About counting cases

Our friends at At the Lectern kindly linked to our SCOCA year in review 2025 and mentioned different sources of opinion counts, noting that "Stanford Law School's Supreme Court of California Resources has what seems to be an authoritative list of 61 opinions for the 1987 calendar year." Again, we concur and dissent, but explaining the differences will show why everyone can be somewhat right-and-wrong here.

First, we concede a typo on our part: our count for cases decided by majority opinion in 1987 is 38 (not 37) and the article has been updated. Next, we should have been clearer about what we were focusing on (majority opinions, not cases decided by any means), and why there are valid differences in count among observers and between the conclusions one might draw from those counts.

Our key output metric for the modern court is majority opinions. In calendar year 1987 we count the court disposing of 62 matters on the merits with citations: 38 by majority opinion, and 24 were per curiam. Yet the current court rarely issues per curiam decisions; the most recent in our list is over a decade ago in June 2015 (*People v. Scott* (2015) 61 Cal.4th 363) — and it was the only such decision that year. Consequently, SCOCAblog's annual tally focuses on merits decisions by majority opinion. That's the critical factor for our comparative analysis because majority opinions are the current benchmark and because those are the common factor between present and past courts.

That's especially so when making an apples-to-apples comparison between the 1987 and 2025 courts; if the 2025 court had issued so many per curiam opinions we'd be having a very different conversation. Nearly all the 1987 per curiam decisions were published after the departure of the three justices ousted in the 1986 retention election. *People v. Wright* (1987) 43 Cal.3d 487 seems to be the last case with signatures by justices Bird, Grodin, and Reynoso — in a batch of cases all issued on their last day in office. The next case (*In re Jackson* (1987) 43 Cal.3d 501, dated February 2, 1987) notes that only the four remaining justices (acting Chief Justice Broussard, and associate justices Mosk, Lucas, and Panelli) participated. The ratio of majority opinions to per curiam decisions that year shows how impaired the court

was in 1987; the absence of that dynamic today requires some nuance beyond comparing bottom-line numbers. And the farther back one goes the more nuance is required. For example, in the early 1900s the court used a department system — should those cases count in an annual decision tally when comparing with today's court? Probably not. That leaves en banc majority opinions as the yardstick.

Nor are we sure that SCOCAL's count of 61 opinions in 1987 is any more authoritative than ours. For example, SCOCAL's list appears to be missing *In re Strick* (1987) 43 Cal.3d 644, so their tally for 1987 should be 62, not 61. And it's a less comprehensive list: it starts with *People v. Murphy* (1934) 1 Cal.2d 37 and does not include 2025. Our data goes back farther to 1900, but even that fails to capture the whole extent of the seven-member court, which began in 1879. And who knows how many cases the three-member court decided in its first year in 1850? That, plus our point about different counting methods, makes anyone's ultimate conclusions somewhat suspect. Of course, should the court alter its longstanding practice and start disposing of cases on the merits with cursory per curiam opinions, we will change our process accordingly. But for now, we are confident that our data view fairly represents the court's work, and we don't perceive there to be a material difference between our analysis and the fine work by At the Lectern.

That's because everyone can agree that in 2025 the court published at or near a modern record low number of majority opinions (or *decisions* however you define that). That we're having this discussion at all is the real headline, and aside from whether the recent year was the least or second-least productive of this century (or ever), the takeaway is that the court's output is historically low and looks set to go even lower by anyone's count. That makes this an opportunity to zoom out and think about whose opinion matters here. Whether commentators count by term or year, or include or exclude per curiam opinions, we are only trying to quantify something to better understand it because it's important to us. But unlike baseball, where players can be voted into the hall of fame, how we count things in our parlor game has little value. Only those who work on the fifth floor at 350 McAllister Street can decide how the court rates against its own past performance. With this context in mind, we hope that our method proves helpful.

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