



THE IOWA SUPREME COURT'S 2017-2018 TERM: BY THE NUMBERS

By Matt O'Hollearn

With the beginning of a new Iowa Supreme Court term, it is time to look back and review the 2017-2018 term by the numbers. The Cady Court has been tracked since its inception in April 2011¹, and this year's numbers further confirm what has been trending since the 2013-2014 term, which is that the current court is Chief Justice Cady's both in naming rights and decision-making authority.

OPINIONS

During the 2017-2018 term, the Iowa Supreme Court issued 103 opinions. The court also held over three cases (Cedar Rapids v. Leaf, Behm v. Cedar Rapids, and Weizberg v. Des Moines) for resubmission next term. The number of opinions is in line with the court's past caseload. Since the institution of the term system, the court has averaged approximately 104 opinions per year (100 in 2012-13, 107 in 2013-14, 102 in 2014-15, 96 in 2015-16 and 116 in 2016-2017).

Although the subject matter of the opinions can be difficult to pigeonhole, the opinions can roughly be categorized as follows: 46 criminal, 44 civil,

four juvenile and nine disciplinary opinions.

SOURCE OF APPEAL

With a deflective appellate system, the Iowa Supreme Court obtains cases both by direct appeal and by further review from the Iowa Court of Appeals. This year, the court took 44 cases by direct appeal and 49 cases by further review. The court also answered one case by certified question from the U.S. District Court for the Northern District of Iowa. Using the same subject matter breakdown as above, the type of cases taken by each source of appeal is shown organized in Chart A.

Historically, the court has followed a relatively close 50/50 split between cases taken by direct appeal and cases taken by further review, and this year is no different. However, this year is unique in the number of criminal cases taken by direct appeal. In the previous two terms, approximately 70 percent of the court's criminal cases came by further review, but this year, it was less than half.

ORAL ARGUMENT

This term, the court held oral arguments in 63 cases. The court also continued to hold

arguments outside the Judicial Branch Building. In addition to the recurring oral arguments held at Iowa College of Law, Drake Law School, and the Night Session held when the legislature is in session, the court also heard arguments at Des Moines Hoover High School, Davenport Central High School, Cedar Falls and Knoxville.

AUTHORSHIP

As will be seen in Chart B, a direct consequence of the disagreements within the Cady Court is the proliferation of authorship. In total, the Court issued 158 opinions in the 103 cases. The authorship of those opinions is shown in Chart B.

This year, Justice Mansfield retained his title as the most prolific writer. He, along with Justices Wiggins and Appel, are generally the court's most prolific writers. In line with historical averages,

| CHART A | | | |
|--------------------|----------|-------|----------|
| | Criminal | Civil | Juvenile |
| Direct Appeal | 25 | 19 | 0 |
| Further Review | 21 | 24 | 4 |
| Certified Question | 0 | 1 | 0 |

| CHART B | | | | |
|--------------|----------|---------|------------|------------|
| Justice | Majority | Dissent | Spec. Con. | TOTAL |
| Cady | 12 | 2 | 2 | 16 |
| Wiggins | 16 | 6 | 2 | 24 |
| Appel | 14 | 11 | 3 | 28 |
| Hecht | 5 | 2 | 1 | 8 |
| Waterman | 15 | 8 | 2 | 25 |
| Mansfield | 19 | 13 | 2 | 34 |
| Zager | 16 | 1 | 0 | 17 |
| Per Curiam | - | - | - | 6 |
| TOTAL | | | | 158 |

Chief Justice Cady and Justice Zager wrote the least number of opinions (likely due to their status as the swing votes for this court).

For Justice Hecht, there is good cause for his low authorship total. In April 2018, the court confirmed that Justice Hecht had been diagnosed with melanoma, the most serious type of skin cancer. As a result, Justice Hecht participated in the court's decisions as his treatment allowed. Although Justice Hecht participated in every case prior to April 2018, from April 2018 to the

end of the term, Justice Hecht took no part in 21 of the court's final 47 issued opinions.

JUSTICE DISAGREEMENT

The Cady Court continues to have significant differences resulting in numerous dissents and special concurrences. This term, only 57 of the 103 opinions were unanimous. Although the 46 non-unanimous opinions would seem high, it is not out of the norm for the Cady Court. Last term had 45 non-unanimous opinions, and from 2011-2016, the Cady Court averaged 30 non-unanimous opinions per year. For comparison, the previous Ternus Court only averaged eight non-unanimous opinions per year from 2006 through 2010.

The battle lines for this court can be drawn into two voting blocs, with Justices Wiggins, Appel and Hecht in one bloc, and Justices Waterman, Mansfield and Zager in the other. Chief

Justice Cady acts as the swing vote in the middle. Chart C shows the voting blocs and their cohesiveness by showing how often each justice agreed in the non-unanimous cases.

As the table shows, Chief Justice Cady was a true swing vote, agreeing with each of his colleagues about half the time. His status in the middle of the two blocs can also be seen by the fact that Chief Justice Cady was in the majority in all but two cases this term. This is a continuation of the previous two terms. For the terms from 2015 to 2018, Chief Justice Cady has found himself in the dissent just six times in 315 opinions, resulting in a majority rate of 98 percent.

Further, Chief Justice Cady's importance as the swing vote in this court is most evident from the court's multiple "4-3" decisions. This term, the court had 20 "4-3" opinions, and seven "4-2" opinions in which Justice Hecht took no part, but his general voting bloc of Justice Wiggins and Appel were in dissent. Of these 27 split-opinions, Chief Justice Cady was only in the dissent one time. Further, 25 of these 27 opinions were decided in

accordance with the general voting blocs of the justices with Chief Justice Cady sitting perfectly in the middle. Specifically, 13 of the 27 split-decisions resulted in the bloc of Justices Wiggins, Appel, and Hecht in dissent, and 12 resulted in the bloc of Justices Waterman, Mansfield, and Zager in dissent.

In summary, by the numbers, the 2017-2018 term was in line with the previous terms of Cady Court, and very much remained "Cady's Court."



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| CHART C | | | | | | |
|-----------|---------|-------|-------|----------|-----------|-------|
| | Wiggins | Appel | Hecht | Waterman | Mansfield | Zager |
| Cady | 47.8% | 50% | X | 47.8% | 50% | 58.7% |
| Wiggins | | 82.6% | X | 8.7% | 10.9% | 26.1% |
| Appel | | | X | 13.0% | 13.0% | 30.4% |
| Hecht | | | | X | X | X |
| Waterman | | | | | 91.3% | 82.6% |
| Mansfield | | | | | | 71.7% |
| Zager | | | | | | |

¹Ryan Koopmans, On Brief: Iowa's Appellate Blog, *Voting Alignment on the Iowa Supreme Court* (July 16, 2012), <https://www.iowaappeals.com/voting-alignment-on-the-iowa-supreme-court/>; Ryan Koopmans, On Brief: Iowa's Appellate Blog, *The Iowa Supreme Court: How Each Justice Voted During the 2012-2013 Term* (Oct. 2, 2013), <https://www.iowaappeals.com/voting-alignment-on-the-iowa-supreme-court-during-the-2012-2013-term/>; Ryan Koopmans, On Brief: Iowa's Appellate Blog, *The Iowa Supreme Court's 2013-2014 Term: By the Numbers* (Aug. 18, 2014), <https://www.iowaappeals.com/iowa-supreme-courts-2013-2014-term-by-the-numbers/>; Ryan Koopmans, *It's Still Cady's Court: A Statistical Review of the Iowa Supreme Court's 2015-16 Term*, THE IOWA LAWYER, Vol. 76, No. 9 (Oct. 2016)