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The Illinois Supreme Court In 2015: A Statistical Analysis


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For the past three years, we've taken a close statistical look at the previous year's decisions from the Illinois Supreme Court to see what insights could be gained about the justices' voting patterns and decision making dynamics. (View the **2012 analysis here**, **2013 analysis here** and **2014 analysis here**.) In 2015, the centrist justices were once again in the majority in most civil and criminal cases. Meanwhile, the court maintained its extraordinarily high rate of unanimity, while significantly decreasing the lag time between arguments and decisions.

For 2015, the court decided 44 civil cases, plus an additional 33 criminal and quasi-criminal, attorney discipline and juvenile cases. Only 56.8 percent of the court's civil docket arose from final judgments of the trial courts — a sharp decline from 2014, and somewhat below the court's long-term trends. Final judgments have historically been a smaller part of the court's criminal docket than they are on the civil side, and 2015 was no exception — 42.4 percent of the court's criminal and quasi-criminal docket was drawn from final judgments of the trial courts. Cook County Circuit Court was the source of 38.64 percent of the court's civil cases — a slight decrease from 2014 — with suburban Lake County ranking second at 9.09 percent. On the criminal side of the docket, Cook County Circuit Court originated 48.48 percent of the cases decided, with nearby Will County second at 12.12 percent.

On the civil side, the court decided 11 cases involving civil procedure issues, eight arising from government and administrative law, six in tort and four each in domestic relations and constitutional law. The court remained skeptical of plaintiffs' claims in tort; all six tort cases it decided had been won by the plaintiffs below, and the court ultimately reversed in five of six. Similarly, all of the constitutional law cases accepted by the court had been won by the plaintiffs below, and the court reversed in every one. On the criminal side of the docket, the court decided 12 cases apiece in criminal procedure and constitutional law and five involving sentencing issues. The court reversed in four of the five criminal procedure cases won by the defendants below and in nine of the 10 constitutional law cases where the defendant had prevailed.

The portion of the court's civil docket involving dissents at the Appellate Court level increased substantially to 34.1 percent in 2015, moving much closer to its long-term trend. The percentage for the criminal docket was almost identical — exactly one-third of the docket arose from fractured Appellate Court cases. Although these numbers were up in 2015, the fact remains that the often-heard anecdotal claim that the court doesn't hear unanimous decisions from the Appellate Courts is simply untrue. 20.45 percent of the court's civil docket arose from unpublished Rule 23 orders — a significant decrease from 2014. In contrast, 42.4 percent of the court's criminal docket arose from unpublished opinions (a 10-point increase from 2014).

We reported last year that the court's unanimity rate in civil cases had returned to its long-term trend in 2014 after a two-year dip, with the court deciding three-quarters of its cases unanimously. The unanimity rate was almost identical this year, with the court deciding 79.5 percent of its civil cases unanimously. If one adds the 6-1 decisions to the unanimous ones, we find that 88.6 percent of the court's civil decisions were decided by lopsided margins. The experience on the criminal side was quite similar — 81.8 percent of decisions were unanimous, and 87.9 percent were lopsided.

The court substantially improved its lag time from argument to decision this past year in cases where the court was divided. Average time under submission for non-unanimous decisions on the civil docket was 152.6 days, a 21.2 percent decrease over the previous year. Non-unanimous criminal cases were under submission for an average of 159.6 days — an improvement of 14.2 percent over 2014. Days under submission were essentially static for unanimous decisions — 104.8 days for civil cases (a slight increase from 2014) and 120.5 days for criminal cases. Measured from the date cases began — whether by allowance of a petition for leave to appeal or filing of a notice of direct appeal — the court continued to move its docket reasonably quickly. Unanimous civil cases were before the Court for an average of 281.3 days from allowance to decision, a slight improvement from 2014, and 367 days for non-unanimous civil cases. Criminal cases were pending for slightly longer. Unanimously decided criminal cases were pending for an average of 420.5 days from grant to decision, while non-unanimous criminal cases were pending an average of 358.3 days.

The court's reversal rate in civil cases fell sharply from a high of 77.8 percent in 2014 back down to a level more in line with its historical trend since 2000 — 54.5 percent. The court's reversal rate in criminal cases was much higher at 69.7 percent (a hefty increase from 2014, when the court reversed in only 42.4 percent of criminal cases it decided).

Although Chicago's First District always contributes a significant portion of the court's civil docket, the First's share was down somewhat in 2015, falling from 48.1 percent in 2014 to 36.4 percent in 2015. Fifty percent of First District decisions reviewed on the civil docket were reversed. Factoring in the rare direct appeals from circuit courts, 38.6 percent of the court's civil docket arose from Cook County. The second biggest contributor to the civil docket was the Second District with 18.2 percent of the caseload. The Second District was reversed in 37.5 percent of those cases. The Fifth District contributed 13.6 percent of the court's civil docket, and was reversed 83 percent of the time (a reversal rate consistent with that district's recent record).

The criminal docket was similar — the First District contributed 39.4 percent of the criminal docket, with exactly 50 percent of the court's cases originating in Cook County. The First District was reversed in criminal cases just over half the time — 53.8 percent. The Third District contributed 18 percent of the criminal docket and was reversed half the time, and the court decided five cases on direct appeals, reversing in whole or in part in every one. While the court heard only a few cases from the Second and Fourth Districts (three and four cases, respectively), the court reversed each of those decisions in whole or in part as well.

Justice Lloyd A. Karmeier led the court in civil decisions with nine majority opinions this past year, including the centerpiece of the year, the court’s eloquent unanimous opinion striking down the legislature’s public pension reform bill in the Pension Reform Litigation. Justices Mary Jane Theis, Robert R. Thomas and Charles E. Freeman were next with seven majorities each, followed by Justice Anne B. Burke (who led last year in civil majorities) with six.

Justice Thomas led the court in majority opinions on the criminal side with six. Justices Theis, Thomas L. Kilbride and Anne M. Burke were next, writing five majority opinions each in criminal cases. The remaining justices — Chief Justice Rita B. Garman, and Justices Freeman and Karmeier — wrote four majorities each in criminal cases.

Dissents were once again comparatively rare on the Court. Justice Kilbride led on the civil side, writing four dissents. Justice Burke wrote three and Justice Freeman two. On the criminal side, there was a five-way tie — with everyone but Justices Karmeier and Theis dissenting once.

As we noted last year, one way of understanding the court’s dynamics is to track which justices are most often in the majority when the court is divided. In 2014 Justices Thomas and Karmeier voted with the majority in every one of the court’s civil cases. This past year, the chief justice was in the majority in every one of the court’s nine split decisions on the civil docket. Justice Thomas voted with the majority in each of the seven split cases in which he participated. Justice Theis was in the majority in eight of nine split civil cases, with Justice Karmeier right behind, voting with the majority in seven of nine. Justices Freeman and Kilbride were least often in the majority, voting with the majority in five and three of the nine non-unanimous decisions, respectively. On the criminal side, the chief justice and Justices Thomas, Karmeier and Theis all voted with the majority in five of six non-unanimous cases. Justices Burke and Freeman were most often at odds with the court in such cases, voting with the majority only half the time.

Agreement rates among the three Republican justices — Chief Justice Garman and Justices Thomas and Karmeier — dipped slightly in 2015 from their recent trend. Although the chief justice agreed with Justice Thomas in every one of the non-unanimous civil cases, Justices Thomas and Karmeier agreed in only 71.4 percent of non-unanimous civil cases, and Justice Karmeier and the Chief Justice agreed 77.8 percent of the time. On the other hand, Justices Burke and Karmeier voted the same way in 88.8 percent of all non-unanimous civil cases. The chief justice and Justice Theis voted together just as often — 88.8 percent of non-unanimous cases. Justices Thomas and Theis voted the same way in 85.7 percent of non-unanimous civil cases. Among the lower agreement rates in non-unanimous civil cases were Justices Burke and Kilbride (0 percent); Chief Justice Garman and Justice Kilbride (33.3 percent); Justices Kilbride and Karmeier (11.1 percent) and Justices Kilbride and Thomas (22.2 percent).

Voting dynamics are more unpredictable in the court's criminal docket than they are on the civil side. Only two combinations of justices voted together even four-fifths of the time in criminal cases in 2015 — Justices Burke and Freeman (100 percent) and Thomas and Karmeier (100 percent). Several different combinations of the justices have agreement rates in non-unanimous cases of two-thirds, including the chief justice and Justices Thomas, Karmeier and Theis, and Justices Burke, Freeman, Thomas and Karmeier (respectively) and Justice Theis. Justice Kilbride's agreement rate is exactly 50 percent with each of the other six justices. Several more combinations of justices agreed in only one-third of all non-unanimous criminal cases: the chief justice and Justices Burke and Freeman; Justice Burke and Justices Thomas and Karmeier; and Justice Freeman and Justices Thomas and Karmeier.

The court asked 839 questions during arguments of civil cases decided during 2015 — 441 to appellants (an average of 10.02 per argument), 398 to appellees (an average of 9.05 per argument). Justice Thomas led the court with 300 questions, with Justice Theis (150) and the chief justice (113) next. After that came Justice Karmeier (93), Justice Kilbride (83), and Justice Burke with 73 questions. Justice Freeman was the least active justice on the civil side, with 27 questions.

I've heard a number of specialists in criminal appellate law suggest that the Illinois Supreme Court is a less "hot" bench during oral argument of criminal cases than it is in civil cases. That was only partially true in 2015. The court asked 566 questions during arguments of criminal cases decided during 2015 — 349 to appellants (an average of 10.9 per argument) and 217 to appellees (an average of 6.8 per argument). So although the court asked significantly fewer questions of appellees in criminal cases — more often than not, the state — it asked slightly more questions of appellants. Justice Thomas was the most active questioner on the criminal side (185), with Justice Theis second (118) and the chief justice (91) third. But after that, the order was somewhat different, with Justice Karmeier (77), Justice Burke (71), and Justices Freeman (15) and Kilbride (9).

Whether or not the court was split in its view of a case appeared to have little impact in 2015 on the intensity of the questioning. The court averaged slightly more questions to appellants in non-unanimous civil decisions — 9.56 to 10.38 — but slightly fewer questions to appellees — 10.11 to 9.85. No impact was evident on the criminal side of the docket either. Indeed, appellants were asked more questions in cases decided unanimously: 10 in non-unanimous decisions, 11.04 in unanimous ones. The result was similar for appellees: five in non-unanimous decisions, 7.19 in unanimous ones.

The most active cases on the civil side were Seymour v. Collins, with 42 questions asked of both sides combined. The most actively questioned appellant was in Gurba v. Community High School District No. 155, with 25. The most actively questioned appellee was in Seymour with 28. On the criminal side, the most active court was in People v. Fiveash and People v. Smith, with 33 questions each. The most heavily questioned appellant was in People v. Fiveash, with 22, and the most heavily questioned appellee was in People v. Smith at 18.

Scholars who have investigated whether the intensity of questioning signals the result have all concluded that all things being equal, the most heavily questioned side is far more likely to lose. We came to the same conclusion this year on the Illinois Supreme Court review, based upon a study of all 233 arguments in civil cases at the court between 2008 and 2014. The numbers in 2015 reflect the same trend.

The four most heavily questioned parties — the appellants in Gurba and Fiveash and the appellees in Seymour and Smith — all lost. For the docket as a whole, on the civil side, losing appellants averaged

12.8 questions per argument to 6.65 for winning appellants. Losing appellees averaged 12.48 questions per argument to 6.05 for winning appellees. Appellants who received more questions than their opponents lost 15 of 21 cases. Appellees who received more questions lost 17 of 22 cases. On the criminal side, losing appellants averaged 12.6 questions per argument to 10.05 for winning appellants. Losing appellees averaged 8.18 questions per argument to only 3.7 for winning appellees. Appellees in criminal cases received more questions than their opponents in eight cases in 2015, and lost all eight. The pattern was broken only with criminal appellants, who won 14 of 23 criminal cases where they received more questions than their opponents.

In 2014, six of the seven justices averaged more questions to appellants in civil cases than to appellees. This past year, questioning was more evenly distributed. Justices Burke (1.43/0.54), Freeman (0.41/0.20), Theis (2.27/1.14) and, by a slight margin, Justice Kilbride (0.98/0.91) averaged more questions to appellants than appellees. Chief Justice Garman (1.61/0.95) and Justices Thomas (3.64/3.33) and Karmeier (1.09/1.02) averaged more questions to appellees. The court's record in arguments in criminal cases was quite different, however: All seven justices averaged more questions to appellants.

Dividing the arguments into cases decided unanimously and non-unanimously reveals interesting patterns. All seven justices averaged more questions to appellees in civil cases decided unanimously than in non-unanimous decisions. On the other hand, five of the seven justices — Chief Justice Garman and Justices Burke, Freeman, Kilbride and Theis — averaged more questions to appellants in cases decided by a divided court. Once again, arguments in criminal cases were quite different. The chief justice and Justices Burke and Thomas asked more questions of appellees in unanimous decisions and of appellants in non-unanimous ones — the same pattern a majority of the court followed in civil cases. But Justices Freeman, Kilbride and Karmeier averaged more questions to both sides when the court was unanimous than when the court was divided. Justice Theis averaged more questions to appellants in unanimous cases, but to appellees in non-unanimous ones.

Finally, we considered what one could infer about what a justice might do in a particular case from watching oral argument. Because of the court's high unanimity rate, it is difficult to say anything definitive about whether justices are more influenced by their own vote or by the views of the majority of the court in deciding which side to more heavily question based solely on 2015. One can easily imagine a justice checking his or her own conclusions by more closely questioning the party the justice was voting against, regardless of the majority view, or perhaps justices in the minority use oral argument to press the party the majority of their colleagues favor in an attempt to convert additional votes.

In civil case affirmances, Justices Burke and Kilbride both averaged more questions to the appellant when they dissented — in other words, the party the justices voted for. Similarly, Justices Burke (4.5/0), Freeman (1.0/0), Thomas (6.0/0) and Karmeier (1.0/0) both averaged more questions to the appellant when they dissented from an affirmance.
Our study of the larger database of arguments between 2008 and 2014 concluded that nearly all of the justices tend to be more active in oral argument in cases where they write the majority opinion. That pattern held true in 2015. When the court reversed, six of the seven justices averaged more questions to the appellee than in reversals where they were not writing (the lone exception being Chief Justice Garman). Five of the seven justices averaged more questions to the appellant when they were writing for the court in a reversal (the exceptions: Justices Freeman and Kilbride).

Curiously, writing appeared to have much less of an impact in criminal cases. While four justices — the Chief Justice and Justices Thomas, Karmeier and Theis — averaged more questions to appellants when they wrote the majority opinion in a reversal than when they did not, only three justices — Burke, Thomas and Karmeier — averaged more questions to appellees in reversals when they wrote the opinion.

Our review of the Illinois Supreme Court's year suggests several lessons for counsel: (1) the court continues to decide a very high fraction of its cases unanimously; (2) the court is quite skeptical of plaintiffs' wins in tort and constitutional law; (3) a dissent at the Appellate Court is not an essential prerequisite to persuading the court to review a decision; (4) the length of time a case is under submission following oral argument is a fairly reliable predictor of dissent; (5) in the relatively rare cases when the court is divided, the justices most likely to be in the majority are the chief justice, Justices Karmeier and Thomas, with Justices Theis and/or Burke providing the deciding votes; and

(6) a party receiving substantially more questions at oral argument is more likely to lose.

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