In the
Supreme Court of Texas

LESSONS FROM THE LONGEST-SERVING SET OF NINE JUSTICES IN TEXAS HISTORY

Civil Appellate Section
March 4, 2010

Justice Don R. Willett
Supreme Court of Texas

Don Cruse
Law Office of Don Cruse

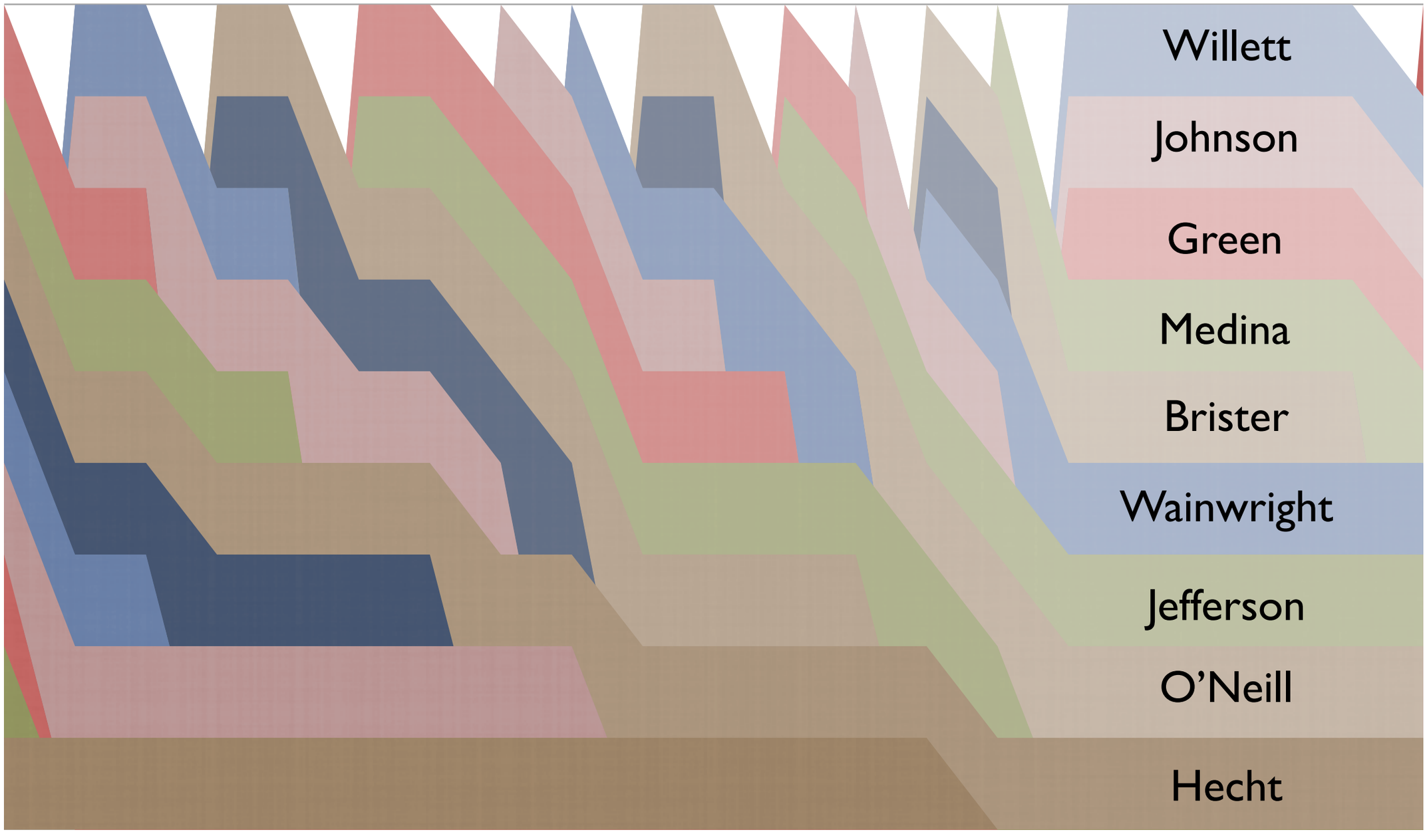
What's new?

Stability.

Historical Rarity

- 1990s: ten changes in ten years
- 2001-2004: change every 159 days
- Fall 2005- Fall 2009: no changes

Historical Rarity



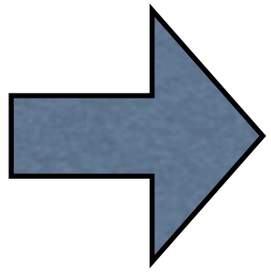
Starting Points

- Richer set of data for voting patterns and trends
- See how one Court adapts, without changing membership

Voting Patterns

Deciding Opinions

Signed Majority	259
Per Curiams	227



9 votes	144
8 votes	24
7 votes	22
6 votes	25
5 votes	39
Visiting Judge Assigned	5

Non-Unanimous Cases
Agreement on the Deciding Opinion

	Hecht	O'Neill	Wainwright	Brister	Medina	Green	Johnson	Willett
Jefferson	59%	69%	66%	59%	74%	78%	69%	52%
Hecht		46%	71%	72%	57%	69%	62%	75%
O'Neill			54%	52%	68%	59%	56%	44%
Wainwright				65%	61%	72%	73%	71%
Brister					60%	59%	52%	64%
Medina						65%	61%	53%
Green							76%	64%
Johnson								67%

Opinion Stats
Given One Joins, Odds of the Other Joining

	Solo	WBJ	NLH	HON	JDW	SAB	DMM	PWG	PJ	DRW
Jefferson	2%		54%	66%	60%	56%	68%	71%	65%	47%
Hecht	6%	53%		40%	64%	67%	54%	62%	58%	68%
O'Neill	9%	70%	43%		51%	51%	65%	54%	52%	40%
Wainwright	6%	59%	64%	47%		58%	55%	63%	69%	63%
Brister	7%	56%	68%	48%	59%		59%	54%	48%	59%
Medina	1%	69%	56%	63%	58%	60%		57%	56%	50%
Green	1%	79%	70%	57%	71%	60%	62%		77%	61%
Johnson	6%	63%	57%	48%	69%	47%	54%	68%		57%
Willett	10%	48%	71%	38%	66%	60%	50%	57%	60%	

Opinion Stats
By Author: Odds of Each Other Justice Joining

	Solo	WBJ	NLH	HON	JDW	SAB	DMM	PWG	PJ	DRW
Jefferson	10%		23%	71%	39%	26%	42%	52%	48%	29%
Hecht	20%	25%		9%	41%	50%	43%	32%	30%	45%
O'Neill	33%	50%	18%		20%	25%	53%	30%	28%	18%
Wainwright	30%	30%	37%	30%		30%	33%	33%	53%	40%
Brister	21%	38%	42%	38%	28%		55%	32%	21%	43%
Medina	5%	71%	48%	76%	67%	52%		62%	62%	48%
Green	4%	78%	70%	52%	74%	65%	43%		78%	52%
Johnson	21%	38%	38%	17%	55%	26%	38%	40%		33%
Willett	44%	21%	41%	21%	35%	18%	15%	29%	32%	

Special Focus:
Five-Vote Majorities

Source: New York Times

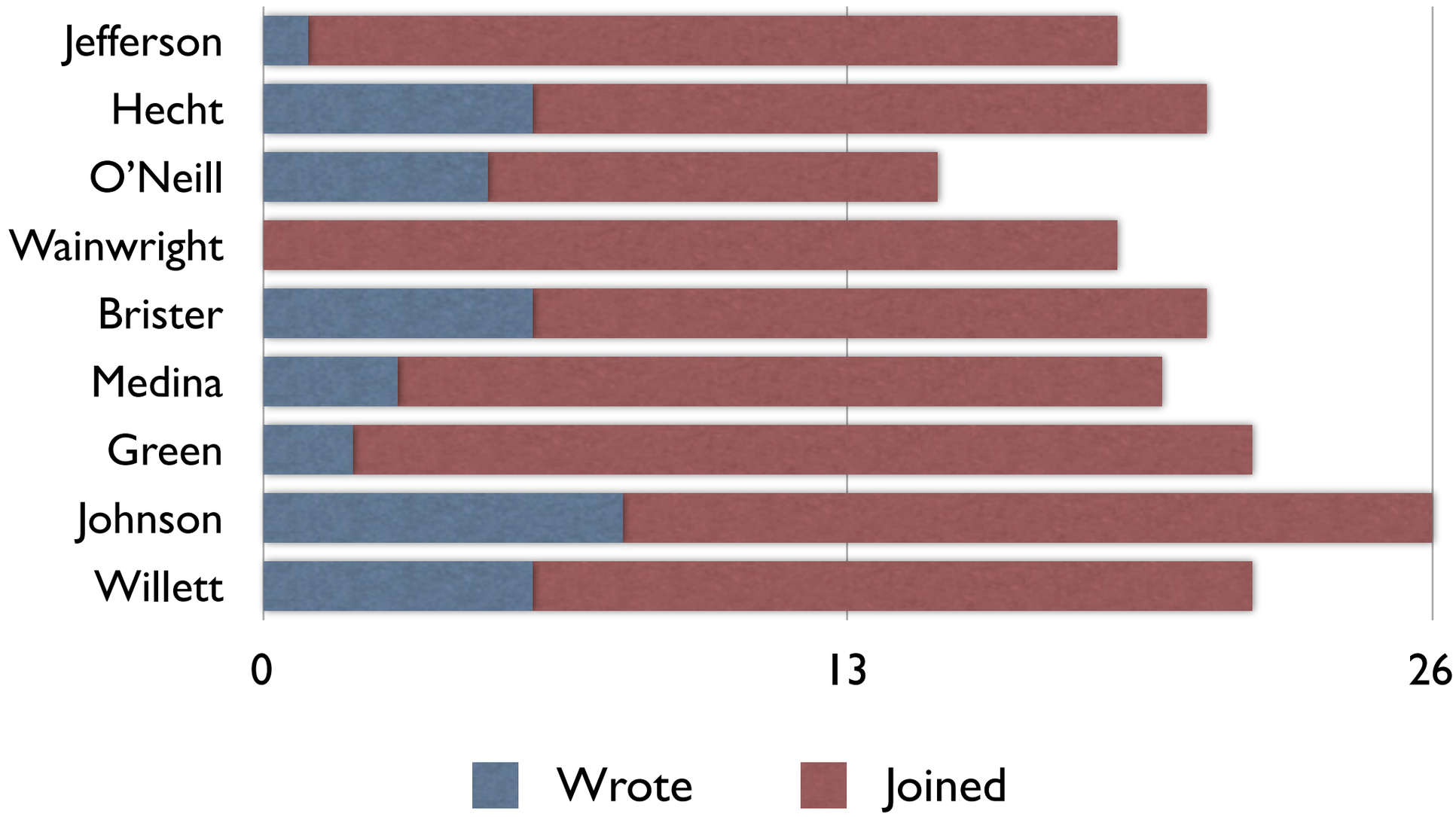
Fall 2005 - Fall 2009

SCOTUS had 92 five-vote majorities.

SCOTX had 39 five-vote majorities
(and 5 more where visiting judges cast deciding votes).

In this analysis, we tried to exclude
"companion cases." With that adjustment,
SCOTUS had 79 that were unique.
SCOTX had 37 that were unique.

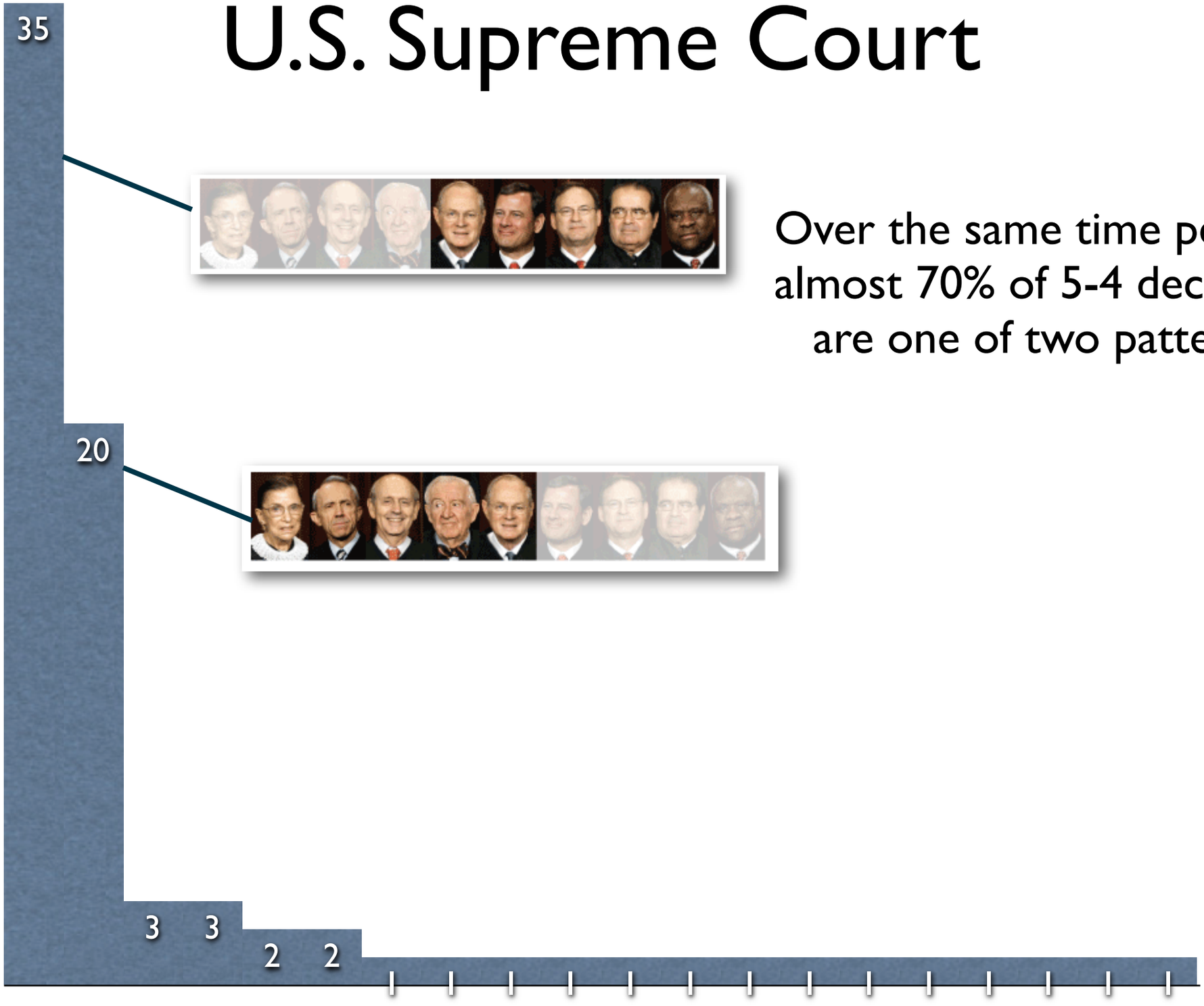
Who Is in These Five-Vote Majorities?



Patterns of 5-4 Decisions

U.S. Supreme Court

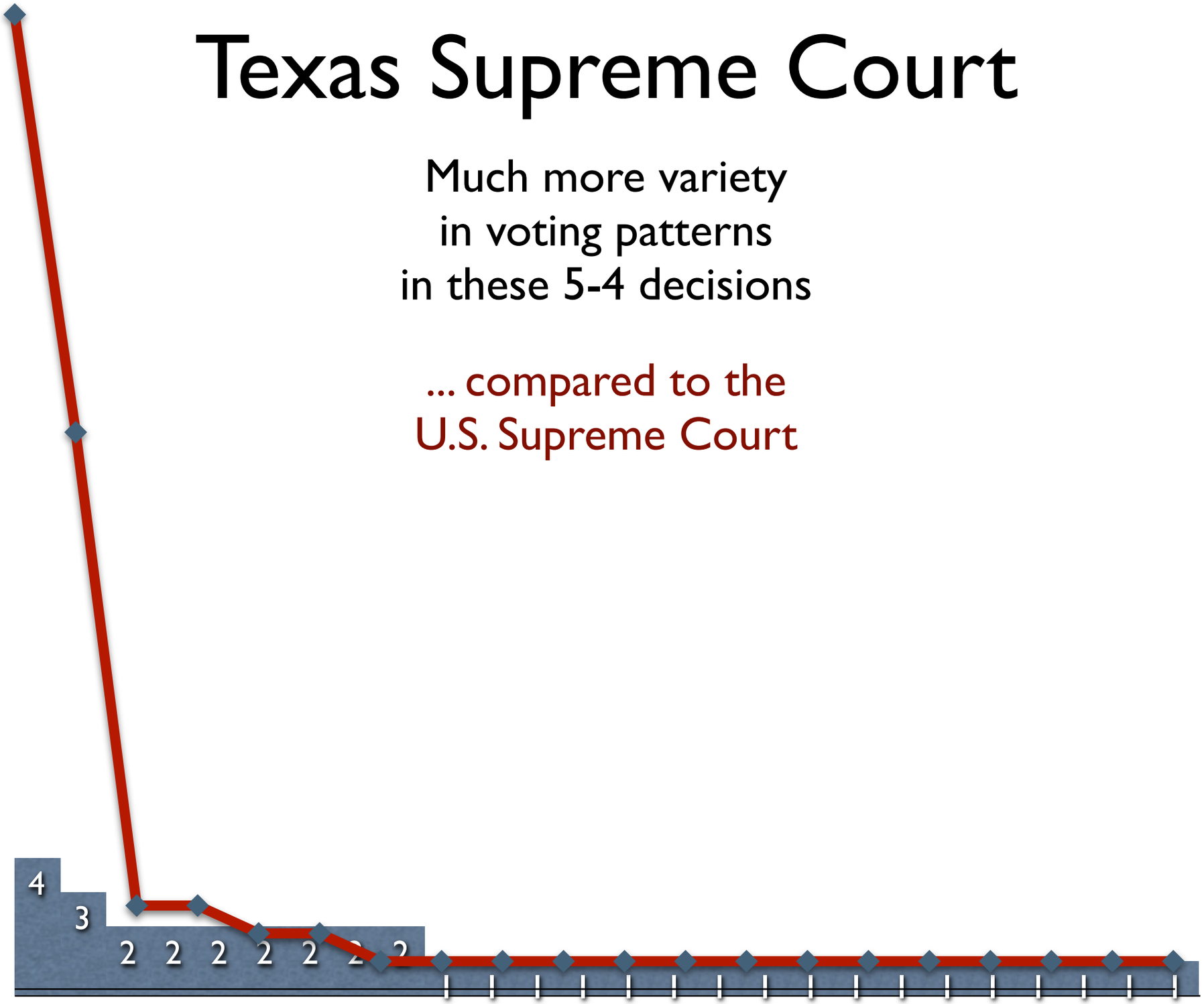
Over the same time period, almost 70% of 5-4 decisions are one of two patterns

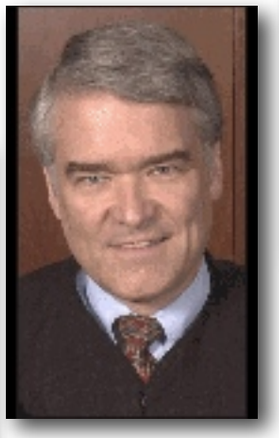


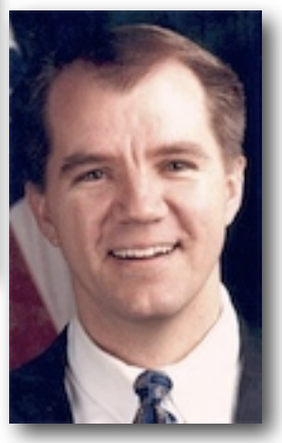
Texas Supreme Court

Much more variety
in voting patterns
in these 5-4 decisions

... compared to the
U.S. Supreme Court



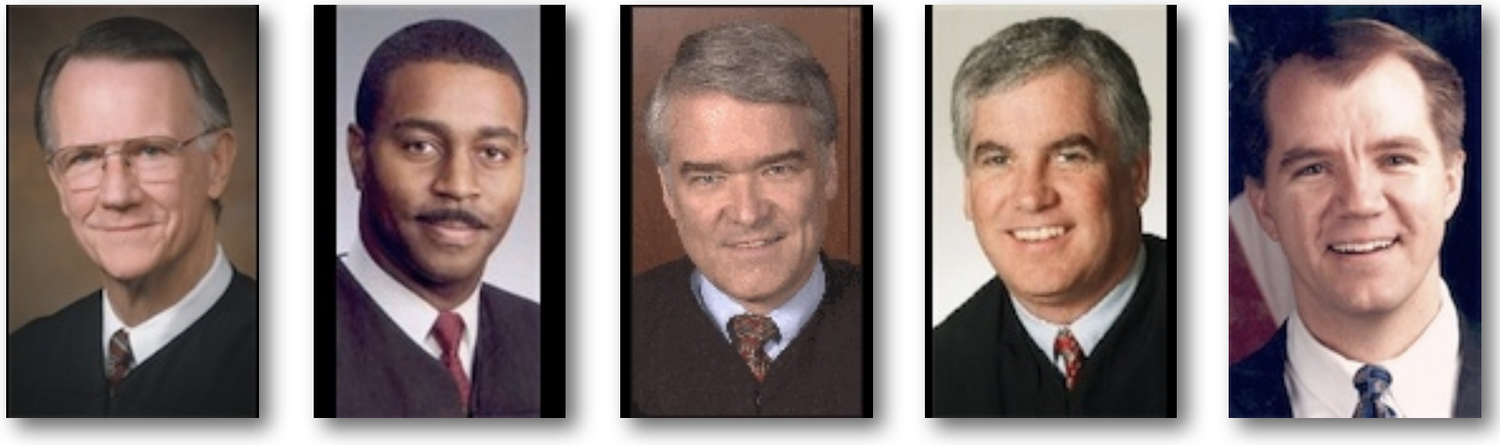




How did the Texas Supreme Court divide up in these 37 5-4 decisions?

The two most common 5-vote majorities

4 times



3 times

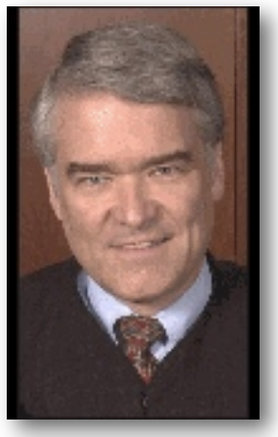
Most common sets of four?

3 more
(7 total)

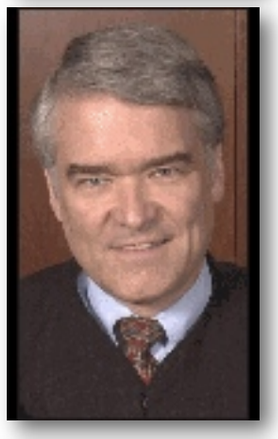
3 more
(7 total)

4 more
(7 total)

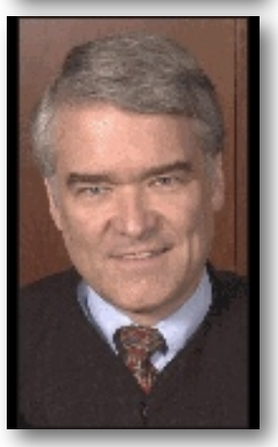
Most Common Sets of Three



11 times



10 times

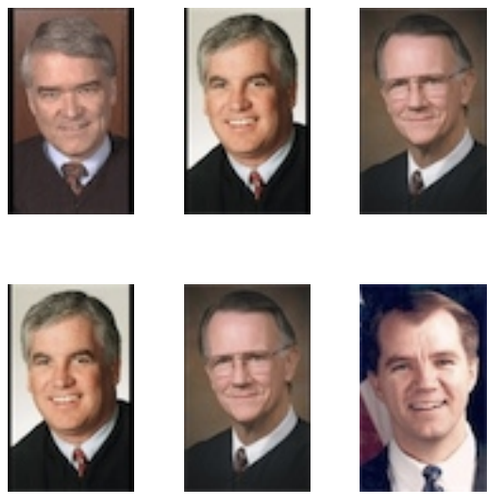


10 times

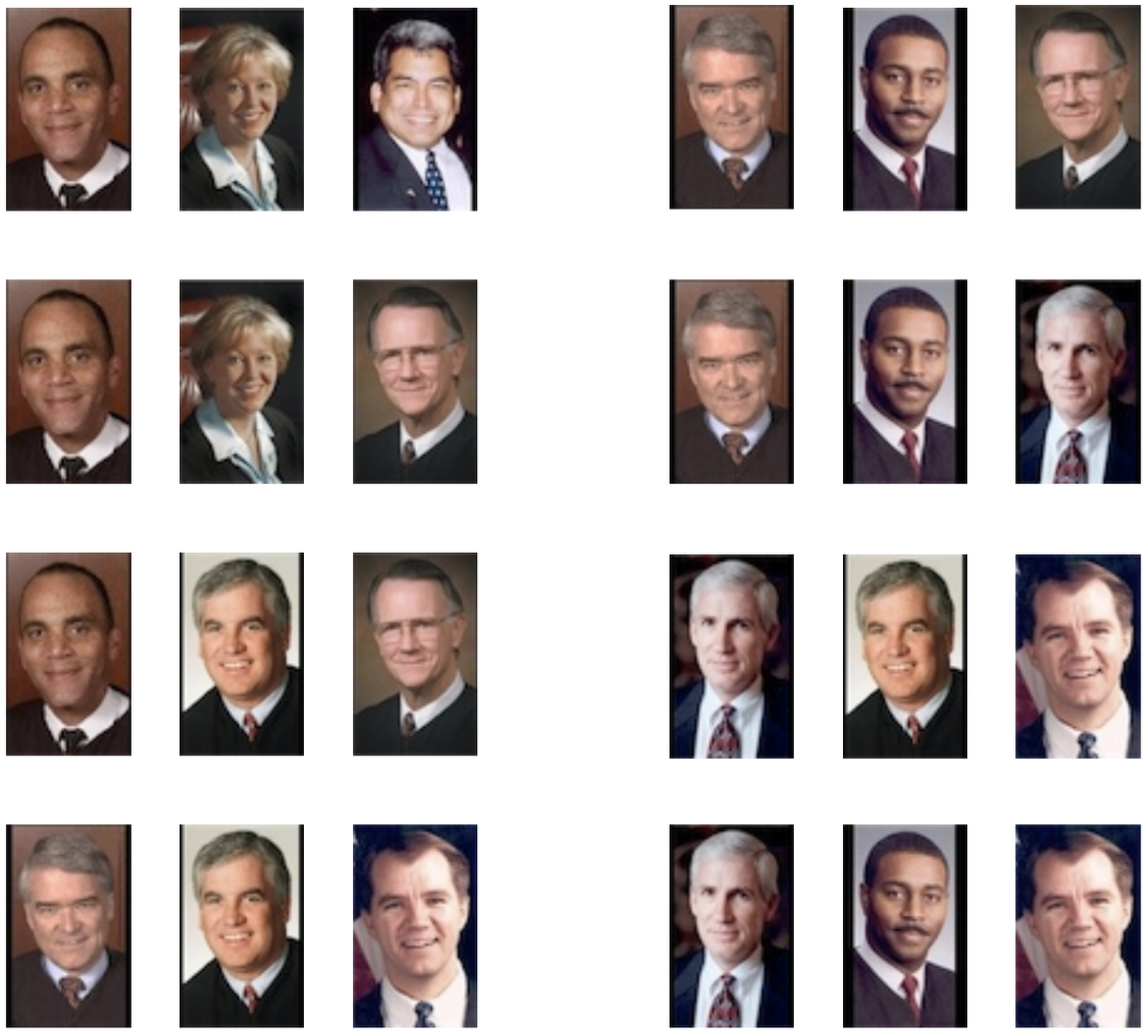
(These totals are within the 37 5-vote majority cases. There are 84 possible sets of three. Each would be expected 4.4 times.)

Other Common Sets of Three

9 times

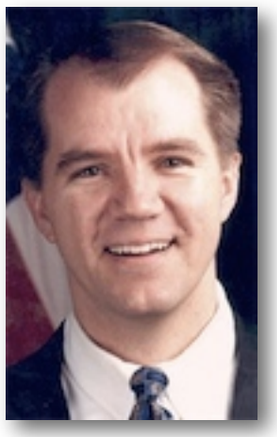


8 times



(These totals are within the 37 5-vote majority cases. There are 84 possible sets of three. Each would be expected 4.4 times.)

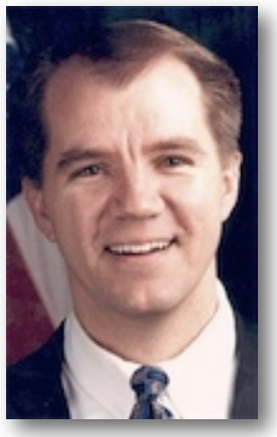
What is the only group of three Justices
who never voted together
in a 5-vote majority?



But this group <u>did</u> join together in a 5-4 dissent.

Harris County Hospital Dist. v. Tomball Regional Hospital, No. 05-0986 (Tex. 2009)

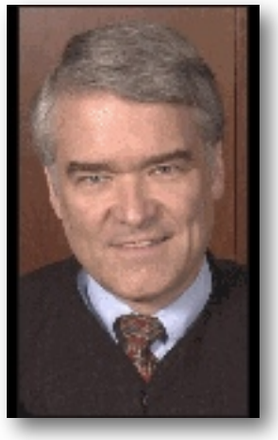
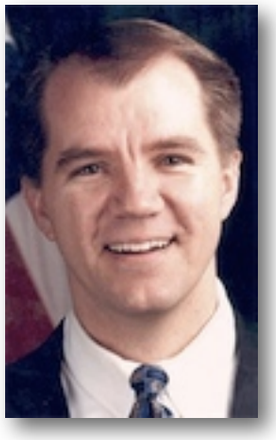
Which two Justices were <u>most</u> likely to join the same 5-vote majority?



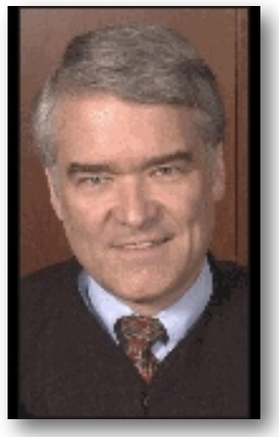
17 times

Next most likely pair?

15 times

Which two Justices were <u>least</u> likely to join the same 5-vote majority?



3 times

Next least likely pair?

4 times

Looking for Patterns

U.S. Supreme Court

SCOTUS
Voting Affinity
(in 79 5-4 decisions)

Texas Supreme Court

Voting Affinity
(in 37 5-4 decisions)

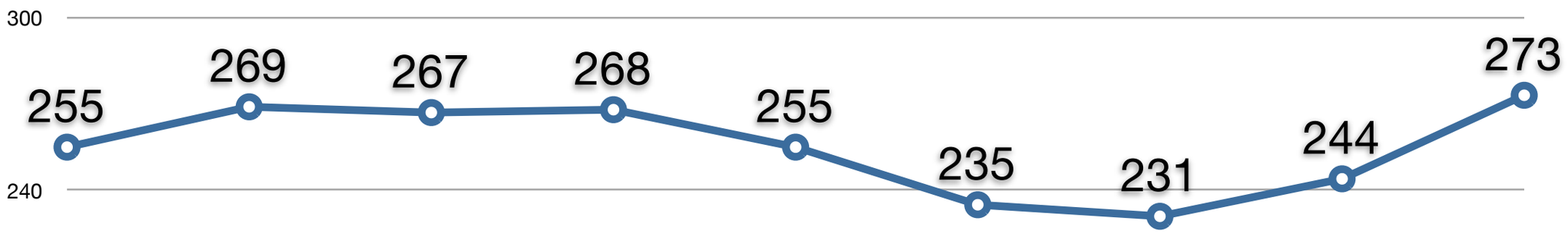
Voting Affinity
(all non-unanimous cases)

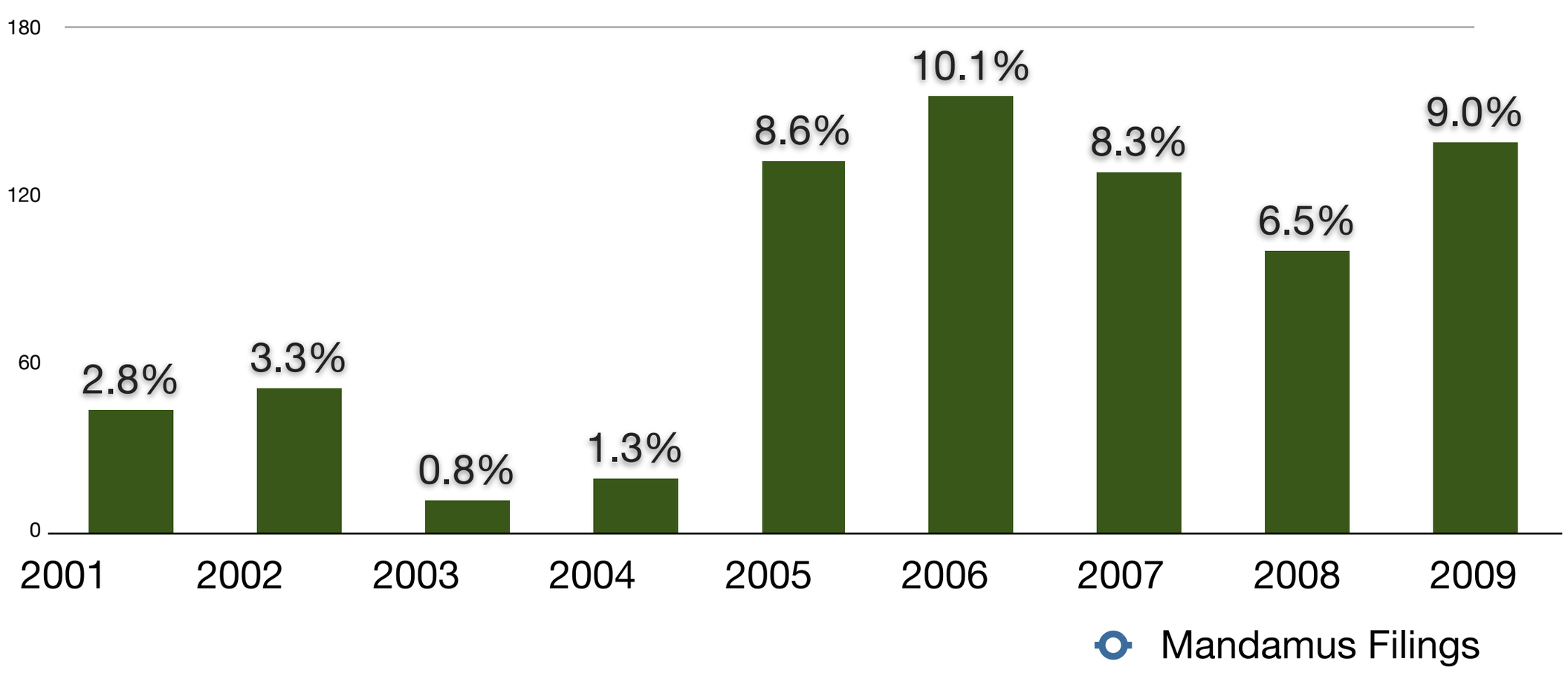
Mandamus

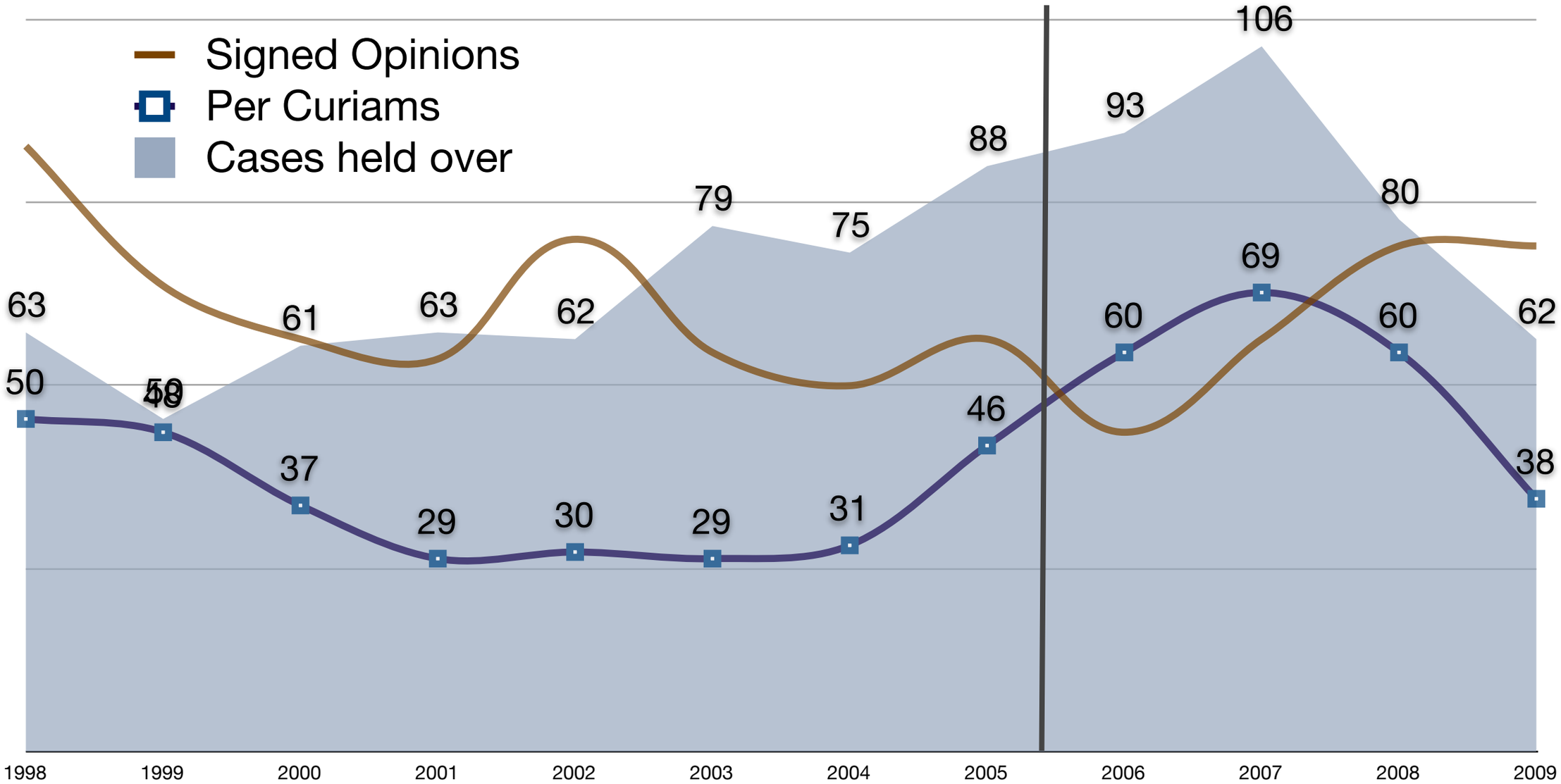
Practice

Mandamus

Grant Rates Are Way Up, Filings Are Not





The Per Curiam Docket

Per Curiams and the Docket