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Re: End of Term Statistics and Analysis

### **End of Term Statistics and Analysis**

1. The Justices decided 73 cases after argument this Term, a recent low. The numbers of decisions after argument for previous Terms are 76 (OT01), 79 (OT00), 74 (OT99), 78 (OT98), 92 (OT97), 81 (OT96), 77 (OT95), 84 (OT94), 84 (OT93), 107 (OT92), 107 (OT91), 102 (OT90).

2. This Term had a very low number of decisions that were 5-4 in whole or in part, 15 of 80 (19%), down from 21 of 76 (28%) in OT01. The numbers for previous Terms are 26 of 79–33% (OT00), 21 of 74–28% (OT99), 19 of 80–24% (OT98), 16 of 96–17% (OT97), 17 of 91–19% (OT96), 16 of 85–19% (OT95).

3. Perhaps the most notable feature of this Term's 5-4 decisions is that Justice O'Connor was in the majority in all of the cases that were entirely 5-4, and all but 2 that were 5-4 at least in part.. Chief Justice Rehnquist and Justice Kennedy were in the majority in the 5-4 decisions the next most often, eight times.

The Court's conservative majority (WHR, SOC, AS, AMK, CT) held together in nearly half (6 of 15) of the 5-4 cases this Term. This figure is slightly lower than last year (10 of 21–48%), and down still further from OT00, in which those Justices voted together in 54% (14 of 26) of the 5-4 decisions. The numbers for previous Terms are 14 of 21–66% (OT99), 10 of 19–53% (OT98), 6 of 16–38% (OT97), 8 of 17–47% (OT96), 7 of 16–44% (OT95).

Of the 5-4 cases, four were decided by a majority composed of the remaining four Justices (JPS, DS, RBG, and SGB) plus Justice O'Connor. In one other that was 5-4 "in part," Justice Scalia "defected." Last Term, Justice O'Connor defected four times and Justices Rehnquist and Thomas defected once each. In OT00, seven 5-4 cases were decided by these four Justices and a defector, with Justice O'Connor providing the fifth vote four times and Justice Kennedy three.

4. As usual, two sets of Justices had extremely high degrees of affinity this Term: Justices Scalia and Thomas and Justices Souter and Ginsburg.

Justices Scalia and Thomas: Justices Scalia and Thomas have shown a growing affinity over the past few Terms. Their percentages of agreement this Term were: 89% (in full), 92% (in full or part), 95% (in full, in part, or in the judgment). The two Justices disagreed completely just 5% of the time. Their percentages in previous Terms were 82/87/92 (OT01), 76/92/99 (OT00), 81/91/93 (OT99), 76/92/95 (OT98), 82/88/93

(OT97), 88/98/99 (OT96), 83/unavail./93 (OT95).

Justices Souter and Ginsburg: Their percentages of agreement were: 88% (in full), 91% (in full or in part), 91% (in full, in part, or in the judgment). Their numbers for previous Terms are 86/90/94 (OT01), 79/94/94 (OT00), 81/88/91 (OT99), 82/91/91 (OT98), 82/87/88 (OT97), 75/87/91 (OT96), 78/unavail./90 (OT95).

Chief Justice Rehnquist and Justice Kennedy also agreed frequently this Term: 86% (in full), 91% (in full or part), 93% (in full, in part, or in the judgment). The two disagreed completely just 8% of the time.

The Chief Justice and Justice O'Connor were in agreement more often this Term, 82% (in full), 87% (in full or part), 87% (in full, in part, or in the judgment), up from 71/75/79 last Term and 73/86/86 in OT00. Their numbers for previous Terms were 87/94/95 (OT99), 79/86/87 (OT98), 80/86/88 (OT97), 73/82/84 (OT96), 78/unavail./87 (OT95).

Measured by agreement in full or in part, the pairing with the lowest affinity this Term was Justices Thomas and Breyer. Their percentages of agreement were: 50% (in full), 53% (in full or part), 60% (in full, in part, or in the judgment). 31 of the Court's 80 decisions this term were unanimous. Of the remaining 49 cases, Justices Thomas and Breyer agreed in full just eight times. They disagreed a whopping 40% of the time.

The pairing that usually has the lowest affinity, Justices Stevens and Scalia, also agreed more often this Term: 53% (in full), 57% (in full or part), 66% (in full, in part, or in the judgment), as compared with 36/46/53 last Term and 36/52/60 in OT00.

5. As usual, Justice O'Connor was in the dissent the least often. She dissented in just five of the Court's 81 cases. Last Term, Justice O'Connor dissented 10 times, as compared with 8 (OT00), 4 (OT99), 7 (OT98), 11 (OT97), 10 (OT96), 8 (OT95).