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# Supreme Court of Appeals of West Virginia: A Statistical Analysis

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# SUPREME COURT OF APPEALS OF WEST VIRGINIA: A STATISTICAL ANALYSIS

## FOREWARD

The *West Virginia Law Review* is proud to announce the inauguration of a new service for the West Virginia practitioner — a quantitative analysis of the decisions of the Supreme Court of Appeals of West Virginia. The analysis deals with various aspects of the court's decisions, such as results reached, voting patterns, and agreement among justices. In the future, the statistics and charts will be included with the *Survey of Developments in West Virginia* to give the practitioner a complete picture of the past year of West Virginia case law.

This first attempt is basic in its vision to ensure its accuracy. However, it is hoped that this will be only a first step and that future charts will be more expansive in their reach and more in-depth in their analysis. This first survey period includes all decisions of the court between January 1, 1978, and December 31, 1978.

The idea for the statistical analysis was developed in response to a recent article in the *Yale Law Journal*.<sup>1</sup> The article dealt with the reversal rate of state supreme courts over the past one hundred years, in which West Virginia was shown to have the highest rate of reversal in the nation (58.1%).<sup>2</sup> The editors of the *West Virginia Law Review* feel that to a degree this statistic is misleading, since in West Virginia all appeals are discretionary. Judicial discretion enables the court to be more selective in the cases it hears, increasing the probability that those accepted warrant reversal.<sup>3</sup> The *Statistical Analysis* was developed to clarify and expand upon this information.

The *West Virginia Law Review* draws no conclusions from the statistical data. A warning must be given that the charts are merely compilations of numbers, and that for a true understanding of the court, its decisions must be read and studied closely. One must also keep in mind that the percentages reflect what happened on the court *last* year, and cannot be relied on to predict what the court will do in the future.

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<sup>1</sup> Note, *Courting Reversal: The Supervisory Role of State Supreme Courts*, 87 YALE L.J. 1191 (1978).

<sup>2</sup> *Id.* at 1215.

<sup>3</sup> *Id.*

## RESULTS

Table I<sup>4</sup> reflects the number of appeals requested of the court and the number accepted. The figures show that there was better than a 50% chance of having an appeal heard.

The results the court reached in its decisions are shown in Table II. Of the 138 cases decided, sixty-four (47%) were reversed. However, when considering only those cases which were either reversed or affirmed, the reversal rate soars to 70% (64 of 91). By applying Table I to Table II, an attorney could forecast to some degree the likelihood of reversal on appeal. Since the numerical likelihood of getting the court to hear a case is a little over 50%, and because the reversal rate of those cases accepted<sup>5</sup> is 70%, then one could say that at the time of filing the appeal there is roughly a 35% probability of having a case reversed.<sup>6</sup>

The most striking feature of the 1978 term is the strong consensus of the court. Table III indicates that one hundred and fifteen decisions (83%) were decided by a unanimous court. In only eight cases was there a significant voting split. For the purpose of the compilation, *per curiam* opinions were classified as 5-0 votes.<sup>7</sup>

The participation and voting patterns of the individual justices is calculated in Table IV. The most prolific (using that term only to reflect the number of opinions written) justices were Justice Miller and Justice Neely, authoring forty and thirty-seven opinions respectively. The figures of this chart also illustrate vividly the pattern of agreement on the court. By determining the number of dissenting votes, calculated by adding the number of dissents written and joined, one can determine how often any particular justice agreed with the majority. The chart reflects the strong unanimity of the court, in that no justice voted with the majority less than 93% of the time.

The agreement between each pair of justices is shown in Table

<sup>4</sup> The *West Virginia Law Review* expresses its thanks to Mr. George W. Singleton, Clerk of the Supreme Court of Appeals, for supplying the figures used in Table I.

<sup>5</sup> Here again reference is made only to those cases which were either reversed or affirmed.

<sup>6</sup> One reason for the imprecision is that Table I and Table II do not include the same cases. Some of the cases in Table I were merely accepted in 1978 and will not be heard until 1979, while some of the cases decided in 1978 were accepted in 1977. Of course the real chances turn on the merits of the case.

<sup>7</sup> There were seven *per curiam* opinions.

V. The agreement is based on the common reasoning of the justices and not merely the reaching of a common result. This determination is made according to the number of times the two justices joined in the *same* opinion. The figures labeled "M," "C," and "D" indicate the number of majority, concurring, and dissenting opinions, respectively, in which both justices joined. "P" reflects the number of decisions in which both justices participated, while "A" reflects the percentage of cases in which they agreed. "A" is obtained by dividing the sum of M, C, and D by P. Thus, the pair with the highest agreement rate is Chief Justice Caplan and Justice Harshbarger, who joined in the same opinion in 89.7% of all the cases. Again the chart reflects the strong agreement of the court, since no pair of justices agreed less than 81.1% of the time.

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TABLE I: APPLICATIONS

Applications for appeals	Accepted	Percentage accepted
343 <sup>1</sup>	182	53%

<sup>1</sup>The application figure is not exact because in a few cases two or more applications were made.

TABLE II: RESULTS

Result	Number of Cases	Percentage
Affirmed	27	20%
Reversed	64	47%
Affirmed in part/Reversed in part	3	.2%
Habeas corpus denied	16	11%
Habeas corpus accepted	10	7%
Prohibition or Mandamus denied	10	7%
Prohibition or Mandamus granted	8	6%
Total	138	

TABLE III: VOTING

Vote	Number of cases	Percentage
5-0 <sup>2</sup>	113	82%
4-0	2	1%
4-1	15	11%
3-2	8	6%

<sup>2</sup>In the case of *State ex rel. Bagley v. Blankenship*, 246 S.E.2d 99 (W. Va. 1978), all the justices except Justice McGraw disqualified themselves. Justice McGraw and four retired judges sat in *Bagley*, reaching a unanimous decision.

TABLE IV: JUSTICE PARTICIPATION

	Majority			Dissents		Voted with Majority
	Opinions Written	Concurrences Written	Joined	Written	Joined	
Caplan, C.J.	18	0	2	2 <sup>3</sup>	1	98%
Harshbarger, J.	15	1	2	2	4 <sup>3</sup>	95%
McGraw, J.	27	0	2	3	4 <sup>3</sup>	94%
Miller, J.	25	7	0	8 <sup>3</sup>	0	93%
Neely, J.	29	1	0	7	1	93%
Per curiam	7					
Total	121 <sup>4</sup>	9		22		

<sup>3</sup> This total reflects one opinion to which a justice dissented only in part.

<sup>4</sup> This total is less than the total reflected in either Tables I or III, since in some instances cases were consolidated for decision.

TABLE V: AGREEMENT OF JUSTICE

		Caplan	Harshbarger	McGraw	Miller	Neely
Caplan	M		122	117	114	120
	C		0	0	4	0
	D		0	0	0	2
	P		136	137	136	137
	A		89.7%	85.4%	86.8%	89.1%
Harshbarger	M	122		119	115	120
	C	0		1	2	1
	D	0		1	1	0
	P	136		136	135	136
	A	89.7%		89.0%	87.4%	89.0%
McGraw	M	117	119		113	111
	C	0	1		3	1
	D	0	1		2	0
	P	137	136		136	137
	A	85.4%	89.0%		86.7%	81.8%
Miller	M	114	115	113		111
	C	4	2	3		0
	D	0	1	2		0
	P	136	135	136		136
	A	86.8%	87.4%	86.7%		81.6%
Neely	M	120	120	111	111	
	C	0	1	1	0	
	D	2	0	0	0	
	P	137	136	137	136	
	A	89.1%	89.0%	81.8%	81.6%	

"M" represents the number of time the justices joined in the majority opinion of the court.

"C" represents the number of times the justices joined in a concurring opinion of the court.

"D" represents the number of times the justices joined in a dissenting opinion of the court.

"P" represents the number of cases in which both justices participated.

"A" represents the percentage of cases in which the justices agreed.