Opinion Writing in the Federal District Courts

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American trial court judges’ roles and behavior vary greatly from their appellate court brethren. One such area of difference has to do with opinion writing behavior, an area where trial judges hold a great deal of discretion in determining whether to write an opinion and, if they do, how long the opinion should be. To examine what factors determine opinion writing behavior among district court judges, this study relies on analyses of an original dataset of civil cases that terminated in eighteen federal district courts from 2000 to 2006. The results indicate that legal, hierarchical, and institutional features are critical in motivating opinion writing and opinion length and that personal factors have very limited effects. The fruits of this exercise have important implications for how we view and model the behavior of trial court judges in the future.

**KEYWORDS:** district courts, opinions, judging

Judges’ jobs vary greatly depending on their position in the judicial hierarchy, with this being particularly true when comparing trial court judges to those serving on multi-member appellate courts. For trial court judges, quite distinctively from their appellate brethren, much of their workload is dominated by the complexities and multi-staged proceedings inherent in trial court cases (e.g., Boyd and Hoffman 2013; Kim et al. 2009). This litigation process means that district judges potentially have numerous decision-making opportunities in each case that they preside over. This level of judging is also likely to present unique pressures on and considerations for trial court judges that simply do not exist for other judges, including the predominance of settlement, the particularly important role of attorneys, the possibility for judicial elevation, and the credible risk of decision appeal and reversal.

One area where these differences between trial and appellate judges are very apparent and can affect behavior is with opinion writing. With very few exceptions, when appellate courts decide a case, they relay their outcome and the justification for it in the form of a written opinion. This written opinion serves a number of functions including constraining and guiding the behavior of other courts and judges, administrative agencies, litigants, and members of the broader public (Corley, Collins, and Calvin 2011). Unlike with appellate courts, however, trial courts frequently do not issue written opinions in their disposed cases. Indeed, because of behavior discretion, trial judges regularly forgo writing an opinion in favor of simply orally announcing a decision from the bench or providing a short order declaring an outcome without written rationale.

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Focusing primarily on federal trial courts, this article thus addresses two questions related to trial judge opinion writing behavior. First, when do trial judges decide to write an opinion? And second, when opinions are written, how long are they? The former question holds the potential to unveil how trial judges uniquely exercise their opinion writing discretion, while the latter, related, question about length is of critical importance in unveiling the time, effort, outward focus, and amount of justification present in these written opinions. The judicial decision-making constraints that are at the heart of so much of political science and legal literature—factors such as institutional, hierarchical, strategic, and legal constraints and personal characteristics—are likely to also affect the decision of district judges to write opinions and may also predict the amount of justification provided by the judge (i.e., the opinion length).

To examine these opinion writing questions, I rely on a sample of civil cases that terminated between 2000–2006 in eighteen federal district courts. In doing so, I find that institutional, hierarchical, and legal factors are of primary importance in predicting when trial judges will author opinions and that only legal factors, case factors, and one judge characteristic (judge sex) affect opinion length. The fruits of this exercise have important implications for how we view trial court judicial behavior both in isolation and in comparison to judges serving on appellate courts.

**TRIAL JUDGE WRITING BEHAVIOR**

Unlike appellate court cases, many district court cases do not yield written opinions. The reasons for this are plentiful, ranging from the frivolous nature of some lawsuits to the limited judicial activity required in some cases. But perhaps more than anything, the lack of opinions across these trial court cases is due to the presence of judicial discretion in engaging in opinion writing behavior. For these judges, many case activities requiring judicial intervention can be resolved orally or through short, publicly unavailable orders, meaning that writing an opinion is voluntary and, at the extreme, perhaps even superfluous.

Like so many of the decisions that a judge faces, a federal trial judge deciding what judicial opinion writing behavior to adopt faces a tradeoff. If she writes, she can help fulfill her desire to build and maintain a good reputation, influence law, and articulate her preferences. But if she does not, the time that would have been allocated to writing is made available for other activities, whether in the workplace or of a more leisure nature. At the same time, by not writing or only writing a short opinion, the district judge may strategically avoid dilemmas involving the law, her voting behavior, and the preferences of her hierarchical superiors.

Regarding the advantages, writing opinions permits judges to influence policy and the law in a way that can have both immediate and longer-term effects. For the district judge considering whether to write an opinion or how much effort to exert in writing the opinion once he decides to do so, the case before him, and its litigants, are of immediate concern. Explanations through opinions allow judges “to help the parties involved understand the law, and thus, the outcome of a case” (Songer 1990, 307) and can lead to increases in judicial legitimacy and legal compliance. Written, carefully crafted opinions can help assure, as Judge Charles Wyzanski put it, that “the jurors, the parties, the witnesses, the counsel, and the spectators not only follow the red threads of fact and of law but [also] leave the courtroom persuaded of the fairness of the procedures and the high responsibility of courts of justice in advancing the values we cherish most deeply” (Cannon
and O’Brien 1985, 28–29). While not always recognized for these functions, district judges are well positioned to make law (Lyles 1995; Swenson 2004) and influence and implement national policies (e.g., Giles and Walker 1975; Vines 1964). These things, when present, can extend the reach of influence of an individual judge well beyond just the actors immediately before him. Not by coincidence, district judge law-making and policy effects are likely to be difficult, if not completely impossible, without a written opinion or with only a very short opinion.

Beyond serving just the law, writing judicial opinions can serve institutional and personal judicial functions and goals. Opinion writing presents a judge the opportunity to articulate her preferences regarding the case before her and the relevant law more generally. For many judges, this idea of weighing in on and helping to develop the law undoubtedly played a major role in leading them to the judging profession. For district judges, probably more so than many other judges, the reputation-building potential that is attached to authoring judicial opinions has important implications for career advancement (Swenson 2004; Baum 1997; Gulati and McCauliff 1998). The presence of written opinions and the amount and content of the justification provided in those opinions can provide critical information about a judge to senators and the president with regard to the nomination and confirmation process (Steigerwalt 2010). District courts serve as the primary feeding institution for federal courts of appeals vacancies, with as many as 50 percent of modern appellate judgeships going to these trial court judges (Savchak et al. 2006).

Under some circumstances and for some judges, there can also be strong disincentives to district judge opinion writing, both in terms of writing opinions at all and writing lengthy opinions. Probably the most visible of these concerns effort and time. More so than with courts of appeals judges and Supreme Court justices, some district judges are likely to be particularly burdened in regard to their available time and effort because of a high level of nondiscretionary work in their district. Indeed, there is a high level of caseload variance between district judges, with some hearing only a couple hundred cases per year, while others hear over one thousand. For judges forced to terminate a high number of cases per year, “goals related to efficient case disposition may achieve greater significance” (Hettinger, Lindquist and Martinek 2003, 225). More generally, the more time that judges spend in the discretionary activity of opinion writing, the less that is reserved for leisure, nonjudicial activities (Macey 1989) that some judges truly value.

In addition, trial judges may be constrained in their opinion writing behavior because of more strategic considerations. Discussed in greater detail below, district judges may be deterred from fully articulating their legal rationale in writing because of the combination of their place at the bottom of the judicial hierarchy and the ideological alignment of their judicial superiors. Recent empirical research on district judge decision-making has found strong evidence that these judges are concerned about the preferences of their hierarchical superiors and, as a result, alter their behavior in anticipation of those preferences (Choi, Gulati and Posner 2012; Randazzo 2008). There is every reason to believe that district judges will extend this anticipatory behavior to their opinion writing decisions, meaning that sometimes writing a lengthy, well-justified opinion, or even any opinion at all, will not be a wise strategic choice.

Finally, despite the single dispute resolution and long-term policy development potential mentioned above, the reality is that for most district judges, there is an inability to set one-shot, single case precedent in their written opinions that will be strong and binding. This likely gives far less incentive to the average district court judge to exert a great deal of energy in this task, particularly if he faces many other demands on his time. In other words, only district judges who
receive some other strategic or personal benefit from writing opinions or who see a strong legal necessity to do so will behave in this way.

With a generalized set of incentives and disincentives to district court opinion writing in hand, we can move to a discussion of how a district judge’s institutional and hierarchical setting, the legal and case-specific circumstances in front of him, and his personal characteristics may predict when an individual trial judge will write opinions and, if he does, how long those opinions are likely to be.

**INSTITUTIONAL AND HIERARCHICAL CONSTRAINTS**

District judges may be constrained in their opinion writing decisions by factors that are specific to their district and its place in the judicial hierarchy. One of the most salient and relevant of these is likely to be the caseload per judge in the district, a number that varies greatly across district courts depending on a number of issue area, geographic, and personnel-specific considerations (Habel and Scott 2014; Hettinger, Lindquist, and Martinek 2003). In higher caseload districts, the amount of nondiscretionary work on a judge’s plate is undoubtedly high. These judges may have hundreds of active cases on their docket at a time, meaning their daily calendars will be full of trials, pretrial conferences, and case management activities, and their staffs will be busy assisting with these tasks. Available time for discretionary work-related duties such as writing opinions will be low, particularly if we assume that all judges, no matter their caseload, maintain time for non-work-related leisure activities. As a district judge’s caseload declines, so, too, should the extent of his compulsory work activities, meaning that he should have more flexibility to write opinions and, when he does so, to write lengthy opinions.

*Hypothesis 1:* District judges with higher caseloads will write fewer and shorter opinions.

When a district court case is proceeding, the judge and the parties cannot predict with certainty whether the dispute will ultimately end up before the federal appellate courts. While such an appeal is not assured, losing parties generally have a right to appeal to the courts of appeals. As such, the frequency with which district cases face appellate review is much greater than it is for other courts. This looming possibility of review means that appellate courts are an ever-present influence in case dispositions, and district court judges are likely to account for the preferences of the higher court judges when making their decisions (Randazzo 2008; Boyd and Spriggs 2009; Hinkle et al. 2012; Keele et al. 2009).

One important hierarchical factor for a district judge concerns the ideological makeup, and specifically its homogeneity, of his supervising circuit. If a district judge serves in a circuit with a great deal of partisanship diversity among the appellate judges, uncertainty is likely to exist as to how to best account for those preferences (Haire, Lindquist, and Songer 2003; Choi, Gulati, and Posner 2012). For example, if a district judge serves under a circuit court with 50 percent of its judges being Republican and 50 percent Democrat, that trial judge will have more difficulty anticipating what the preferences of any three-judge reviewing panel might be. These district judges are likely to shy away from writing opinions whenever legally practical, since doing so will hopefully downplay the importance of the case and its outcome and avoid sending a signal to the circuit judges that this decision, if appealed, should be reversed. As the partisan preferences of the circuit judges become more homogenous, this uncertainty should fade, and with it, the
need for district judges to strategically avoid writing. When a district judge does write an opinion, being in a diverse partisanship circuit should increase the likelihood with which he writes longer opinions, since doing so may provide legal justification to help close the uncertainty gap for the reviewing circuit court judges, allowing them to affirm a district ruling that they might not otherwise if only given a small amount of written legal support.

Similarly, district judges considering whether to write and how lengthy to make their opinions may also be concerned with their supervising circuit court’s ideological preferences compared to their own. When a district judge and the circuit court are ideologically similar, opinion writing should be at its highest, since in this situation, the average district judge’s preferences should be aligned with the circuit court, and the written opinion should serve to bolster the district judge’s position. By not writing, ideologically distant district judges may be able to downplay the importance of the case and its outcome and avoid sending a signal to the circuit judges that this decision, if appealed, should be reversed. And, just as with diverse partisanship circuits, as a district judge becomes ideologically distant from the circuit court, he should be more likely to write longer, more justified decisions.

_Hypothesis 2a_: The more ideologically diverse a district judge’s supervising circuit court is, the fewer opinions he should write and the longer his opinions should be.

_Hypothesis 2b_: The less ideologically congruent a district judge is with his supervising circuit court, the fewer opinions he should write and the longer his opinions should be.

**LEGAL AND CASE-SPECIFIC CHARACTERISTICS**

A major factor that distinguishes trial court judging from appellate court judging has to do with district judges’ roles in supervising and managing dynamic cases and ruling on a variety of motions prior to case termination. Indeed, motions practice plays a major role in district court litigation and presents numerous opportunities for district judges to make decisions on the record throughout a case’s development. The most serious of these motions not only require judicial rulings but also necessitate legal research and, ultimately, rationale. In particular, major motions that, if granted, could terminate the case in whole or in part should increase the likelihood of a district judge providing this reasoning through writing an opinion. Two motions are particularly noteworthy in this regard. Motions to involuntarily dismiss the case are filed for a variety of reasons (e.g., failure to state a claim upon which relief can be granted or lack of jurisdiction). Motions for summary judgment, on the other hand, should be granted if “there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law” (FRCP Rule 56). Both categories of motions require judicial rulings on critical legal matters in the case after what is usually extensive briefing by the opposing parties. The presence of these motions should increase the likelihood of a written and lengthy opinion. Since summary judgment motions happen later in a case and are based on a higher legal standard, they should generate complex lawyers’ briefs, both in support and in opposition, and, in response, lengthy judicial explanation. Their effect on opinion writing and opinion length should be greater than for motions to dismiss.
Hypothesis 3: The presence of key motions in a case should increase the likelihood that the district judge will write more and longer opinions.

District court cases that are pending for long periods of time are frequently very involved and competitive cases, with multiple parties and attorneys involved on each side, numerous depositions, expert participation, lengthy discovery, and, perhaps, multiple attempts at settlement. These lengthy cases are likely to have a number of implications, including affecting the likelihood of the case going to trial and being appealed (Boyd and Hoffman 2013; Howard et al. 2000). For opinion writing decisions, long cases should present district court judges greater legal opportunity and necessity to write opinions. At the same time, because of the lengthy factual and procedural history, they should, by their very nature, also promote longer opinions.¹

Hypothesis 4: The longer cases take to terminate, district judges will write more opinions and, when they choose to write, those opinions will be longer in length.

A trial court case’s issue area determines a great deal about its case events, its salience, and method of termination. This is likely due to a number of factors that vary by case type including different rates of party-initiated settlements, complex case issues requiring judicial intervention, differing average levels of discovery, and inequality in levels of frivolous case filings. In evaluating Minnesota’s federal trial court, Olson (1992) finds evidence to support this issue area importance in district judge publication rates. In a broader sense, empirical research examining judicial opinion writing behavior in appellate courts has found that judges are more likely to write in salient cases (Maltzman and Wahlbeck 1996; Hettinger, Lindquist, and Martinek 2004), a notion that is frequently, albeit imperfectly (Epstein and Segal 2000), conceptualized as involving civil rights or constitutional law issues. As Hettinger, Lindquist, and Martinek (2003, 224) put it: “Arguably, a case involving a civil rights or liberties claim is likely to elicit more strongly held ideological positions and, hence, is one means of evaluating salience or importance to judges themselves. Obviously, this measure of salience may, and probably does, also relate to importance to the larger political and social system.”

As is noted in detail below, this current study focuses on three broad issue areas: business, civil rights, and personal injury torts cases. As the business cases involve patents, copyrights, and contracts, they are likely to be the most technical disputes of the three types and, as such, should be likely to yield written legal exposition from trial judges. Of those remaining, because of their salience and higher levels of judicial activity (Kritzer 1986), civil rights cases should have higher levels of opinions than personal injury tort disputes.

Hypothesis 5: District judges should write more opinions and longer opinions in cases involving business and civil rights issues compared to those involving torts.

¹A case’s disposition may be delayed by a district judge who is (slowly) working on writing an opinion. In these cases, the length of the case would be affected by the presence and/or length of an opinion, rather than the reverse. If this delay happens, it will likely only be a short delay for the vast majority of cases. However, only future empirical work modeling case length can address this with certainty.
PERSONAL CHARACTERISTICS

District judges with experience as full-time academics may be more likely than their colleagues to have a scholarly appreciation for the law and exposition. As professors, these judges had job-related requirements to write and publish legal books and articles. This experience makes these now-district judges more efficient at opinion writing and enables them to enjoy it more (Swenson 2004; Taha 2004). They may also feel “irresistibly driven to communicate their intellectual processes and products to the world” (Wald 1995).

The same may well be true for those judges who graduated from top-tier, elite law schools where their professors likely were actively producing legal scholarship — and at a very high level. This may lead to elite law school graduates having a higher appreciation for opinion writing. As Merritt and Brudney (2001, 100) put it in their courts of appeals study, elite law schools “may breed a special respect for law as a public institution or for the development of legal principles through case-by-case decision making.” These top-tier graduates may also be, on average, more efficient writers than their colleagues (Taha 2004). Overall, then, these academic and elite-trained judges may be less likely than their colleagues to discount this discretionary opinion-writing task because of concerns about expending too much time and losing leisure.

Hypothesis 6: District judges graduating from elite law schools will write more opinions and longer opinions.

Hypothesis 7: District judges with experience as a law professor will write more opinions and longer opinions.

Similarly, district judges receiving higher American Bar Association (ABA) ratings during their nomination and confirmation process are likely to place a higher value on opinion writing than lower ranked judges. Rated based on professional competence, integrity, and judicial temperament, judges receiving high marks from the ABA may also have a high scholarly and legal appreciation for writing. At the same time, because of their professional competence, highly rated district judges may be particularly efficient and effective writers and legal analysts, meaning that they gain more from writing at a lower cost. Taha (2004, 12) argued this very point, noting that “[b]ecause publishing decisions is a part of a judge’s duties, it is reasonable to expect that more highly rated judges would be more efficient at publishing decisions and thus more likely to do so.” Taha’s results regarding opinion publication by district judges in sentencing guidelines cases confirms the presence of this effect. On the flip side, lower rated judges will tend to lack legal experience (Smelcer, Steigerwalt, and Vining 2012), something that may increase the effort required to write well-argued and supported opinions.

Hypothesis 8: District judges with higher ABA ratings will write more opinions and longer opinions.

A long line of research has found that in certain circumstances, especially when cases involve “women’s issues,” female judges make distinct decisions from their male colleagues (Boyd, Epstein, and Martin 2010; Farhang and Wawro 2004). While the evidence is quite mixed regarding this gender effect on outcomes in trial courts (Taha 2004; Walker and Barrow 1985; Schanzenbach and Tiller 2007; Segal 2000), recent work has found that female district judges behave differently from males while managing their cases and communicating with the litigants involved, the results of which lead to more frequent and more rapid settlement (Boyd 2013). This work, which
characterizes female judge management styles as encouraging participation among subordinates, democratic communication, collaboration, and consensus-building (Eagly and Johnson 1990), may also be extended to opinion writing. Therein, female judges may find increased value in providing written justification for their district court outcomes. And when they decide to write, these written opinions are likely to be longer than their male colleagues’, since the additional text will (theoretically) better provide the parties with the explanation and justification for why the case (or motion) concluded as it did.

**Hypothesis 9:** Female district judges will write more opinions and longer opinions than male district judges.

**DATA AND MEASUREMENT**

To study this empirically, I turn to an original dataset of 4,174 civil cases involving technical business issues, civil rights, and personal injury torts terminated in eighteen federal district courts between 2000 and 2006. To identify the population of civil cases that terminate in these district courts during the years of this study, I turn to the Federal Judicial Center’s (FJC) Integrated Databases, which include standardized filing and termination information for every case in the district courts. A stratified random sample of 250 cases per district was selected from the FJC’s data, and for each sampled case, PACER (“Public Access to Court Electronic Records”) was used to gather the case docket and other relevant case documents. After collecting every opinion made available on Lexis (which includes published Federal Supplement and Federal Rules Decisions opinions as well as written and unpublished opinions for the cases in the dataset), this information was merged with the PACER-retrieved district court data (via docket numbers) to establish which cases in the data have one or more written opinion. This coding errs on the side of undercounting

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2While 4,500 cases were sampled, 43 were dropped due to duplication (either within districts, because of refiling or remand, or across districts due to, e.g., transfers). An additional 283 cases were dropped because the case’s assigned judge (by the consent of the parties) was a non-Article III magistrate judge. Because these magistrate judges face many different decision making constraints from their district judge counterparts (Boyd and Sievert 2013), much of the above theory does not apply to them. While this is the case, it is worth noting that the results from the regression models reported below do not substantively change when these magistrate judges’ cases are included. Also dropped from the dataset were the fewer than one percent of the cases that terminated over 50 months after being filed.

3To identify these issue areas, I rely on the filing party’s chosen coding of the case’s nature of suit (NOS). The exact NOS codes are: civil rights cases (440, 442, 443, 444), personal injury cases (310, 320, 340, 350, 360), and technical business and intellectual property rights-related cases (190, 820, 830, 840).

4The districts in the data are Rhode Island, New York (Southern), New York (Eastern), Delaware, Pennsylvania (Middle), Maryland, Virginia (Eastern), Texas (Northern), Louisiana (Eastern), Michigan (Eastern), Tennessee (Western), Illinois (Northern), Iowa (Northern), Missouri (Eastern), South Dakota, California (Central), Kansas, and Florida (Middle). These 18 district courts provide representation of 11 of 12 geographically oriented federal circuits and are also diverse in size, ranging from as few as three active district judges (District of Rhode Island) to as many as 28 (Central District of California and Southern District of New York).

5Included within this database are many cases that ultimately settle, an inclusion that is deemed as critical for this project’s generalizability to greater district judge behavior. Although these settled cases rarely receive a judicial opinion at their time of termination, many of them do undergo substantial litigation prior to settlement, a process that may well produce judicial opinions. To allay concerns about the inclusion of settled cases within the data, the regression results reported below were also estimated without settled cases, the results of which largely mirror those produced with settled cases. These results are available from the author by request.
the presence of opinions—by its very nature, it does not include written orders that have not been classified as opinions. With that said, the study’s sample goes well beyond just focusing on published opinions. Indeed, of the opinions in the data, 64.4 percent are not published in either the Federal Supplement or Federal Rules Decisions.

Matching the two opinion-writing questions of interest, there are two dependent variables in this study. For the question of whether a district case has a written opinion, the dependent variable is Written Opinion, a dichotomous variable measured as 1 any time that a case has one or more written opinions. Just over 9 percent of the cases in the data have an opinion. For the examination of the content of those writings, with a specific focus on opinion length, the dependent variable of interest is Opinion Length, a count variable that captures the number of words in an opinion. For the body of the opinions, Opinion Length was captured by computer software. The mean word count in the opinions studied is 4,678. Summary statistics for these and all other variables are provided in Table 1.

Turning now to the independent variables, to code Weighted Caseload Per Judge, I rely on the Administrative Office of the U.S. Court’s (AO) statistic for weighted filings per judge in a district. This measure is reported at the district level each year and is calculated by the AO to reflect the total number of civil and criminal cases filed in a district, the number of active judges in the district, and the proportional presence of types of certain criminal and civil actions that take more time (e.g., death penalty) or less time (e.g., student loan disputes) than average cases (Administrative Office of the U.S. Courts 2007). The first hierarchy-related variable is Circuit Partisan Diversity, which measures the partisanship diversity within the district judge’s supervising circuit. Following Choi, Gulati, and Posner (2012), this variable is measured continuously from 0 to 1, with 0 being a completely homogenous circuit court (all judges appointed by a president of one party) and 1 being the most diverse circuit possible (50-50). The second hierarchy-related variable is Ideological Distance, which measures the absolute difference in ideology between the presiding district court judge’s Judicial Common Space (JCS) score and the supervising circuit court’s median JCS score. The measurement is based on JCS scores using the methodology described in Giles, Hettinger, and Peppers (2001) and Epstein et al. (2007).

Hypothesis 3 is operationalized with Motion to Dismiss and Motion for Summary Judgment. Both of these variables are coded dichotomously from a case’s docket. Motions to dismiss are coded as being present any time a case has one or more involuntary, non-consensual motion to dismiss, either in part or in full. Motion for Summary Judgment is coded as 1 any time there is a motion for summary judgment, from any party, partial or in full. Case Length (in Months) captures the number of months from case filing to case termination as recorded on a case’s docket sheet. Finally, the issue-area specific expectations are measured using NOS codes (described

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6One could imagine two alternative research designs for a project on district judge opinion writing. One of these was adopted by Hoffman, Izenman, and Lidicker (2007), where the authors examine district court dockets and code whether an opinion or order results from each judicial action in a case. While providing an excellent in-depth view of intra-case opinion writing decisions, the design encounters a number of empirical hurdles related to, e.g., docketing inconsistencies, sample size, and randomization. A second alternative approach has been more widely used and entails examining district judge opinion publication (rather than simply writing) (e.g., Keefe et al. 2009; Swenson 2004; Taha 2004; Songer 1988). This latter approach eases data collection barriers but does combine a judge’s decision to write with West’s decision to publish.

7In the small number of instances where a case has more than one written opinion, Opinion Length is coded based on the largest value from the case.
TABLE 1
Summary Statistics for Key Variables within Study

<table>
<thead>
<tr>
<th>Variable</th>
<th>Mean</th>
<th>Std. Dev.</th>
<th>Min</th>
<th>Max</th>
</tr>
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<tbody>
<tr>
<td><strong>Dependent Variables</strong></td>
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<tr>
<td>Written Opinion</td>
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<td>651</td>
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<td>Motion to Dismiss</td>
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<td>1</td>
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<tr>
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<td>0.25</td>
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<td>0</td>
<td>1</td>
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<td>50</td>
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</table>

*Note.* Except for the Opinion Length dependent variable, all statistics reported are for the larger Written Opinion (Table 2) database.

above in footnote 3). The three broad issue area variables that result are Business Case, Personal Injury Torts Case, and Civil Rights Case.

Elite Law School measures whether a district judge attended such a law school to receive his J.D. As utilized previously by Morriss, Heise, and Sisk (2005), the elite law schools include Chicago, Columbia, Harvard, Michigan, Stanford, Virginia, and Yale. Law Professor Experience is dichotomously measured, and it records any experience as a full-time academic law professor or law dean. A district judge’s ABA rating is divided into three dichotomous variables: (1) Exceptional ABA Rating, which includes ratings of Exceptionally Well-Qualified and Well-Qualified, (2) Qualified ABA Rating, and (3) Not Qualified ABA Rating. Female District Judge is coded as 1 if the case’s assigned judge at termination is a female. The judicial biographical information for these variables was retrieved from the Federal Judicial Center (2011) and Almanac of the Federal Judiciary (2005). Finally, circuit dummy variables for each of the eleven supervising circuit courts in this study are included to control for any writing behavior circuit-level effects (Swenson 2004).

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8Only 21.5 percent of judges rated Exceptionally Well-Qualified by the ABA went to an elite law school, and only 7.8 percent of Exceptionally Well-Qualified-rated judges have experience as a law school professor. However, to address any lingering concerns over collinearity between these variables, it is worth noting that excluding either the Elite Law School variable or the Law Professor Experience variable from the modeling reported below does not alter the results.
TABLE 2
Logistic Regression Estimates for the Effects on Whether a District Judge Will Write an Opinion in a Case

<table>
<thead>
<tr>
<th>Variables</th>
<th>Coefficient</th>
<th>RSE</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Institutional and Hierarchical Factors</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Weighted Caseload Per Judge</td>
<td>−0.007*</td>
<td>(0.00)</td>
</tr>
<tr>
<td>Circuit Partisan Diversity</td>
<td>−1.521*</td>
<td>(0.46)</td>
</tr>
<tr>
<td>Ideological Distance</td>
<td>−0.016</td>
<td>(0.30)</td>
</tr>
<tr>
<td><strong>Legal and Case Factors</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Motion to Dismiss</td>
<td>0.900*</td>
<td>(0.21)</td>
</tr>
<tr>
<td>Motion for Summary Judgment</td>
<td>1.034*</td>
<td>(0.15)</td>
</tr>
<tr>
<td>Case Length (in Months)</td>
<td>0.036*</td>
<td>(0.01)</td>
</tr>
<tr>
<td>Personal Injury Torts Case</td>
<td>−0.157</td>
<td>(0.15)</td>
</tr>
<tr>
<td>Business Case</td>
<td>0.231</td>
<td>(0.21)</td>
</tr>
<tr>
<td><strong>Personal Characteristics</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Elite Law School</td>
<td>−0.066</td>
<td>(0.28)</td>
</tr>
<tr>
<td>Law Professor Experience</td>
<td>0.085</td>
<td>(0.26)</td>
</tr>
<tr>
<td>Exceptional ABA Rating</td>
<td>−0.040</td>
<td>(0.17)</td>
</tr>
<tr>
<td>Not Qualified ABA Rating</td>
<td>−1.039*</td>
<td>(0.40)</td>
</tr>
<tr>
<td>Female District Judge</td>
<td>0.135</td>
<td>(0.22)</td>
</tr>
<tr>
<td>Circuit Controls</td>
<td>Included</td>
<td></td>
</tr>
<tr>
<td>Constant</td>
<td>0.175</td>
<td>(1.66)</td>
</tr>
<tr>
<td>Observations</td>
<td>4137</td>
<td></td>
</tr>
</tbody>
</table>

Note. Statistical significance is represented with * (p < 0.05, Two-Tailed), and Robust Standard Errors (RSE) clustered on a case’s district court are reported in parentheses. Civil Rights Cases and Qualified ABA Rating are the baseline categories and are excluded from the model.

RESULTS

Writing an Opinion

The first empirical examination is whether a district judge writes an opinion in a case. To capture this, I estimate a logistic regression models with robust standard errors clustered on district, the results of which are reported in Table 2. The results indicate that a number of variables have a statistically significant effect in the predicted direction on the likelihood of opinion writing. The most impressive of these results rest in the institutional, hierarchical, and legal arenas. To further delve into the substantive effect of these results, since the logit coefficients can be interpreted only for significance and direction, the rest of this section will focus on the results of estimated predicted probabilities.

Table 2’s estimates provide statistical support for a number of institutional, hierarchical, and legal variables. The institutional constraint hypothesis predicts that as a judge’s caseload grows, he will be less likely to write an opinion. The negatively signed, statistically significant caseload

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9 As a robustness check, I estimate the logistic regression below in the following alternative ways: (1) excluding all cases that ultimately settle, (2) including all cases in which a magistrate serves as a case’s assigned judge (by the consent of the parties), and (3) excluding the variable for elite law school graduates and, separately, the law professor experience variable out of concern for its possible collinearity with the ABA ratings' variables. The results of these supplementary estimations are very similar to those listed in Table 2 and are available from the author upon request.
variable provides evidence to support this expectation. As the top panel of Figure 1 depicts, this effect is rather sizable. Small caseloads afford district judges the time and ability to write more opinions, with the figure indicating that the probability of writing an opinion rises to nearly 0.25 for those judges with the lowest number of cases on their dockets. As caseload rises, so does the nondiscretionary workload of these judges, meaning the flexibility to write more frequently fades. Median caseload judges have a probability of writing of about 0.072, and for those judges with extremely high yearly caseloads, this probability falls to a minuscule 0.020.

The hierarchy-related hypothesis above predicts that, as a form of strategic anticipation, as a supervising circuit court has a higher level of partisanship heterogeneity, the less likely a district judge should be to write. The negative result for Circuit Partisan Diversity provides evidence for this expectation. The middle panel of Figure 1 plots the predicted probability of a judge writing an opinion across the values of circuit partisan diversity. It indicates that a district judge serving in a circuit dominated by judges of a single party has a probability of writing of nearly 0.11, but that probability drops as low as 0.04 when the district judge is instead serving under a completely diverse (50–50 split between Republicans and Democrats) circuit. Note that the results do not provide statistical support for the other hierarchy-related expectation captured by Ideological Distance.

Turning to the legal and case-specific factors that may affect opinion writing, there is strong statistical evidence to support the motion-related expectation. As the modeling above indicates, motions for summary judgment and involuntary dismissal both have strong, positive effects on district judge opinion writing, something that is likely driven by the necessity of district judges to provide written and well-researched legal justification for their rulings on these important, case-altering motions. The importance of these motions for judicial opinion writing behavior is further clarified in the plot of the substantive effects of these variables in Figure 2. The figure depicts the probability of a district judge writing an opinion based on key motion activity in four types of cases: (1) a case with neither a motion for summary judgment or a motion to dismiss, (2) a case with only a motion to dismiss, (3) a case with only a motion for summary judgment, and (4) a case with both a motion to dismiss and a motion for summary judgment. The differences are telling. When no motion is present, the probability of an opinion rests around 0.06. When both motions are present, this probability skyrockets to 0.32. In between, with just a motion to dismiss, the probability is 0.14, and with just a motion for summary judgment, the probability is 0.16.10

The other significant case and legal factor is Case Length (in Months). As expected, the longer a case lasts, the more likely a judge will be to write an opinion. Plotted in the bottom panel of Figure 1, the probability of opinion writing ranges from below 0.05 in very short cases to over 0.22 in those longer cases terminating around 50 months after filing. Median length cases have a 0.10 probability of yielding a written opinion.

Finally, while the hypotheses above indicate an expectation that a variety of judicial characteristics will affect the district court opinion-writing decision, only a judge’s ABA rating has a

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10While the 95 percent confidence intervals on these probabilities overlap, the key to statistical significance here is the overall change in this probability and the fact that the interval around this change does not include 0 (Austin and Hux 2002; Epstein, Martin, and Schneider 2006). Here, the change from a case with just a motion for summary judgment to one with both motions is nearly 0.16, with a 95 percent confidence interval around that change of [0.0395, 0.2767].
FIGURE 1  Predicted probability that a case will have a judge-authored opinion based on (top panel) the weighted caseload per judge in a district, (middle panel) the level of partisan diversity in a judge’s supervising circuit court, and (bottom panel) the number of months it takes for a case to terminate. Notice that the y-axis varies for each of the three subfigures. All other variables are held at their mean (continuous variables) and modal (dichotomous variables) values.
statistically meaningful effect. The coefficient on Not Qualified ABA Rating indicates that compared to judges that received a qualified ABA rating (the model’s baseline), district judges that received a not qualified ABA rating are less likely to author an opinion. The estimated predicted probability on this effect indicates that the size of this effect is relatively modest, changing from a 0.023 probability of writing an opinion for a not qualified ABA-rated judge to 0.063 for a qualified-rated district judge. It does partially confirm the ABA-related results that Taha (2004) found in his study of criminal sentencing cases.

Opinion Length

I turn next to an examination of the legal content of district court opinions—via length—when a district judge decides to write. As noted above, the dependent variable of interest in this section is a count variable based on the total number of words in the body of the district court opinions.11

11Future work may consider approaching the modeling of opinion length and the presence of an opinion with a selection model. Finding the appropriate selection model for such an exercise is not without complications. A traditional Heckman-style selection model would be inappropriate for this task since there is a high degree of substantive and theoretical overlap between this article’s potential selection stage (writing an opinion or not) and the outcome stage (the length of the written opinion). For the Heckman model with sample selection to be identified beyond its functional form, it requires the existence of one or more exclusionary variables (StataCorp 2009) that are related to the selection equation but are not related to the outcome equation. When this exclusionary restriction is not satisfied, it creates omitted variable bias in the outcome equation and can yield erroneous inferences and biased parameter estimates (Brandt and Schneider 2007; Freedman and Sekhon 2010). In addition to the difficulties present with finding an appropriate selection model, the estimation of such a model would likely necessitate a reconsideration of how to best deal with cases yielding multiple opinions (see footnote 7).
TABLE 3
Negative Binomial Regression Estimates for the Number of Words in an Opinion

<table>
<thead>
<tr>
<th>Variables</th>
<th>Coefficient</th>
<th>RSE</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Institutional and Hierarchical Factors</strong></td>
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<td></td>
</tr>
<tr>
<td>Weighted Caseload Per Judge</td>
<td>-0.001</td>
<td>(0.00)</td>
</tr>
<tr>
<td>Circuit Partisan Diversity</td>
<td>-0.812</td>
<td>(0.52)</td>
</tr>
<tr>
<td>Ideological Distance</td>
<td>-0.039</td>
<td>(0.21)</td>
</tr>
<tr>
<td><strong>Legal and Case Factors</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Motion to Dismiss</td>
<td>0.020</td>
<td>(0.12)</td>
</tr>
<tr>
<td>Motion for Summary Judgment</td>
<td>0.556*</td>
<td>(0.15)</td>
</tr>
<tr>
<td>Case Length (in Months)</td>
<td>0.017*</td>
<td>(0.01)</td>
</tr>
<tr>
<td>Personal Injury Torts Case</td>
<td>-0.146</td>
<td>(0.09)</td>
</tr>
<tr>
<td>Business Case</td>
<td>0.222*</td>
<td>(0.08)</td>
</tr>
<tr>
<td><strong>Personal Characteristics</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Elite Law School</td>
<td>0.108</td>
<td>(0.21)</td>
</tr>
<tr>
<td>Law Professor Experience</td>
<td>0.212</td>
<td>(0.38)</td>
</tr>
<tr>
<td>Exceptional ABA Rating</td>
<td>0.031</td>
<td>(0.20)</td>
</tr>
<tr>
<td>Not Qualified ABA Rating</td>
<td>0.084</td>
<td>(0.35)</td>
</tr>
<tr>
<td>Female District Judge</td>
<td>0.155*</td>
<td>(0.07)</td>
</tr>
<tr>
<td>Circuit Controls</td>
<td>Included</td>
<td></td>
</tr>
<tr>
<td>Constant</td>
<td>8.116*</td>
<td>(0.39)</td>
</tr>
<tr>
<td>/lnalpha</td>
<td>-0.504*</td>
<td>(0.12)</td>
</tr>
<tr>
<td>alpha</td>
<td>0.604</td>
<td>(.07)</td>
</tr>
<tr>
<td>Observations</td>
<td>380</td>
<td></td>
</tr>
</tbody>
</table>

*Note. Statistical significance is represented with * (p < 0.05, two-tailed), and robust standard errors clustered on a case’s district court are reported in parentheses. Civil Rights Cases and Qualified ABA Rating are the baseline categories and are excluded from the model.

To capture the effect of the independent variables on this dependent variable, I estimate a negative binomial regression model (NBRM).12 The results of the estimation are reported in Table 3.

As the results indicate, when it comes to opinion length, institutional (caseload), hierarchical (circuit diversity and ideological distance), and personal judicial characteristics seem to have little to no effect on district judge opinion writing behavior. Indeed, across these categories, only Female District Judge has a statistically significant effect on opinion length, with female district judges’ presence leading to written opinions that are just under 550 words longer than male district judges’ opinions. This female judge result is modest enough that it may well be explained by writing style or word choice rather than, as theorized, a deliberate attempt at providing the parties with more justification for case outcomes.

While these non-results are consistent with the above opinion writing model for judicial characteristics, they do serve as a departure for the institutional and hierarchical measures. In

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12 The NBRM is a flexible model that accounts for the overdispersion of a count dependent variable. As Anderson, Box-Steffensmeier and Sinclair-Chapman (2003, 363) report, the NBRM “allows us to model the heterogeneity in our data while not eliminating the possibility that the data have a Poisson distribution.” Although the estimations provided below indicate evidence of overdispersion and thus the appropriateness of estimating the NBRM, estimations of a Poisson count model and an ordinary least squares regression model, while both inefficient choices for the task at hand, produce results that are substantively similar to those reported for the NBRM.
other words, while a judge’s caseload and his considerations of the diversity of his supervising circuit court do appreciably affect whether he will write an opinion, once he makes that decision, he seems to be no longer constrained by these things when it comes to the length of his opinion. This provides an interesting way of viewing how the considerations of these district judges varies across the two opinion writing questions of this study.

Trial judges’ opinion lengths are substantially impacted by many legal and case characteristics. This is true for some variables that were also significant in the opinion writing model above (Table 2) and is also the case for the issue area variables that did not reach statistical significance in the first model. The most substantively significant of these legal variables on opinion length is the presence of a summary judgment motion in a case. As Figure 3 indicates, this impact is, as predicted, positive. For cases that have a motion for summary judgment, their opinions’ predicted number of words is 5,699, while the same case without a summary judgment motion is likely to yield an opinion with only 3,269 words. This over 2,400 word difference in judicial opinion writing behavior is likely due to the legally compelling reasons, like the tough legal standard required to satisfy the motion and the high, case-altering, stakes involved, that were hypothesized for this variable.13 Motions to dismiss, however, do not have this same statistically significant effect on opinion length.

In addition, a case’s issue area matters for how long a district judge makes his written opinions. As predicted, business cases (involving technical matters like patents and intellectual property) lead to longer opinions, averaging about 4,080 words (as plotted in Figure 3), something that is likely explained by the higher than average degree of legal complexity of these cases necessitating more judicial explanation in resolved matters. While not as long as business case opinions, civil rights trial court opinions do tend to be longer in length than those in tort cases (compare 3,268

13By way of comparison, many articles published in Justice System Journal and other journals range between 6,000 and 9,000 words.
words to 2,826 words in the modal cases in these categories). These civil rights cases may be more salient and/or involve more judicial activity than the personal injury tort cases, factors that provide a strong legal explanation for why district judges would tend to write these longer opinions.

Finally, the length of a case prior to its termination (Case Length (in Months)) also affects judicial opinion writing length in the expected way. In other words, the longer cases are pending, the lengthier their generated opinions are. The substantive effect of this is plotted in Figure 4. There, we can see that the predicted number of words per case ranges from around 3,159 in the shortest cases to approximately 7,290 in cases that terminate in just over four years.

**DISCUSSION**

It has been said that “[d]istrict judges have much greater discretion and power over litigants and cases” than federal appellate judges (Levin 2008, 978). This discretion is just one of many areas where trial judges’ work and behavior greatly distinguishes them from their appellate court colleagues. Where present, judicial discretion permits the broad examination of judicial behavior, including in areas well beyond merits decision making. As this article has discussed, one such area of uniquely vast discretion among district court judges lies with opinion writing and opinion length.

With this opinion writing discretion in place, this study finds empirical evidence that district judges are, in many circumstances, constrained by institutional, hierarchical, and legal factors when choosing whether and what to write in their assigned cases. Of particularly high importance in this regard are legal characteristics such as key motions, case complexity, and issue area. These factors, when present, signal the importance of the case and its necessity for legal rationale and, while doing so, increase the likelihood of opinion writing. And, indeed, once a district
judge makes the decision to write an opinion, these legal factors seem to be the only consistent constraints on judges on how lengthy to make their opinions.

In following recent district court-related empirical research, the results from this project also indicate some evidence to support hierarchical constraints on district judges in their opinion writing. At least when it comes to whether a district judge is going to write an opinion, the partisan diversity of his supervising circuit court has a statistically and substantively important influence on his behavior. The findings here provide even stronger evidence that when district judges are constrained by the institutionally related factor of high caseload, opinion writing and content suffer (along with, undoubtedly, many other discretionary aspects of their jobs). Among other things, this institutional result may well give additional fodder to those increasingly engaged in district court forum shopping in civil litigation. A district judge, when burdened by a high caseload, may opt out of opinion writing, a choice that could greatly (and unequally) impact the case’s likelihood of success on appeal and the losing party’s satisfaction with the outcome. This is just one additional area where district courts, and the judges, litigants, and cases within them, are uniquely affected by the presence of opinion writing discretion.

Finally, what may be most surprising to readers interested in judicial behavior is that this study yields very limited results related to personal judicial characteristics in any of the models. Except for the substantively small ABA results (from model 1) and judge sex (from model 2), this includes virtually no evidence that district judges choose to write opinions because of their strong academic background or to gain intrinsic, intellectual benefits. While the lack of results for this may be due to the measurable district judge variables simply being insufficient for capturing this expectation, it is also quite possible that these non-effects are indicative of something greater. While the theory regarding the individual, academic aspects of judicial opinion writing behavior may be informative for the practice of circuit judging (and perhaps even salient criminal district court judging), it seems increasingly likely that the nature of general, everyday district court judging is something that disincentivizes exercising intellectual vanity through opinion writing. While it is not yet possible to disentangle these explanations, the empirical results (and lack thereof) from this project provide additional evidence that once we move away from studying published outcomes and only highly salient cases in district courts, things such as personal preferences, judicial background, and strategy are less influential in explaining judicial behavior. Rather, legal and institutional constraints move firmly to the forefront in predicting the behavior of federal district judges.

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REFERENCES


