Optimizing Your Legal Decisions

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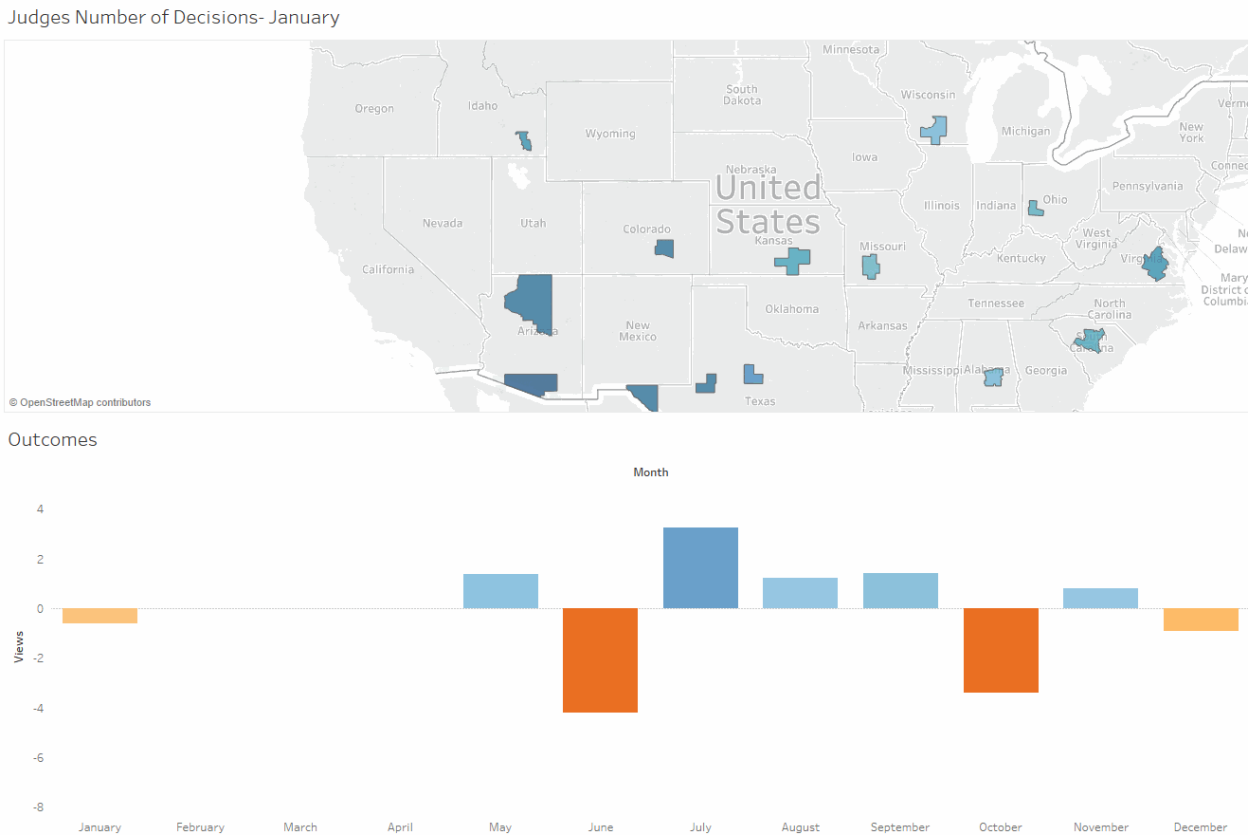
Introductory Note

Optimized Legal Solutions LLC is a modern consulting service designed assist attorneys in making data driven decisions. These can range from strategic choices within cases to choices about cases and clients. Data can come in the form of information you have already accumulated over time to new information that needs to be gathered. Optimized Legal can help you understand how to put this to good use. To give a better sense of the tasks Optimized Legal performs, below are two examples of recent projects.



Note: Graphs like the one above track changes in judges' decisions by location and over time. They help us understand trends and make future predictions. This is one of the many methods Optimize Legal regularly employs.

Example 1: Brief Language Analysis

Purpose

The goal of this project was to locate the impact of multiple briefs on a decision's language.

Data Collection and Output

1. Information for XXX Overlap Data Settings: The data captures all instances of overlapping phrases of six words or more with at least an 80% identical match in the language of the text of a brief and the text of the opinion(s).

2. The spreadsheet has the quantitative findings. Each row is an observation related to a single brief listed in column (B). Each brief begins with Cert, Neither (if the brief is an amicus brief in support of neither party), Pet (Brief for or supporting the petitioning party on the merits), or Resp (for the respondent). Columns (C)-(G) refer to the opinion(s) in the comparison. For instance, column (D) contains the overlap metrics for each brief with the majority opinion. Within each information cell, the first two pieces are the number of words and percentage of the opinion that overlaps with the brief in the observation. The second two are the number of words and the percentage of the brief that overlaps with the opinion.

   Take the first observation. The brief is "xxx" This corresponds to the cert brief from xxx. The ".txt" at the end is from the file extension for the document in the comparison. 0% of the opinion and 3% of the brief overlap in this instance. Even though the overlapping percentage for the opinion is 0, there are 160 overlapping words from the opinion and 163 overlapping words from the brief that overlap. The discrepancy between these two numbers in the word counts is due to the settings requiring a similar but non-identical match. Columns (D)-(G) contain the same information but for the relationship between the brief in the row and the opinion(s) listed in the column)

3. The folder "Docket" contains each brief and opinion. They are raw text files and correspond to the title of the brief found in the spreadsheet. Along with the briefs in this folder are the five files compared with the briefs: "Opinions_Combined" is a file with all four opinions, "Opinions_Majority" has only the majority opinion, "Opinions_SeparateOps" has the three separate opinions, and the last two opinion files are "Opinion_Dissents" and "Opinion_Concurrence."

4. In the Matches Folder, the file "OverallMatches" has the information contained in first sheet of the spreadsheet plus links to all of the documents' text. Within the "OverallMatches" file there are three hyperlinks for each brief or observation. The most interesting one for your purposes is probably column three which shows the brief and opinion files side by side. All instances of overlapping language are hyperlinked in the file so if you are interested in navigating to the parallel text in the brief or opinion you can do so by clicking the corresponding phrase in the other document (on the other side of the page). The other two columns with hyperlinks in the main file page give you one document or the other without the split screen (either the brief file or the opinions file). If you click on a hyperlinked phrase in one of these documents you will go to the corresponding language in the other document (brief or opinion).

Table 1: Language Sharing Statistics (25 Examples Included)

Perfect Match	Overall Match	File L	File R	Filing Title
38 (0% L, 1% R)	39 (0%) L; 38 (1%) R	Op.txt	File_0010.txt	Brief 1
92 (0% L, 1% R)	96 (0%) L; 101 (2%) R	Op.txt	File_0011.txt	Brief 2
68 (0% L, 0% R)	72 (0%) L; 70 (0%) R	Op.txt	File_0012.txt	Brief 3
27 (0% L, 0% R)	27 (0%) L; 27 (0%) R	Op.txt	File_0013.txt	Brief 4
90 (0% L, 1% R)	93 (0%) L; 93 (1%) R	Op.txt	File_0014.txt	Brief 5
81 (0% L, 1% R)	81 (0%) L; 84 (1%) R	Op.txt	File_0015.txt	Brief 6
25 (0% L, 0% R)	25 (0%) L; 26 (0%) R	Op.txt	File_0016.txt	Brief 7
168 (1% L, 2% R)	174 (1%) L; 176 (2%) R	Op.txt	File_0017.txt	Brief 8
165 (1% L, 2% R)	177 (1%) L; 178 (2%) R	Op.txt	File_0018.txt	Brief 9
56 (0% L, 1% R)	57 (0%) L; 58 (1%) R	Op.txt	File_0019.txt	Brief 10
26 (0% L, 0% R)	27 (0%) L; 26 (0%) R	Op.txt	File_0020.txt	Brief 11
36 (0% L, 0% R)	36 (0%) L; 39 (0%) R	Op.txt	File_0021.txt	Brief 12
43 (0% L, 0% R)	44 (0%) L; 43 (0%) R	Op.txt	File_0022.txt	Brief 13
24 (0% L, 0% R)	26 (0%) L; 25 (0%) R	Op.txt	File_0023.txt	Brief 14
43 (0% L, 1% R)	45 (0%) L; 44 (1%) R	Op.txt	File_0024.txt	Brief 15
10 (0% L, 0% R)	10 (0%) L; 10 (0%) R	Op.txt	File_0025.txt	Brief 16
66 (0% L, 0% R)	71 (0%) L; 69 (1%) R	Op.txt	File_0026.txt	Brief 17
58 (0% L, 2% R)	60 (0%) L; 59 (2%) R	Op.txt	File_0027.txt	Brief 18
166 (1% L, 2% R)	173 (1%) L; 174 (2%) R	Op.txt	File_0028.txt	Brief 19
64 (0% L, 1% R)	66 (0%) L; 65 (1%) R	Op.txt	File_0029.txt	Brief 20
29 (0% L, 0% R)	30 (0%) L; 31 (0%) R	Op.txt	File_0030.txt	Brief 21
81 (0% L, 1% R)	87 (0%) L; 87 (2%) R	Op.txt	File_0031.txt	Brief 22
433 (4% L, 2% R)	444 (4%) L; 450 (3%) R	Op.txt	File_0032.txt	Brief 23
158 (1% L, 1% R)	163 (1%) L; 162 (1%) R	Op.txt	File_0033.txt	Brief 24
86 (0% L, 0% R)	88 (0%) L; 92 (0%) R	Op.txt	File_0034.txt	Brief 25

Example 2: State Court Habeas Decision Database

Purpose

This project's goal was to track the behavior of state court judges' habeas corpus cases over time in order to assess the impact of the changing understandings of AEDPA's requirements since the statute was enacted.

Data Collection

The overall time frame for cases in this data collection has theoretical relevance. Not only are the early cases relevant, but possibly more importantly, so are the later cases. Given that the Supreme Court's decision in *Harrington v. Richter* was made in 2011, this leaves five post *Harrington* years for analysis. The decisions in this five year period will be essential to our analysis because they provide potential variation on our variables of interest (discussed below in Sections 2.2 and 2.3). The chart on the next page shows the number of habeas corpus petitions from state court decisions by federal judicial district across the years of the project.

Background

While federal courts make the ultimate habeas corpus decisions, state courts are the progenitors of the information examined on habeas corpus as well as the bodies designated to make the ultimate determination about the merits of petitioners' initial claims.

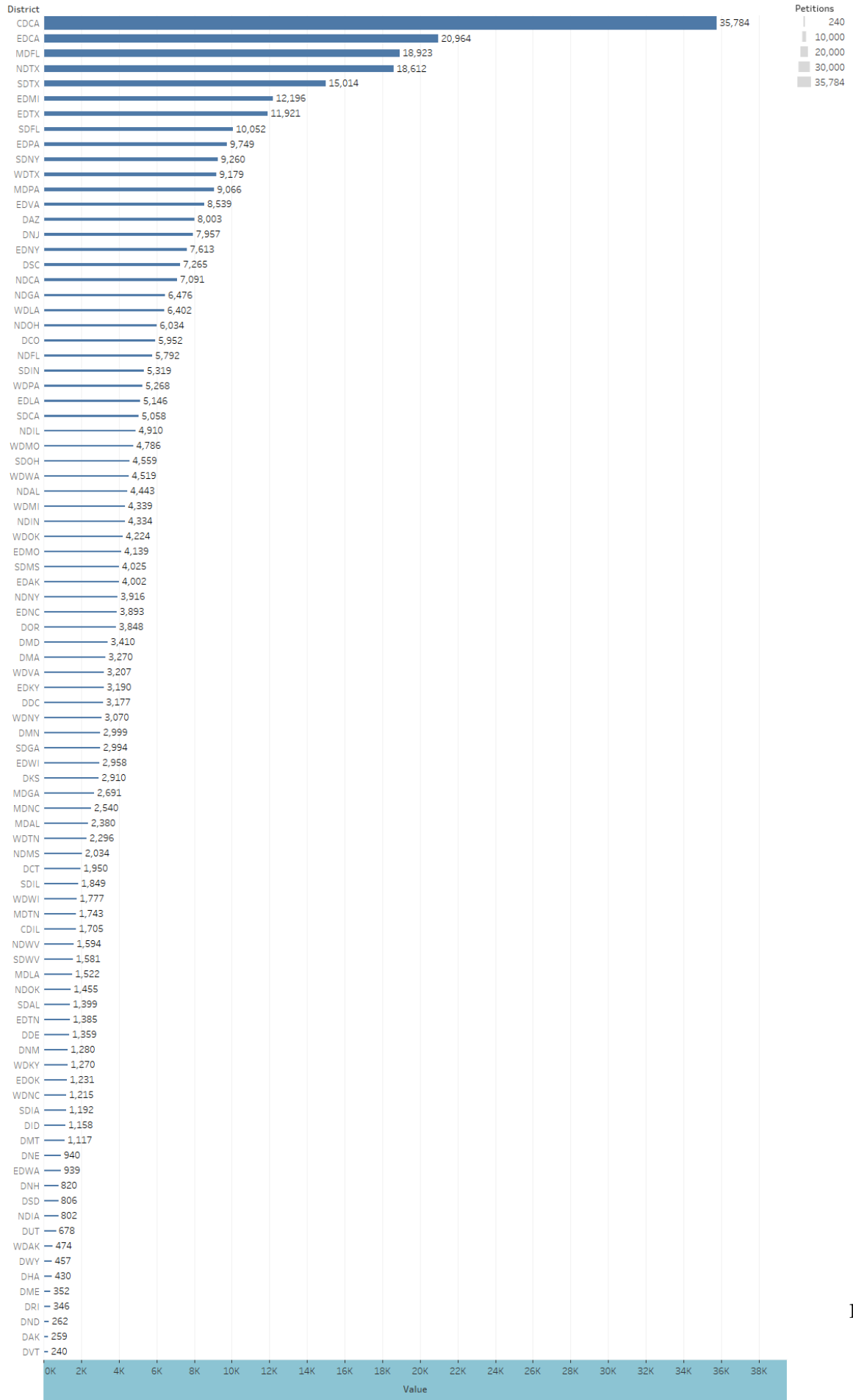
Although AEDPA established significant deference to state courts with its provision for grants of habeas petitions only under two grounds (28 U.S.C. §2254(d)), deference to state courts' decision increased even further in the years since AEDPA's enactment. One glaring example is the case of *Harrington v. Richter*,[1] where the Supreme Court clarified the level of deference. The *Harrington* decision sets forth, "[t]here is no merit to the assertion that compliance with §2254(d) should be excused when state courts issue summary rulings because applying §2254(d) in those cases will encourage state courts to withhold explanations for their decisions. Opinion-writing practices in state courts are influenced by considerations other than avoiding scrutiny by collateral attack in federal court."[2] The presumption of state courts' superior position in this process of review was underscored in that case with the Court's statement, "[w]hen a federal claim has been presented to a state court and the state court has denied relief, it may be presumed that the state court adjudicated the claim on the merits in the absence of any indication or state-law procedural principles to the contrary."[3]

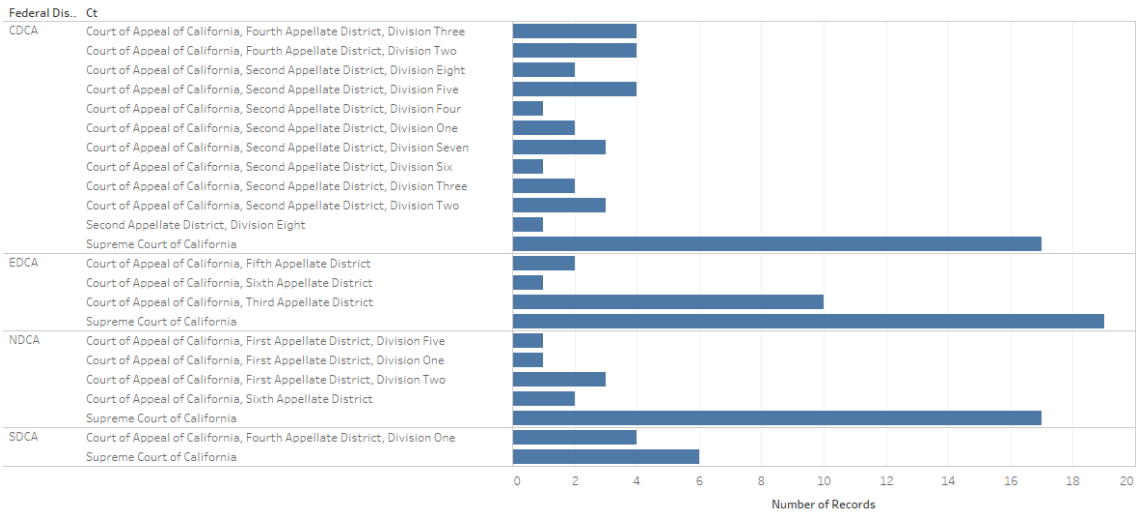
Unlike other projects examining the various stages of habeas corpus litigation, the expansive nature of this proposed project will provide the tools to look at differing processes both at the state level, and below the state level by federal judicial district. This comparative information will allow us to test whether divergent patterns of state court level decision-making have emerged as a result of AEDPA and the subsequent defining Supreme Court precedents.

Research

To begin studying basic characteristics of this data, I assembled a random sample of 110 California state decisions that later led to federal court habeas corpus petitions from the years 1996 through 2016. I then broke the data down into several dimensions. The following figure shows how the cases are distributed between the deciding state courts and the federal district courts that were later petitioned.

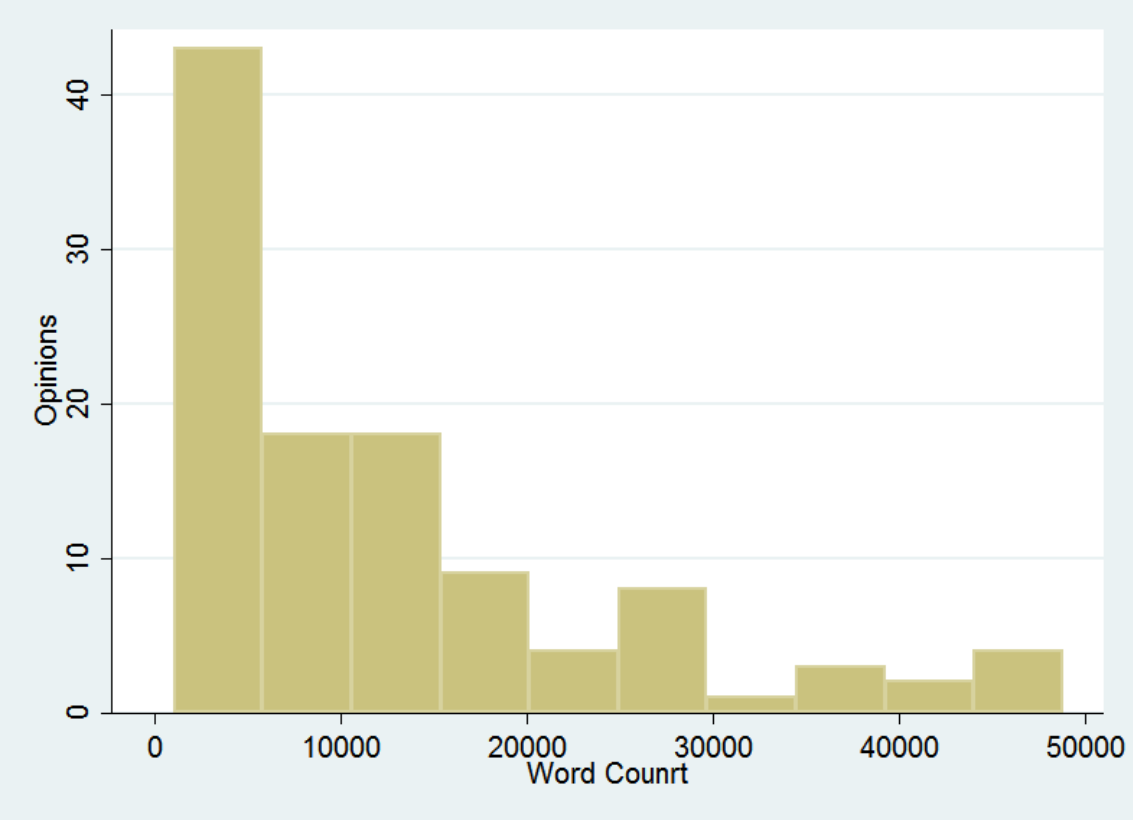
[1] 131 S.Ct. 770 (2011)
[2] *Id.* at 784
[3] *Id.* at 784-85


District
CDCA 35,784
EDCA 20,964
MDFL 18,923
NDTX 18,612
SDTX 15,014
EDMI 12,196
EDTX 11,921
SDFL 10,052
EDPA 9,749
SDNY 9,260
WDTX 9,179
MDPA 9,066
EDVA 8,539
DAZ 8,003
DNJ 7,957
EDNY 7,613
DSC 7,265
NDCA 7,091
NDGA 6,476
WDLA 6,402
NDOH 6,034
DCO 5,952
NDFL 5,792
SDIN 5,319
WDPA 5,268
EDLA 5,146
SDCA 5,058
NDIL 4,910
WDMO 4,786
SDOH 4,559
WDWA 4,519
NDAL 4,443
WDMI 4,339
NDIN 4,334
WDOK 4,224
EDMO 4,139
SDMS 4,025
EDAK 4,002
NDNY 3,916
EDNC 3,893
DOR 3,848
DMD 3,410
DMA 3,270
WDVA 3,207
EDKY 3,190
DDC 3,177
WDNY 3,070
DMN 2,999
SDGA 2,994
EDWI 2,958
DKS 2,910
MDGA 2,691
MDNC 2,540
MDAL 2,380
WDTN 2,296
NDMS 2,034
DCT 1,950
SDIL 1,849
WDWI 1,777
MDTN 1,743
CDIL 1,705
NDWV 1,594
SDWV 1,581
MDLA 1,522
NDOK 1,455
SDAL 1,399
EDTN 1,385
DDE 1,359
DNM 1,280
WDKY 1,270
EDOK 1,231
WDNC 1,215
SDIA 1,192
DID 1,158
DMT 1,117
DNE 940
EDWA 939
DNH 820
DSD 806
NDIA 802
DUT 678
WDAK 474
DWY 457
DHA 430
DME 352
DRI 346
DND 262
DAK 259
DVT 240
0K 2K 4K 6K 8K 10K 12K 14K 16K 18K 20K 22K 24K 26K 28K 30K 32K 34K 36K 38K
Value
Petitions
240
10,000
20,000
30,000
35,784



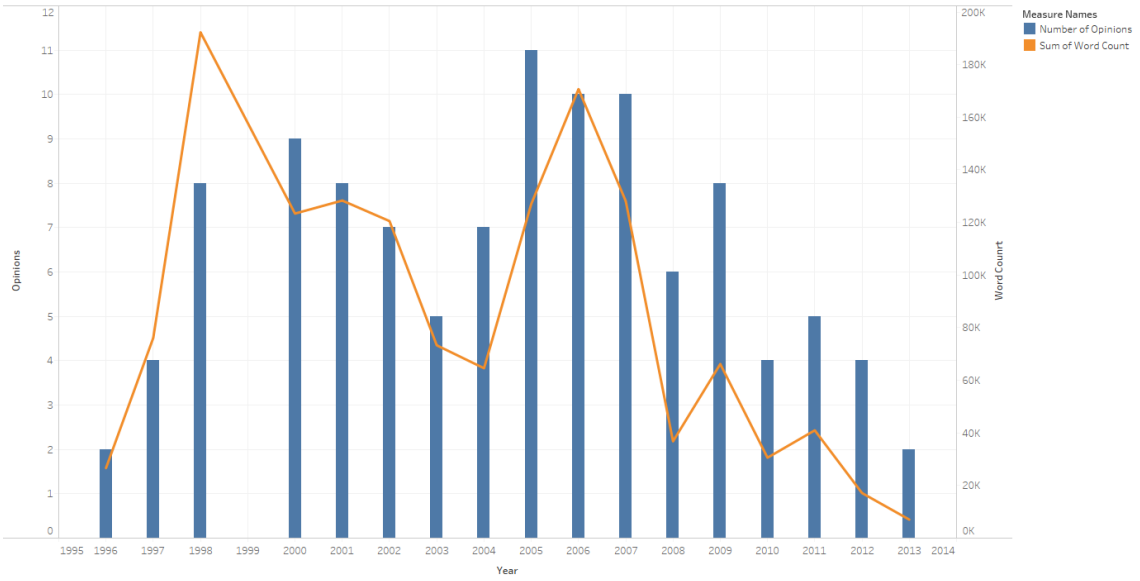
We see in this figure that even in this small sample of cases, the petitions are distributed to each federal district court in California and that petitions in each district come from a combination of state courts of appeal as well as from the California Supreme Court.

I also ran the word counts for each of the decisions. I then generated a histogram to observe the distribution of decision lengths.



Here we see the bulk of the decisions across time fell to the lower end of the decision length spectrum, although the tail extends out to include a small number of much longer opinions. This also begs the question of how these decisions are distributed across time. Although this small sample will not provide much clarity

to answer question (even within California) we examined the word count lengths by year to generate the figure on the following page.



While these data are extremely speculative, we can see that within these decisions there is an overall word count decrease over time as the orange line dips below the blue bars in the later years. The fact that this trend tracks across the years of this project provides some insight that this is not merely an artifact of a few outlier decisions.

Get In Touch

For any questions or to find out how Optimized Legal Solutions can assist with your legal data and decisions visit our website at www.optimizedlegal.com or contact adam@optimizedlegal.com.