *Noble County v. Rogers*, 745 N.E.2d 194 (Ind. 2001); *City Chapel Evangelical Free, Inc. v. City of South Bend, ex rel. Dep't of Redev.*, 744 N.E.2d 443 (Ind. 2001).

^{bb} *Sholes v. Sholes*, 760 N.E.2d 156 (Ind. 2001); *Cannon v. Cannon*, 758 N.E.2d 524 (Ind. 2001); *Buckalew v. Buckalew*, 754 N.E.2d 896 (Ind. 2001).

^{cc} *Degussa Corp. v. Mullens*, 744 N.E.2d 407 (Ind. 2001).

^{dd} *Moberly v. Day*, 757 N.E.2d 1007 (Ind. 2001); *Mangold ex rel. Mangold v. Ind. Dep't of Natural Res.*, 756 N.E.2d 970 (Ind. 2001); *Owens Corning Fiberglass Corp. v. Cobb*, 754 N.E.2d 905 (Ind. 2001); *Forte v. Connerwood Healthcare, Inc.*, 745 N.E.2d 796 (Ind. 2001); *Elmer Buchta Trucking, Inc. v. Stanley*, 744 N.E.2d 939 (Ind. 2001); *Sears Roebuck & Co. v. Manuilov*, 742 N.E.2d 453 (Ind. 2001).

^{ee} *Felsher v. Univ. of Evansville*, 755 N.E.2d 589 (Ind. 2001).

^{ff} *Mangold ex rel. Mangold v. Ind. Dep't of Natural Res.*, 756 N.E.2d 970 (Ind. 2001); *Noble County v. Rogers*, 745 N.E.2d 194 (Ind. 2001).

^{gg} *Degussa Corp. v. Mullens*, 744 N.E.2d 407 (Ind. 2001).

^{hh} *State ex rel. Ind. Dep't of Revenue v. Deaton*, 755 N.E.2d 568 (Ind. 2001); *State Bd. of Tax Comm'rs v. Town of St. John*, 751 N.E.2d 657 (Ind. 2001); *State Bd. of Tax Comm'rs v. Indianapolis Racquet Club, Inc.*, 743 N.E.2d 247 (Ind. 2001).

^{ia} *Allstate Ins. Co. v. Dana Corp.*, 759 N.E.2d 1049 (Ind. 2001); *Brown v. Branch*, 758 N.E.2d 48 (Ind. 2001).

^{jj} *Ind. Dep't of Env'tl. Mgmt. v. RLG, Inc.*, 755 N.E.2d 556 (Ind. 2001); *G&N Aircraft, Inc. v. Boehm*, 743 N.E.2d 227 (Ind. 2001).

^{kk} *Livingston v. Fast Cash USA, Inc.*, 753 N.E.2d 572 (Ind. 2001); *Rheem Mfr. Co. v. Phelps Heating & Air Conditioning, Inc.*, 746 N.E.2d 941 (Ind. 2001).

^{ll} *Livingston v. Fast Cash USA, Inc.*, 753 N.E.2d 572 (Ind. 2001).

^{mmm} *Fratus v. Marion Cmty. Sch. Brd. of Trs.*, 749 N.E.2d 40 (Ind. 2001).

ⁿⁿ *Allstate Ins. Co. v. Dana Corp.*, 759 N.E.2d 1049 (Ind. 2001); *Gallant Ins. Co. v. Isaac*, 751 N.E.2d 672 (Ind. 2001).

^{oo} *Allstate Ins. Co. v. Dana Corp.*, 759 N.E.2d 1049 (Ind. 2001); *Ind. Dep't of Env'tl. Mgmt. v. RLG, Inc.*, 755 N.E.2d 556 (Ind. 2001).

^{pp} *Degussa Corp. v. Mullens*, 744 N.E.2d 407 (Ind. 2001); *GKN Co. v. Magness*, 744 N.E.2d 397 (Ind. 2001).

^{qq} *Equicor Dev., Inc. v. Westfield-Washington Township Plan Comm'n*, 758 N.E.2d 34 (Ind. 2001); *Fratus v. Marion Cmty. Sch. Brd. of Trs.*, 749 N.E.2d 40 (Ind. 2001); *Turner v. City of Evansville*, 740 N.E.2d 860 (Ind. 2001).

^{rr} *Forrest v. State*, 757 N.E.2d 1003 (Ind. 2001); *LeShore v. State*, 755 N.E.2d 164 (Ind. 2001); *Ashabraner v. Bowers*, 753 N.E.2d 662 (Ind. 2001).

^{ss} *Sholes v. Sholes*, 760 N.E.2d 156 (Ind. 2001); *Boatright v. State*, 759 N.E.2d 1038 (Ind. 2001); *Hopkins v. State*, 759 N.E.2d 633 (Ind. 2001); *Gates v. State*, 759 N.E.2d 631 (Ind. 2001); *Edwards v. State*, 759 N.E.2d 626 (Ind. 2001); *Gray v. State*, 758 N.E.2d 519 (Ind. 2001); *West v. State*, 758 N.E.2d 54 (Ind. 2001); *Crawford v. State*, 755 N.E.2d 565 (Ind. 2001); *Hubbell v. State*, 754 N.E.2d 884 (Ind. 2001); *Johnson v. State*, 749 N.E.2d 1103 (Ind. 2001); *Sanchez v. State*, 749 N.E.2d 509 (Ind. 2001); *Marley v. State*, 747 N.E.2d 1123 (Ind. 2001); *Fosha v. State*, 747 N.E.2d 549 (Ind. 2001); *Lockett v. State*, 747 N.E.2d 539 (Ind. 2001); *Kilpatrick v. State*, 746 N.E.2d 52 (Ind. 2001); *Mitchell v. State*, 745 N.E.2d 775 (Ind. 2001); *Noble County v. Rogers*, 745 N.E.2d 194 (Ind. 2001); *City Chapel Evangelical Free, Inc. v. City of South Bend ex rel. Dep't of Dev.*, 744 N.E.2d 443 (Ind. 2001); *Smith v. State*, 744 N.E.2d 437 (Ind. 2001); *Games v. State*, 743 N.E.2d 1132 (Ind. 2001); *Russell v. State*, 743 N.E.2d 269 (Ind. 2001); *Redman v. State*, 743 N.E.2d 263 (Ind. 2001); *Long v. State*, 743 N.E.2d 253 (Ind. 2001); *Roby v. State*, 742 N.E.2d 505 (Ind. 2001); *Ledo v. State*, 741 N.E.2d 1235 (Ind. 2001); *Sivels v. State*, 741 N.E.2d 1197 (Ind. 2001).