

Judicial Writing and Case Management

A Bibliography

Aliza Milner*

I. Introduction

The work of the judiciary is manifold. On the one hand, judges develop law and answer weighty questions for all aspects of life and human relationships. On the other hand, they process cases and resolve disputes in workaday government fashion. And while we rely on courts to safeguard rights and uphold democratic principles, we also expect them to function well within prescribed budgets regardless of the number of cases they have. The mix of these expectations, lofty and routine, analytical and administrative, explains why the study of judicial work continues to absorb our attention as teachers, students, judges, and practitioners. It explains, too, the great volume of scholarship about judicial work, which fed this project.

This bibliography focuses on two aspects of judicial work: written opinions and decisions; and management of cases to resolution. I chose these categories because the writings of courts are the best-known aspect of judicial work, and case management supports that work. These categories also reflect the lofty and routine mix of expectations in judicial work.

Primarily, this bibliography includes material from January 2000 to December 2023. But it also updates portions of two bibliographies from 2011: Ruth Vance’s annotated bibliography about judicial opinion writing and Mary Dunnewold, Beth Honetschlager, and Brenda Tofte’s bibliography about judicial clerkships. Vance focused on “the craft of drafting an opinion primarily for courses on judicial writing.”¹ She selected

* Director of Legal Communication and Research, Syracuse University College of Law. Thank you to Amy Griffin and Rachel Goldberg for their expert editorial advice and to my husband, Daniel Kornfeld, for his enduring support.

¹ Ruth C. Vance, *Judicial Opinion Writing: An Annotated Bibliography*, 17 LEGAL WRITING 197, 199 (2011).

“how-to” materials published mostly between 1990 and 2010. Dunnewold, Honetschlager, and Tofte’s bibliography included material about writing opinions, as well as material about applying to clerkships and a clerk’s role in chambers.² It included material published from 1980 through 2011. These earlier bibliographies, then, focused on clerkships, whereas this compilation focuses on judicial work. A few sources from 2000 to 2011 about writing opinions appear in these previous bibliographies, but otherwise the content included in this bibliography is new.

II. The bibliography

A bibliography about judicial work cannot be too tidy because the work and commentary about it defy categories. Yet, I strove to define the scope of the bibliography intentionally, with several demarcations to assist readers in using the bibliography effectively. The first demarcation is that this bibliography concerns what judges do, rather than who they are. It does not include, for example, scholarship about judicial selection,³ temperament, ideology, or education. Nor does it include scholarship analyzing an individual judge’s style or tributes for individual judges, as meaningful as those tend to be.

Another demarcation is that the bibliography considers some, but not all, aspects of judicial work. In concentrating on writing and case management, it does not include scholarship about how judges reach decisions, mostly because that burgeoning material would be better served in a bibliography of its own. That bibliography, not this one, might focus on the psychology of judicial decisions and include topics of deliberation, collegiality, and jurisprudence.⁴ Similarly, another bibliography, not this one, might chart scholarly conversations about judicial reasoning, statutory interpretation, stare decisis, and citation practices. All those topics affect what judges write and how they manage cases, but I do not include them here. Finally, Barbara Gotthelf prepared an excellent bibliography of oral argument in 2002, which I do not repeat.⁵

2 Mary Dunnewold, Beth Honetschlager & Brenda Tofte, *Judicial Clerkships: A Bibliography*, 8 LEGAL COMM. & RHETORIC 239 (2011). Readers also may be interested in an earlier bibliography about workflow in the federal courts. See Thomas E. Baker, *A Bibliography for the United States Courts of Appeals*, 25 TEX. TECH L. REV. 335 (1994).

3 See Suzanne L. Cassidy, *Judicial Selection: A Selective Bibliography*, 56 MERCER L. REV. 1019 (2005); Amy B. Atchison, Lawrence Tobe Liebert & Denise K. Russell, *Judicial Independence and Judicial Accountability, A Selected Bibliography*, 72 S. CALIF. L. REV. 723 (1999).

4 For writings by judges about decisionmaking, see Shirley S. Abrahamson, Susan M. Fieber & Gabrielle Lessard, *Judges on Judging: A Bibliography*, 24 ST. MARY’S L.J. 995 (1993). For sources concerning narrative theory in judicial writing and reasoning, see J. Christopher Rideout, *Applied Legal Storytelling: A Bibliography*, 12 LEGAL COMM. & RHETORIC 247 (2015).

5 Barbara Gotthelf, *Oral Advocacy: A Bibliography*, 19 LEGAL COMM. & RHETORIC 239 (2022).

Most, but not all, of the sources included are books and articles written for law journals because adding material prepared primarily for readers of political science or psychology quickly became unwieldy. Also, the bibliography includes writings about federal and state courts, as well as trial courts, intermediate appellate courts, and courts of last resort. The bibliography shows that legal scholarship is uneven, favoring federal appellate courts and state courts of last resort over state intermediate appellate courts and trial courts. Finally, this bibliography does not include scholarship about courts outside of the United States or comparative analyses of courts from different countries.

Often as I returned to this project, I saw different ways to organize and select material. The structure I chose is one among several possibilities. Nonetheless, this bibliography provides a wealth of reading about the judicial work of writing and managing cases. I hope the bibliography inspires new questions, research, and discussions. Years of clerking in the Maryland appellate courts taught me that judicial work is a noble endeavor, and I have yet to forget that lesson.

A. Judicial writing

Scholarly attention for judicial writing shifts between descriptions of what courts do and prescriptions for what they ought to do. Overall, the material in this section reflects that twofold attention. Subsections 1 and 2 include scholarship about the rules and customs of judicial writing in federal and state courts. These sources track when courts write and how those writings are treated. Common subjects, for example, are the different forms that appellate opinions take and their precedential effect. Next, subsection 3 explores the purpose and ethics of judicial writing. These sources are more prescriptive than descriptive, suggesting how judges should approach writing to meet their professional responsibility. Subsection 4 covers style in judicial writing. Subsection 5 lists scholarship exploring dissents and concurrences, and subsection 6 collects new scholarship about artificial intelligence and judicial writing, a conversation that is sure to grow.

1. Rules and customs of judicial writing in federal courts

For federal material in this section, the precedential weight of judicial opinions continues to gather attention even after Federal Rule of Appellate Procedure 32.1 allowed for citation to unpublished opinions issued after 2007. Also, among federal courts, disproportionate attention is given to the U.S. Court of Appeals for the Federal Circuit because it allows affirmance of patent law cases without written explanation. Separating the material devoted to federal courts from that devoted to state courts

should assist future research, but a few of the sources in this subsection also discuss state courts.

Jill Barton, *Supreme Court Splits . . . on Grammar and Writing Style*, 17 SCRIBES J. LEGAL WRITING 33 (2017).

Rachel Brown, Jade Ford, Sahrula Kubie, Katrin Marquez, Bennett Ostdiek & Abbe R. Gluck, *Is Unpublished Unequal? An Empirical Examination of the 87% Nonpublication Rate in Federal Appeals*, 107 CORNELL L. REV. 1 (2021).

Stephen J. Choi & G. Mitu Gulati, *Which Judges Write Their Opinions (and Should We Care)?*, 32 FLA. ST. U. L. REV. 1077 (2005).

Dennis Crouch, *Wrongly Affirmed Without Opinion*, 52 WAKE FOREST L. REV. 561 (2017).

Matthew J. Dowd, *Rule 36 Decisions at the Federal Circuit: Statutory Authority*, 21 VAND. J. ENT. & TECH. L. 857 (2019).

Ben Grunwald, *Strategic Publication*, 92 TUL. L. REV. 745 (2018).

Paul R. Gugliuzza & Mark A. Lemley, *Can a Court Change the Law by Saying Nothing?*, 71 VAND. L. REV. 765 (2018).

Deborah L. Heller, *To Cite or Not to Cite: Is That Still a Question?*, 112 LAW LIBR. J. 393 (2020).

Andrew Hoffman, *The Federal Circuit's Summary Affirmance Habit*, 2018 BYU L. REV. 419 (2018).

Kenneth F. Hunt, *Saving Time or Killing Time: How the Use of Unpublished Opinions Accelerates the Drain on Federal Judicial Resources*, 61 SYRACUSE L. REV. 315 (2011).

Michael Kagan, Rebecca Gill & Fatma Marouf, *Invisible Adjudication in the U.S. Courts of Appeals*, 106 GEO. L.J. 683 (2018).

Richard J. Lazarus, *The (Non)finality of Supreme Court Opinions*, 128 HARV. L. REV. 540 (2014).

Rebecca A. Lindhorst, *Because I Said So: The Federal Circuit, the PTAB, and the Problem with Rule 36 Affirmances*, 69 CASE W. RES. L. REV. 247 (2018).

Zina Makar, *Per Curiam Signals in the Supreme Court's Shadow Docket*, 98 WASH. L. REV. 427 (2023).

Peter W. Martin, *District Court Opinions That Remain Hidden Despite a Long-Standing Congressional Mandate of Transparency—The Result of Judicial Autonomy and Systemic Indifference*, 110 LAW LIBR. J. 305 (2018).

- Peter W. Martin, *Judges Revising Opinions After Their Release*, 4 J.L.: PERIODICAL LAB'Y LEGAL SCHOLARSHIP 243 (2014).
- Merritt E. McAlister, "Downright Indifference": *Examining Unpublished Decisions in the Federal Courts of Appeals*, 118 MICH. L. REV. 533 (2020).
- Elizabeth Y. McCuskey, *Submerged Precedent*, 16 NEV. L.J. 515 (2016).
- Alexander A. Reinert, *Measuring Selection Bias in Publicly Available Judicial Opinions*, 38 REV. LITIG. 255 (2019).
- Scott Rempell, *Unpublished Decisions and Precedent Shaping: A Case Study of Asylum Claims*, 31 GEO. IMMIGR. L.J. 1 (2016).
- Lauren Robel, *The Practice of Precedent: Anastasoff, Noncitation Rules, and the Meaning of Precedent in an Interpretive Community*, 35 IND. L. REV. 399 (2002).
- Jeffrey S. Rosenthal & Albert H. Yoon, *Judicial Ghostwriting: Authorship on the Supreme Court*, 96 CORNELL L. REV. 1307 (2011).
- Hayley Stillwell, *Shadow Dockets Lite*, 99 DENV. L. REV. 361 (2022).
- Donna S. Stroud, *The Bottom of the Iceberg: Unpublished Opinions*, 37 CAMPBELL L. REV. 333 (2015).

2. Rules and customs of judicial writing in state courts

The scholarship for judicial writing considers state courts, too, as this subsection demonstrates. Yet, the rules and customs of judicial writing vary considerably across states and between levels of state courts, so reasonably one might expect more attention for state courts than federal courts. That has not happened, perhaps because academic scholarship favors federal courts or because the variation in state practices complicates neat analysis. Nonetheless, opportunities abound for future exploration of judicial writing in state courts.

David R. Cleveland, *Appellate Court Rules Governing Publication, Citation, and Precedential Value of Opinions: An Update*, 16 J. APP. PRAC. & PROCESS 257 (2015).⁶

Victor Eugene Flango, *State Supreme Court Opinions as Law Development*, 11 J. APP. PRAC. & PROCESS 105 (2010).

⁶ Cleveland's article includes federal and state rules. It updated two previous surveys: Melissa M. Serfass & Jessie Wallace Cranford, *Federal and State Court Rules Governing Publication and Citation of Opinions: An Update*, 6 J. APP. PRAC. & PROCESS 349 (2004), and Melissa M. Serfass & Jessie L. Cranford, *Federal and State Court Rules Governing Publication and Citation of Opinions*, 3 J. APP. PRAC. & PROCESS 251 (2001).

- Steven N. Gosney, "What Are My Chances on Appeal?" *Comparing Full Appellate Decisions to Per Curiam Affirmances*, 18 J. APP. PRAC. & PROCESS 115 (2017).
- Kent Greenfield, *Law, Politics, and the Erosion of Legitimacy in the Delaware Courts*, 55 N.Y. L. SCH. L. REV. 481 (2011).
- Logan Hetherington, *Keeping Up with Your Sister Court: Unpublished Memorandums, No-Citation Rules, and the Superior Court of Pennsylvania*, 122 DICK. L. REV. 741 (2018).
- Blake Koemans, *The Big Sky Shadow Docket: Noncite Opinions and the Montana Supreme Court*, 84 MONT. L. REV. 317 (2023).
- Robert A. Mead, *Unpublished Opinions and Citation Prohibitions: Judicial Muddling of California's Developing Law of Elder and Dependent Adult Abuse Committed by Health Care Providers*, 37 WM. MITCHELL L. REV. 206 (2010).
- Rafi Moghadam, *Judge Nullification: A Perception of Unpublished Opinions*, 62 HASTINGS L.J. 1397 (2011).
- Michael L. Smith, *The Citation of Unpublished Cases in the Wake of COVID-19*, 25 CHAP. L. REV. 97 (2021).
- Joshua Stein, *Tentative Oral Opinions: Improving Oral Argument Without Spending a Dime*, 14 J. APP. PRAC. & PROCESS 159 (2013).
- Charles J. Stiegler, *The Precedential Effect of Unpublished Judicial Opinions Under Louisiana Law*, 59 LOY. L. REV. 535 (2013).
- William C. Vickrey, Douglas G. Denton & Wallace B. Jefferson, *Opinions as the Voice of the Court: How State Supreme Courts Can Communicate Effectively and Promote Procedural Fairness*, 48 CT. REV. 74 (2012).
- Lauren S. Wood, *Out of Cite, Out of Mind: Navigating the Labyrinth That Is State Appellate Courts' Unpublished Opinion Practices*, 45 U. BALT. L. REV. 561 (2016).

3. Purpose and ethics of judicial writing

The sources in this subsection discuss what judicial writing means, most often for the audience, but sometimes for the writers. And that discussion of meaning tends to blend with sharp recommendations for what should or should not be done in judicial writing. The sources here lean interdisciplinary, offering, for example, historical reviews of judicial writing or linking judicial writing to cognitive science and writing theory. Some of the sources in this subsection discuss federal or state courts, but most cover all courts, so I did not distinguish between them.

- Mathilde Cohen, *When Judges Have Reasons Not to Give Reasons: A Comparative Law Approach*, 72 WASH. & LEE L. REV. 483 (2015).
- Michael Conklin, "Be A Lot Cooler If You Didn't": *Why Judges Should Refrain from Pop Culture References in Judicial Opinions*, 46 J. LEGAL PROF. 139 (2021).
- Skylar Reese Croy, *The Demise of the Law-Developing Function: A Case Study of the Wisconsin Supreme Court*, 26 SUFFOLK J. TRIAL & APP. ADVOC. 1 (2021).
- Perry Dane, *Law Clerks: A Jurisprudential Lens*, 88 GEO. WASH. L. REV. 54 (2020).
- Adam Feldman, *All Copying Is Not Created Equal: Borrowed Language in Supreme Court Opinions*, 17 J. APP. PRAC. & PROCESS 21 (2016).
- Peter Friedman, *What Is a Judicial Author?*, 62 MERCER L. REV. 519 (2011).
- Mary Kate Kearney, *The Propriety of Poetry in Judicial Opinions*, 12 WIDENER L.J. 597 (2003).
- Mark R. Kravitz, *Written and Oral Persuasion in the United States Courts: A District Judge's Perspective on Their History, Function, and Future*, 10 J. APP. PRAC. & PROCESS 247 (2009).
- Gerald Lebovits, Alifayah V. Curtin & Lisa Solomon, *Ethical Judicial Opinion Writing*, 21 GEO. J. LEGAL ETHICS 237 (2008).
- Gerald Lebovits, *What Trial Judges Want (and Don't Want) in Appellate Opinions*, 23 J. APP. PRAC. & PROCESS 375 (2023).
- James Markham, *Against Individually Signed Judicial Opinions*, 56 DUKE L.J. 923 (2006).
- David McGowan, *Judicial Writing and the Ethics of the Judicial Office*, 14 GEO. J. LEGAL ETHICS 509 (2001).
- Anne E. Mullins, *Jedi or Judge: How the Human Mind Redefines Judicial Opinions*, 16 WYO. L. REV. 325 (2016).
- Anne E. Mullins, *Source-Relational Ethos in Judicial Opinions*, 54 WAKE FOREST L. REV. 1089 (2019).
- Chad M. Oldfather, *Error Correction*, 85 IND. L.J. 49 (2010).
- Chad M. Oldfather, *Writing, Cognition, and the Nature of the Judicial Function*, 96 GEO. L.J. 1283 (2008).
- Douglas R. Richmond, *Unoriginal Sin: The Problem of Judicial Plagiarism*, 45 ARIZ. ST. L.J. 1077 (2013).

- Joel Schumm, *No Names, Please: The Virtual Victimization of Children . . . in Appellate Court Opinions*, 42 GA. L. REV. 471 (2008).
- Suzanna Sherry, *Our Kardashian Court (and How to Fix It)*, 106 IOWA L. REV. 181 (2020).
- Justin Simard, *Citing Slavery*, 72 STAN. L. REV. 79 (2020).
- Annie M. Smith, *Great Judicial Opinions Versus Great Literature: Should the Two Be Measured by the Same Criteria?*, 36 MCGEORGE L. REV. 757 (2005).
- Barry Sullivan & Ramon Feldbrin, *The Supreme Court and the People: Communicating Decisions to the Public*, 24 U. PA. J. CONST. L. 1 (2022).
- Nina Varsava, *Professional Irresponsibility and Judicial Opinions*, 59 HOUS. L. REV. 103 (2021).
- Ryan Benjamin Witte, *The Judge as Author / The Author as Judge*, 40 GOLDEN GATE U. L. REV. 37 (2009).

4. Style in judicial writing

Beyond the earlier subsections of rules, customs, purpose, and ethics, this subsection explores the style of judicial writing, mostly for appellate opinions. The scholarship discusses structure, language, tone, and length of opinions, but it also considers added flourishes like humor or images.

Articles

- Douglas E. Abrams, *Sports in the Courts: The Role of Sports References in Judicial Opinions*, 17 VILL. SPORTS & ENT. L.J. 1 (2010).
- Ruggero J. Aldisert, Meehan Rasch & Matthew P. Bartlett, *Opinion Writing and Opinion Readers*, 31 CARDOZO L. REV. 1 (2009).
- Jill Barton, *So Ordered: The Techniques of Great Judicial Stylists*, 18 SCRIBES J. LEGAL WRITING 1 (2019).
- Luke Burton, *Less Is More: One Law Clerk's Case Against Lengthy Judicial Opinions*, 21 J. APP. PRAC. & PROCESS 105 (2021).
- Frank B. Cross & James W Pennbaker, *The Language of the Roberts Court*, 2014 MICH. ST. L. REV. 853 (2014).
- Lisa Eichhorn, *Declaring, Exploring, Instructing, and (Wait for It) Joking: Tonal Variation in Majority Opinions*, 18 LEGAL COMM. & RHETORIC 1 (2021).
- Ross Guberman, *What A Breeze: The Case for the "Impure" Opinion*, 16 SCRIBES J. LEGAL WRITING 57 (2015).

- Lucas K. Hori, *Bons Mots, Buffoonery, and the Bench: The Role of Humor in Judicial Opinions*, 60 *UCLA L. REV.* 16 (2012).
- Stephen Johnson, *The Changing Discourse of the Supreme Court*, 12 *U.N.H. L. REV.* 29 (2014).
- Andrew Jensen Kerr, *The Perfect Opinion*, 12 *WASH. U. JURIS. REV.* 221 (2020).
- Joseph Kimble, *The Straight Skinny on Better Judicial Opinions*, 9 *SCRIBES J. LEGAL WRITING* 1 (2003).
- Nancy Marder, *The Court and the Visual Images and Artifacts in U.S. Supreme Court Opinions*, 88 *CHI.-KENT L. REV.* 331 (2013).
- Jack Metzler, *Cleaning Up Quotations*, 18 *J. APP. PRAC. & PROCESS* 143 (2017).
- S.I. Strong, *Writing Reasoned Decisions and Opinions: A Guide for Novice, Experienced, and Foreign Judges*, 2015 *J. DISP. RESOL.* 93 (2015).
- Mary B. Trevor, *From Ostriches to Sci-Fi: A Social Science Analysis of the Impact of Humor in Judicial Opinions*, 45 *U. TOL. L. REV.* 291 (2014).
- Nancy A. Wanderer, *Writing Better Opinions: Communicating with Candor, Clarity, and Style*, 54 *ME. L. REV.* 47 (2002).

Books

- RUGGERO J. ALDISERT, *OPINION WRITING* (2012).
- JILL BARTON, *SO ORDERED: THE WRITER'S GUIDE FOR ASPIRING JUDGES, JUDICIAL CLERKS, AND INTERNS* (2017).
- MARY L. DUNNEWOLD, BETH A. HONETSCHLAGER & BRENDA L. TOFTE, *JUDICIAL CLERKSHIPS: A PRACTICAL GUIDE* (2010).
- FEDERAL JUDICIAL CENTER, *LAW CLERK HANDBOOK* (4th ed. 2020).
- JOYCE J. GEORGE, *JUDICIAL OPINION WRITING HANDBOOK* (4th ed. 2000).
- ROSS GUBERMAN, *POINT TAKEN: HOW TO WRITE LIKE THE WORLD'S BEST JUDGES* (2015).
- ALIZA MILNER, *JUDICIAL CLERKSHIPS: LEGAL METHODS IN MOTION* (2011).
- ABIGAIL L. PERDUE, *THE ALL-INCLUSIVE GUIDE TO JUDICIAL CLERKING* (2017).
- WILLIAM POPKIN, *EVOLUTION OF THE JUDICIAL OPINION: INSTITUTIONAL AND INDIVIDUAL STYLES* (2007).
- RICHARD A. POSNER, *REFLECTIONS ON JUDGING* (2013).

JENNIFER L. SHEPPARD, *IN CHAMBERS: A GUIDE FOR JUDICIAL CLERKS AND EXTERNS* (2012).

5. Dissents and concurrences

In the scholarship about dissents and concurrences a lingering question is whether separate opinions benefit courts and the people they serve. Do dissents, for example, represent healthy debate or strained collegiality? Are concurrences useful for law development? This subsection includes scholarship about federal and state courts.

Articles

Thomas B. Bennett, Barry Friedman, Andrew D. Martin & Susan Navarro Smelcer, *Divide & Concur: Separate Opinions & Legal Change*, 103 CORNELL L. REV. 817 (2018).

Marsha S. Berzon, *Dissent, "Dissentals," and Decision Making*, 100 CALIF. L. REV. 1479 (2012).

Sarah M.R. Cravens, *In Good Conscience: Expressions of Judicial Conscience in Federal Appellate Opinions*, 51 DUQ. L. REV. 95 (2013).

Bernice B. Donald, *Judicial Independence, Collegiality, and the Problem of Dissent in Multi-Member Courts*, 94 N.Y.U. L. REV. 317 (2019).

Theodore Eisenberg & Geoffrey P. Miller, *Reversal, Dissent, and Variability in State Supreme Courts: The Centrality of Jurisdictional Source*, 89 B.U. L. REV. 1451 (2009).

Lee Epstein, William M. Landes & Richard A. Posner, *Why (and When) Judges Dissent: A Theoretical and Empirical Analysis*, 3 J. LEGAL ANALYSIS 101 (2011).

Greg Goelzhauser, *Silent Concurrences*, 31 CONST. COMMENT. 351 (2016).

M. Todd Henderson, *From Seriatim to Consensus and Back Again: A Theory of Dissent*, 2007 SUP. CT. REV. 283 (2007).

Bert I. Huang & Tejas N. Narechania, *Judicial Priorities*, 163 U. PA. L. REV. 1719 (2015).

Allison Orr Larsen, *Perpetual Dissents*, 15 GEO. MASON L. REV. 447 (2008).

Joseph P. Mastrosimone, *Benchslaps*, 2017 UTAH L. REV. 331 (2017).

Joseph Scott Miller, *A Judge Never Writes More Freely: A Separate-Opinions Citation-Network Approach to Assessing Judicial Ideology*, 2022 MICH. ST. L. REV. 901 (2022).

- Jonathan Remy Nash, *Measuring Judicial Collegiality Through Dissent*, 70 BUFF. L. REV. 1561 (2022).
- Note, *From Consensus to Collegiality: The Origins of the “Respectful” Dissent*, 124 HARV. L. REV. 1305 (2011).
- David Orentlicher, *Judicial Consensus: Why the Supreme Court Should Decide Its Cases Unanimously*, 54 CONN. L. REV. 303 (2022).
- Meg Penrose, *Goodbye to Concurring Opinions*, 15 DUKE J. CONST. L. & PUB. POL’Y 25 (2020).
- Alexander I. Platt, *Deciding Not to Decide: A Limited Defense of the Silent Concurrence*, 17 J. APP. PRAC. & PROCESS 141 (2016).
- Laura Krugman Ray, *Circumstance and Strategy: Jointly Authored Supreme Court Opinions*, 12 NEV. L. J. 727 (2012).
- Hunter Smith, *Personal and Official Authority: Turn-of-the-Century Lawyers and the Dissenting Opinion*, 24 YALE J.L. & HUMAN. 507 (2012).
- Joan Steinman, *Signed Opinions, Concurrences, Dissents, and Vote Counts in the U.S. Supreme Court: Boon or Bane? (A Response to Professors Penrose and Sherry)*, 53 AKRON L. REV. 525 (2019).
- Indraneel Sur, *How Far Do Voices Carry: Dissents from Denial of Rehearing En Banc*, 2006 WIS. L. REV. 1315 (2006).
- Nina Varsava, *The Role of Dissents in the Formation of Precedent*, 14 DUKE J. CONST. L. & PUB. POL’Y 285 (2019).

Books

- PAMELA C. CORLEY, *CONCURRING OPINION WRITING ON THE U.S. SUPREME COURT* (2010).
- MARK TUSHNET, *I DISSENT: GREAT OPPOSING OPINIONS IN LANDMARK SUPREME COURT CASES* (2008).
- MICHAEL A. ZILIS, *THE LIMITS OF LEGITIMACY: DISSENTING OPINIONS, MEDIA COVERAGE, AND PUBLIC RESPONSES TO SUPREME COURT DECISIONS* (2015).

6. Artificial intelligence and judicial writing

This subsection includes recent scholarship about artificial intelligence. The technology is new, but the conversations reflected here are familiar, asking once again what judicial writing means to American courts, and attempting once again to parse the analytical and administrative functions of courts.

- Ray Worthy Campbell, *Artificial Intelligence in the Courtroom: The Delivery of Justice in the Age of Machine Learning*, 18 COLO. TECH. L.J. 323 (2020).
- Cary Coglianese & Lavi M. Ben Dor, *AI in Adjudication and Administration*, 86 BROOK. L. REV. 791 (2021).
- Joshua P. Davis, *Of Robolawyers and Robojudges*, 73 HASTINGS L.J. 1173 (2022).
- Aziz Z. Huq, *A Right to A Human Decision*, 106 VA. L. REV. 611 (2020).
- Richard M. Re & Alicia Solow-Niederman, *Developing Artificially Intelligent Justice*, 22 STAN. TECH. L. REV. 242 (2019).
- Eugene Volokh, *Chief Justice Robots*, 68 DUKE L.J. 1135 (2019).

B. Case management

Courts must manage their dockets. Written opinions and decisions are important components of judicial work, but they are not the only considerations. The sources in this section tackle other considerations of judicial work like timeliness, efficiency, and the division of labor between judges and law clerks. At times, I paused in deciding whether to include a source in section A, Judicial writing, or this section devoted to case management. As caseloads and time pressures increase, for example, courts are more likely to forego written and fully reasoned opinions. With that said, I was able generally to separate scholarship focused primarily on writing opinions from scholarship focused on managing cases.

Along with the sources listed below, several excellent collections exist regarding case management. *Duke Law Journal* and the *New England Law Review* have hosted symposia exploring evaluation and measurement of judicial work.⁷ *Marquette Law Review* hosted a comprehensive discussion about law clerks.⁸ More recently, the *Nevada Law Journal* devoted a volume to the U.S. Supreme Court's shadow docket.⁹ For state courts, the *Journal of Appellate Process and Procedure* collected writings about expedited appeals¹⁰ and the *Indiana Law Review* honed its lens on state intermediate appellate courts.¹¹ *Kentucky Law Journal* hosted a symposium about state court funding.¹²

⁷ See, e.g., Jeffrey M. Chemerinsky & Jonathan L. Williams, *Measuring Judges and Justice*, 58 DUKE L.J. 1173 (2009); Jordan M. Singer, *Foreword: Productivity in Public Adjudication*, 48 NEW ENG. L. REV. 445 (2014).

⁸ See, e.g., Chad Oldfather & Todd C. Peppers, *Judicial Assistants or Junior Judges: The Hiring, Utilization, and Influence of Law Clerks*, 98 MARQ. L. REV. 1 (2014).

⁹ See Leslie C. Griffin, *The Shadow Docket: A Symposium*, 23 NEV. L.J. 669 (2023).

1. Case management in federal courts

As in section A, I divided the material about case management between federal and state courts. The U.S. Courts of Appeals are a popular focus for case management, along with the U.S. Supreme Court’s shadow docket. There are several articles studying law clerks and staff attorneys in federal courts.

Articles

David R. Cleveland, *Post-Crisis Reconsideration of Federal Court Reform*, 61 CLEV. ST. L. REV. 47 (2013).

Ryan W. Copus, *Statistical Precedent: Allocating Judicial Attention*, 73 VAND. L. REV. 605 (2020).

Rebecca Frank Dallet & Matt Woleske, *State Shadow Dockets*, 2022 WIS. L. REV. 1063 (2022).

Miguel F. P. de Figueiredo, Alexandra D. Lahav & Peter Siegelman, *The Six-Month List and the Unintended Consequences of Judicial Accountability*, 105 CORNELL L. REV. 363 (2020).

Adam Heavin, *Short-Circuited: How Constitutional Silence and Politicized Federalism Led to Erosion of “Judicial Hallmarks” in Federal Appellate Process*, 56 TULSA L. REV. 109 (2020).

Christopher D. Kromphardt, *Fielding an Excellent Team: Law Clerk Selection and Chambers Structure at the U.S. Supreme Court*, 98 MARQ. L. REV. 289 (2014).

Shay Lavie, *Appellate Courts and Caseload Pressure*, 27 STAN. L. & POL’Y REV. 57 (2016).

Steve Leben, *Getting It Right Isn’t Enough: The Appellate Court’s Role in Procedural Justice*, 69 U. KAN. L. REV. 13 (2020).

Marin K. Levy, *Judicial Attention as A Scarce Resource: A Preliminary Defense of How Judges Allocate Time Across Cases in the Federal Courts of Appeals*, 81 GEO. WASH. L. REV. 401 (2013).

Marin K. Levy, *Panel Assignment in the Federal Courts of Appeals*, 103 CORNELL L. REV. 65 (2017).

Stefanie A. Lindquist, *Bureaucratization and Balkanization: The Origins and Effects of Decision-Making Norms in the Federal Appellate Courts*, 41 U. RICH. L. REV. 659 (2007).

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10 See Coleen M. Barger, *Expedited Appeals in Selected State Appellate Courts*, 4 J. APP. PRAC. & PROCESS 191 (2002).

11 See, e.g., Edward W. Najam, Jr., *Caught in the Middle: The Role of State Intermediate Appellate Courts*, 35 IND. L. REV. 329 (2002).

12 See, e.g., Erwin Chemerinsky, *Symposium on State Court Funding: Keynote Address*, 100 KY. L.J. 743 (2012).

- Katherine A. Macfarlane, *Shadow Judges: Staff Attorney Adjudication of Prisoner Claims*, 95 OR. L. REV. 97 (2016).
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2. Case management in state courts

Counting law journal articles, less has been written about case management in state courts as compared to federal courts. But the material in this subsection is a strong start for further study. Note that the scholarship differentiates between intermediate appellate courts and courts of last resort.

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