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Lightening the Load: In the Georgia Supreme Court

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ESSAY

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*R. Perry Sentell, Jr.**

I. INTRODUCTION

The highest appellate court in any jurisdiction constitutes an institution of inestimable importance. That court issues the final "law" governing the citizens of the jurisdiction, and it exercises supervisory influence over all inferior judicial tribunals. Essentially, the high court crafts the qualitative tone for what its subjects perceive as "justice," that illusive but critical legal order under which they live their lives.

The Supreme Court of Georgia enjoys legendary status in perpetuating both "law" and "justice" for the citizens it serves. It functions as an institution of rich tradition, and it operates from a perspective of historic proportions. The court's heritage exudes a profusion of shaping facets, facets coalescing to yield an indelible profile of Georgia's juristic content. That profile reflects such characteristics as the court's authoritative underpinnings: the legends of judicial fame to whom the court periodically returns for lessons of wisdom.[1] Other distinctions focus upon the court's output: the *per curiam* opinion, for example, constitutes an expressive

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[1] For treatment, see generally R. Perry Sentell, Jr., *Juristic Giants: A Georgia Study in Reputation*, 34 GA. L. REV. 1311 (2000).

peculiarity of historical intrigue.[2] Finally, the catalyst of dissent looms large in supreme court chronology: since the mid-twentieth century, in particular, Georgia justices expend considerable time and effort in decisional disputes.[3] These and a myriad of other foundational features reveal in stark relief the fountainhead of Georgia's judicial system.

The supreme court's most public performance comes, of course, in deciding the cases which appear before it. With the constitution largely mandating its decisional agenda, the court possesses little institutional control over the volume of its workload.[4] Over time, however, practice has presented the court with at least two potential opportunities for easing its burden. First, under its adopted "Rule 59," the court may on occasion affirm without opinion the lower court's judgment in a civil case.[5] Second, under the constitution, the court may on occasion determine whether to review by certiorari

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[2] For treatment, see generally R. Perry Sentell, Jr., *The Peculiarity of* Per Curiam*: In the Georgia Supreme Court*, 52 MERCER L. REV. 1 (2000).

[3] For treatment, see generally R. Perry Sentell, Jr., *Dissenting Opinions: In the Georgia Supreme Court*, 36 GA. L. REV. 539 (2002).

[4] *See, e.g.*, GA. CONST. art. VI, § VI, ¶ II, which provides:

> The Supreme Court shall be a court of review and shall exercise exclusive appellate jurisdiction in the following cases: (1) All cases involving the construction of a treaty or of the Constitution of the State of Georgia or of the United States and all cases in which the constitutionality of a law, ordinance, or constitutional provision has been drawn in question; and (2) All cases of election contest.

Id.; GA. CONST. art. VI, § VI, ¶ III, which provides:

> Unless otherwise provided by law, the Supreme Court shall have appellate jurisdiction of the following classes of cases: (1) Cases involving title to land; (2) All equity cases; (3) All cases involving wills; (4) All habeas corpus cases; (5) All cases involving extraordinary remedies; (6) All divorce and alimony cases; (7) All cases certified to it by the Court of Appeals; and (8) All cases in which a sentence of death was imposed or could be imposed.

Id.; GA. CONST. art. VI, § VI, ¶ IV ("The Supreme Court shall have jurisdiction to answer any question of law from any state or federal appellate court.").

[5] GA. SUP. CT. R. 59, which provides:

> Affirmance without opinion may be rendered in any civil case when the court determines one or more of the following circumstances exists and is dispositive of the appeal: (1) The evidence supports the judgment; (2) No harmful error of law, properly raised and requiring reversalappears [sic]; or (3) The judgment of the court below adequately explains the decision and an opinion would have no precedential value.

Id.

cases from the court of appeals.[6] The exceptional nature of these instances prompts inquiry into their utilization by the court to lighten its load. An account of that utilization offers yet another means for measuring the manner in which the Georgia Supreme Court perpetuates both "law" and "justice."

II. RULE 59

A. ADOPTION AND REPORTING

In 1979, the Georgia Supreme Court adopted as one of its rules of procedure what has since become commonly referenced as "Rule 59":

> Affirmance without opinion may be rendered when the court determines one or more of the following circumstances exists and is dispositive of the appeal: (1) The evidence supports the judgment; (2) No error of law appears and an opinion would have no precedential value; (3) The judgment of the court below adequately explains the decision.[7]

With this rule, therefore, the court excused itself from accompanying every judgment with an elaborating written opinion. When the court resolved to affirm a decision on review,[8] and when the court additionally perceived the presence of a stated "circumstance," it could now simply announce the fact of affirmance.[9] On those self-determined occasions, the court declared its freedom from preparing a written analysis in support of its actions. To the extent that it discovered those occasions, the court exempted itself from one of the most time-consuming functions it is typically called upon to perform.

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[6] GA. CONST. art. VI, § VI, ¶ V ("The Supreme Court may review by certiorari cases in the Court of Appeals which are of gravity or great public importance.").

[7] 242 Ga. 1011, 1011 (1979). The rules carried the effective date of August 1, 1979. *Id.*

[8] The court first hears oral argument of a case, prior to taking a tentative vote on whether an affirmance is in order. The author appreciates this information obtained in discussions with various justices.

[9] Should the court tentatively agree on affirmance, the decision to subject the case to a Rule 59 disposition is rendered by majority vote. *Id.*

That exemption possessed the potential, at least, to effect notable alteration of the court's decisional workload.

For the first few years after adoption, the court's applications of Rule 59 received no centralized notations or reporting. In 1982, however, with the appearance of Volume 249 of the *Georgia Reports*, the court initiated the practice of publically recording all Rule 59 dispositions. Thus, in the prefatory pages of that volume, following the "Table of Cases Reported," there appeared a list of "Judgments Affirmed Without Opinion" for the covered period.[10] Since that time, each volume of the *Reports* similarly records the court's Rule 59 affirmances.

TABLE I.
RULE 59 DISPOSITIONS RECORDED IN GEORGIA REPORTS

Year(s)	*Volume*	*Cases*	*Year(s)*	*Volume*	*Cases*
1982	249 Ga.	75	1993-94	263 Ga.	91
1982-83	250 Ga.	82	1994-95	264 Ga.	38
1983-84	251 Ga.	77	1995	265 Ga.	26
1984	252 Ga.	27	1995-96	266 Ga.	21
1984-85	253 Ga.	96	1996-97	267 Ga.	8
1985	254 Ga.	84	1997-98	268 Ga.	5
1985-86	255 Ga.	92	1998	269 Ga.	7
1986-87	256 Ga.	108	1998-99	270 Ga.	4
1987-88	257 Ga.	110	1999-00	271 Ga.	3
1988-89	258 Ga.	129	2000	272 Ga.	7
1989-90	259 Ga.	152	2000-01	273 Ga.	5
1990-91	260 Ga.	121			

[10] 249 Ga. XXV (1982).

1991-92	261 Ga.	116		
1992-93	262 Ga.	105	Total Cases:	1,589

As reflected through twenty-five volumes of the *Georgia Reports*, therefore, the supreme court has made considerable use of its Rule 59 power to affirm without elaboration. Those volumes record a total of 1,589 cases in which no opinion was written, an average of 64 cases per volume. As Table I evidences, utilization of Rule 59 has varied markedly over the nineteen-year period chronicled. Beginning impressively in 1982,[11] and peaking from 1986 to 1992,[12] the court's employment of the practice has steadily lessened in more recent times.[13] Indeed, utilizations averaged ninety-eight cases per volume for the first fourteen *Reports*,[14] but only twenty cases for each of the last eleven volumes.[15] Single-volume totals ranged from a high of 152 cases (259 Ga.)[16] to a low of only three cases a decade later (271 Ga.).[17] Rule 59's recorded chronology thus impresses with two intriguing revelations: the rule's early popularity, and its subsequent fall from judicial grace.

Because the respective *Reports* provide only a listing, and nothing more, of cases subjected to the court's affirmance without opinion, little additional information can be extracted from them.

B. DETAILS OF OPERATION

The Clerk of the Georgia Supreme Court provides an invaluable resource for details on the court's operations.[18] Materials (including

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[11] *See supra* Table I (reflecting total of 75 cases utilizing Rule 59 procedure).

[12] *See id.* The seven volumes during that period averaged 120 cases per volume. *Id.*

[13] Indeed, the last seven volumes totaled thirty-nine utilizations, only 2% of the total cases recorded by the twenty-five volumes. *Id.*

[14] *Id.*

[15] *Id.*

[16] 259 Ga. XXX (1989-90).

[17] 271 Ga. XXVI (1999-2000).

[18] The author expresses deep appreciation to Ms. Sherie M. Welch, Clerk of the Supreme Court of Georgia, for her kind and unstinting assistance in providing the records upon which this part of the article is based. She is in no manner responsible, however, for the uses made of those records or for the author's interpretations or inferences. The records are hereinafter cited as "Clerk's Office Materials," and may be found in the author's files.

computer generated records) from the clerk's office assist immeasurably in fleshing out the court's operational legacy on Rule 59. Materials available for the years 1990 through 2001 adduce crucially significant information on aspects both numerical and substantive. Numerically, the materials reveal that the court applied Rule 59 to a total of 612 cases during the twelve-year period of record.[19] Additionally, the materials isolate the number of cases to their respective years of decision.[20] Substantively, the Clerk's documents enumerate the number of cases (from the 612 total) dealing with each of ten specified subjects.[21] In this distinctive fashion, the records put a "case type" face on all litigation subjected to affirmance without opinion.[22] Brief appraisals of the numbers and the subjects may shed a more detailed focus upon the special instance that is "Rule 59."

1. The Numbers. As noted, computer generated records from the Office of the Clerk of the Georgia Supreme Court depict Rule 59's operative chronology over a twelve-year period of application. From 1990 through 2001, those records portray that the court employed the rule's summary appellate disposition to a total of 612 cases before it.[23] Additionally, the records distribute those cases among their respective calendar years of decision.[24]

TABLE II.
SUPREME COURT RULE 59 DISPOSITIONS BY CALENDAR YEAR

Calendar Year	*No. of Cases*	*Calendar Year*	*No. of Cases*
1990	134	1996	14
1991	135	1997	12
1992	125	1998	6
1993	93	1999	6

[19] Clerk's Office Materials, *supra* note 18.
[20] *Id.*
[21] *Id.*
[22] *Id.*
[23] *Id.*
[24] *Id.*

1994	34	2000	8
1995	36	2001	9
Totals:		12	612

From the above Table, it appears that Rule 59 dispositions averaged fifty-one cases per calendar year for the period covered. The years 1990 and 1991 proved the most prolific of the period, with dispositions for those years totaling 134 and 135 cases, respectively. Conversely, the fewest utilizations occurred in 1998 and 1999, with the court effecting only six Rule 59 dispositions for each year.[25]

The Table also illumines a sharp dispositional demarcation between the two six-year components of the covered period. Confirming the trend noted earlier from another perspective, the court's utilization of Rule 59 has experienced a drastic decrease in recent years.[26]

TABLE III.
RULE 59 DISPOSITIONS 1990-1995

Year	*Cases*	*Percent of 12-Year Total (612) Cases*
1990	134	22%
1991	135	22%
1992	125	20%
1993	93	15%
1994	34	6%
1995	36	6%
Totals:	557	91%

[25] *Id.*

[26] This was the trend observed in working with the Rule 59 listings in each volume of the *Georgia Reports*. *See supra* Table I. *See also supra* note 13 and accompanying text.

TABLE IV. RULE 59 DISPOSITIONS 1996-2001		
Year	*Cases*	*Percent of 12-Year Total (612) Cases*
1996	14	2%
1997	12	2%
1998	6	1%
1999	6	1%
2000	8	1%
2001	9	2%
Totals:	55	9%

The contrasts between utilizations during the two component periods are striking. In the first six-year interval, the court applied Rule 59 to 557 cases, ninety-one percent of the twelve-year period's total (612) utilizations. In the second six-year interval, the court applied Rule 59 to fifty-five cases, nine percent of the twelve-year period's total (612) utilizations.[27] The degree of difference appears most graphically when yearly averages for the two component periods are adumbrated.

TABLE V. AVERAGE RULE 59 DISPOSITIONS PER YEAR	
Component Period	*Yearly Average Dispositions*
1990-1995	92.8 Cases per year
1996-2001	9.2 Cases per year

The chances of a Rule 59 disposition loom markedly less likely in the present court, therefore, than in its predecessor court of but twelve

[27] Clerk's Office Materials, *supra* note 18.

years ago. Parties and attorneys with cases in the present court thus stand a far greater likelihood of obtaining a written explanation for their litigational fates. For whatever its reason(s), the Georgia Supreme Court has convincingly curtailed employment of affirmances bereft of opinions.

2. The Subjects. As noted, records supplied by the clerk of the supreme court purport to divide the Rule 59 cases (from 1990 to 2001) into ten general subject areas (or "case types").[28] As formulated, those subjects largely mirror the constitution's indicated jurisdictional designations,[29] and are as follows: (1) Constitutional Question, (2) Election Contest, (3) Public Revenue, (4) Title to Land, (5) Equity, (6) Mandamus, (7) Wills, (8) Habeas Corpus, (9) Domestic Relations ("divorce/alimony/child"), and (10) Miscellaneous.[30] (The records also attribute a few cases to an "unclassified" category.[31]) These subject-matter divisions thus bring identity to the heretofore amorphous body of "Rule 59 dispositions." They confer substantive import upon the supreme court's heritage of affirmances without opinions. These are the litigated subjects actually impacted by the supreme court's utilization of Rule 59.

The divisions indicate the number of Rule 59 cases falling within each substantive designation over the twelve-year period.

TABLE VI.
RULE 59 DISPOSITIONS BY CASE TYPE 1990-2001

Case Type	*No. of Cases*	*Percent of Total (612) Dispositions*
Constitutional Question	58	9%
Election Contest	6	1%
Public Revenue	4	1%

[28] *Id.*
[29] *See supra* note 4.
[30] Clerk's Office Materials, *supra* note 18.
[31] *Id.*

Title to Land	93	15%
Equity	220	36%
Mandamus	74	12%
Wills	56	9%
Habeas Corpus	13	2%
Domestic Relations	21	3%
Miscellaneous	12	2%
Unclassified	55	9%
Totals:	612	99%

The clerk's supporting print-outs purport to list each case by name of parties (and to identify the case by subject) afforded Rule 59 disposition during each of the twelve years profiled.[32] Those listings reveal that some of the subject entries appeared irregularly over the period, and that only a few subjects were included in all years' listings.[33]

TABLE VII.
SUBJECT APPEARANCES DURING 12-YEAR PERIOD

Subject	*Years Listed in Disposition Records*
Constitutional Question	7 of 12 years
Election Contest	5 of 12 years
Public Revenue	3 of 12 years
Title to Land	12 of 12 years
Equity	12 of 12 years

[32] *Id.*
[33] *Id.*

Mandamus	11 of 12 years
Wills	9 of 12 years
Habeas Corpus	7 of 12 years
Domestic Relations	5 of 12 years
Miscellaneous	3 of 12 years
Unclassified	5 of 12 years

"Title to Land" and "Equity," therefore, constituted the only litigated subjects experiencing Rule 59 dispositions in each of the twelve chronicled years. "Mandamus" and "Wills," it appears, were the only remaining subjects approaching that status.

The print-outs also assist in an effort to determine the number of Rule 59 dispositions for each subject during each year of the covered period.[34] A brief table will delineate each year's four most "popular" Rule 59 subjects, as well as those subjects' respective proportions of the year's total Rule 59 utilizations.

TABLE VIII.
TOP FOUR RULE 59 SUBJECTS: 1990

Subjects	*No. of Cases*	*Percent of Year's Dispositions*
Equity	48 of 134 cases	36%
"Unclassified"	24 of 134 cases	18%
Title to Land	14 of 134 cases	10%
Mandamus	12 of 134 cases	9%
Totals:	98 of 134 cases	73%

[34] *Id.* A few designations employed in the individual-year print-outs do not precisely parallel those used in the overall summary sheet. Accordingly, the author has drawn a few inferences in analyzing those print-outs and compiling resulting totals. Although a few of the totals therefore may be slightly off, those instances are highly infrequent and assuredly do not impeach the accuracy of the study in its entirety. The author is confident the conclusions accurately reflect the content of the records.

TABLE IX. TOP FOUR RULE 59 SUBJECTS: 1991		
Subjects	*No. of Cases*	*Percent of Year's Dispositions*
Equity	64 of 135 cases	47%
"Unclassified"	19 of 135 cases	14%
Mandamus	11 of 135 cases	8%
Wills	11 of 135 cases	8%
Totals:	105 of 135 cases	77%

TABLE X. TOP FOUR RULE 59 SUBJECTS: 1992		
Subjects	*No. of Cases*	*Percent of Year's Dispositions*
Equity	43 of 125 cases	34%
Constitutional Questions	26 of 125 cases	20%
Title to Land	13 of 125 cases	10%
Mandamus	12 of 125 cases	10%
Totals:	95 of 125 cases	74%

TABLE XI. TOP FOUR RULE 59 SUBJECTS: 1993		
Subjects	*No. of Cases*	*Percent of Year's Dispositions*
Equity	29 of 93 cases	31%
Title to Land	23 of 93 cases	25%
Mandamus	11 of 93 cases	12%

Constitutional Question	10 of 93 cases	11%
Totals:	73 of 93 cases	79%

TABLE XII.
TOP FOUR RULE 59 SUBJECTS: 1994

Subjects	*No. of Cases*	*Percent of Year's Dispositions*
Title to Land	12 of 34 cases	35%
Equity	8 of 34 cases	23%
Mandamus	5 of 34 cases	15%
Wills	4 of 34 cases	11%
Totals:	29 of 34 cases	84%

TABLE XIII.
TOP FOUR RULE 59 SUBJECTS: 1995

Subjects	*No. of Cases*	*Percent of Year's Dispositions*
Mandamus	12 of 36 cases	31%
Equity	9 of 36 cases	28%
Title to Land	8 of 36 cases	22%
Wills	5 of 36 cases	14%
Totals:	34 of 36 cases	95%

TABLE XIV.
TOP FOUR RULE 59 SUBJECTS: 1996

Subjects	*No. of Cases*	*Percent of Year's Dispositions*
Equity	6 of 14 cases	43%
Title to Land	4 of 14 cases	29%

Mandamus	1 of 14 cases	7%
Wills	1 of 14 cases	7%
Totals:	12 of 14 cases	86%

TABLE XV.
TOP FOUR RULE 59 SUBJECTS: 1997

Subjects	*No. of Cases*	*Percent of Year's Dispositions*
Mandamus	6 of 12 cases	50%
Equity	4 of 12 cases	33%
Constitutional Question	1 of 12 cases	8%
Title to Land	1 of 12 cases	8%
Totals:	12 of 12 cases	99%

TABLE XVI.
TOP FOUR RULE 59 SUBJECTS: 1998

Subjects	*No. of Cases*	*Percent of Year's Dispositions*
Title to Land	3 of 6 cases	50%
Mandamus	2 of 6 cases	33%
Equity	1 of 6 cases	17%
Totals:	6 of 6 cases	100%

TABLE XVII.
TOP FOUR RULE 59 SUBJECTS: 1999

Subjects	*No. of Cases*	*Percent of Year's Dispositions*
Equity	3 of 6 cases	50%
Wills	2 of 6 cases	33%

Title to Land	1 of 6 cases	17%
Totals:	6 of 6 cases	100%

TABLE XVIII.
TOP FOUR RULE 59 SUBJECTS: 2000

Subjects	*No. of Cases*	*Percent of Year's Dispositions*
Equity	3 of 8 cases	38%
Title to Land	2 of 8 cases	25%
Mandamus	1 of 8 cases	13%
Habeas Corpus	1 of 8 cases	13%
Totals:	7 of 8 cases	89%

TABLE XIX.
TOP FOUR RULE 59 SUBJECTS: 2001

Subjects	*No. of Cases*	*Percent of Year's Dispositions*
Title to Land	5 of 9 cases	55%
Equity	2 of 9 cases	22%
Constitutional Question	1 of 9 cases	11%
Wills	1 of 9 cases	11%
Totals:	9 of 9 cases	99%

The above delineating tables indicate that "equity" cases received the most Rule 59 dispositions in seven of the twelve covered years;[35] that "title to land" cases encountered the most dispositions in three of the twelve years;[36] and that "mandamus" cases ranked first in two

[35] The years: 1990, 1991, 1992, 1993, 1996, 1999, 2000.
[36] The years: 1994, 1998, 2001.

of twelve years.[37] Together, it appears, those three "case types" accounted for roughly sixty-three percent of Rule 59 dispositions (612) over the twelve-year period of record.

III. CERTIORARI

A. ORIGINS AND GENERAL PRACTICE

The Georgia Constitution has long provided that "[t]he Supreme Court may review by certiorari cases in the Court of Appeals which are of gravity or great public importance."[38] A supreme court rule implements that provision by clarifying that "[a] review on certiorari is not a right."[39] Rather, the rule emphasizes, "[a] petition for the writ will be granted only in cases of great concern, gravity, and importance to the public."[40] Obviously, the terminology of the constitution and rule is deliberately general, intentionally devoid of self-executing determinants.[41] The constructs of "gravity," "concern," and "importance" offer minimal administrative illumination, serving merely as verbal vessels into which operative content must be poured. Virtually unreviewable in supplying that content, the supreme court fashions its own certiorari jurisdiction and, hence, its certiorari workload.[42]

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[37] The years: 1995, 1997.

[38] GA. CONST. art. VI, § VI, ¶ V. Reportedly, the term "certiorari" derives from the Latin, meaning "to be more fully informed." It is defined as "[a]n extraordinary writ issued by an appellate court, at its discretion, directing a lower court to deliver the record in the case for review." BLACK'S LAW DICTIONARY 220 (7th ed. 1999).

[39] GA. SUP. CT. R. 40.

[40] *Id.*

[41] A former Chief Justice of the Georgia Supreme Court effectively makes the point: "Like the constitutional provision, the Rule does not adequately identify what cases will be deemed by the Court to meet the criteria for the grant of certiorari." Harold N. Hill, Jr., *Getting Certiorari Granted*, 28 GA. ST. B.J. 90, 90 (1991).

[42] The discretionary role of certiorari is much more conclusive in shaping the workload of the United States Supreme Court:

> The discretionary writ of certiorari has come to control access to almost all branches of Supreme Court jurisdiction. Appeal jurisdiction has been narrowly limited, and certification of questions from federal courts of appeals has fallen into almost complete desuetude. Certiorari control over the cases that come before the Court enables the Court to define its own institutional role.

18 CHARLES ALLEN WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE § 4004 (2d ed. 1996).

It is the court's general practice that each petition for certiorari is docketed upon arrival and randomly assigned to a justice.[43] The court's "Central Staff" (composed of attorneys) then reviews and prepares a memorandum for each petition, and that memorandum, including a tentative recommendation, is forwarded to all justices. The assigned justice reviews the petition, considers the Staff's recommendation, and makes his or her own recommendation ("granted" or "denied") at a conference (or "banc") of the justices. If the justices unanimously agree with the recommendation, the petition is granted or denied without further discussion. If one or more justice does not agree, then the assigned justice must bring the petition back at a future conference for another vote. At that point, the petition for certiorari is denied unless at least four justices agree that it should be granted.[44]

It is through this general practice, therefore, that the supreme court puts in play its constitutional power of certiorari. The results of that practice (*i.e.*, the "grant" or "denial" of the writ) operate directly upon the court's decisional agenda. The extent to which those results add to that agenda further profiles the court's own exceptional role in determining its jurisdictional workload. That role receives little public explication, as the *Georgia Reports* provide no compilations of the court's certiorari determinations.

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[43] This brief description of the court's general practice was obtained from discussions with various justices for which the author expresses deep appreciation.

[44] *See supra* note 43 and accompanying text. For substantive advice on success in obtaining the grant of certiorari, see generally Harold N. Hill, Jr., *Getting Certiorari Granted*, 28 GA. ST. B.J. 90 (1991). The former Chief Justice notes that most writs of certiorari are granted in order to address a single issue, an issue specified by the court in its notification of the grant to counsel. *Id.* He includes as likely instances for granting certiorari those in which the court of appeals' decision conflicts with a decision of the supreme court, with another decision of the court of appeals, with a decision by the United States Supreme Court, or with an opinion of the Georgia Attorney General. *Id.* Additionally, he includes as "important" cases likely to receive grants of certiorari those instances in which the court of appeals has rendered a variant interpretation of a uniform law, a misinterpretation of a Georgia statute, or a decision affecting many different entities or people. *Id.* Finally, he estimates that the supreme court affirms the court of appeals in roughly half the cases in which certiorari is granted. *Id.*

B. DETAILS OF OPERATION

Once again, the clerk of the supreme court facilitates further analysis by providing materials detailing the court's certiorari activities from 1993 through 2001.[45] From those materials, it is possible to delineate for each of the nine years the total certiorari petitions received (both civil and criminal) and the court's actions on those petitions.[46] In order to insure undistracted comparisons and contrasts, the nine tables are presented in uninterrupted fashion.

TABLE XX.
CERTIORARI: 1993

	Total Petitions	*Granted*	*Denied*
Civil	505	39 (8%)	466 (92%)
Criminal	158	3 (2%)	155 (98%)
Totals:	663	42 (6%)	621 (94%)

TABLE XXI.
CERTIORARI: 1994

	Total Petitions	*Granted*	*Denied*
Civil	554	30 (5%)	524 (95%)
Criminal	171	9 (5%)	162 (95%)
Totals:	725	39 (5%)	686 (95%)

[45] The materials consist of extremely helpful summarizing cover sheets and supporting computer generated records that include case names, dates, and individual certiorari dispositions for each of the nine years. Once again, the author expresses deep appreciation for the clerk's most valuable assistance, and emphasizes that the clerk bears no responsibility for the manner in which the author has employed them. The materials are hereinafter cited as "Clerk's Computer Records" and may be found in the author's files.

[46] *See* Clerk's Computer Records, *supra* note 45. The materials distinguish the cases as civil or criminal and indicate whether certiorari was either "granted" or "denied." *Id.* The "denials" include the petitions denied and the relatively few which were dismissed or allowed to be withdrawn. *Id.*

TABLE XXII.
CERTIORARI: 1995

	Total Petitions	*Granted*	*Denied*
Civil	661	61 (9%)	600 (91%)
Criminal	174	13 (7%)	161 (93%)
Totals:	835	74 (9%)	761 (91%)

TABLE XXIII.
CERTIORARI: 1996

	Total Petitions	*Granted*	*Denied*
Civil	536	41 (8%)	495 (92%)
Criminal	182	10 (5%)	172 (95%)
Totals:	718	51 (7%)	667 (93%)

TABLE XXIV.
CERTIORARI: 1997

	Total Petitions	*Granted*	*Denied*
Civil	521	62 (12%)	459 (88%)
Criminal	201	16 (8%)	185 (92%)
Totals:	722	78 (11%)	644 (89%)

TABLE XXV.
CERTIORARI: 1998

	Total Petitions	*Granted*	*Denied*
Civil	438	41 (9%)	397 (91%)
Criminal	205	19 (9%)	186 (91%)
Totals:	643	60 (9%)	583 (91%)

TABLE XXVI. CERTIORARI: 1999			
	Total Petitions	*Granted*	*Denied*
Civil	411	37 (9%)	374 (91%)
Criminal	210	27 (13%)	183 (87%)
Totals:	621	64 (10%)	557 (90%)

TABLE XXVII. CERTIORARI: 2000			
	Total Petitions	*Granted*	*Denied*
Civil	408	31 (8%)	377 (92%)
Criminal	215	18 (8%)	197 (92%)
Totals:	623	49 (8%)	574 (92%)

TABLE XXVIII. CERTIORARI: 2001			
	Total Petitions	*Granted*	*Denied*
Civil	378	28 (7%)	350 (93%)
Criminal	210	13 (6%)	197 (94%)
Totals:	588	41 (7%)	547 (93%)

With the court's certiorari performances of the individual years adumbrated, it is possible to mark cumulative distinctions between civil and criminal cases. Thus, information extracted from the above tables yields the following focus exclusively upon the supreme court's responses to petitions for certiorari in civil cases.

TABLE XXIX. CIVIL CERTIORARI: 1993-2001			
Year	*Total Petitions*	*Granted*	*Denied*
1993	505	39	466
1994	554	30	524
1995	661	61	600
1996	536	41	495
1997	521	62	459
1998	438	41	397
1999	411	37	374
2000	408	31	377
2001	378	28	350
Totals:	4,412	370 (8%)	4,042 (92%)

Table XXIX reveals that petitions for certiorari in civil cases totaled 4,412 over the nine-year period. That total, it results, constituted seventy-two percent of all certiorari petitions (6,138) received by the court during that period. For the last decade, therefore, the primary context in which the court considered certiorari, and by a large margin, was that of civil litigation. Interestingly, the table also indicates that civil certiorari petitions have tapered off in recent years. Initially increasing from 505 (in 1993) to 661 (in 1995), the yearly total then steadily dropped to 378 in 2001. A decrease of 283 cases over a six-year period (1995-2001) represents a marked decline in the petitioning practices of civil litigants. Perhaps that decline resulted from the court's stringent approach to the process. Thus, the court's "petition granted" percentage ranged from five percent (in 1994) to twelve percent (in 1997), and averaged only eight percent over the entire nine-year period. A decade's "certiorari denied" percentage of ninety-two percent was hardly calculated to inculcate perceptions of civil

certiorari success. If the court intended a message via those denials, the records may indicate a communications achievement.

The tables for the individual years similarly isolated the court's certiorari activity in criminal cases.

TABLE XXX.
CRIMINAL CERTIORARI: 1993-2001

Year	*Total Petitions*	*Granted*	*Denied*
1993	158	3	155
1994	171	9	162
1995	174	13	161
1996	182	10	172
1997	201	16	185
1998	205	19	186
1999	210	27	183
2000	215	18	197
2001	210	13	197
Total:	1,726	128 (7%)	1,598 (93%)

Table XXX illustrates that petitions for certiorari in criminal cases equaled 1,726 over the nine-year period. That total, accordingly, amounted to twenty-eight percent of all certiorari petitions (6,138) received by the court during that period. For the last decade, therefore, criminal litigation has accounted for only a small fraction of the court's certiorari diet. In contrast to the civil sphere, however, the table also reveals that criminal certiorari petitions have modestly increased over the period of record. Beginning with 158 cases (in 1993), the yearly total has steadily risen to 215 and 210 in the years 2000 and 2001, respectively. A similarly modest increase has marked the court's granting of criminal certiorari petitions. From a minuscule rate of three percent in 1993, the

"certiorari granted" figure rose to thirteen percent in 1999 and settled back to eight percent and six percent most recently (in 2000 and 2001, respectively). Nevertheless, a decade's average "certiorari denied" percentage rate of ninety-three percent scarcely serves as a phenomenon of enticement for criminal litigants.

Finally, a composite (civil and criminal) table summarizes the supreme court's complete certiorari experience.

TABLE XXXI.
CERTIORARI COMPOSITE (CIVIL & CRIMINAL) 1993-2001

Total Certiorari Petitions	*Total Petitions Granted*	*Total Petitions Denied*
6,138	498 (8%)	5,640 (92%)

Over the most recent nine years of its recorded experience, the supreme court received a yearly average of 682 certiorari petitions and granted eight percent of those petitions.[47] These results find perspective when compared with records of the court's performance during a similar but earlier period (1978-88) of its certiorari activity. A summary of the earlier records concluded that the court "receives about five hundred to six hundred petitions for certiorari each year, and grants approximately fifteen to twenty percent of them."[48] The promptly protruding point of contrast fastens, of course, upon the court's "certiorari granted" percentages of the two periods.

TABLE XXXII.
PERCENTAGE OF CERTIORARI PETITIONS GRANTED

Years	*Average Petitions Granted*
1978-1988	15%-20%
1993-2001	8%

[47] Clerk's Computer Records, *supra* note 45.

[48] Harold N. Hill, Jr., *Getting Certiorari Granted*, 28 GA. ST. B.J. 90, 90 (1991) (citing "Annual *Caseload Analysis of the Supreme Court of Georgia, 1978-88*, available in the Office of the Clerk").

That contrast reflects a plunge in petitions granted of approximately fifty percent from one recorded period to the other, periods separated by only five years. A decline of that proportion, over so brief an interval, would appear to suggest far more than mere happenstance. Possibly it suggests a present court increasingly concerned with controlling its discretionary workload.

IV. CONCLUSION

A myriad of foundational facets distinguish the Supreme Court of Georgia as the legendary institution that it is. No facet looms more foundational than the court's decision of the cases that appear before it. Although the volume of such cases lies largely beyond its control, two exceptional procedures afford the court a measure of functional discretion. Those procedures, "Rule 59" and "certiorari," claim prominence, therefore, in profiling the court's dispensation of law and justice.

Rule 59 derives from the supreme court's own rule-making prowess, it is limited to civil cases, and it applies only when the court affirms the judgment under review. Upon the court's additional discovery of a prescribed "circumstance," the Rule excuses the court from accompanying its affirmance with an opinion. Since 1982, it has excused the court from writing 1,589 opinions. Unpublished records of the last twelve years reveal 612 Rule 59 applications in cases dealing with ten specified subjects. Those records also denote, however, a drastic drop in Rule 59 dispositions during recent years. The present court bodes far less likely than its predecessors, it appears, to refrain from a written elaboration of its decisional exercises.

The supreme court's review of decisions by the court of appeals (both civil and criminal) is governed by the Georgia Constitution, and depends upon the grant or denial of a petition for certiorari. The court enjoys virtually unlimited discretion in considering the petition, and it has exercised that discretion on 6,138 petitions over the past nine years. Unpublished records detail those exercises for each year, delineating intriguing variations between civil and criminal cases. Overall, the court's willingness to grant the writ has constricted markedly during recent years, with determinations of

"certiorari granted" plunging to a mere eight percent of the total petitions considered. The present court, it appears, bodes fifty percent less likely to grant certiorari than its predecessor courts of the recent past.

In summary, the exceptional procedures here profiled have significantly impacted the supreme court's workload over a period of time. To the extent they provide the court with a means of lightening that load, they constitute historic tiles in Georgia's judicial mosaic. Records etch a distinct institutional receptiveness to the opportunity of agenda control, and reveal intriguing details of its legacy. Against that background, they also depict a present court suppressing one technique (Rule 59) but advancing the other (certiorari). The future of that tendency, and its ultimate results, are issues that appeal, appropriately, to the future.