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'All eyes are on you': Gender, race, and opinion writing on the US Courts of Appeals

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Abstract

Because stereotyping affects individual assessments of ability and because of socializing experiences in the law, we argue that women and judges of color, while well-credentialed, feel pressure to work harder than their white male peers to demonstrate their competence. Using an original dataset of published appellate court opinions from 2008–2016, we find that majority opinions authored by female and non-white judges go farther to explain and justify their rulings, when compared to opinions written by white male peers. In comparison to other judges, opinions by white men are about 6% shorter, with 11% fewer citations, and 17% fewer extensively discussed citations. Our findings suggest that norms about crafting judicial opinions are gendered and racialized in ways that create higher workloads for women and judges of color.

Prestigious legal positions in the United States are filled, overwhelmingly, by white men. Women and people of color are underrepresented as tenured law school faculty and deans, as general counsel of Fortune 500 companies, and as partners in law firms (Kellerman & Rhode, 2017; Nelson et al., 2019). In state judiciaries, a 2019 report noted that white men constituted 56% of state supreme court seats, in spite of making up less than one third of the US population (Robbins & Bannon, 2019). The same report analyzed states with judicial elections and found that white male incumbents were more likely to run unopposed than white women, minority women, or minority men. As of January 2021, five of the nine sitting US Supreme Court justices were white men. Although Presidents Carter, Clinton, George W. Bush, and Obama all significantly increased the presence of women and individuals of color in the lower federal judiciary (Haire & Moyer, 2015),[1] one observer recently noted, "If you are ever unfortunate enough to wind up in federal court, chances are that your fate will be decided by a white man" (Millhiser, 2019).

The experience of being one of a few "outsiders" in a high-profile, prestigious institution can be isolating and pressure-inducing for women and judges of color (Haire & Moyer, 2015). As Justice Ruth Bader Ginsburg observed about her experiences as a woman in the legal profession, "when you are the only woman, all eyes are on you" (Associated Press, 1993). Biographers and historians have

[1]Under President Trump, this trend has reversed, with the appointment of fewer non-white judges to the federal bench (FJC 2020). Trump did appoint slightly more women than George W. Bush but far fewer than recent Democratic presidents (Gramlich, 2021).

also documented how the first black and Latinx judges to be appointed to the federal appellate bench felt pressure to exceed expectations (Fisch, 1996; Ware, 1984).

How might racial minorities and women respond to their high-profile positions in the judiciary? From one line of inquiry, negative stereotypes about one's relative abilities will be activated for women and people of color as a result of their token presence in a largely white, male institution (Hoyt et al., 2010; Kanter, 1977; Steele et al., 2007; Taylor et al., 1978). Although this type of stereotype threat has been observed to lead to diminished performance, counter-stereotypical, positive behaviors may also be induced as a result of this situation (Brehm, 1966; Hoyt & Blascovich, 2007; Kray et al., 2001). Related research on the impostor phenomenon finds that, in fields dominated by a particular group, individuals who do not fit into the profession's stereotype may adopt perfectionistic tendencies and set exceptionally high standards for their work, in order to demonstrate they have legitimately earned their position (Clance & Imes, 1978; Cokley et al., 2013; Sakulku & Alexander, 2011). As Nelson et al. (2019, p. 1052) argue, "[g]ender and racial stereotypes afford individual members of privileged gender or ethno-racial groups the presumption of competence while women and racial minorities are held to a higher standard than their white male counterparts." In the law, a profession that has historically been dominated by white men, Kirkpatrick (2020) argues that white maleness is conflated with the neutral ideal of "judge as umpire," leaving judges who are women and people of color open to charges of bias or incompatibility with the judicial role (see also Means & Unah, 2020).

Taken together, this literature raises the possibility that, whether consciously or subconsciously, judges who are people of color and/or women are likely to feel pressure to work harder than white men to explain and to justify their decisions to relevant audiences like co-panelists, litigants, and even the Supreme Court in order to be persuasive (Baum, 2006; Boyd, 2015). This is especially likely among the very few elite individuals appointed to the federal appellate courts, an institution comprised primarily of white, male judges. When deciding whether to pursue a seat, "outsider" judges may believe being overqualified is necessary to survive a multi-staged selection process characterized by intense public scrutiny.[2] This perception is reinforced by reality: women and non-white nominees receive lower ABA ratings, take longer to be confirmed, and receive more negative votes in the Judiciary Committee (Nixon & Goss, 2001; Sen, 2014; Steigerwalt, 2010).

In this study, we explore whether female and non-white judges—judges who have survived the gauntlet of law school, a legal career, and Senate confirmation—process the weighty responsibility of opinion writing differently than their white male counterparts. Will these "outsider" judges be especially driven to legitimate the opinion of the court?

Judges who write for the majority have discretion when deciding how to explain the ruling of the court to key audiences (Baum, 2006; Leonard & Ross, 2016), including which, and how many, cases to cite (Choi & Gulati, 2007; Hinkle, 2017; Klein, 2002). Indeed, a thorough, well-reasoned opinion helps to legitimize the judicial use of political power to shape public policy by demonstrating that the decision was reached by reasonably applying neutral legal principles (Carter, 1979, p. 221). Furthermore, Kim (2009, p. 1343) observes that it is "the content of the opinions rather than a simple declaration of a winner that shapes the development of the law."

As we explain below, we expect that women and people of color will write longer, more thorough opinions that incorporate more extensive discussion of precedents cited than those authored by their white male colleagues. Using a large, representative sample of published federal appellate opinions from 2008 to 2016, we find evidence of differences between white male judges ("insiders") and women and non-white judges ("outsiders") that support our expectations.

[2]We use the term "insider" to refer to white male judges because they are the largest race-gender cohort in the federal judiciary and legal profession, both historically and during the period of study, and, as such, shape perceptions of what a judge should look like and who should be a judge. We use the term "outsider" to refer to judges who are women and/or people of color because individuals from these groups have faced (and continue to face) overt discrimination in the legal profession and represent a change from the status quo of the white male judge. However, we recognize that on other dimensions, like connections to powerful interest groups or professional networks, outsider and insider status might break down differently.

GENDER, RACE, AND SELF-ASSESSMENT

A large body of research in the social sciences has documented that individuals' confidence in their abilities and intellect is heavily influenced by the structural hierarchies that assign meaning to race and gender. Social forces like family, mass media, teachers, and other cultural institutions shape the expectations that individuals have for themselves and for others (Bian et al., 2017; Furnham & Rawles, 1995; Pajares, 2002).

With respect to gender, children internalize messages that relay different expectations for boys and girls, as well as assertions that particular domains are masculine (e.g., math and science) or feminine (e.g., language arts).[3] As a result of these and other processes, researchers consistently find that "boys are more likely to express confidence in skills they may not possess and to express overconfidence in skills they do possess" (Pajares, 2002, p. 118). Regardless of objective indicators of ability, research confirms that girls are more prone than boys to experience internal distress, evaluate themselves negatively, and worry about their academic performance (Pomerantz et al., 2002; Silverman et al., 1995). These confidence differences persist into adulthood (Kling et al., 1999) and have been documented even among highly accomplished individuals such as medical professionals (Blanch et al., 2008). When tasks are masculine-typed, women are more likely than men to display inaccurately low self-perceptions of their performance (Beyer & Bowden, 1997) and to underestimate their intelligence relative to men (Furnham & Rawles, 1995).

With respect to race, research points to a similar mechanism whereby negative societal expectations about race contribute to low self-esteem and reduced performance among racial minorities. From this perspective, harmful stereotypes associated with racial identity (e.g., African Americans are not as intelligent as whites) can create an unconscious fear of confirming the negative stereotype (Steele, 1997). Empirical evidence suggests that this stereotype threat emerges early on in life and undermines self-confidence, resulting in reduced academic performance among minority children and young adults (Vecci & Zelinsky, 2019; Wasserberg, 2014). Findings from multiple experimental studies of adults consistently document underperformance by African Americans who were primed by a negative stereotype; in the absence of the primed stereotype, performance was consistent with ability (Steele et al., 2007). Outside of the lab setting, research indicates that those who were the only people of color in their office experienced a greater degree of stereotype threat, which subsequently affected how those workers interpreted feedback from peers and supervisors (Roberson et al., 2003). Scholars have also observed the consequences of stereotype threat for professionals in higher education, including the legal academy (Manning, 2018; McClain, 2016; Whaley, 2018).[4]

Differences in confidence may also manifest themselves in a psychological phenomenon known as impostor syndrome (Clance & Imes, 1978). Impostors believe that they are unworthy of success and fear that they will be revealed as frauds, which drives them "to work even harder to keep up the charade" (Ewing et al., 1996, p. 54). As such, impostorism is often characterized by extreme overpreparation, a desire to be special relative to peers, and perfectionistic tendencies (Sakulku & Alexander, 2011) that drive self-perceived impostors to "hold themselves to exceptionally high standards" (Cokley et al., 2013, p. 85). Research has documented impostorism in a variety of male-dominated professional contexts for women (Henning et al., 1998; Vaughn et al., 2019), as well as among racial and ethnic minorities in predominantly white settings (Ewing et al., 1996; Lige et al., 2017; Peteet et al., 2015).

Next, we explore how these feelings of otherness may be fueled in law school and in subsequent experiences in the legal profession, ultimately affecting the behavior of the elite few who attain judicial office.

[3]Even in feminine-typed subjects, girls do not evaluate themselves more positively than boys after academic performance is taken into account (Pomerantz et al., 2002). This raises the possibility that institutional factors reinforce and compound gender gaps in self-assessment.

[4]In the Supreme Court context, Onwuachi-Willig (2004) argues that both Clarence Thomas and the late Thurgood Marshall have frequently been described in ways that rely on stereotypes about African Americans' supposed intellectual inferiority and laziness.

EXPERIENCES IN LEGAL EDUCATION AND THE PATH TO THE BENCH

Through most of the 20th century, law schools were almost exclusively white and male in their student composition (Teles, 2012), and the few women and racial minorities who pursued a legal education encountered outright hostility and explicit discrimination from professors and classmates alike (Haire & Moyer, 2015). By the end of 2000, however, women had made significant inroads, making up just under half of the student population (Moyer & Haire, 2015). With respect to race, one report noted that from 1993 to 2013, the percent of law school graduates who were racial minorities increased from 14% to 25% (NALP, 2014).

In spite of the trend toward a somewhat more diverse law student population, law schools have been the subject of critiques about the ways in which the climate and pedagogical approach undermines the self-confidence of women and people of color and fosters feelings of alienation (Weiss & Melling, 1988). One study found that women and racial minorities were significantly more likely than white men to agree with the statement, "Before law school I thought of myself as intelligent and articulate, but I often don't feel that way about myself now" (Fischer, 1996; Guinier et al., 1994; Krauskopf, 1994). Another account from first-year law students noted that,

> "The white male students adjusted rapidly to this socialization process, and many outwardly seemed to enjoy it. Many women and people of color, on the other hand, felt themselves outside of this process and experienced a growing unhappiness and frustration with it…[I]t felt as if we had been admitted to [law school] under the condition that we speak, if at all, in a tongue that was entirely foreign to us." (Homer & Schwartz, 1989, p. 3)

The homogeneity of law school faculty certainly plays a role in these critiques (Fischer, 1996), particularly during the period of time that present-day judges attended law school. Indeed, half of US Courts of Appeals judges actively serving between 2008 and 2018 graduated from law school by 1972, and 75% earned law degrees by 1982 (FJC, 2020). In the mid-70s, faculty were almost entirely white (96%) and male (93%) (Fossum, 1983). In contrast, by 2002, two-thirds of tenured law faculty were white men (Mertz et al., 2012). The numbers of female law faculty have risen, but they are still less likely to earn tenure (Neumann, 2000) and are overrepresented in lower paid, nontenure track positions teaching legal writing. The authors of a 2001 report criticized this practice, noting that while "virtually all lawyers and judges acknowledge that legal writing is the single most important course in law school and agree that this course provides the fundamental underpinnings of law practice,… the overwhelmingly male power structure in law schools disdainfully treats teaching this course as 'women's work'" (Stanchi & Levine, 2001, p. 5). Women of color who teach legal writing describe how they are "presumed incompetent" and report the need to continually demonstrate their legitimacy to their fellow colleagues (Bannai, 2014). One recent book documents substantial, widespread professional and personal challenges faced by women of color law faculty that extend to all levels of the legal academy, reinforcing the idea that non-white women are "outsiders" or even "intruders" in the white, male legal profession (Deo, 2019, p. 41).

Beyond law school, women and racial minorities also deal with occupational stereotyping that undermines their sense of belonging in the legal profession. Surveys of attorneys reveal that lawyers who are not white males often deal with embarrassing and distressing instances of "mistaken identity" from peers, clients, and even judges (e.g., Epner, 2006). For example, black male attorneys report being confused with criminal defendants, while Latinx attorneys are confused with interpreters and women of color assumed to be administrative staff (Rhode, 1994; Garcia-Lopez, 2008). White women, women of color, and—to a lesser extent—non-white men are more likely than white male attorneys to have experienced a situation where a client requested a new attorney (Nelson et al., 2019), and black judges are more likely to be asked to recuse themselves in cases involving race (Means & Unah, 2020). In the courtroom and in interactions with other attorneys, including their own co-workers, female attorneys report demeaning behavior, such as inappropriate comments

about their appearance (Collins et al., 2017, 2018). These experiences illustrate and reinforce perceptions that women and people of color do not belong in prestigious legal occupations, like that of attorney or judge.

In addition to occupational stereotyping that links white maleness with being a judge, women and people of color must also contend with negative stereotypes related to their gender and race (and the intersection of the two). As noted above, negative stereotypes about the competence and personality traits of particular groups can create anxiety for individuals in those groups. This anxiety is heightened with awareness that their behavior could be judged as "stereotypical" by outside groups. This, in turn, impacts the performance of achievement-oriented tasks (Davis & Silver, 2003). For example, Epner (2006, p. 10) quotes a non-white, female attorney who described the demeaning comments she received because of her gender, race, and age: "When I first start practicing, it would make me incensed to the point where I would lose my concentration and focus and I would not be as good of an advocate as I would have been if it weren't an issue." A black female attorney observed, "White associates are not expected to be perfect. Black associates. .. have one chance and if you mess up that chance, look out. There is no room for error" (Epner, 2006, p. 25). Among attorneys, one study concluded that women of color "felt a need to continually establish their competence to professors, peers, and judges" (Epner, 2006, p. 2).

Although negative stereotypes may ultimately fuel anxiety and result in under-performance by women and non-white lawyers, these negative stereotypes can also produce positive responses (Hoyt & Blascovich, 2007). Described by Brehm (1966) as psychological reactance theory, this perspective suggests that individuals respond to stereotype threat by engaging in behavior that is contrary to a negative stereotype about one's race or gender. For members of racial and ethnic minority groups, there is an additional motivation to counter negative expectations: linked fate. In his observations about race, and the legal profession, Wilkins noted that the "actions of individual blacks will affect the fate of the black community as a whole, and that ties the opportunities available to any individual black to the progress of the group" (Wilkins, 1994, p. 1041).

Empirical support for reactance theory can also be found in research on legislative bodies where women's lower self-assessments of ability translate into more productive legislative behavior when they are elected to office. According to Lazarus and Steigerwalt (2018), women in Congress overestimate their electoral vulnerability in part because of higher levels of self-doubt. As a result, they work harder than their male peers in a variety of ways, including increasing communication with constituents, garnering more federal spending for the district, and more effectively representing constituent preferences. Thomsen and Sanders (2020) find similar results among state legislators. A recent study of judicial elections found that female lawyers who wish to become state supreme court justices are risk averse and underestimate their abilities; female prospective candidates wait until a seat is open before pursuing an office and delay running until they are certain they will have the "best" qualifications (Nguyen, 2019; but see Williams, 2008). This literature suggests that female judges may be inclined to underestimate their abilities and believe they must overprepare in achievement-related tasks like writing majority opinions. For example, a female attorney, specifically commenting on gender stereotypes in the legal profession, said, "I show up extremely prepared, professional, articulate, knowledgeable about my case, friendly and authentic. I've found that it works in gaining the opposing side's respect and it helps educate them so they don't disrespect other women lawyers or me again" (Weiss, 2018).

The pressure to overwork may also be fueled by contextual cues that signal to "outsiders" that they will be held to a higher standard of performance (e.g., Hengel, 2017). Lazarus and Steigerwalt (2018) note that the overworking behavior of women in Congress reflects the reality that female incumbents are more likely than their male counterparts to draw a challenger. In fact, women in Congress have to "introduce twice as much legislation as men to see the probability of challenger emergence decrease to a level that is indistinguishable from that of men" (Atkinson & Windett, 2019, p. 769). Gill et al. (2011) also note that external assessments of judicial performance are biased against minority and female judges.

Pressures toward overpreparation may also be shaped by the desire to persuade key audiences. As Lazarus and Steigerwalt (2018) find, female legislators react to their gendered vulnerability by working harder to appeal to constituents, an audience that is central to legislators' ability to stay in office. Judges are also mindful of their audiences (Baum, 2006) and seek to persuade those audiences that their decisions are legally sound (Klein, 2002). For federal appellate judges, key audiences for a majority opinion author include their colleagues on the panel and circuit, the litigants, and the Supreme Court (Moyer, 2008). Consistent with Chaiken (1980) and O'Keefe (1998), women and non-white judges may feel that they must work harder than their white male colleagues to persuade these audiences that their decisions are legally correct. Along these lines, Judge Patricia Wald of the DC Circuit observed that opinion authors write "to persuade their colleagues and the public they are moving law in the right direction" (Wald, 1995, p. 1372).

Because white men have authored the vast majority of court opinions in the American legal system, we argue that this identity is implicitly linked with judicial opinion writing (see also Kirkpatrick, 2020). Ifill (2011, p. 441) similarly argues that "society builds the values embodied in our laws, for example, upon a set of accepted and legitimized narratives … In general, the dominant community's narratives form the basis of our approach to legal doctrine, theory, and practice. When white men were the only group permitted to offer and legitimate narratives in the legal process, master narratives could function virtually undisturbed as unassailable truths."

Taken together, these mechanisms all point in a similar direction: women and people of color will feel additional pressures to succeed in an environment that has long been the domain of white men. Both individual assessments of ability related to stereotypes and socializing experiences in the law will drive these judges, while well-credentialed, to feel that they must work harder than their white male peers to demonstrate their competence. As a result, we argue that "outsider" judges will strive for perfection in their work, including in the most visible and enduring aspect of their position as an appellate judge: authoring an opinion for the court.

On the federal appeals courts, rotating three-judge panels must quickly come to a collective resolution of a case. The opinion author plays a prominent role in shaping the output of the panel's deliberations (Hinkle, 2017). With help from clerks, the majority opinion assignee writes an initial opinion draft, which is then circulated to the other panelists. Commonly, the other judges on the panel will suggest changes to the draft, which are usually incorporated into the opinion (Bowie et al., 2014). Majority opinion authors have strong incentives to accommodate their colleagues' preferences (Hinkle, 2017) because doing so can help insulate the opinion from en banc and Supreme Court review (Beim et al., 2016).[5] Norms of consensus also motivate the opinion writer to incorporate her colleagues' perspectives (Bowie et al., 2014, p. 97).

Extant research suggests that "outsider" opinion authors may more thoroughly explain the reasons behind their rulings than do white male opinion authors. Among federal district court judges, Boyd (2015) finds that female and non-white judges tend to write lengthier opinions, perhaps to better justify the outcome to litigants. Judges who are racial minorities are more thorough in drawing upon due process jurisprudence when adjudicating sentencing guidelines (Sisk et al., 1998) and have been found to write longer opinions in other appellate contexts (Budziak et al., 2019). This leads us to our first hypothesis:

H1: *Female and non-white judges will write longer opinions than white, male judges.*

In addition, over-preparation may also manifest itself through a greater identification of, reliance on, and incorporation of legal authorities in the majority opinion. While citing legal authorities in a majority opinion is linked to self-presentation motivations among all judges (Baum, 2006; Choi & Gulati, 2007; Hume, 2009), we argue that female judges and judges of color will be especially driven

[5]Other members of the panel also have incentives to be persuaded by the majority-opinion author rather than to write a separate opinion, including the extra time and effort associated with writing separate opinions (Epstein et al., 2011).

to justify their rulings by incorporating more legal authorities compared to their white male colleagues. This leads to the following two hypotheses:

H2: *Female and non-white judges will write opinions that cite more legal authorities than opinions authored by white, male judges.*

H3: *Female and non-white judges will write opinions that devote more attention to discussing cited legal authorities than opinions authored by white, male judges.*

DATA AND MEASURES

Using an original sample of signed, published opinions from the US Courts of Appeals (2008–2016), we merged case data with information on judicial backgrounds acquired from the Federal Judicial Center.[6] The analysis contains three dependent variables, each of which captures an aspect of opinion thoroughness: page length (***Opinion Length***), the total number of precedents cited in the opinion (***Total Authorities***), and the number of cited cases discussed in depth (***Deep Cites***).[7] Because the variables are counts, and because concrete evidence shows overdispersion,[8] we use negative binomial regression to estimate the model parameters. Additionally, given potentially correlated errors within circuits and over time, as well as across opinions authored by the same judge, we include unconditional circuit and year fixed effects along with White-Huber robust standard errors clustered by opinion author.[9]

Our primary variables of interest reflect the race and gender of the judge who authored the opinion, ***Female Judge*** (1 if female, 0 if male) and ***Non-white Judge*** (1 if non-white, 0 if white).[10] We expect that the coefficients for these variables will be positive in all models.

We also include controls for characteristics of the opinion author that could influence the opinion length and sourcing: ***Law Professor*** (coded 1 if the judge was previously a tenure-track law school professor and 0 otherwise), ***Elite Law School*** (coded 1 if the judge attended an elite law school and 0 if not),[11] and ***Judge Tenure*** (the number of years since the judge was commissioned to serve as a federal appeals court judge, logged due to skewness and potential diminishing marginal returns). Because tenure-track law school professors are socialized to write lengthy, well-cited texts due to research expectations within the field, we expect to find a positive ***Law Professor*** coefficient. ***Elite Law School*** should be positive to the extent that it provides a rough measure of the ability of the judge. Conversely, we posit a negative coefficient for ***Judge Tenure***, as early-career judges may feel the need to write longer opinions with arguments justified by more sources.

[6]Following the sampling design of Songer (1997), we drew a stratified, random sample of 30 published cases per circuit year for the 12 geographic circuits. En banc decisions were excluded. The Federal Circuit is omitted due to the breadth of its geographic jurisdiction and its limited subject-matter jurisdiction.

[7]The ***Deep Cites*** variable is derived from Westlaw's "Depth of Treatment Codes" and represents the number of precedents that were labeled either "discussed" or "examined" in the text of the majority opinion. In its documentation, Westlaw states that "discussed" indicates that the author devotes "more than a paragraph but less than a printed page" and that "explained" reflects more than a printed page devoted to discussing the cited case. (More on Westlaw's coding scheme can be found here: https://lscontent.westlaw.com/images/content/KeyCite%20on%20Westlaw.pdf. Accessed February 20, 2020).

[8]The likelihood-ratio test of the alphas for all three models resulted in observed probability levels below 0.000. We can reject the null hypothesis that alpha is equal to zero, which is a clear indication of overdispersion (Long & Freese, 2014).

[9]We did not use conditional fixed effects because they lead to unstable, biased estimates of the fixed covariates in negative binomial models (Allison, 2009). Following Allison and Waterman (2002), we also estimated outer product of gradient standard errors as a potential correction for the bias and present these substantively similar results in the Supporting Information file.

[10]We recognize that the dummy-variable approach lumps together distinct races and ethnicities. In our sample, most of the opinion authors were either white (82%), African American (10%), or Latinx (6%). Because Asian American judges authored opinions only in less than 2% of the cases (and there was only one Asian American woman), we also estimated the models excluding those observations (see Supporting Information). Regardless of specification, the results are unchanged.

[11]We used Slotnick's (1983) measure, which identified 15 elite law schools: UC Berkeley, Columbia, Pennsylvania, Harvard, Yale, Michigan, Stanford, Chicago, Cornell, NYU, Duke, Cornell, Texas, UCLA, and Virginia. See also Szmer and Ginn (2014).

Judges should generally pen longer, more thoroughly reasoned opinions in salient cases (Bowie et al., 2014). Here, we incorporate three indirect measures of case salience: whether the opinion involved constitutional interpretation (*Constitutional Issue*), whether an amicus was filed (*Amicus Curiae*), and whether a prior published decision was associated with the case (*Prior Publication*). We follow the coding protocols developed by Songer (1997); information on coding procedures related to measures for these case characteristics can be found in the codebook that accompanies the Multi-User Database. We expect the estimated coefficients for all three to be positive in all models.

Closely related to these indicators of case salience is a dummy variable, *Affirmed*, coded 1 if the court affirmed the lower court or agency decision and 0 if the court completely or partially reversed the prior decision. Courts are more likely to affirm decisions of the lower court or agency when the issues are "easy." In these routine cases, judges are more likely to write shorter opinions with fewer quoted citations. Consistent with this causal mechanism, one prior study concluded that Courts of Appeals judges tended to write longer opinions when the panel reversed the lower-court decision (Epstein et al., 2013), while another found that federal appellate judges typically wrote shorter opinions when the panel affirmed the decision below (Haire & Moyer, 2015). Based on the theory and prior evidence, we expect the coefficients will be negative.

Opinions also may be longer and devote greater attention to precedents as a result of the number of lawyers in an appeal. Evidence suggests that Courts of Appeals judges are less likely to suppress issues raised in briefs by larger litigation teams; moreover, judges tend to side with litigants represented by more attorneys (Haire & Moyer, 2008). Together, this suggests that larger litigation teams will present more persuasive and informative briefs—which can facilitate the work of the opinion author. Because the variable is positively skewed, and existing work finds diminishing marginal returns as the number of lawyers increases (Haire & Moyer, 2008), we calculate the natural log of the total number of attorneys who are listed as counsel representing all appellant(s) and respondent(s) in the case (*Number of Attorneys*). We expect the estimated coefficient will be positive in all models.

We also include controls that account for the role of the majority opinion author's policy preferences and potential ideological differences among panel members. *Outcome Congruence* is coded 1 if the judges' presumed ideology (based on the party of the appointing president) is congruent with the ideological direction of the court's decision (i.e., a Democrat [Republican] supporting a liberal [conservative] outcome); otherwise, it is coded 0. We expect that judges will be inclined to write longer, more thoroughly cited opinions when the outcome is consistent with their policy predisposition and shorter, less thoroughly cited opinions when their policy views are inconsistent with the outcome. *Split Panel* is coded 1 if the panel included judges who were appointed by presidents from different political parties. Circuit court norms strongly encourage the judges to incorporate colleagues' suggestions when writing the majority opinion (Bowie et al., 2014). Judges who are like-minded are more likely to converge quickly on the reasoning, resulting in an opinion that is shorter and less thorough in its reasoning. Based on these expectations, the coefficient for *Split Panel* should be positive.

We control for those cases in which conflict on the panel resulted in publishing a dissenting (*Dissent*) or concurring opinion (*Concurrence*). Separate opinions are more likely to occur in salient and legally ambiguous cases (Hettinger et al., 2006). In addition, majority opinion authors should respond to the dissenter's counterarguments. Supreme Court justices, Courts of Appeals judges, and judges on state courts of last resort tend to write longer majority opinions in cases with separate opinions (Bowie et al., 2014; Epstein et al., 2013; Leonard & Ross, 2016). Therefore, the coefficients should be positive, indicating a tendency to write longer opinions with more directly quoted, and thoroughly cited legal precedents.

Finally, we estimate circuit caseload (*Caseload*) using the Judicial Caseload Profile measure of the US Courts' Federal Court Management Statistics. This profile measures the number of terminated cases per active judge during the year the case was decided.[12] Epstein et al. (2013) posit that judicial behavior

[12]We accessed the reports here: http://www.uscourts.gov/statistics-reports/analysis-reports/federal-court-management-statistics (accessed August 19, 2018). Prior to 2010, the US Courts estimated statistics only for fiscal years, not calendar years. Therefore, for 2009 we used the federal fiscal-year estimates, which ran from October 1, 2008 through September 30, 2009.

balances costs and benefits. When judges have higher workloads, the opportunity costs of writing longer and more diligently sourced opinions increases. Consistent with this expectation, researchers found that higher circuit workload (Epstein et al., 2013) and opinion-writer workload (Bowie et al., 2014) tended to reduce the length of US Courts of Appeals majority opinions. With that in mind, the coefficient should be negative.

ANALYSIS

Based on multiple mechanisms, including stereotyping, impostorism, and socialization forces, we expect women and people of color, as "outsiders" on the prestigious federal appellate bench, to experience higher pressures to be successful in the status quo environment dominated by "insider" white male judges. Since our hypotheses generally focus on the effects of outsider status, we begin by comparing white male judges to all other judges.

Figure 1 displays evidence from the negative binomial regression model that confirms our general expectations: minority and female judges write longer opinions with more sources, cites, and deep cites. The plots show expected counts of the dependent variables (number of pages, total citations, and deep citations) for judges who are white men ("insiders") and those who are not white men ("outsiders"), averaged across observed combinations of the other covariates.[13] The estimates are circles, and the horizontal lines are confidence interval ranges. On average, white men write opinions that are roughly two-thirds of a page shorter, with almost three fewer cites, and one fewer deep cite. We also generated percent changes to get a better sense of the relative effects of "outsider" performance pressures on each of the dependent variables. We observed the largest gaps in citation patterns. Opinions written by white males, on average, contain 10.7% fewer citations to precedent

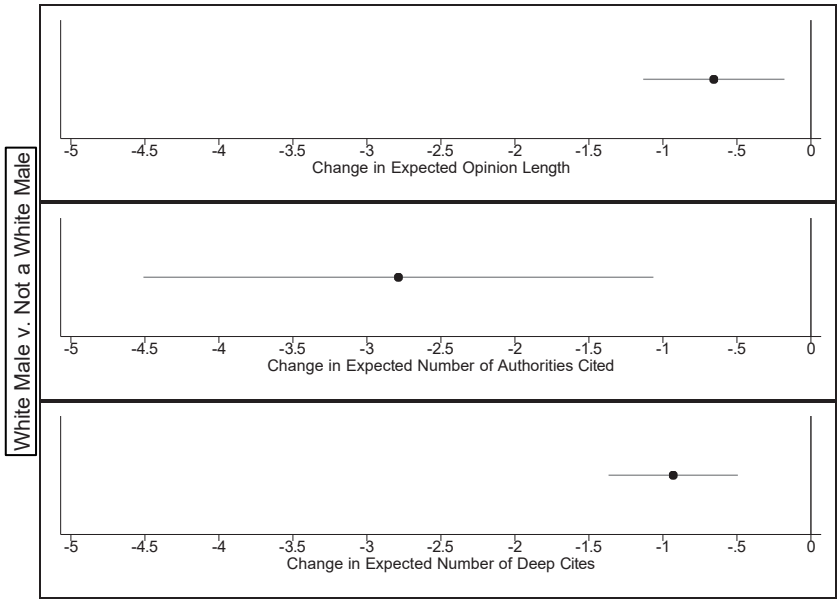

FIGURE 1 Marginal effects of white male versus other judges, US Courts of Appeals cases, 2008–2016.
Note: $N = 2906$. Confidence intervals shown are for two-tailed tests ($p < 0.05$). Full results for these models appear in Table A1

[13]Please see Table A1 for the estimates of the full model with control variables.

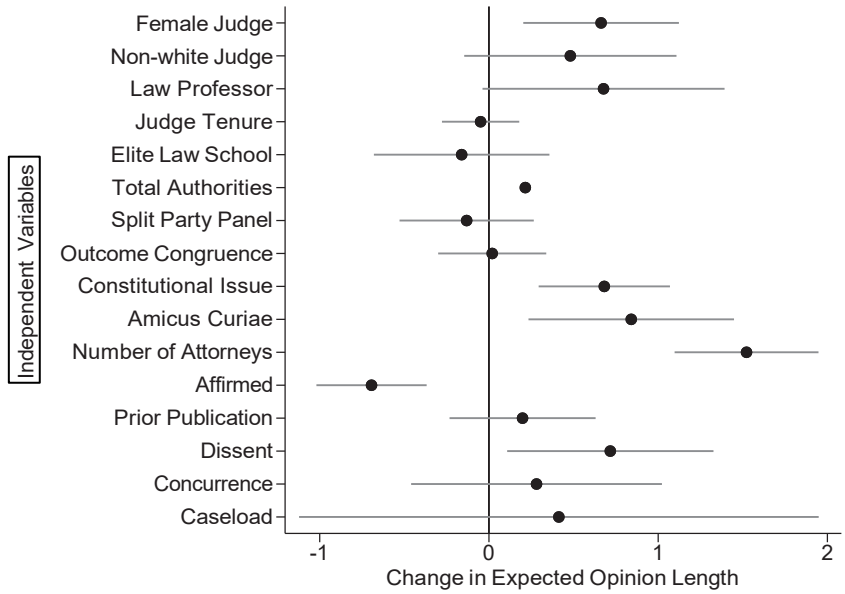

FIGURE 2 Marginal effects of expected count of opinion length, US Courts of Appeals cases, 2008–2016.
Note: $N = 2906$. Unconditional circuit and year fixed effects not shown. Confidence intervals shown are for two-tailed tests ($p < 0.05$). Full results shown in Table A2

and 16.6% fewer citations discussed with more than a paragraph of text. Conversely, their opinions are 5.26% shorter than those written by women and non-white judges.

The following analyses unpack the previous findings with respect to each of our hypotheses. Hypothesis 1 predicts that women and non-white judges would author lengthier opinions than their white, male counterparts. We include a control for *Total Authorities*, which allows us to evaluate the effect of our variable of interest after taking into account the number of citations on opinion length.[14] Figure 2 displays the results of the negative binomial regression on the number of pages in the majority opinion using average marginal effects[15] plots, with the independent variables on the Y axis.[16] As the figure shows, there is a positive and statistically significant effect for the *Female Judge* variable. On average, women write opinions that are approximately two-thirds of a page longer than their male peers. Put another way, women write opinions that are roughly 5.6% longer, on average. Although the relationship is in the predicted direction, non-white judges do not author significantly longer opinions than their white colleagues to a statistically significant degree.

Moving to control variables, the plot also shows that former law professors author longer opinions than judges who lack experience in legal academia. Case characteristics such as the presence of a constitutional issue, amicus curiae, or a dissenting opinion tend to increase the number of pages in the majority opinion, as expected.

Figure 3 shows the average marginal effects generated from the negative binomial regression on the total number of authorities cited in the majority opinion, testing Hypothesis 2. Consistent with our hypothesis, female and minority opinion writers include more citations in majority opinions than their white male colleagues. Opinions of the court written by women contain, on average, 6.7% more citations than those authored by male peers. The results for *Non-white Judge* indicate that

[14]The effects of *Female Judge* and *Non-white Judge* are even larger when we exclude *Total Authorities* (see Supporting Information).
[15]The average marginal effects are differences in the expected counts averaged across all values of the covariates.
[16]The point estimates of the average marginal effects are black circles, and the gray lines running through the circles illustrate the 95 percent confidence intervals. Positive point estimates are to the right of the solid vertical zero line. When the confidence intervals do not cross the vertical zero line, the estimate is statistically significant. (The table of results appears in the Appendix.)

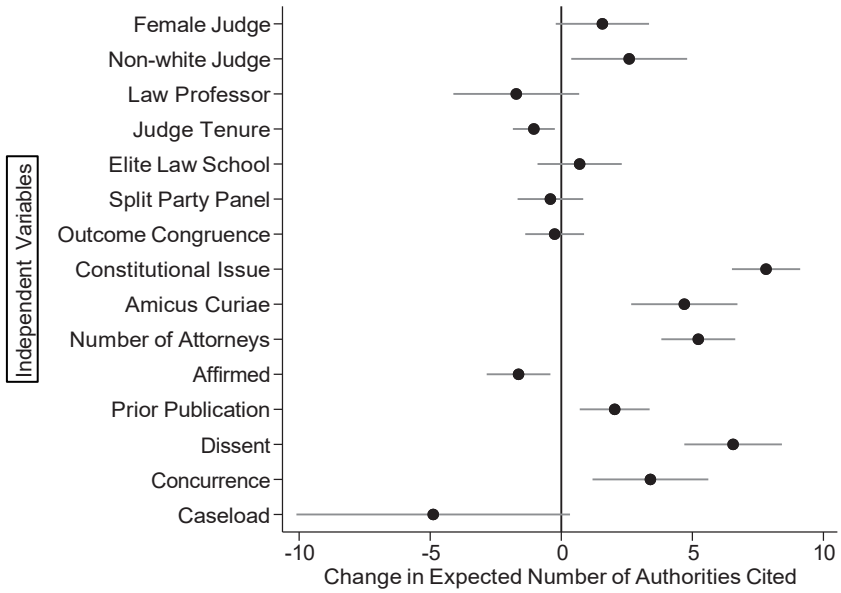

FIGURE 3 Marginal effects of expected count of the total number of authorities cited in majority opinions, US Courts of Appeals cases, 2008–2016. Note: $N = 2906$. Unconditional circuit and year fixed effects not shown. Confidence intervals shown are for two-tailed tests ($p < 0.05$). Full results shown in Table A2

non-white judges write opinions that have 11.2% more citations than those written by white jurists, all else equal.

Among the other covariates, *Judge Tenure*, *Amicus Curiae*, *Number of Attorneys*, *Affirmed*, *Prior Publication*, *Dissent*, and *Constitutional Issue* are statistically significant—and all in the expected direction.[17] The effects for cases that raise a constitutional issue are the most striking. On average, judges include more than eight additional citations in constitutional cases than in cases that merely interpret statutes or administrative regulations.

To evaluate our third hypothesis, Figure 4 shows the average marginal effects generated from the negative binomial regression on the number of cases discussed in depth (*Deep Cites*) in the majority opinion. Again, the marginal effects of *Female Judge* and *Non-white Judge* are positive and statistically significant. Consistent with expectations, on average, female judges extensively discuss about one-half more cited cases than do their male counterparts. When converted to percent changes, we see that, on average, women incorporate 11.3% more deep cites compared to male opinion authors. Also, as with the previous model, *Non-white Judge* is positive and significant; opinions authored by nonwhite judges discuss about one more cited authority in depth compared to opinions authored by white judges. Expressed using percent changes, appellate judges of color write majority opinions that contain, on average, 19.5% more deep citations than their white peers.

The findings for most control variables support our expectations about the role of case-level factors in shaping the depth of discussion surrounding a cited precedent. *Constitutional Issue*, *Amicus Curiae*, *Affirmed*, *Prior Publication*, *Number of Attorneys*, and *Concurrence* are all statistically significant in the posited direction. In particular, judges seem to examine precedents more deeply when

[17]To assess whether there were writing-related gender differences in adjusting to the appellate bench, we also estimated supplemental models that investigated whether the effect of *Female Judge* was conditional on *Judge Tenure* (see Supporting Information), but the interaction terms and marginal effects graphs provided no evidence of a statistically significant interaction effect.

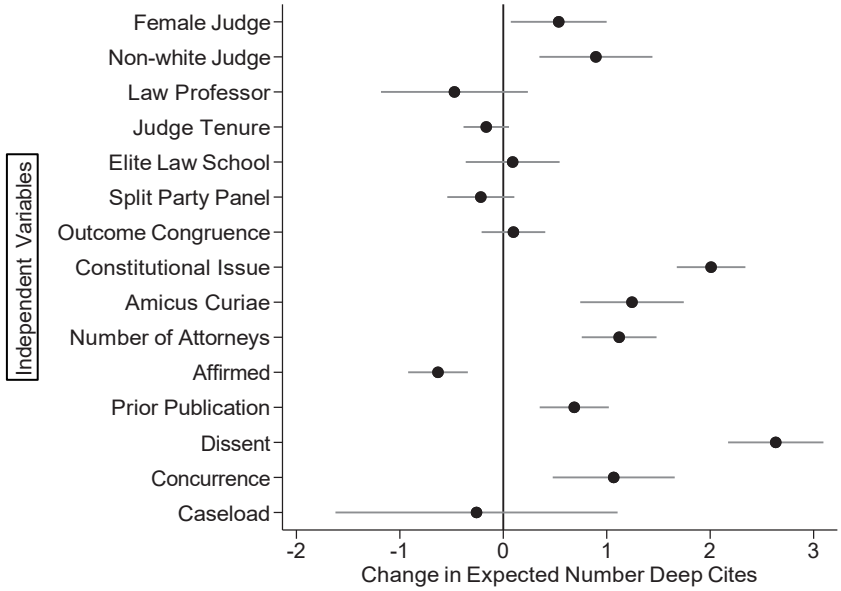

FIGURE 4 Marginal effects of expected count of the deep cites in majority opinions, US Courts of Appeals cases, 2008–2016. Note: $N = 2906$. Unconditional circuit and year fixed effects not shown. Confidence intervals shown are for two-tailed tests ($p < 0.05$). Full results shown in Table A2

their majority opinion is challenged by a dissent. On average, the majority opinion includes 3.2 more deep cites when there is a dissent than in unanimously decided cases.

Of course, women of color in the legal profession experience multiple facets of discrimination that reflect the intersecting nature of their identities (Collins et al., 2017; Collins & Moyer, 2008; Deo, 2019) and that could drive impostorism fears that affect opinion writing. We estimated a series of additional models that looked at the effect of race and gender together. In each model, the results failed to identify intersectional differences (see Supporting Information for full models).[18]

DISCUSSION

As the ranks of the federal judiciary continue to include judges from a broader range of backgrounds, it is increasingly important to understand how social forces condition the ways that individuals assess their abilities and determine requirements for career success in male-dominated professions like politics and law. Even those who have reached the elite ranks of their profession are not immune to self-doubt and feelings of impostorism (Blanch et al., 2008; Lazarus & Steigerwalt, 2018). While much of the extant work on gender and race in the judiciary focuses on the voting behavior of judges, another profitable avenue for inquiry focuses on the micro-foundations of racialized and gendered institutions, identifying ways in which actors and institutional rules or norms interact to shape expectations and how such interactions shape the distribution of power within an institution (Lowndes, 2020, p. 544).

[18]We caution against generalizing from these results in light of the small number of women of color in our sample (13 circuit judges and four district judges sitting by designation). Collectively, these judges authored less than 5% of the majority opinions in the analysis, and only 10 non-white women in our sample authored more than one majority opinion.

Building from this body of work, our central argument posits that high-achieving women and people of color in the legal profession have adopted strategies for dealing with pressure and societal expectations and that they carry these strategies with them onto the bench. Consistent with our expectations, the evidence suggests that female and minority appellate judges are more likely to over-prepare in achievement-related tasks like writing majority opinions, spending more effort than their male colleagues to justify to key audiences (litigants, other judges, and the Supreme Court) that their decision is legally correct. Majority opinions written by women and minorities include more citations to prior cases, and they are more likely to devote more attention to discussing specific precedents. Even after controlling for the tendency to include more citations, our study shows that women still write longer opinions than men do, consistent with findings from other, earlier studies of trial courts (Boyd, 2015). Moreover, these differences in opinion writing do not appear to vary based on the length of time a judge has served on the bench.[19]

Our results have important implications for scholars of courts and other legal and political institutions. First, our findings suggest that standard measures of workload, like cases per judge, may obscure systematic differences in effort. To put this into context, the median number of written opinions per year for a judge in our sample is 44, consistent with what circuit judges themselves describe (Wald, 1995). If women write about two-thirds of a page more in each opinion, this would translate to an estimated additional 26 pages a year for each woman. Over a female judge's career, this would total hundreds of additional pages of writing from her majority opinions alone. Of course, this is likely a conservative estimate, given studies that find that female judges are disproportionately assigned to write more opinions than are men on other courts with discretionary opinion-assignment practices (Christensen et al., 2012). In addition, the cumulative effect of additional work, particularly over time, could hasten work-related burnout and stress, which some studies have found to affect more female judges than male judges (Lustig et al., 2008; Flores et al., 2008, Flores et al., 2009; but see Miller et al., 2018). Future research should continue to explore whether and in what ways this gendered pattern of additional effort extends to other high-achieving female political elites, such as members of Congress and state legislators (Dolan & Ford, 1995), as well how it may extend to the experiences of racial minorities in political institutions.

This study also contributes to the burgeoning judicial-politics literature on opinion content and the use of precedent in the federal judiciary (Black et al., 2016; Corley et al., 2011; Nelson & Hinkle, 2018). Opinion content is an important focus for inquiry because it is "the opinions themselves, not who won or lost … which provide the constraining directions to the public and private decision makers who determine the 99 percent of conduct that never reaches the courts" (Shapiro, 1968, p. 39). The US Courts of Appeals, in particular, are crucial institutions to examine because they establish the bulk of federal precedent due to the relatively small docket of the Supreme Court, which effectively renders most federal appellate decisions the final word (Hinkle, 2015).

There are, of course, limitations to our study that point to areas where more research is needed. Law clerks undoubtedly play a central role in the work of federal appellate judges; a 2013 survey of federal appellate judges found that more than 90 percent used their law clerks to do legal research and help them draft opinions (Peppers et al., 2014). Unfortunately, law-clerk information for each judge's chambers is not publicly available, so we are unable to control for the demographic makeup of each judge's chambers and cannot systematically evaluate how law clerks affected the content of particular opinions.[20] It is quite likely, however, that men are overrepresented as law clerks for the judges in our sample; national data from the law school class of 2016 reveals that more than half of

[19]It is also possible that, if a judge's life experiences related to race and/or gender lead them to have a different basis for a decision, it may take a longer opinion with more citations to justify and contextualize those reasons, given that these perspectives are underrepresented within the federal judiciary. We thank an anonymous reviewer for raising these points.

[20]Most of what is known about law clerk contributions to appellate opinion writing comes from interviews with judges or former clerks (e.g., Bowie et al., 2014; Swanson & Wasby, 2008); the Administrative Office of the Courts does not collect demographic information on law clerks (Mauro, 2019). Recent news accounts and Congressional testimony have cataloged concerning instances of abuse and harassment by male circuit judges toward their female law clerks (Matthews, 2020; Purvis, 2017).

all federal clerkships went to men, a number that has stayed consistent since 2006 (NALP, 2017; see also Szmer et al., 2014).[21] Future surveys will be an important vehicle to investigate whether the addition of more female and non-white judges has had the effect of socializing future judges into different norms of opinion writing than those more commonly adopted by white male judges. More generally, while we note that gender and race-based differences are suggestive of labor disparities—in terms of both observable work product and the psychological toll that may be associated with dynamics such as impostorism and stereotype threat—it is also possible that the contributions of "outsider" judges could raise expectations for all judges, in the long run, about what a majority opinion should be.

With respect to intersectional identities, studies of the legal profession have identified particular ways in which women of color (Collins et al., 2017; Deo, 2019; Epner, 2006; Haire & Moyer, 2015) experience distinct kinds of discrimination compared to white women and minority men. We fail to find evidence of different opinion-writing approaches by women of color, though our analysis is hampered by the relatively small number of majority opinions authored by this group in our sample. For this reason, quantitative approaches may not always be ideal for untangling the ways in which socialization and stereotypes play out in opinion writing for particular intersectional cohorts. Future work should use interviews and archival materials to explore how these judges negotiate the pressures and expectations associated with the prestigious posts they occupy. Moreover, researchers might profitably explore deeper narratives that might, for example, identify whether female judges and judges of color feel impostorism and stereotype threat pressures differently and under what circumstances.

Taken together, our findings suggest that norms about a central activity of judging, crafting opinions, are gendered and racialized in ways that create higher workloads for "outsider" judges. As scholars explore other facets of diversifying legal institutions, it will be important to assess whether other norms operate in the same fashion and, if so, what changes in organizational practice can create more equitable outcomes.

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[21]The NALP report also reveals substantial racial disparities in clerkships; 40% of all federal law clerks are white men, followed by white women at 30%, minority women at 9.2%, and minority men at 5.9% (NALP, 2017).

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SUPPORTING INFORMATION

Additional supporting information may be found online in the Supporting Information section at the end of this article.

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APPENDIX

TABLE A I Models comparing white males to all other judges (negative binomial models with unconditional fixed effects)

	Opinion length	Total authorities	Deep cites
White Male Judge	−0.054**	−0.113**	−0.182**
	(0.020)	(0.035)	(0.042)
Law Professor	0.055*	−0.075	−0.100
	(0.030)	(0.050)	(0.072)
Judge Tenure	−0.004	−0.043**	−0.034
	(0.010)	(0.017)	(0.022)
Elite Law School	−0.013	0.033	0.024
	(0.022)	(0.034)	(0.045)
Total Authorities	0.018**	--	--
	(0.001)		
Split Party Panel	−0.011	−0.018	−0.046
	(0.017)	(0.026)	(0.033)
Outcome Congruence	0.001	−0.010	0.020
	(0.014)	(0.023)	(0.031)
Constitutional Issue	0.057**	0.322**	0.401**
	(0.016)	(0.026)	(0.032)
Amicus Curiae	0.070**	0.192**	0.247**
	(0.026)	(0.042)	(0.050)
Number of Attorneys	0.127**	0.213**	0.220**
	(0.018)	(0.028)	(0.036)
Affirmed	−0.057**	−0.065**	−0.123**
	(0.014)	(0.025)	(0.029)
Prior Publication	0.016	0.083**	0.135**
	(0.018)	(0.028)	(0.034)

(Continues)

TABLE A1 (Continued)

	Opinion length	Total authorities	Deep cites
Dissent	0.060**	0.267**	0.520**
	(0.026)	(0.038)	(0.045)
Concurrence	0.022	0.143**	0.217**
	(0.031)	(0.046)	(0.060)
Caseload	0.036	−0.201*	−0.049
	(0.065)	(0.109)	(0.138)
Constant	1.522**	4.047**	1.300
	(0.394)	(0.665)	(0.843)
lnalpha	−3.163**	−1.245**	−1.096**
	(0.129)	(0.038)	(0.053)
N	2906	2906	2906
pseudo R^2	0.148	0.031	0.059

Note: Standard errors clustered by judge. Output for circuit and year dummies not shown.
*$p < 0.10$ (two-tailed); ** $p < 0.05$ (two-tailed).

TABLE A2 Full results for Figures 2-4 (negative binomial models with unconditional fixed effects)

	Opinion length	Total authorities	Deep cites
Female Judge	0.055**	0.065*	0.107**
	(0.020)	(0.037)	(0.047)
Non-white Judge	0.040	0.107**	0.178**
	(0.027)	(0.046)	(0.055)
Law Professor	0.056*	−0.071	−0.094
	(0.030)	(0.050)	(0.072)
Judge Tenure	−0.004	−0.043**	−0.033
	(0.010)	(0.017)	(0.022)
Elite Law School	−0.013	0.029	0.018
	(0.022)	(0.034)	(0.046)
Split Party Panel	−0.011	−0.017	−0.043
	(0.017)	(0.026)	(0.033)
Outcome Congruence	0.002	−0.010	0.020
	(0.014)	(0.024)	(0.031)
Constitutional Issue	0.057**	0.321**	0.400**
	(0.016)	(0.026)	(0.032)
Amicus Curiae	0.070**	0.193**	0.248**
	(0.026)	(0.042)	(0.050)
Number of Attorneys	0.126**	0.215**	0.223**
	(0.018)	(0.029)	(0.036)
Affirmed	−0.058**	−0.067**	−0.126**
	(0.014)	(0.025)	(0.029)
Prior Publication	0.016	0.084**	0.137**
	(0.018)	(0.028)	(0.034)

(Continues)

TABLE A2 (Continued)

Dissent	0.060**	0.270**	0.525**
	(0.026)	(0.039)	(0.046)
Concurrence	0.023	0.140**	0.213**
	(0.031)	(0.046)	(0.060)
Caseload	0.034	−0.201*	−0.052
	(0.065)	(0.109)	(0.139)
Total Authorities	0.018**	--	--
	(0.001)	--	--
Constant	1.476**	3.940**	1.134
	(0.392)	(0.667)	(0.838)
lnalpha	−3.164**	−1.243**	−1.093**
	(0.129)	(0.038)	(0.053)
N	2906	2906	2906
pseudo R^2	0.148	0.031	0.059

Note: Standard errors clustered by judge. Output for circuit and year dummies not shown.
* $p < 0.10$ (two-tailed); ** $p < 0.05$ (two-tailed).