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The Peculiarity of *Per Curiam*: In the Georgia Supreme Court

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SPECIAL CONTRIBUTIONS

The Peculiarity of *Per Curiam*: In the Georgia Supreme Court

by R. Perry Sentell, Jr.*

I. INTRODUCTION

On notable occasions, the format of a message acquires a heritage equal in significance to the message itself. Because of its history, familiarity, intrigue, or sheer repetition, an account's style of presentation may serve not only to characterize the account, but also to condition its recipient to a pre-ordained demeanor of expectation. Style and substance are thus comingled, and the medium subsumes the message.

It should come as no surprise that the described phenomenon claims a special affinity to the law and to legal "messages." Much of the information transmitted in law and in legal circles projects history, familiarity, intrigue, and repetition, and its accounts bear highly distinctive styles of communication. Pivotally dependent upon a process of revelation, law defers to no other professional domain in its preoccu-

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pation with definitive prerequisites of presentation. The "legal literature" of forms, reports, and assorted other prescribed species of documentation assumes a medium of unparalleled significance.

One of the law's most unique styles of presentation is the *per curiam* judicial opinion. When an appellate court reports its judgment in a case via a *per curiam* opinion, it employs a format of legendary status. Resoundingly rooted in history and popularly perpetuated by custom, the *per curiam* opinion constitutes a fixture of jurisprudential communication. Few "forms" of legal literature are more familiar.

Upon closer examination, however, a second feature of this fixture also provokes observation. Despite its air of comfortable familiarity, the *per curiam* judicial opinion concurrently emits an aura of frustrating imprecision. Among the disquieting aspects defying neat categorization are the precise origins of the technique, its practical as opposed to technical definition, possible prerequisites for its utilization, and both the frequency and circumstances of its traditional invocation. How can a format so familiar be at once so illusive?

II. IN GENERAL

The reference sources leave much to be desired. As for origin, the dictionaries recount only that "*per curiam*" derives from the Latin and receives a literal English translation into the phrase, "by the court."[1] That phrase "distinguish[es] an opinion of the whole court from an opinion written by any one judge."[2] Even this tentative sketch, however, appears flawed. An "opinion of the whole court" is necessarily written by some "one judge" on the court; thus, the proffered definition falters at its inception. Perhaps this difficulty accounts for the alternative description: "[A] brief announcement of the disposition of a case by [a] court not accompanied by a written opinion."[3] From this perspective, the distinction goes to the degree of elaboration with which the court treats the case.

Another descriptive endeavor employs a bit more care: The term "*per curiam*" "appears in opinions not attributed to any one member of the court."[4] Replacing the emphasis upon authorship, therefore, is the point of attribution: The view expressed by the opinion is that of the court

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1. BLACK'S LAW DICTIONARY 1136 (6th ed. 1990).

2. *Id.* "Sometimes it denotes an opinion written by the chief justice or presiding judge." *Id.*

3. *Id.*

4. A DICTIONARY OF MODERN LEGAL USAGE 125 (2d ed. 1995). "*By the court* is merely an English translation of *per curiam*, a term that appears in opinions not attributed to any one member of the court." *Id.* (emphasis in original).

and not that of an individual judge. At the same time, this resource cautions, "*per curiam* opinions should not be construed as exhibiting greater unanimity among members of the court than a signed opinion without a dissent."[5] Although the attribution reflects no single judge, therefore, neither does it imply particular agreement among the judges.[6]

Scholarship on the *per curiam* opinion is likewise largely lacking. An earlier "critique" on the format's employment by the United States Supreme Court described the device as "short, often one-sentence statements of the result, with or without citation of authority."[7] On the one hand, the technique offers a "feasible means" of affording adjudication finality "to as many as possible of the numerous litigants who demand it."[8] On the other hand, the Court's *per curiam* practice "has given rise to a number of problems."[9] The style's brevity of disposition creates a pervading "uncertainty," which in turn bewilders litigants,[10] legislatures,[11] and lower courts.[12] Moreover, within the Court itself, there appears disagreement "as to which decisions ought to be accorded summary treatment."[13]

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5. *Id.*

6. *Id.* The reference observes that the phrase's immediate future appears assured. "Though it is a LATINISM, *per curiam* is a useful and well-established one: it is not likely to be discarded any time soon." *Id.* at 126 (emphasis in original).

7. Note, *Supreme Court Per Curiam Practice: A Critique*, 69 HARV. L. REV. 707, 707 (1956).

8. *Id.*

9. *Id.* at 722.

10. *Id.* at 723. "It would seem that the Court might by rule provide a clear warning to counsel that such results are likely to ensue." *Id.*

11. *Id.* at 722. "Legislatures may be unable to effectuate their policies because of uncertainty as to the reason for the Court's decision." *Id.*

12. *Id.* "For the lower court judge the difficulty has centered principally around uncertainty as to the scope of the Court's decision from the standpoint both of its meaning and of its precedential effect." *Id.*

13. *Id.* at 723.

> This disagreement raises problems of the extent to which the majority of the Justices should yield to the desire of a minority to hear oral argument when the case is appealable as of right; and generally of the desirability of reversing the highest court of a state without hearing or opinion.

Id. The "critique" offered the following advice for reform:

> Clarification of the meaning of per curiam decisions could be obtained without the need for an increase in full opinions. In many cases confusion could be avoided by the addition to the per curiam decision of a few sentences by way of explanation; by closer attention on the part of the Court to its citation of authority in per curiam opinions, and by citation to specific pages of prior decisions; by a sentence of explanation as to why a prior decision is regarded as controlling when this is not readily apparent; and, finally, by occasional adoption of portions of the opinion

A later review finds that the Supreme Court "has changed the use of the per curiam label over time," rendering it difficult "to define what is meant by a per curiam opinion."[14] For example, "[c]ounter to conventional understanding, . . . per curiams are not characteristically consensus decisions."[15] As for the functions served by such opinions: "They decide less controversial cases in a cost-effective manner; provide prompt direction to lower courts to follow recent decisions; rapidly answer obvious legal questions that, nonetheless, represent important

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of the court below where that opinion is sufficiently in accord with the Justices' views.

Id.

Other early references include Felix Frankfurter et al., *The Business of the Supreme Court at October Term, 1929*, 44 HARV. L. REV. 1 (1930):

> Per curiam is appropriately used, presumably, only if the record (1) fails to raise a federal question, (2) lacks in some technical prerequisite, like finality of judgment below, (3) discloses an issue palpably frivolous or one lacking in substantiality because controlled on the merits by settled doctrine . . . . But in current practice, the authorities cited by the Court in its memoranda seldom control the merits of the controversy. They are merely references to other cases enforcing the jurisdictional postulate that the absence of a substantial federal question in itself precludes jurisdiction. Such citations are at once needless and confusing. *Per curiams*, like other decisions, serve a double purpose: as an adjudication between the parties and as a pronouncement of law. They are guides to the bar, to the lower courts, to the Supreme Court itself. If a *per curiam* announces that a doctrine is no longer assailable, the public, the profession, and the bench ought to be advised what the doctrine is.

Id. at 8-11 (citations omitted). *See also* Albert M. Sacks, *Foreword: The Supreme Court, 1953 Term*, 68 HARV. L. REV. 99 (1954):

> The summary [per curiam] opinion is one of the various processes whereby the Court seeks to assure that time and effort of the Justices are allocated in relation to the importance and complexity of what is to be decided. As such, the summary opinion has obvious utility in the efficient functioning of the Court, and there can be no question of its propriety. There remains, however, the problem of its appropriate use, and, more specifically, whether the Court is extending the use of the summary opinion to cases where fuller exposition of views is warranted.

Id. at 99.

14. Stephen L. Wasby et al., *The Per Curiam Opinion: Its Nature and Functions*, 76 JUDICATURE 29, 38 (1992).

> Use of a per curiam ruling rather than a signed opinion may indicate that a case is considered routine or noncontroversial, at least to the majority deciding it. Or a case may involve a case-specific, factual situation the Court feels it cannot correct without explanation; the peculiar nature of the facts or procedures in the case result in an unsigned opinion with less precedential effect than a fuller signed opinion. A per curiam disposition may also be used to signal that the outcome in the case is obvious and should receive prompt compliance . . . .

Id. at 36. The study also records a decrease in the Court's use of such opinions in recent years. *Id.* at 33.

15. *Id.* at 38.

issues; and extend major decisions incrementally."[16] Contrarily, expressed concerns include fears that the lack of full consideration may lead to "bad decisions"; that *per curiam* opinions may provide poor communication with lower courts; and that they convey inadequate guidance to judges resistant to the Supreme Court's decisions.[17] Finally, the review laments that "remarkably little work has been done to clarify [the per curiam opinion's] nature and uses."[18]

When the focus is retracted from the Supreme Court to other appellate tribunals, the appraising literature reveals a striking stand off in analytical assessments. One view grudgingly concedes the potential value of the *per curiam*, but decries its deficiencies: "In its proper place, [the *per curiam*] serves a legitimate purpose as a tool in the appellate arsenal. But it can also be an evasive, if not an abusive device . . . ."[19] Under this view, appellate courts commit serious error in extending the *per curiam* opinion beyond the dictionary context when all the judges concur on questions so clear as to require no explanation.[20] Any other utilization of the format runs counter to the precept of "public scrutiny": It thus fosters judicial misconduct, defies evaluative appraisal, defeats analytical jurisprudence, and forestalls legal advancement.[21] When, incredulously, a *per curiam* opinion and a dissent appear in the same case, the result approaches folly: "It is not evident how a decision is 'by the court' where part of the court disagrees with the decision and takes an opposing position."[22] In summary, "[t]he per curiam without explanation represents government by edict, typical of a monarch of whom no explanation may be asked, characteristic of the imperial 'ukase,'"[23] and it "does not belong in a democracy."[24] Finally, "[w]hat

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16. *Id.*

17. *Id.*

18. *Id.* at 29.

> The decision to use the per curiam label is made by the justices in conference. This is unlike the situation in the federal courts of appeals, where the decision whether to sign an opinion or to issue it per curiam is made by the judge assigned to write the opinion.

Id. at 31.

19. Tobias Weiss, *What Price Per Curiam?*, 39 TRIAL LAW. GUIDE 23, 23 (1995).

20. *Id.* at 25. "The literal or dictionary meaning of the Latin phrase per curiam, 'by the court,' offers little insight into the use of per curiam dispositions." *Id.*

21. *Id.* at 24. "The courts, as the servants of the people, must be amenable to public scrutiny. For that purpose, judicial action must not only be open but must also be explained. Anything less, offers the temptation of abuse, if not evasion." *Id.*

22. *Id.* at 27.

23. *Id.* at 30. "'Ukase' is defined in Webster's New International Dictionary (2d ed.): 'In Russia, a published proclamation or imperial order, having the force of law.'" *Id.* at 30 n.48 (quoting WEBSTER'S NEW INTERNATIONAL DICTIONARY 2754 (2d ed. 1959)).

price per curiam? As to the ukase per curiam, it is justice of impaired quality, and a loss of respect for and confidence in the courts, with a possible reaction outside the court system."[25]

At the other extreme, there is the position that signed judicial opinions are "obsolete and counterproductive"[26] and that the "intellectually honest approach requires [the designation of] all opinions from intermediate courts of appeal 'per curiam.'"[27] Under this view, the identified judicial opinion constitutes an unhealthy manifestation: It derives purely from "judicial ego," and its ramifications are "dysfunctional."[28] In contrast, the *per curiam* opinion "is a part of the American heritage from English law. It has its roots in that period of English law when opinions were not only anonymous, but also sometimes represented the feelings of only a majority of the court, with no dissent permitted."[29] Thus, the English Privy Council announced each decision as "the decision of the whole" and "every opinion was per curiam and without dissent."[30] In the United States Supreme Court, Chief Justice John Marshall instituted the issuance of "a single, collective opinion for the entire Court," but then regrettably erred in determining to sign those composite opinions.[31] Supreme Court practice aside, "an unfortunate by-product of the personally ascribed opinion has been a deterioration in the institutional diligence on some courts of appeals, leaving the judge who is assigned the opinion to write approximately as he or she

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24. *Id.* at 30. "No agency of a democracy, the judiciary included, should be permitted to act in that manner." *Id.*

25. *Id.* at 36.

26. Richard L. Nygaard, *The Maligned Per Curiam: A Fresh Look At An Old Colleague*, 5 SCRIBES J. LEGAL WRITING 41, 41 (1996).

27. *Id.* at 50.

> Appellate judges, however, must cooperate . . . That is why it is such an anomaly that an intermediate-appellate-court opinion, which speaks for the court, is nonetheless signed and personalized by a judge simply because he or she was assigned to write it. Often the result is that appellate judges think of "their" opinions rather than opinions "by the court."

Id. at 41.

28. *Id.* "Opinions are the product of a consensus and should represent the composite view of a court; they should not be the clone or scion of their authors." *Id.* at 43.

29. *Id.* at 43-44. "Publication of signed opinions, now an accepted and familiar characteristic in American reporters, was not done in either the English or the American courts when we declared our independence from England." *Id.* at 44.

30. *Id.* "Indeed, Council rules forbade anyone to reveal individual votes from the conference. An opinion was that of the court, whether it was unanimous or decided by the margin of one vote." *Id.*

31. *Id.* at 45. Marshall concluded that "by canvassing the views of the Justices and issuing a single, collective opinion for the entire Court, the institution of the Court would be enhanced." *Id.*

pleases as long as the result represents the conference position."[32] The prescribed remedy is obvious: "[T]he use of per curiam opinions by intermediate courts of appeals would preempt the 'new lords, new laws' approach to case analysis, make each opinion currency of equal value, and curb the temptation to remap old territory merely because new mapmakers, using the same old methods, have come along."[33] Rather than lower individual standards and personal accountability, "the per curiam would inspire greater institutional responsibility."[34] In summary, "Judge Per Curiam [should be elevated] to the well-deserved and venerated status of a full-fledged and respected–and indeed the predominant–colleague on intermediate courts of appeals."[35]

Although strikingly limited in scope, therefore, both dictionary and scholarship reveal the settled but unsettling complexion of the *per curiam* judicial opinion. Of Latin derivation, English translation, and American adoption, the famous format both comforts and consternates. Its status as a familiar convention of legal presentation is surpassed only by its concurrent nature of confounding illusiveness.

In concept, the *per curiam* connotation suggests the predominating qualities of oneness, unanimity, solidarity, anonymity, succinctness, conclusiveness, brevity, agreement, approval, routine, simple, and noncontroversial. Applied to a judicial opinion, those qualities manifest a single, unanimous, unidentified announcement of the court's judgment—minus dissent or elaboration—in the relatively rare case viewed by all the judges as indisputably controlled by a clear legal principle. Conjecturally, this rarity might most likely occur when an appellate court summarily affirms a lower court's decision, perhaps on a simple procedural point, and in a noncriminal setting.

In practice, as the writers have evidenced, appellate courts employ the *per curiam* opinion beyond its logical boundaries. Apparently unre-

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32. *Id.*

33. *Id.* at 46. "The judgment of equal persons would be more readily acceptable if pronounced in the name of the court, not a person on it." *Id.*

34. *Id.* at 49.

35. *Id.* at 50.

> The most famous opinion-writer in the history of American courts, "PER CURIAM," has gotten a bum rap. Per Curiam has been accused of writing the opinions for the court, when out of cowardice others do not wish to. Per Curiam has been accused of writing less-than-thorough explanations in simple affirmances. Per Curiam has been accused of being the handmaiden of law clerks . . . . But I think the intellectually honest approach requires that we designate all opinions from intermediate courts of appeal "per curiam." After all, they are simply opinions by the court.

Id.

strained by conceptual connotations, the courts utilize the technique in contexts contraindicated by its predominating qualities, and they do so far more frequently than those qualities would suggest. As a result, the venerable format finds itself mired in confusion and suffused in uncertainty. If its distinctive characteristics do not determine its utilization, what are its generating circumstances? Do those circumstances hold constant over a term of years? How often is the format employed, and does its rate of employment vary over time? If it is indeed bereft of its historic condiments, does the *per curiam* opinion play a viable role in current jurisprudential communication?

Such answers as are discoverable might best be sought within the confines of a single jurisdiction and focusing upon the practices of a particular appellate court.

III. IN GEORGIA

A. *Preliminary*

1. Method. The computer reveals that the phrase "*per curiam*" appears in thousands of the Georgia Supreme Court's opinions.[36] This vast volume of references obviously dictated a measure of selectivity, an approach for locating illustrative cases appropriate for study. The method (arbitrarily) formulated simply focused upon groups of cases decided at more or less regular intervals across the span of the relevant judicial activity. Although constituting but a minuscule proportion of the whole, those selections nonetheless offer a revealing perspective on the Georgia Supreme Court's experience with the *per curiam* opinion.[37]

The identified case clusters appeared across the following span: (1) a group of 100 cites starting in 1846 and counting forward; (2) a group of 100 cites starting in 1910; (3) a group of 100 cites starting in 1950; (4) a group of 100 cites starting in 1980; and (5) a group of 100 cites starting in 2000 and counting backwards. These groupings thus produced a total of 500 citations to "*per curiam*" references by the Georgia Supreme Court. They reveal the court's earliest 100 cites, its most recent 100 cites, and three clusters of 100 cites each at selected

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36. For suffering my numerous requests and conducting all computer searches treated in this study, I am deeply grateful for the patience, the industry, and the enduring kindness of Ms. Carol Watson, the University of Georgia Law Library's "Reference/Computing Services Librarian." She, of course, bears no responsibility for my treatment of those search results.

37. Although minuscule in proportion, the total selected cases constituted a sizeable corpus for consideration.

intervening junctures.[38] In this fashion, the study provides a highly relevant and continuing chronicle of the court's *per curiam* usages.

2. Frequency Facets. A strikingly instructive initial revelation about those usages concerned their rates of frequency; i.e., the period of time covered by each of the randomly selected 100-case clusters. Thus, the first 100 cases ran from 1846 to 1892,[39] a period of roughly 46 years. The second 100 cases appeared between 1910 and 1916,[40] a period of roughly 6 years. The third 100-case cluster extended from 1950 to 1973,[41] a period of roughly 23 years. The fourth 100 cases began in 1980 and reached to mid-1981,[42] roughly 1.5 years. The final 100 cases ran from 1998 into 2000,[43] another period of roughly 1.5 years.

These are impressive findings: They reflect that the supreme court's *per curiam* utilizations have increased markedly over time. At the inception of its practice, the court required a period of 46 years to accumulate a total of 100 *per curiam* references. Currently, the findings portray, 100 *per curiam* references occur in less than 2 years. Finally, the total number of years consumed by all the case clusters is likewise noteworthy. The five groups of cases totaled a period of, roughly, 78 years. Of *per curiam*'s 154-year history (from 1846 to 2000) in the Georgia Supreme Court, the study directly touches 78 of those years. That period of assessment assures a realistic profile of Georgia's *per curiam* experience.

TABLE 1. The Georgia *Per Curiam* Sample Scenario

	No. of Citations	Years Covered	No. of Years
	100	1846-1892	46
	100	1910-1916	6
	100	1950-1973	23
	100	1980-1981	1.5
	100	1998-2000	1.5
Totals:	**500 cases**		**78 years**

38. Each of the 500 cases required individual examination and analysis.
39. June 1846 to January 1892.
40. January 1910 to February 1916.
41. June 1950 to October 1973.
42. January 1980 to April 1981.
43. October 1998 to May 2000.

3. Points of Ponder. As earlier observed, considerable conflict arises over the actual and perceived characteristics of the *per curiam* judicial opinion. Any study of the famous format, therefore, should acknowledge that conflict and attempt, at least, to place it in context. Such an effort requires attention to a number of analytical features in each of the scrutinized case groupings. Recurring reference to those features provides a degree of the uniformity prerequisite to meaningful comparative assessment.

What is the litigational context (civil, criminal, other) in which the Georgia Supreme Court typically employs the *per curiam* style of presentation?[44] Does utilization of the format most often result in affirming or reversing the actions under review?[45] Is the style reserved for the court's unanimous decisions, or can it accommodate dissenting opinions?[46] Does the *per curiam* author remain anonymous, or are there occasions for identification?[47] If *per curiam* resolution is (as often characterized) "adjudication without opinion," then what form of elaboration (memorandum, opinion, headnote, other) does the pronouncement assume?[48] Are *per curiam* utilizations more likely to resolve procedural or substantive aspects of the case?[49] These are all points for ponder in each of the dissected case groupings.

B. Georgia Supreme Court Per Curiams: First Sample (1846-1892)

From the first 100-case cluster of *per curiam* references, 7 cases were excluded from consideration. Those cases, rather than featuring *per curiam* opinions, simply referred to other cases containing such opinions. This "first sample" of *per curiams*, therefore, focuses upon a total of 93 cases.

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44. Whether a case constitutes a civil proceeding or a criminal prosecution is objective in nature and yields a definite conclusion.

45. Whether the appellate court affirms or reverses the actions below is generally capable of objective determination, and such an inquiry yields a definite conclusion.

46. Whether the opinion is a unanimous one or subject to dissenting opinions can be objectively determined and reported.

47. Whether authorship of the opinion is stated can be objectively determined and reported.

48. The answer to this inquiry can be somewhat subjective. For example, the difference between an "opinion" and a "memorandum" is one of degree (length of opinion, discussion of issue, extent of proffered analysis, etc.), and the matter is sometimes open to interpretation.

49. "Procedural" and "substantive" are also interpretative terms, and some amount of subjectivity may color the classification.

The Georgia Supreme Court's first *per curiam* opinion appeared in 1846, in the initial volume of its official reports.[50] The report described the litigation as a "claim case," a levy upon defendant's property for rent and involving the validity of a sale.[51] The report's style featured an anonymously formulated statement of the facts, a description of the jury's verdict, three "headnote" principles of law,[52] and the names of the respective attorneys.[53] Finally, there appeared the words "*Per* Curiam," followed by a single paragraph stating that prior named decisions controlled the resolution, that the trial judge committed error in his charge, and that a new trial would be forthcoming.[54]

This initial *per curiam* venture by the supreme court thus illumined the previously formulated six "points for ponder" in the following fashions: Its litigational context was "civil" in nature rather than "criminal"; it operated to reverse, rather than to affirm, the actions under review; the court was unanimous in its decision; the author of the disposition remained anonymous; the elaboration assumed the form of a memorandum rather than a more extensive opinion; and the decision turned upon substantive, rather than procedural, legal principles. Only time would tell whether these *per curiam* results would also characterize cases of the ensuing 46 years.

A review of those ensuing years not only captures the crucial characteristics, but also imposes a distinctive "first sample" imprint upon Georgia's *per curiam* profile. Although taking liberties in both simplifying and summarizing, the review's tabulated results suggest an emerging mosaic of intriguing proportions.

First, on the point of litigation context, the supreme court's first 93 *per curiam* exercises remained overwhelmingly "civil." Only nine of the cases assumed a "criminal" complexion.

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50. George S. Cameron & Co. v. Scudder, 1 Ga. 204 (1846).

51. *Id.* at 204.

52. These were in the form of the traditional West Publishing Co. "Keynotes."

53. 1 Ga. at 205.

54. *Id.* at 204-05. The following constituted the entire elaboration:

> *Per* Curiam.
>
> This case comes fully within the principles of the cases of *Eastman and Philbrick vs. McAlpin*; and of *John E. Davis and others vs. George W. Anderson and Brother*, decided at the present term of this court. For the reasons given in those cases, to which the learned reader is referred, it is considered and adjudged, that there was error in the charge of the court below, that a *bona fide* sale by an insolvent debtor, to a creditor for a pre-existing debt, is void under the act of 1818. Let a new trial be awarded.

Id. at 205.

Second, as for the *per curiam*'s operation upon the actions under review, reversals occupied a distinctly minority position. Thus, in 71 of the total 93 scrutinized cases, the supreme court's resolution affirmed the lower court's disposition of the matter.

Third, the most resounding message of the "first sample" review confirmed the status of the *per curiam* position in the case as one of complete unanimity. Not a single dissenting opinion marred any of the 93 *per curiam* dispositions of the period. In its original appearance, therefore, the historic format signaled complete concurrence among the supreme court's justices. As introduced, Georgia's *per curiam* stance exuded a position of zero tolerance for judicial disagreement.

Fourth, despite the previously recounted dictionary emphasis upon *per curiam*'s author anonymity and the absence of personal attribution, Georgia's initial embrace of the format stood in dramatic refutation. Study of the "first sample" 93-case cluster revealed a total of 13 instances in which the justice who authored the *per curiam* was identified.[55] Unaccountably, it appeared, Georgia perceived no necessary inconsistency between a presentation style at odds with personally ascribed judicial opinions and the identification of the *per curiam*'s author. No proffered explanation of the seeming enigma was forthcoming.[56]

Fifth, the extent to which the *per curiam* elaborated its position varied considerably over the course of the "first sample" period. Although the classification exercise is largely one of degree, it was possible to distinguish 19 "memoranda" during the period from 12 "opinions."[57] By

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55. Cases were classified "anonymous" when no justice's name appeared in either the statement of the facts of the case or in connection with the stated "*per curiam*" opinion. As for the cases classified "identified," the attributions were effected in various ways. For example, the report of *Nicholson v. State*, 2 Ga. 363 (1847), sets out preliminary information, headnotes, and then the following: "By the Court–Lumpkin, J., delivering the opinion." *Id.* at 363. Later in the report, the phrase "per curiam" appears when the judgment is announced. *Id.* at 365. For a different "identified" style, see *Carey v. Rice*, 2 Ga. 408 (1847), in which the report of the case begins with headnotes, followed by a description of the facts, and finally: "Per Curiam–Warner, J., delivering the opinion." *Id.* at 408-09. Again, see *Pendergrast v. Gullatt*, 10 Ga. 218 (1851), in which the report originates with headnotes, then a statement of the facts of the case, then: "By the Court–Lumpkin, J., delivering the opinion." *Id.* at 218-21. At the conclusion of the opinion, there is the phrase "Per Curiam–Judgment affirmed." *Id.* at 225.

56. Perhaps the individual justices of that day simply determined from case to case the format in which they would deliver their opinions.

57. For an example of the "memorandum" classification, see *Psalmonds v. Barksdale*, 3 Ga. 584 (1847), in which the report originates with a headnote and then concludes as follows: "PER CURIAM. It is ordered by the Court, that the above cause be dismissed, upon the ground of *non joinder* in the writ of error of the security on appeal." *Id.* at 584.

far the most popular form of the era, however, consisted of a "Syllabus by the Court." Indeed, in a total of 62 instances, this self-characterized "syllabus" elaboration, typically more extensive than either the "memorandum" or the "opinion," carried the case.[58] The Georgia Supreme Court apparently abhorred complete subscription to the "adjudication without opinion" description of the *per curiam* format.

Sixth, the "procedural-substantive" distinction represents yet another quandary of interpretation. An effort to exercise that discretion as prudently as possible, however, yielded a fairly clear determination. In a sizable majority of the scrutinized instances (by a margin of 69 to 24), the supreme court's earliest *per curiam* opinions served to resolve substantive aspects of the cases.

TABLE II. Georgia *Per Curiams*: First Sample (93 Cases)

Ponder Point		Number	Percentage
(1)	*Context:*		
	Civil	84	90%
	Criminal	9	10%
(2)	*Disposition:*		
	Affirm	71	76%
	Reverse	22	24%
(3)	*Unanimity:*		
	Unanimous	93	100%
	Dissents	0	0%
(4)	*Authorship:*		
	Anonymous	80	86%
	Identified	13	14%
(5)	*Elaboration:*		
	Opinion	12	13%
	Memorandum	19	20%
	Syllabus	62	67%
(6)	*Principle:*		
	Procedural	24	26%
	Substantive	69	74%

For an instance of the "opinion" classification, see *Weathers v. Doster*, 6 Ga. 227 (1849), in which the report first sets out the headnotes and then the phrase "Per Curiam." There then follows a two-paragraph discussion that explains the issue and gives a prior case as authority for the conclusion. *Id.* at 227-28.

58. For an example of the "syllabus" classification, see *Franklin v. State*, 85 Ga. 570, 11 S.E. 876 (1890), in which the report originates with a syllabus by the court. There then appears a statement of the facts of the case under which there appears both an opinion and an announcement of the judgment. For a different style, see *Gregory v. Gray*, 88 Ga. 172, 14 S.E. 187 (1891), which originates with a syllabus by the court, in the form of headnotes, followed by a description of the case. *Id.* at 172-74, 14 S.E. at 187-88.

C. Georgia Supreme Court Per Curiams: Second Sample (1910-1916)

The study's second sample time line moved to the conclusion of the first decade in the new century. Remarkably, no exclusions from this sample were necessary, for each of the selected cases featured a *per curiam* opinion. This treatment of "second sample" *per curiams*, therefore, focuses upon a total of 100 cases.

A review of these early-1900 case reports serves not only to confirm previously noted impressions, but also to mark several intriguing modifications. Both endeavors add significantly to the Georgia Supreme Court's tentative but developing *per curiam* jurisprudence.

First, the court's earlier proclivity for adopting the *per curiam* presentation style primarily in the civil context continued apace. Of the 100 adoptions reviewed at the second juncture, only 10 occurred in the domain of criminal law. *Per curiam*'s special affinity for civil dispositions thus maintained a striking presence in the Georgia corpus.

Second, likewise consistent with the findings of the initial sample, the *per curiam* opinion affirmed actions under review markedly more often than it overturned them. By a division of 74 to 26, the decisions of the second 100-case cluster upheld the lower court judgments on appeal.[59] As earlier conjectured, summary disposition may indeed coalesce more completely with an approving appellate demeanor.

Third, in a dynamic digression from the impressive pattern of first segment cases, the *per curiams* of the second sample no longer attained total judicial unanimity. Although the great majority (86 of 100) of *per curiam* opinions still spoke for the entire court, two glaring exceptional practices now emerged. First, in a total of 10 cases, the supreme court employed *per curiam* opinions to announce that its full bench of six justices was evenly divided on the issue under review.[60] Such equal

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59. Actually, one of the decisions counted as "affirm" consisted of the supreme court's instructions to the court of appeals.

60. For an example, see *Rogers v. Brand*, 133 Ga. 759, 66 S.E. 1095 (1910), in which the entire opinion (following one headnote) consists of the following:

> Per Curiam. This case came before this court upon a writ of error, and the same being for decision by a full bench of six Justices, who are evenly divided in opinion, Chief Justice Fish, Presiding Justice Evans, and Justice Lumpkin being in favor of a reversal, and Justices Beck, Atkinson, and Holden being in favor of affirmance, it is considered and adjudged that the judgment of the court below stand affirmed by operation of law.

Id. at 759, 66 S.E. at 1095-96.

divisions, "by operation of law," affirmed the lower courts' judgments. In an ironic overthrow of *per curiam*'s historic connotations of oneness, solidarity, and total concurrence, therefore, the format now found service in proclaiming polarizing factionalism and paralyzing dissension. The other digression was equally conclusive in reversing history. In 4 cases of the second sample, a *per curiam* opinion was followed by an explicitly styled "dissenting opinion." The dissent, moreover, carried the identification of the dissenting justice.[61] Once again, the staple characteristic of anonymous solidarity experienced rather traumatic rejection.

Fourth, as for the authorship of *per curiam* opinions themselves, the cases of the scrutinized period followed the questionable lead of initial practices. In a total of 10 instances, the report clearly identified each justice in the case and revealed his judgment on the issue presented.[62] Once again, Georgia perceived no necessary connection between a no-attribution format and a lack of anonymity.

Fifth, the elaboration practices of the second 100-case sample served to continue, even to accelerate, previously observed tendencies. Once again, both "opinion" and "memorandum" forms of expression appeared throughout the cases of the period under scrutiny. The overwhelming medium of *per curiam* communication remained, however, the "syllabus" presentation. Indeed, 85 of the 100 cases surveyed included the *per curiam* statement as a part of the self-styled "Syllabus by the Court."

Sixth, likewise confirming the indications of the initial sample, the *per curiams* of the early 1900s resolved, by a considerable majority, "substantive" issues in the reported cases. Although a somewhat subjective exercise, the "procedural" designation applied clearly to only 22 of the second sample's *per curiam* resolutions.[63]

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61. For an example, see *Western & A. R.R. v. Kinnamon*, 134 Ga. 217, 67 S.E. 799 (1910), in which, after the phrase "per curiam" and the announced judgment in the case, there appeared the following: "Beck, J., dissenting." *Id.* at 217-18, 67 S.E. at 799 (Beck, J., dissenting). "Being of the opinion that the charge complained of was authorized by the evidence, and that it was adapted to that portion of the evidence to which it relates, I dissent from the opinion of the majority of the court." *Id.* at 218, 67 S.E. at 799.

62. These were the 10 cases referred to above, in which the report employed a *per curiam* opinion to announce that the court was evenly divided and to list the justices and their respective positions. Although the *per curiam* itself was not signed, the judgments of all the justices were clearly revealed.

63. That, of course, left a total of 78 *per curiam* opinions that appeared to resolve substantive issues presented in the subject cases.

TABLE III. Georgia *Per Curiams*: Second Sample (100 Cases)

Ponder Point		Number	Percentage
(1)	*Context:*		
	Civil	90	90%
	Criminal	10	10%
(2)	*Disposition:*		
	Affirm	74	74%
	Reverse	26	26%
(3)	*Unanimity:*		
	Unanimous	86	86%
	Dissents	4	4%
	Divided	10	10%
(4)	*Authorship:*		
	Anonymous	90	90%
	Identified	10	10%
(5)	*Elaboration:*		
	Opinion	2	2%
	Memorandum	13	13%
	Syllabus	85	85%
(6)	*Principle:*		
	Procedural	22	22%
	Substantive	78	78%

D. Georgia Supreme Court Per Curiams: Third Sample (1950-1973)

From the third 100 cites to "*per curiam*" references, it was necessary to extract 5 cases not actually featuring *per curiam* opinions.[64] This "third sample," therefore, includes a total of 95 material cases, cases decided during the third quarter of the twentieth century.[65] Their results serve both to reaffirm and to reorder previously observed phenomena.

First, one instructive facet of this sample pointed to an increased prominence of criminal cases. Thus, criminal cases receiving *per curiam* disposition more than doubled in number from each of the first two scrutinized periods. Indeed, the percentage of criminal context *per curiams* in this third sample exceeded the total of those rendered in both

64. The opinions in those 5 cases only referred to other *per curiam* decisions.

65. The first tabulated case of this third 100-case cluster was decided in June 1950, and the last case of the survey period was decided in October 1973.

prior periods. For no explicated reason, the supreme court added substantially to its *per curiam* presence in criminal proceedings.

Second, another significant manifestation of the period was the notable decrease in *per curiam* affirmances, a drop from approximately 75% in each of the first two periods to roughly 60%. This decrease resulted, in turn, from two other developments. In a number of instances, the supreme court employed the *per curiam* format merely to transfer certain cases to the court of appeals. More importantly, the court markedly increased its number of *per curiam* reversals. In each of the first two study periods, *per curiam* reversals stood at roughly 25%; during the present period, those reversals rose to 36%. The implications from those findings may weaken the theory that clear, simple, unelaborated dispositions should most logically be expected when the court affirms the actions under review.

Third, the truly revolutionary revelation from the third 100-case cluster portrayed *per curiam*'s fervent embrace of the dissenting opinion. From a presence of 0% in the first sample, to one of 10% in the second, dissenting opinions during the third period appeared in 56% of the court's *per curiam* cases. The manifested disagreement, moreover, frequently operated at its most severe level; i.e., the *per curiam* opinion would express the judgment of four justices only to be immediately followed by a three-justice dissent.[66] The dissension ravaged the court not only in its *per curiam* dispositions of cases on the merits, but also in its *per curiam* decisions on the propriety of granting certiorari.[67] *Per curiam*'s conventional connotation of consensus appeared reduced to shambles.

Fourth, although the great majority of *per curiams* remained anonymous, a small persistent percentage of identified opinions maintained a presence throughout the third case sample.

Fifth, the "syllabus" format of *per curiam* elaboration, introduced so forcefully by the cases of the second survey period, continued its dominating presence.[68] Although "opinions," "memoranda," and even

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66. For an illustrative case appearing relatively early in the third survey period, see *Jackson v. Jackson*, 209 Ga. 85, 70 S.E.2d 592 (1952); for an illustrative case appearing relatively late in the period, see *Morgan v. Reeves*, 226 Ga. 697, 177 S.E.2d 68 (1970).

67. For an illustrative case appearing relatively early in the third survey period, see *Wedner & Roberts, Inc. v. Jones*, 213 Ga. 375, 99 S.E.2d 142 (1957); for an illustrative case appearing relatively late in the period, see *Law v. State*, 226 Ga. 591, 176 S.E.2d 80 (1970).

68. Additionally, the lengths of the syllabus opinions appeared to increase during this third survey period, thus, leading to further deterioration of the practical distinction between *per curiams* and regular opinions.

"headnotes" occasionally served the cause, they played a distinctly minor role as alternative forms of presentation.

Sixth, again, a clear majority of *per curiam* resolutions could be identified as substantive in nature. This could not disguise the fact, however, that procedural issues constituted the objects of attention in an increasing number of cases. Indeed, those instances rose from 26% and 22%, respectively, in previous periods, to an impressive 38% of the third 100-case cluster.

TABLE IV. Georgia *Per Curiams*: Third Sample (95 Cases)

Ponder Point		Number	Percentage
(1)	*Context:*		
	Civil	70	74%
	Criminal	25	26%
(2)	*Disposition:*		
	Affirm	56	60%
	Transfer	5	5%
	Reverse	34	35%
(3)	*Unanimity:*		
	Unanimous	39	41%
	Dissents	56	59%
(4)	*Authorship:*		
	Anonymous	88	93%
	Identified	7	7%
(5)	*Elaboration:*		
	Opinion	8	8%
	Headnote	7	7%
	Memorandum	5	5%
	Syllabus	75	79%
(6)	*Principle:*		
	Procedural	36	38%
	Substantive	59	62%

E. Georgia Supreme Court Per Curiams: Fourth Sample (1980-1981)

A stunning feature of the fourth sample revealed the breathtaking rapidity with which the Georgia Supreme Court rendered 100 *per curiam* opinions. In a record period of approximately 1.5 years,[69] the court

69. The fourth sample period began with a case decided on January 3, 1980 and ended with a case decided on April 21, 1981.

accomplished what had previously required, respectively, 46 years, 6 years, and 23 years. Truly, the historic *per curiam* format, sometimes considered a relic of antiquity, had claimed center-stage prominence in Georgia's modern jurisprudence.

Only one of the fourth sample references was excluded for reasons of immateriality,[70] leaving a total of 99 cases for analytical review. When evaluated via the characteristics here studied, those cases assist significantly in refining the profile in progress.

First, as previously, the court's "civil" *per curiam* dispositions (65%) considerably outnumbered its *per curiam* treatments of "criminal" cases (13%). The fourth sample offerings also revealed, however, that the two traditional designations no longer sufficed to account for all the supreme court's *per curiam* activity. For the first time in the historical route here traced, legal "disciplinary" determinations claimed an insistent status on the court's agenda. Whether "disbarments," "suspensions," "reprimands," or "certifications," the supreme court found itself immersed in regulation of the bar's professional ethics. Impressively, when confronted with this crucial and sensitive responsibility, the court selected as its primary tool of presentation the fabled format of the *per curiam* opinion. Indeed, during the fourth sample's extremely brief period of coverage, 23% of the supreme court's *per curiam* volume consisted of disciplinary determinations. The "anachronism" found service, therefore, in an astonishingly modern venue.

Second, new developments also registered a demonstrative impact upon the characteristic of "disposition." For example, there appeared during the fourth sample survey a considerable number of domestic relations cases in which the court summarily dismissed appeals for improper procedures.[71] Those dismissals are included in the period's *per curiam* affirmances (63%). Additionally, *per curiam* reversals declined from the third period to a total of 15%. As for the remaining 23% of *per curiam* dispositions, these, once again, represent the court's disciplinary determinations. Classified as neither "affirmances" nor "reversals," this disciplinary total featured "suspensions" (13%), "disbarments" (3%), "reprimands" (6%), and "certifications" (1%).

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70. That case merely referred to a *per curiam* opinion in another case.

71. For example, see *Zusmann v. Zusmann*, 246 Ga. 341, 272 S.E.2d 75 (1980): "Per Curiam. Appellant has not followed the appeal procedures required by law in domestic relations cases. Appeal dismissed. All the Justices concur." *Id.* at 341, 272 S.E.2d at 75 (citations omitted).

Third, a majority (69%) of the *per curiam* judgments delivered during the fourth survey period reflected the support of a unanimous court. Although this facet restored a semblance of order to the remarkable "dissent revolution" highlighted in the previous period, it by no means brought that phenomenon to a stable conclusion. The fact that 31% of the fourth sample *per curiams* still drew opposition by dissenting opinions stood as stark testimony of the Georgia *per curiam*'s consensus crises.

Fourth, yet another fourth-sample revelation pivoted on the point of anonymity. For the first time in the entire study, not a single *per curiam* opinion rendered by the supreme court carried an indication of authorship. Finally, perhaps, Georgia reflected the conceptual irreconcilability of the *per curiam* format with the personally ascribed judicial opinion.

Fifth, the fourth-sample survey period registered a monumental shift in the form of *per curiam* elaboration. Suddenly, according to the self-styled offerings of the case reports themselves, the "syllabus" format abruptly terminated. Departing from the form that had overwhelmingly dominated all three previous study periods, *per curiams* of the fourth sample divided between "opinions" and "memoranda." A majority (56%) of the dispositions not only assumed the mantle of "opinions," but also proffered full fledged elaborations that, had they carried an author's signature, would have been virtually indistinguishable from regular judicial opinions. The remaining 44% of presentations subscribed to the "memorandum" format.

Sixth, once again, the *per curiam* dispositions of "substantive" issues considerably exceeded (by a division of 65% to 32%) those perceived as "procedural." Moreover, it was this fourth sample period that first reflected the court's practice of employing the *per curiam* format to "affirm[] without opinion pursuant to Rule 59."[72] Although this summary practice accounted for only 3% of the cases, it appeared sufficiently distinctive to warrant separate classification.

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72. McZorn v. Taylor, 246 Ga. 307, 271 S.E.2d 218 (1980). "Per Curiam. Judgment affirmed without opinion pursuant to Rule 59. *All the Justices concur.*" Rule 59 reads as follows:

> "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 harmful error of law, properly raised and requiring reversal, appears;
>
> (3) The judgment of the court below adequately explains the decision and an opinion would have no precedential value."

GA. SUP. CT. R. 59.

TABLE V. Georgia *Per Curiams*: Fourth Sample (99 Cases)

Ponder Point		Number	Percentage
(1)	*Context:*		
	Civil	63	65%
	Criminal	13	13%
	Disciplinary	23	23%
(2)	*Disposition:*		
	Affirm	61	63%
	Reverse	15	15%
	Disciplinary	23	23%
(3)	*Unanimity:*		
	Unanimous	68	69%
	Dissents	31	31%
(4)	*Authorship:*		
	Anonymous	99	100%
	Identified	0	0%
(5)	*Elaboration:*		
	Opinion	55	56%
	Memorandum	44	44%
(6)	*Principle:*		
	Procedural	32	32%
	Substantive	64	65%
	Rule 59	3	3%

F. Georgia Supreme Court Per Curiams: Fifth Sample (1998-2000)

In order to obtain the supreme court's latest 100 *per curiam* references, selection began in 2000 and proceeded backwards to capture the necessary number of cases. This search process required a period of precisely 19 months to produce the desired results.[73] The fifth sample's *per curiam* coverage thus ranges from October 1998 through May 2000, not only conferring currency upon the study but also confirming the astounding *per curiam* volume exposed by the preceding survey period. The vintage format, it turns out, truly does retain startling popularity with Georgia's highest appellate tribunal.

Only 3 cases required elimination from the corpus for reasons of immateriality,[74] leaving a total of 97 decisions as the fifth sample's

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73. Beginning with a case decided on May 30, 2000, the search had produced a total of 100 *per curiam* references by the Georgia Supreme Court when it reached a case decided on October 13, 1998.

74. These cases simply referred to other *per curiam* decisions and did not themselves render *per curiam* opinions.

frame of reference. From this sample, the mosaic's concluding configurations emerge.

First, the survey period revealed two remarkable developments regarding "context." For the first time, the sample registered no criminal cases. Although never commanding an overwhelming presence in the *per curiam* montage, traditionally ranging, however, from 10% to 25% of the total, the criminal case's complete disappearance from the scene marked a major occurrence of the study. In addition, the sample reflected almost total domination by the disciplinary determination. Having gained an initial foothold (23%) during the fourth survey period, *per curiam* treatments of lawyer discipline soared to a total of 90% in the fifth sample. Indeed, legal ethics determinations appeared poised to assume a position virtually synonymous with *per curiam* itself. In terms of both popularity and context, therefore, the *per curiam* opinion could scarcely hold a higher profile in the Georgia Supreme Court.

Second, *per curiam*'s disciplinary explosion also overwhelmed the "disposition" determinant. For the only time in the entire study, not a single *per curiam* opinion operated to reverse the actions under review. From a position averaging 25% of the total across the first four survey periods, reversals dropped off the screen in the fifth sample. Even the sample's affirmances barely registered: They consisted of 10 civil cases in which the supreme court affirmed judgment without opinion under "Rule 59."[75] Once again the documented decline was dramatic: From a position averaging 68% of the total across the first four survey periods, *per curiam* affirmances plummeted to 10% in the fifth sample.

Obviously, then, the sample's dispositions consisted primarily of the supreme court's disciplinary determinations. Indeed, those determinations accounted for 90% of the court's entire *per curiam* output, composed of the following denominations: disbarments (43%), suspensions (37%), certifications (4%), bar exam status (3%), and reinstatements (2%). In the Georgia Supreme Court's current jurisprudence, therefore, "discipline" equals "*per curiam*," and, increasingly, "*per curiam*" equals "discipline."

Third, although 89% of the period's *per curiam* opinions spoke for a unanimous court, the remaining opinions drew dissents.[76] Accordingly, the previously emphasized dichotomy, although lessened to 11% of the cases, continued into the fifth sample.

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75. *See, e.g.*, Portman v. Ingram, No. S99A0440, 1999 WL 198279 (Ga. Apr. 12, 1999) (unpublished opinion): "Per Curiam. The judgment of the court below is affirmed without opinion pursuant to Supreme Court Rule 59. All the Justices concur." *Id.* at *1.

76. Dissents occurred both in the disciplinary decisions and in the "Rule 59" affirmances.

Fourth, the fifth sample cases followed those of the fourth in registering only anonymous opinions. Once again, therefore, not a single *per curiam* opinion indicated its personal source of origin.

Fifth, the court's fifth-sample *per curiam* dispositions continued the previously evidenced revolt against "syllabus" elaborations and opted instead for "opinions" and "memoranda." The court employed "opinions" in its disciplinary endeavors: Most of those efforts were fairly brief but with an occasional exception. The "memorandum" constituted the court's method of handling its affirmances under "Rule 59."

Sixth, the pervading distinction between the discipline determinations and the summary affirmances also controlled classification of *per curiam*'s principles during the fifth sample. The disciplinary dispositions were deemed "substantive" in nature; the "Rule 59" cases again accounted for a separate category; and "procedural" principles failed to register.

TABLE VI. Georgia *Per Curiams*: Fifth Sample (97 Cases)

Ponder Point		Number	Percentage
(1)	*Context:*		
	Civil	10	10%
	Criminal	0	0%
	Disciplinary	87	90%
(2)	*Disposition:*		
	Affirm	10	10%
	Reverse	0	0%
	Disciplinary	87	90%
(3)	*Unanimity:*		
	Unanimous	86	89%
	Dissents	11	11%
(4)	*Authorship:*		
	Anonymous	97	100%
	Identified	0	0%
(5)	*Elaboration:*		
	Opinion	87	90%
	Memorandum	10	10%
(6)	*Principle:*		
	Procedural	0	0%
	Substantive	87	90%
	Rule 59	10	10%

G. *A Compendium of the Composites*

The preceding synopses chronicle the Georgia Supreme Court's use of the *per curiam* opinion over the past 154 years. They describe findings ferreted from five samples, each sample focusing upon 100 cases in which the court referred to the *per curiam* technique. In most, the court actually issued a *per curiam* opinion to resolve the litigation. The samples feature both the earliest and the most current of the court's *per curiam* endeavors, as well as strategically selected case clusters spanning the intervening years. In this fashion, the scrutinized selections accomplish two remarkable feats of coverage. First, they touch a total of 500 cases decided in 78 of the 154 years under review. Second, they treat *per curiam* opinions delivered by the supreme court during three different centuries. An analytical range of those proportions assures a temporal perspective both complete and current.

Training that perspective upon *per curiam*'s traditional vagaries requires several brief inquiries into each cluster of cases. Although somewhat tedious in execution, those recurring references provide meaningful comparative appraisal. They also assist in assessing the historic controversy surrounding the *per curiam* opinion. Having presented a composite of the results extracted from each case sample, perhaps a compendium of those composites, inquiry by inquiry, might helpfully position the Georgia experience.

1. Context. Initially, the surveys sought to identify the precise litigation context in which the supreme court typically employed the *per curiam* style of presentation. This "context" anthology revealed a characteristic perpetually in motion. As it originated and traditionally operated, Georgia *per curiam* primarily treated the lawsuit of civil complexion. The criminal case, in contrast, maintained a low *per curiam* profile in early years, peaked in the 1950-1973 case cluster, and gradually disappeared from view. Currently, both civil and criminal contexts have suffered complete domination by the court's increasingly active role in monitoring legal ethics. "Context" thus remains a *per curiam* characteristic warranting close attention in the immediate future.

Table VII. *Per Curiam*'s Context (1846-2000)

	1st Sample 1846-1892	2nd Sample 1910-1916	3rd Sample 1950-1973	4th Sample 1980-1981	5th Sample 1998-2000
Civil	90%	90%	74%	65%	10%
Criminal	10%	10%	26%	13%	0%
Disciplinary	0%	0%	0%	23%	90%

2. Disposition. Another shaping inquiry focused upon *per curiam*'s substantive results in the cases. Did the supreme court's adoption of the famous format traditionally foretell a decision to affirm, reverse, or treat in some other manner, the actions under review? The sampled instances unfolded a performance that, until present practices, accorded with logical expectations. Over the years, by a roughly calculated ratio of three to one, the *per curiam* opinion affirmed, rather than reversed, the actions appealed. However, the court's modern *per curiam* preoccupation with lawyer discipline has drastically impacted this facet as well. Those disciplinary determinations, classified as neither "affirmances" nor "reversals," currently account for 90% of the court's entire *per curiam* output.

TABLE VIII. *Per Curiam*'s Dispositions (1846-2000)

	1st Sample 1846-1892	2nd Sample 1910-1916	3rd Sample 1950-1973	4th Sample 1980-1981	5th Sample 1998-2000
Affirm	76%	74%	60%	63%	10%
Reverse	24%	26%	35%	15%	0%
Transfer	0%	0%	5%	0%	0%
Disciplinary	0%	0%	0%	23%	90%

3. Unanimity. A third recurring question plumbed the extent to which Georgia practice mirrored *per curiam*'s dictionary definition as an opinion by the court rather than by a judge. More specifically, could the *per curiam* format accommodate a dissenting opinion? Initially, the response was resoundingly negative. As introduced and instituted, Georgia's *per curiam* disposition signaled complete concurrence among the supreme court's justices, and no dissenting opinions marred that unanimity. This position relented in the early 1900s, however, and mid-twentieth century samples revealed a striking presence of dissenting opinions in a majority of the court's *per curiam* cases. Although modern surveys depict moderation of the conceptual revolt, they nevertheless attest to *per curiam*'s continued toleration of at least some expressed judicial dissension.

Table IX. *Per Curiam*'s Unanimity (1846-2000)

	1st Sample 1846-1892	2nd Sample 1910-1916	3rd Sample 1950-1973	4th Sample 1980-1981	5th Sample 1998-2000
Unanimous	100%	86%	41%	69%	89%
Dissents	0%	4%	59%	31%	11%
Divided	0%	10%	0%	0%	0%

4. Authorship. Georgia's original embrace of the *per curiam* format intriguingly refuted conventional emphasis upon the absence of personal attribution. Perceiving no necessary connection between a no-attribution technique and a lack of anonymity, a healthy minority of Georgia cases identified the authors of *per curiam* opinions. Indeed, the samples reveal, only in the last twenty years have such attributions ceased so as to reflect a conceptional conflict between the *per curiam* format and the personally ascribed judicial opinion.

Table X. *Per Curiam*'s Authorship (1846-2000)

	1st Sample	2nd Sample	3rd Sample	4th Sample	5th Sample
	1846-1892	1910-1916	1950-1973	1980-1981	1998-2000
Anonymous	86%	90%	93%	100%	100%
Identified	14%	10%	7%	0%	0%

5. Elaboration. Rejecting *per curiam*'s "adjudication without opinion" connotation, the supreme court originally couched its *per curiam* formulation in a "Syllabus by the Court." This elaboration, more extensive than the alternative forms of "memoranda" and "opinions," held dominating presence throughout much of Georgia's *per curiam* history. That presence abruptly terminated in recent years, however, and the alternative styles prevailed. Presently, the court employs what closely resembles an "opinion" to elaborate its disciplinary determinations and a considerably more succinct "memorandum" to effectuate its "Rule 59" affirmances. Although the classification efforts themselves exude considerable subjectivity, it is clear that *per curiam*'s form of elaboration has varied vigorously across the centuries.

Table XI. *Per Curiam*'s Elaboration (1846-2000)

	1st Sample	2nd Sample	3rd Sample	4th Sample	5th Sample
	1846-1892	1910-1916	1950-1973	1980-1981	1998-2000
Opinion	13%	2%	8%	56%	90%
Memorandum	20%	13%	5%	44%	10%
Syllabus	67%	85%	79%	0%	0%
Headnote	0%	0%	7%	0%	0%

6. Principle. A final monitored facet of the study sought to determine whether Georgia's *per curiam* utilizations resolved "procedural" principles in the cases more frequently than "substantive" ones. Although the distinction itself resides in the eye of the beholder, fairly clear delineations emerged throughout the samples. Consistently, review revealed, it was the substantive principle that most often, and by a measurable majority, received *per curiam* resolution. Presently, the

supreme court's "substantive" role in the lawyer discipline phenomenon dwarfs its "Rule 59" dispositions.

Table XII. *Per Curiam*'s Principle (1846-2000)

	1st Sample	2nd Sample	3rd Sample	4th Sample	5th Sample
	1846-1892	1910-1916	1950-1973	1980-1981	1998-2000
Procedural	26%	22%	38%	32%	0%
Substantive	74%	78%	62%	65%	90%
Rule 59	0%	0%	0%	3%	10%

IV. CONCLUSION

Among the communication forms of legal process, no "medium" subsumes the "message" more thoroughly than the *per curiam* judicial opinion. When an appellate court delivers its judgment "*per curiam*," it employs a format of legendary status, a format as vague, however, as it is familiar. The Latinism derives from an English heritage both praised as "intellectually honest"[77] and condemned as "government by edict."[78] Beyond superficial dictionary translations, moreover, the device remains a subject of remarkably little work or clarification.[79]

Any sustained effort at enlightenment bears the burdens of appraising the generalities, observing the utilizations, and attempting an assimilation. The informed performance of those endeavors requires a theater of operation: a body of the *per curiam* practices historically perpetuated by a single appellate tribunal. This brief study has focused upon those practices in the Supreme Court of Georgia.

Essentially, the study reveals, the historic "definitions" suffer documented default. On occasion, the *per curiam* opinion is *not* "an opinion by the whole court." On occasion, the *per curiam* statement is *not* "an announced judgment unaccompanied by written opinion." On occasion, the *per curiam* expression *may be* one "attributed to any one member of the court."[80] Further, the study exposes inherent weaknesses in the conventional *per curiam* connotations. "Unanimity," "solidarity," "anonymity," "succinctness," "routine," and "noncontroversial" all fail inevitably to withstand the consuming tides of actual experience. Finally, the study resists calculated conjectures that the *per curiam* opinion most likely constitutes an affirmance, dealing perhaps with a procedural issue, and operating perhaps in a noncriminal context.

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77. *See supra* note 28.
78. *See supra* note 24.
79. *See supra* note 18.
80. *See supra* Part II.

Again, explicated evidence undermines the confidence with which those suppositions may be advanced.

The study also effectively responds to the more general inquiries. First, do the circumstances of *per curiam*'s utilization hold constant over the years? As tabulated, those circumstances change at a dynamic pace; indeed, "context" proves perpetually in motion as it touches civil cases, criminal cases, and disciplinary proceedings in historic succession. Second, does *per curiam*'s degree of usage vary over time? As recounted, usage has flourished in fulsome fashion; indeed, its current velocity reaches roughly 100 judicial references every 1.5 years. Third, what of *per curiam*'s role in modern jurisprudential communication? As graphically demonstrated, the format's vitality virtually pulsates; indeed, its present preoccupation with lawyer discipline not only serves a crucial cause but also confirms the technique's invaluable versatility.[81]

Long live the peculiarity of *per curiam* in the Georgia Supreme Court!

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81. As for present practices within the Georgia Supreme Court, there are no adopted "rules" as to when *per curiam* opinions will be employed, but there is an "understanding" that they will be used in attorney discipline matters, in bar admission cases, and in "Rule 59" dispositions. Otherwise, the decision to employ a *per curiam* opinion for a particular case would be made by the court in conference; no individual justice assigned to write an opinion would make that decision. (The author gratefully acknowledges receipt of this information via a telephone conversation with The Honorable George H. Carley, Justice, The Supreme Court of Georgia.)