BREAKING: Law bloggers mostly agree with each other

[Editor's note: this is all in good fun.]

Our friends at At the Lectern fired their latest salvo in the Great Blog Battle of 2026, which provides an opportunity to explain why per curiam decisions deserve special attention when parsing the California Supreme Court's annual decisions.

Majority opinion output matters most for assessing the current court's productivity because that's how it decides the overwhelming proportion of cases it resolves on the merits. At the Lectern is correct, of course, that a per curiam decision is still a merits resolution, however summary it may be. But the reasons the court may have for writing with no individual author matter enough that per curiam decisions should be counted separately, and maybe excluded when comparing current and past courts. If for example half of the court's decisions in 2026 are per curiam, no one would count 2026 as a normal year and move on — it would be a sign of *something*, and much debate would ensue about *what*.

That's because although the use of per curiams (and their relative import) can vary and changes over time, a per curiam disposition generally indicates something unusual, especially in the modern era. In its earliest U.S. Supreme Court uses, the per curiam decision was presented "by the Court" to express a result that enjoyed full institutional support.[1] The subtext was that the case was so easily resolvable that it required only a brief decision that anyone could draft and that no one need sign.[2] But more recently the Court has used per curiam decisions "as an alternate method of conveying the institutional unity that the Court clearly lacked."[3] Thus, in the high court a per curiam opinion suggests that something motivated the court to assign no individual author, especially if it is brief.[4]

Varied circumstances similarly explain the California Supreme Court's use of per curiam decisions over time. In the early 1900s the court's overwhelming docket, along with frequent seat vacancies, encouraged efficiency over individual expression

and resulted in many years with hundreds of opinions with a high proportion of per curiams. Similar conditions (at far lower volume) partly explain the slate of per curiam decisions in 1987, where the court was (as At the Lectern notes) employing its practice of always resolving discipline matters with per curiam decisions. Indeed, the volume of discipline cases at the time explains why they were amenable to routine per curiam disposition, and why we don't see a similar volume of per curiam dispositions today.

The court was relieved of initial responsibility for attorney discipline when the legislature amended the State Bar Act and created the State Bar Court in 1989. Before then the court was the sole authority for — and had to hear — all discipline matters. Chief Justice Lucas gets partial credit for prompting the change when, soon after becoming chief justice, he appointed a Select Committee on Supreme Court Procedures to study structural reforms. One of the committee's recommendations was to transfer attorney discipline cases to a new dedicated court. The legislature was also looking at reforms, which led to adopting Senate Bill No. 1498 during the 1987–88 legislative session, creating the new discipline court.[5]

Before that change, attorney discipline cases were a significant part of the court's regular work. For example, "Between 1980 and 1987, the court issued opinions in between 7 and 20 State Bar matters each year, and averaged 13 [discipline] cases per year."[6] That's no longer so: since then the court conducts independent review of bar discipline recommendations, and the relevant court rule provides for reviewing attorney discipline cases only in certain limited circumstances. Consequently, the court now rarely grants review in discipline cases, with the result that decisions on discipline matters are equally rare. That allows the court to handle them as regular cases, with authored opinions, rather than on the unaccredited volume basis of the past.

This is why it's rational to include discipline decisions in the opinion count today but exclude them from 1987. The court treats them differently, so we should too. In the modern court before 1989 per curiam opinions were largely exclusive to discipline cases — and soon after divesting the discipline cases the court mostly stopped using per curiam decisions for anything. Since 2000 there are only a handful of per curiam

decisions, with an array of potential explanations:

- *People v. Scott* (2015) 61 Cal.4th 363 (automatic appeal)
- *In re Glass* (2014) 58 Cal.4th 500 (admission)
- *In re Aguilar* (2004) 34 Cal.4th 386 (discipline for contempt)
- *People v. Snow* (2003) 30 Cal.4th 43 (automatic appeal)
- *In re Gossage* (2000) 23 Cal.4th 1080 (admission)

That there are perhaps half a dozen such decisions in the past 25 years supports our point about per curiams being such a negligible part of the court's current output that they should be evaluated separately from authored majority opinions when comparing with the past. As At the Lectern notes, "opinions for about the last 25 years have usually not been per curiam," illustrating the significance of the change. Before the State Bar Court existed discipline cases were second-tier matters — now they receive the court's full attention. These substantive, structural, and process factors all suggest that per curiams were their own category before 1989. That leaves authored majority opinions as the common factor for comparison.

Finally, the year we are all using as the comparison here is significant. The court in 1987 arguably reached its modern nadir: embattled politically, beset by a self-inflicted investigation, and bedeviled by internal divisions. All that doubtless impacted the justices' ability to decide cases, as reflected in their smallest (or second-smallest) output that year. None of that describes the current court — yet here we are, comparing its performance with the calamity of 1987. And the solons of At the Lectern are predicting that 2026 will "yield decisions in only 35 or 36 cases, an historic low." If that proves right, to what will we compare this year?

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1. Laura Krugman Ray, The Road to Bush v. Gore: The History of the Supreme Court's Use of the Per Curiam Opinion (2000) 79 Neb. L. Rev. 517, 519–520.

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2. *Id*; see also Stephen L. Wasby, The Per Curiam Opinion: Its Nature and Functions (1992) 76 Judicature 29, 30 (“First used only to indicate cases with ‘indisputably clear’ substantive law, per curiam rulings came to be used for orders in original jurisdiction cases, dismissals of appeals for want of a substantial federal question, and obviously moot cases.”). ↑

3. Ray, 79 Neb. L. Rev. at 576; see also Wasby, 76 Judicature at 30 (the Court uses per curiam opinions “when the justices are very badly divided” and “the opinion is limited to policy on which the justices can agree,” which is “sometimes no more than the judgment and the basic holding”). Note that these sources may not reflect the Roberts Court’s use of per curiam rulings, which further illustrates our point about change over time. ↑

4. See, e.g., *People v. Crenshaw* (2025) 116 Cal.App.5th 1169 (disparaging the authoritative value of a two-page per curiam opinion). ↑

5. *In re Attorney Discipline System* (1998) 19 Cal.4th 582, 611. ↑

6. *Id*. at 612. ↑