Incarceration without Representation: Race-Based Panel Effects in Prisoner Civil Rights Litigation

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Abstract

Studies have come to differing conclusions regarding the importance of racial and ethnic identity in the way that judges cast their votes. Some of those who claim that identity is a critical factor in judicial decisions have documented a panel effect, which refers to the potential for the presence of a minority judge on an appellate panel to affect the votes of their peers. This thesis seeks to investigate the role of race of the judge in decisions on the U.S. Court of Appeals, analyzing outcomes in the civil rights claims of prisoners through a logistic regression model. Ultimately, it finds no meaningful linkage between the race of a jurist and the vote that they cast. Similarly, it does not document a race-based panel effect. It does, however, find an ideological one, where having one Democratic jurist on a panel materially affects the votes of the panel's other jurists.

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Introduction

Though judicial diversity has been a topic of conversation since the Carter Administration, it became highly discussed during the presidency of Donald J. Trump. Trump left office having appointed over 200 federal judges, including nearly as many appellate judges as his predecessor, President Barack Obama, appointed over an eight-year period. Trump's picks stood out not only for their conservativism, but also their homogeneity. His appointments were overwhelmingly White and male.[1]

Besides the representational difficulties that arise from having a judiciary that does not look like the population it serves, the absence of diversity can produce poor judicial decisions, i.e., those that do not adequately consider the interests of all parties, are biased, or are inconsistent with the cannons of judicial ethics. On average, jurists from historically marginalized groups, whether women and/or racial minorities, have life experiences that are unique from those of their White and/or male counterparts. From this point forward, these jurists will be referred to as "nontraditional jurists", denoting the tendency of members of America's judiciary to be White men. In theory, these experiences may prompt nontraditional jurists to vote differently compared to their White, male peers, ensuring that the interests of minority litigants are more fully considered and that judicial decisions reflect diverse perspectives.[2] Scholar Michael Nava noted that jurists from historically underrepresented groups tend to be more

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[1] John Gramlich, "How Trump Compares with Other Recent Presidents in Appointing Federal Judges," Pew Research Center (Pew Research Center, January 13, 2021), https://www.pewresearch.org/fact-tank/2021/01/13/how-trump-compares-with-other-recent-presidents-in-appointing-federal-judges/.
[2] Ciara Torres-Spelliscy, Monique Chase, and Emma Greenman, "Improving Judicial Diversity," Brennan Center for Justice (Brennan Center for Justice at NYU Law, March 3, 2010), https://www.brennancenter.org/sites/default/files/2019-08/Report_Improving-Judicial-Diversity.pdf.

considerate of litigants who have been "similarly ostracized for their differences".[3] For example, Chew and Kelley (2012) found that Black judges on the federal district courts were more likely than their nonblack counterparts to hold for the plaintiffs in workplace racial harassment cases. They theorized that this was because Black judges were more likely than their White peers to give credence to the effects of coded language and racial stereotyping in a professional setting.[4]

This influence is theorized to extend beyond individual votes and into collegial decision-making settings. Various scholars have documented the existence of characteristic-based panel effects, with the most salient characteristics typically being either race or gender of the judge. Panel effects refer to instances in which the presence of a nontraditional jurist on a multi-judge panel prompts the other jurists to vote differently than they normally would. In a 2010 study, for example, Boyd, Epstein, and Martin found that male jurists were more likely to rule in favor of the plaintiff in a sex discrimination case when a female judge also sat on the panel.[5]

Despite the work of Boyd et al. (2010) and similar scholars who have sought to document both the unique voting patterns of nontraditional jurists and their subsequent panel effects, results of studies in this area are mixed. Political scientists have reached varying conclusions regarding the extent to which racial or gender identity matters in judicial outcomes, with scholars like Root, Faleschini, and Oyenubi (2019) holding that a judge's demographics almost never shape their votes, while others have found the opposite. For example, Steffensmeier and Hebert (1999)

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[3] Michael Nava, "The Servant of All: Humility, Humanity, and Judicial Diversity," GGU Law Digital Commons (Golden Gate University School of Law, 2008), https://digitalcommons.law.ggu.edu/cgi/viewcontent.cgi?article=1973&context=ggulrev, 15.

[4] Pat K Chew and Robert E Kelley, "The Realism of Race in Judicial Decision Making: An Empirical Analysis of Plaintiffs' Race and Judges' Race," Harvard Blackletter Law Journal (Harvard Law School, 2012), https://harvardblackletter.org/wp-content/uploads/sites/8/2012/11/HBK1021.pdf.

[5] Christina L Boyd, Lee Epstein, and Andrew D Martin, "Untangling the Causal Effects of Sex on Judging," Columbia Law School (The Trustees of Columbia University in the City of New York, April 9, 2010), https://web.law.columbia.edu/sites/default/files/microsites/law-theory-workshop/files/sex_paper.pdf.

found that a judge's gender plays a critical role in the sentencing outcomes of criminal cases. They, like Root et al. (2019) found that female jurists were actually harsher in their sentencing practices than their male counterparts.[6]

This thesis seeks to explore the difference in patterns of Black and nonblack judges' decision-making on the courts of appeals. Specifically, it analyzes patterns in civil rights claims raised by prison inmates and criminal defendants. In the Songer data set, civil rights claims include suits for damages for false arrest or false confinement, cruel and unusual punishment, due process rights in prison, denial of other rights of prisoners (42 USC 1983 suits), denial or revocation of parole on due process grounds, other denial or revocation of parole, other prisoner petitions, excessive force used in arrest, and other civil rights violations alleged by prisoners.[7] This thesis also explores race-based panel effects, i.e., whether the presence of a Black jurist on an appellate panel will influence the votes of the panel's nonblack jurists in ways that materially affect the case outcome. Specifically, this research will explore two questions. First, are Black jurists more likely to rule in favor of prisoners in civil rights claims than their nonblack peers? Second, does the presence of a Black jurist on an appeals court panel influence the votes of the nonblack judges of the panel, making cases more likely to be decided in favor of the prisoner, regardless of the race of the prisoner?

Literature Review

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[6] Danielle Root, Jake Faleschini, and Grace Oyenubi, "Building a More Inclusive Federal Judiciary," Center for American Progress (Center for American Progress, October 3, 2019), https://americanprogress.org/article/building-inclusive-federal-judiciary/.

[7] Donald R Songer, "Original U.S. Courts of Appeals Databases 1925 - 1996 Documentation," The Songer Project (Don Songer Project, October 21, 2008), https://nebula.wsimg.com/e3868245e358a0ef588fb7d7a31980a1?AccessKeyId=96203964AD4677DE3481&disposition=0&alloworigin=1, 31.

The effort to diversify America's judiciary began in earnest in the 1970s, when President Jimmy Carter took office. Carter believed that the overwhelming presence of White, male judges on the federal bench undermined the integrity of the entire justice system. In response, he designed his judicial appointment strategy to increase diversity.[8] Though subsequent administrations have taken similar approaches, America's courts are still defined by alarming homogeneity. More than 73% of sitting federal judges are White, while 80% are men.[9] From the 18th century to the 1960s, 99% of federal judges were White men.[10]

Numerous scholars have explored the impacts of the composition of the federal bench and the efforts to diversify it, with research centering on three questions: first, what is significance of judicial diversity? Second, do nontraditional jurists vote differently compared to their White, male counterparts? Finally, if nontraditional jurists do vote differently, do their votes affect case outcomes?

Does Diversity Matter?

In a poignant dissent in *Bush v. Gore*, Justice John Paul Stevens wrote that "it is confidence in the men and women who administer the judicial system that is the backbone of the law."[11] Unfortunately, the American public does not maintain a high level of confidence in its courts. In a study on trial court legitimacy that focused on public trust in judges, lawyers, and juries, Klein

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[8] Nancy Scherer, "Diversifying the Federal Bench: Is Universal Legitimacy for the U.S. Justice System Possible?" Northwestern University Law Review (Northwestern University School of Law, 2011), https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=1169&context=nulr.

[9] "Biographical Directory of Article III Federal Judges, 1789-Present," Federal Judicial Center (Federal Judicial Center), accessed November 29, 2021, https://www.fjc.gov/history/judges/search/advanced-search.

[10] Jonathan K Stubbs, "A Demographic History of Federal Judicial Appointments by Gender and Race: 1789-2016," University of Richmond UR Scholarship Repository (University of Richmond School of Law, 2016), https://core.ac.uk/download/pdf/232784671.pdf.

[11] John Paul Stephens, "George W. Bush, Et Al., Petitioners v. Albert Gore, Jr., Et Al.," Legal Information Institute (Cornell Law School, December 12, 2012), https://www.law.cornell.edu/supct/pdf/00-949P.ZD, 7.

(2016) found that concerns about judicial neutrality have led to fragility of perceptions of the U.S. judiciary's legitimacy.[12] This fragility compounds with race. In a 2014 Pew study, Anderson found that 27% of White respondents, 40% of Hispanic respondents, and 68% of Black respondents felt that courts treat Black people less fairly than White people.[13]

Increased diversity of the bench is often proposed as a means of mitigating legitimacy issues. According to Justice Elena Kagan, "People look at an institution and they see people who are like them, who share their experiences, who they imagine share their set of values, and... they feel more comfortable…"[14] Nontraditional jurists can draw on their unique life experiences in hearings and deliberations, allowing a full, fair consideration of the interests of the diverse litigants that appear before America's courts. Further, diversity on the bench acts as a check on implicit bias, generating impartial decisions that secure public confidence. Thus, judicial diversity aids in building court legitimacy by ensuring that the law does not merely reflect a single, dominant viewpoint.

Conversations regarding judicial diversity are incomplete without a discussion of the concepts of descriptive and substantive representation. As explained by Root and Berger (2019), descriptive representation references situations in which "an institution physically resembles the population it has authority over". Substantive representation occurs when members of said institution act in their constituency's substantive interest.[15] The two are not intrinsically linked; jurists can be a member of a historically underrepresented group but not advocate for that

[12] Kenneth S Klein, "Truth and Legitimacy (In Courts)," LAW eCommons (Loyola University Chicago School of Law, 2016), https://lawcommons.luc.edu/cgi/viewcontent.cgi?article=2578&context=luclj.
[13] Monica Anderson, "Vast Majority of Blacks View the Criminal Justice System as Unfair," Pew Research Center (Pew Research Center, August 12, 2014), https://www.pewresearch.org/fact-tank/2014/08/12/vast-majority-of-Blacks-view-the-criminal-justice-system-as-unfair/.
[14] Danielle Root et al., Building a More Inclusive Federal Judiciary.
[15] Danielle Root and Sam Berger, "Structural Reforms to the Federal Judiciary," Center for American Progress (Center for American Progress, May 8, 2019), https://americanprogress.org/article/structural-reforms-federal-judiciary/.

group's interests (like Supreme Court Justice Clarence Thomas, for example), and vice versa. Many jurists have been fierce advocates for populations like women and Blacks without belonging to those groups themselves.

It is clear that America's judicial system fails to achieve the promise of descriptive representation. White males are overrepresented on appellate benches by a margin of nearly two to one, while almost every other group is underrepresented when compared to its share of the United States' population.[16] Thus, scholars have turned their attention towards substantive representation. Specifically, many seek to examine the extent to which, if at all, nontraditional jurists vote differently than their White, male counterparts. In theory, small differences in voting patterns would denote a clearer linkage between descriptive and substantive representation, indicating that having more nontraditional jurists on the bench translates to better outcomes for minority litigants and ensures that the judiciary adequately considers the interests of multiple groups within American society.

Race and Gender Disparities

The link between descriptive and substantive representation is defined by the assumption that actors with different characteristics will react differently to the same set of factors, thus ensuring that all sides of an issue are fully considered. However, this is not always the case. Consider the work of Bonneau and Rice (2009), who conducted an empirical analysis of non-unanimous decisions in criminal cases at the state supreme court level. They found that in drug and violent crime-related cases, the race and gender of a judge had an insignificant effect on their final

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[16] Ciara Torres-Spelliscy et al., Improving Judicial Diversity.

vote.[17] Further scholarship indicates that a judge's identity almost never shapes their votes.[18] In

other words, in most instances, a Black judge and a White judge will decide a case similarly. The

exception is cases where identifying characteristics like race, gender, sexuality, and religion are

at issue. In these instances, the identity of a judge can have a large impact on their vote outcome.

Consider Chew and Kelley (2012), who conducted a study on the outcomes of workplace

racial harassment cases in relation to the race of the plaintiff and judge. They utilized a database

containing all reported racial harassment cases brought under Title VII of the Civil Rights Act in

the federal district courts of six representative circuits between the years of 2002 and 2008. Upon

analysis, they found that Black judges were more likely than their nonblack counterparts to hold

for the plaintiffs. Again, this was thought to be because Black judges were more likely than their

White peers to have experiences with racial discrimination and to give weight to the effects of

racial stereotyping in professional settings. The Chew and Kelley (2012) study also found that

jurists were more likely to decide in favor of plaintiffs of their own race, highlighting an implicit

bias that can only be addressed through the maintenance of a diverse judiciary.[19]

Similar disparities in voting patterns have been documented between male and female

jurists. In a regression analysis of both published and unpublished decisions in sexual harassment

and discrimination cases before the federal courts of appeals, Peresie (2005) found that female

judges were 86% more likely to decide in favor of the plaintiff in sexual harassment cases than

male judges were. They were 65% more likely to do so in sex discrimination cases. Both liberal

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[17] Chris W Bonneau and Heather Marie Rice, "Impartial Judges? Race, Institutional Context, and U. S. State Supreme Courts.," JSTOR (ITHAKA, 2009), 381
https://www.jstor.org/stable/40421647?seq=1#metadata_info_tab_contents.
[18] Danielle Root et al., Building a More Inclusive Federal Judiciary.
[19] Chew and Kelley, The Realism of Race in Judicial Decision Making.

and conservative female judges were more likely to support the plaintiffs than men were.[20]

Similarly, Smith (2005) found that female jurists were more likely to strike down statutes that violate the equal protection, due process, or freedom of association rights of people who identify as LGBTQ+.[21]

One should note that, while a number of studies have indicated that a judge's identity can impact their votes, the result of studies in this area are still mixed. Thus, more research on the extent to which a judge's identity and background influences their decisions is critical in filling noticeable inconsistencies in the literature.

Substantive Representation and Voting

In the event that nontraditional jurists do vote differently in some instances than their White, male peers, one must consider not only their votes in isolation, but how those votes interact with others to decide case outcomes.

For trial court judges in one of America's ninety-four judicial districts, cases have single-vote outcomes. Here, if nontraditional jurists vote in the interest of a specific demographic, it translates directly into substantive representation. This is not the case for judges on the courts of appeals, whose votes are merely one-third of those from a three-judge panel, or as little as one-fifteenth when cases are heard en banc. In these situations, substantive representation hinges

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[20] Jennifer L Peresie, "Female Judges Matter: Gender and Collegial Decision making in the Federal Appellate Courts," JSTOR (ITHAKA, May 2005), https://www.jstor.org/stable/4135764?seq=1#metadata_info_tab_contents.

[21] Fred O Smith, "Gendered Justice: Do Male and Female Justices Rule Differently on Questions of Gay Rights?," SSRN (Elsevier, December 6, 2005), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=864984.

upon whether individual votes lead to changes in the overall case outcome, as nontraditional justices may be outnumbered on their respective panels.[22]

Despite possibly being outnumbered, nontraditional jurists may still have a relevant influence upon case outcomes; an analysis by Boyd, Epstein, and Martin (2010) revealed the existence of a "panel effect", in which the vote of one judge on an appellate panel shapes those of the other two judges. In the case of Boyd et al., the panel effect was gender-based. It was hypothesized that having even one female judge sitting on a three-judge panel would influence the men on the panel, making them more likely to vote in favor of the plaintiff and affecting the ultimate case outcome. Ultimately, the group found that the likelihood of a male judge ruling in favor of the plaintiff in a sex discrimination case increased between 12 and 16% when a female judge sat on their panel.[23]

Though race-based panel effects have a far smaller body of research surrounding them than gender-related effects, they are still relevant to consider. One of the key studies in the subject area is that of Cox and Miles (2007), who analyzed every published federal case decided under Section 2 of the Voting Rights Act since 1982. They found that adding a Black judge to a three-judge panel made the panel's White judges roughly 20% more likely to find that a state or locality violated Section 2 of the Voting Rights Act. Black judges in the study were twice as likely than their nonblack colleagues to vote for Section 2 liability, which, when combined with the panel effect, translated into differences in overall case outcomes.[24] Kastellec (2020), who

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[22] Jonathan P Kastellec, "Racial Diversity and Judicial Influence on Appellate Courts," OpenScholar@Princeton (Princeton University, 2012), https://scholar.princeton.edu/sites/default/files/kastellec_racial_diversity_final_0.pdf, 3.

[23] Christina L Boyd et al., Untangling the Causal Effects of Sex of Judging.

[24] Adam B Cox and Thomas J Miles, "Judging the Voting Rights Act," SSRN (Elsevier, March 30, 2007), https://poseidon01.ssrn.com/delivery.php?ID=704004065004021004082003074010087101050000093043060085030 0074111000064087030098083022028107099061116032008087125076085080018087102052030015033019100 02

utilized a multivariate regression model to study race-based panel effects in death penalty cases,

found similar results. In his study, when a defendant was Black, a three-judge panel with a single

Black judge was roughly 23% more likely to grant relief to the defendant than an all-nonblack

panel.[25] As the death penalty is a highly racialized issue which disproportionately affects Black

Americans, this is substantive representation. In a similar vein as the research done by Chew and

Kelley (2012), in which the pair found that jurists were more likely to decide in favor of

plaintiffs of their own race, Kastellec found that there was no significant race-based panel effect

in cases in which the defendant was White.[26] This, again, highlights an implicit bias.

The mechanism underlying panel effects is less understood than their actual existence.

Scholars have highlighted several possible explanations. First, deliberation. This theory holds

that nontraditional jurists present their colleagues with unique arguments as cases are being

deliberated, thereby changing the final outcome of the three-judge panel's vote. The second is

votes: the presence of nontraditional judges and their tendency to vote more liberally than White,

male jurists might influence their colleagues to do the same. Here, it is important to note that

nontraditional jurists are not a monolith that leans liberal; there are indeed some conservative

Black appellate judges, as Clarence Thomas once was. However, they are rare. Third, presence:

the mere presence of the characteristics of a nontraditional judge may cause their colleagues to

evaluate a case differently, regardless of the way the nontraditional judge votes.[27] Finally, the

judicial norm of panel unanimity may play a role in the emergence of panel effects. Federal

40640060641100720330491210231010930101271040290090830930700300930791200040661150640301241181021190091&EXT=pdf&INDEX=TRUE.

[25] Jonathan P Kastellec, "Race, Context, and Judging on the Courts of Appeals: Race-Based Panel Effects in Death Penalty Cases," OpenScholar@Princeton (Princeton University, October 6, 2020), https://scholar.princeton.edu/sites/default/files/jkastellec/files/kastellec_race_dp_paper_jsj_submission_for_web.pdf

[26] Chew and Kelley, The Realism of Race in Judicial Decision Making.

[27] Jonathan P Kastellec, Race, Context, and Judging on the Courts of Appeals.

appellate panels are overwhelmingly unanimous, with average dissent rates of only 6-8%,

depending on the issue area.[28] Even in instances in which the ideological leanings and

demographic information of judges vary widely, unanimous decisions are reliably reached. This

gives nontraditional jurists the opportunity to gain legal concessions from the majority, who

likely seek to avoid dissent and the production of a majority opinion of questionable adherence

to legal doctrine. Here, the nontraditional jurist does not change the minds of their colleagues,

but rather, exchanges their vote for a change in the content of the final opinion, moving it further

from what the majority jurist would have preferred.[29]

The Criminal Civil Rights Context

As aforementioned, this thesis seeks to explore the linkage between descriptive representation

and substantive representation on the federal appeals courts in the context of prisoner civil rights

claims. Specifically, it will explore if such a linkage exists at all; does increasing the number of

nontraditional jurists on a bench truly increase the representation of the interests of minority

litigants? This issue area is particularly interesting. Both ideological and race-based effects have

already been identified in the context of traditional criminal issues like the death penalty;

Kastellec and Beim (2014), for example, found that the likelihood that a jurist votes in a pro-

defendant manner increases as they sit with more colleagues appointed by a Democrat and

decreases with those appointed by Republicans.[30] However, no studies have explored race-based

panel effects at the intersection of civil and criminal law that criminal civil rights petitions

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[28] Sean Farhang and Gregory Wawro, "Institutional Dynamics on the U.S. Court of Appeals: Minority Representation under Panel Decision Making," JSTOR (ITHAKA, October 2004), https://www-jstor-org.libproxy.lib.unc.edu/stable/3555020?pq-origsite=summon&seq=4#metadata_info_tab_contents, 307-308.
[29] Ibid.
[30] Deborah Beim and Jonathan P Kastellec, "The Interplay of Ideological Diversity, Dissents, and Discretionary Review in the Judicial Hierarchy: Evidence from Death Penalty Cases," JSTOR (ITHAKA, July 22, 2014), https://www.jstor.org/stable/pdf/10.1017/s0022381614000619.pdf?refreqid=excelsior%3A34570cfed8931c89b9f49 2cb9fdc88de.

inhabit. Instead, they have opted to investigate issues like workplace racial discrimination and voting rights claims, in which the salience of race is a constant factor and reliably expected to influence the votes of nontraditional jurists.

Criminal issues present an interesting consideration, as they should technically be race-neutral. Mechanisms of the criminal justice system, whether incarceration rates or death penalty usage, should remain proportional across racial groups. In practice, however, this is not the case. All aspects of the criminal justice system are heavily racialized. For example, one of out every three Black men born today will be sentenced to prison, compared to one of six Latino men and one of seventeen White men.[31] Black defendants are 22% more likely than White defendants to be exonerated for convictions involving police misconduct.[32] They make up 13% of the population, but 35% of individuals executed under the death penalty over the last 40 years.[33] Thus, one can reasonably expect other criminal issues, such as the civil rights claims of prisoners and those accused of crimes, to be inexplicably tied to questions of race.

Theory and Hypotheses

The entirety of this research rests upon the importance of identity — the understanding that before a judge is a judge, they are a person, whether Black or nonblack. Most prior research indicates that in cases that feature issues made salient by identity-based characteristics, whether race, gender, sexuality, etc., the identity of a jurist becomes increasingly important in influencing their final vote. This is often attributed to the ability of nontraditional jurists to fully weigh the

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[31] Criminal Justice Fact Sheet," NAACP (NAACP), accessed December 4, 2021, https://naacp.org/resources/criminal-justice-fact-sheet.
[32] Ibid.
[33] Ibid.

circumstances of the minority litigants in these cases, drawing upon life experiences that their White, male colleagues do not have. I expect to find that cases involving the civil rights claims of prisoners and those accused of crimes, an issue area based in a criminal justice system with significant and consistent racial disparities, will be no exception. Specifically, I theorize that there will be a significant difference in the voting patterns of Black and nonblack jurists in these cases.

Research in this area also demonstrates a significant capacity for nontraditional jurists, in the event that they vote differently than their peers, to influence the votes of the other jurists on their panel and thus, final case outcomes. These, again, are referred to as panel effects. The mechanism underlying said panel effects is theorized to be either unanimity, deliberation, votes, or mere presence of a Black judge on the panel. As the majority of literature that cited differences between the votes of nontraditional and traditional jurists also cited panel effects, I theorize that the same will be true for cases involving civil rights claims of prisoners and those accused of crimes.

Hypotheses

H1: Black jurists will be more likely than their nonblack peers to vote in favor of the prisoner in civil rights claims of prisoners and those accused of crimes.

H2: Mixed panels, those consisting of at least one Black jurist, will be more likely to rule in favor of the prisoner (regardless of race) than nonmixed panels.

Research Design

Data

The analysis for this thesis utilizes a combined version of five separate data sets. First and

foremost, I will be using two U.S. Court of Appeals Databases from the Songer Project, a

comprehensive hub for legal and political research organized by Donald R. Songer.[34] The data

set has inspired a number of works, most notably Songer's own book, *Continuity and Change on

the United States Courts of Appeals*.[35] The first data set spans the years of 1925-1996, while the

second covers from 1997-2002. Here, 1925 was chosen for its status as the beginning of an

increased policy role for the Courts of Appeals, spurred by an increase in control of the Supreme

Court over its own docket. When combined, these data sets feature 236 variables and 20,355

fully coded court cases from all of the federal appeals courts, including the D.C. circuit. Of the

20,355 cases, 496 will be used in the testing of the two hypotheses. Cases heard en banc, which

are heard by as many as fifteen jurists at once, constituted less than 2% of this data set and were

dropped for ease of analysis.

In the combined data set, judges are assigned codes, found under the variables coded

codej1, codej2, codej3, etc. Though traditional appeals panels consist of three jurists, when cases

are heard en banc, as many as fifteen jurists can participate. Thus, there are 15 codej variables.

These codes line up with jurist identification numbers in my third and fourth data sets, the

Appeals Courts Attributes Data set and District Courts Attributes Data set, also from the Songer

Project, to allow for easy combination.[36] The attributes data set includes all relevant information

regarding the jurists who voted on the coded cases, ranging from American Bar Association

rating, to race, to party of appointing President. Though decisions on appellate courts are made

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[34] Donald R Songer, "U.S. Courts of Appeals Databases," The Songer Project (Don Songer Project), accessed December 4, 2021, http://www.songerproject.org/us-courts-of-appeals-databases.html.

[35] Donald R Songer, Reginald S Sheehan, and Susan B Haire, *Continuity and Change on the United States Courts of Appeals* (Ann Arbor, MI: The University of Michigan Press, 2000).

[36] Donald R Songer, "Attributes of U.S. Federal Judges Database," The Songer Project (Don Songer Project), accessed December 4, 2021, http://www.songerproject.org/attributes.html.

chiefly by appellate court jurists, 28 U.S. Code § 292 allows for district court judges within a

circuit to sit on their respective court of appeals when necessary.[37] Thus, some of the votes cast

in the original data set come from district court jurists.

Finally, the fifth data set is that of Professor James Stimson, who formulated the policy

mood index.[38] Stimson's policy mood index is a measure of the liberalism of the American

public over time, which he generates through the analysis of over 145 questions administered

over several decades. The questions cover issues ranging from race, to healthcare, to defense

spending.[39] The data set includes policy mood information for the period of 1952 to 2020.

In the combined data set, I will be working chiefly with the variables that denote the

policy mood in the year that a case was heard, the gender, race, and political affiliation of jurists,

individual votes cast, number of female jurists in the court, and final case outcomes. Also critical

are variables that were created specifically for this thesis, which indicate the gender, race, and

ideological makeups of the appellate panels being analyzed.

In an ideal circumstance, this model could greatly benefit from the inclusion of further

contextual factors, such as the number of amicus curiae briefs filed on the behalf of each party,

which have been shown to tip the judicial scales towards the party with the greatest number, and

the type of counsel representing each party, which scholarship indicates meaningfully affects

case outcomes.[40] As significant scholarship has documented the propensity of jurists to hold for

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[37] "28 U.S. Code § 292 - District Judges," Legal Information Institute (Legal Information Institute), accessed December 5, 2021, https://www.law.cornell.edu/uscode/text/28/292.

[38] James Stimson, "Data," James Stimson's Site (UNC Chapel Hill), accessed March 3, 2022, https://stimson.web.unc.edu/data/.

[39] Isaac Unah, Kristen Rosano, and K Dawn Milam, "U.S. Supreme Court Justices and Public Mood," SSRN (Elsevier, 2015), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2584520, 381.

[40] Joseph D Kearney and Thomas W Merrill, "The Influence of Amicus Curiae Briefs on the Supreme Court," Legal Scholarship Repository (Digital Commons, 2000); https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=3356&context=penn_law_review, 816; James M Anderson and Paul Heaton, "How Much Difference Does the Lawyer Make? The Effect of Defense Counsel on

litigants of their own race or gender more often than they do for other parties, the race of litigants in my studied cases also presents an interesting consideration.[41] Unfortunately, limitations in the Songer data set precluded the inclusion of these factors.

Variables and Their Operationalization

Above all, this research evaluates the effect of race of the judge, the independent variable of interest, on the final vote of a court of appeals jurist/panel, the dependent variable. However, in order to most effectively study this relationship, several other variables must be considered and controlled for.

The Songer database codes the votes of jurists and the final outcomes of appellate panels according to their directionality, where a 3 denotes the most liberal vote, siding completely with the prisoner, and a 1 denotes the most conservative vote, siding completely with the other party. 2 denotes a mixed outcome, where, for example, the case has been affirmed in part and remanded in part. For the purpose of analysis, mixed case outcomes were recoded to have a directionality of 1, as remands are widely considered to be merely soft reversals.[42]

The political affiliation of individual jurists is incorporated into the model to control for its effect on the directionality of votes cast. Political affiliation takes the form of a dummy variable, where jurists are coded according to the party of their appointing president. 0 denotes a jurist appointed by a Republican, while 1 denotes one appointed by a Democrat. Though this is

Murder Case Outcomes," The Yale Law Journal (The Yale Law Journal, 2011), https://www.yalelawjournal.org/pdf/1105_8izvsf8m.pdf, 179.
[41] Chew and Kelley, The Realism of Race in Judicial Decision Making; Jonathan P Kastellec, Race, Context, and Judging on the Courts of Appeals.
[42] Lawrence Baum, "Implementation of Judicial Decisions: An Organizational Analysis," SAGE Journals (SAGE Publications, January 1, 1976), https://journals-sagepub-com.libproxy.lib.unc.edu/doi/pdf/10.1177/1532673X7600400104, 89.

an admittedly imperfect metric, many jurists do not publicly declare their political party in an effort to maintain the appearance of an apolitical judiciary. Further, data shows that judges who differ in party from their appointing president are few in number.[43]

Also considered in the model is gender of the judge. The majority of research on gender and judicial decision-making shows that female jurists, on average, are more liberal than their male colleagues. Male jurists tend to be distributed relatively evenly between liberal and conservative parties, while women reliably skew left.[44] Gender, like political affiliation, is also coded as a dummy variable, where a man is a 0 and a woman is a 1. Gender is further considered through the incorporation of the "NumFemjud" variable, which reveals how many female jurists sat on a particular court at the time that a case was heard. We can think of this variable as representing the critical mass of women in a court of appeals. Does a higher number of women judges in a court of appeals make a difference in outcomes? The critical mass perspective originates from sociologist and women's rights activist, Rosabeth Moss Kanter (1993). In her book, *Men and Women of the Corporation,* Kanter reminds us that, "change in the behavior and treatment of token women is strongly tied to shifting proportions."[45] Expanding upon this idea, Unah and Williams (2022, forthcoming) argue that "after a critical mass of women has been reached in an appeals court bench, women judges feel freer to express controversial opinion and take stances that diverge from the norm typically exercised by the dominant group."[46] This effect functions similarly to gender-based panel effects, regardless of the fact that many of these female jurists do not hear and vote on the case in question.

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[43] Songer, Sheehan, and Haire, *Continuity and Change,* 32.

[44] Christina L Boyd et al., Untangling the Causal Effects of Sex of Judging.

[45] Rosabeth Moss Kanter, *Men and Women of the Corporation* (New York, NY: Basic Books, 1993), 241.

[46] Isaac Unah and Ryan Williams, "Echoes of the Feminine Mystique: Women Judges and Intergenerational Change in the U.S. Courts of Appeals," *Journal of Law and Policy*, n.d.

As aforementioned, the logistic models incorporate James Stimson's policy mood variable. This is done in an effort to control for any effect that public opinion shifts may have on case outcomes. As studies like that of Casillas et al. (2011) have found that public opinion has a real, substantively important effect on judicial decisions, it is imperative to this study ensure that a judge's vote is affected most directly by their race, not the current political climate.[47]

Finally, the model also incorporates the circuit that a case was heard in, in an effort to control for any outcome discrepancies that may emerge due to purely geographical differences.

See the Appendix A for complete information regarding coding.

Methodology

All of the previously identified research questions and hypotheses for this thesis will be explored utilizing a logistic regression model. Analysis will be done using StataSE.

Each of the two research questions will be answered through the use of a separate regression model. To answer the first question, which asks whether Black jurists are more likely to rule in favor of prisoners in civil rights claims than their nonblack peers, the votes cast by every judge in every case were listed in an aggregate form, totaling 1,488 observations. While case identifiers were removed, the code of the jurist casting the vote remained, so that the race, gender, and party of that jurist could be included in the model.

Several new variables were created to aid in answering this question. First, Songer's vote variable was recoded into a dummy variable entitled "prisvote". This variable indicates whether a jurist voted in favor of the prisoner party (coded 1) or voted for the other party (coded 0).

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[47] Christopher J Casillas, Peter K Enns, and Patrick C Wohlfarth, "How Public Opinion Constrains the U.S. Supreme Court," JSTOR (ITHAKA, January 2011), https://www.jstor.org/stable/25766255?seq=1#metadata_info_tab_contents.

A second dummy variable, entitled "jrace", was created for incorporation into the model. This variable indicates the race of the jurist casting each vote. While the Songer data set codes a wide breadth of races for its jurists, for the purpose of this analysis, jurist race was recoded as either Black or nonblack, with the assumption that the vast majority of the nonblack judges are White. This follows the methodology of Kastellec (2020), who decided upon this grouping based on the likelihood of criminal justice issues being more salient to Black jurists than any other racial group.[48] The isolation of Black votes would not be possible with a White, nonwhite grouping. Further, as stated above, nontraditional jurists are so dramatically underrepresented on appellate courts that very few nonwhite jurists even find themselves in the nonblack category. Jrace is coded so that nonblack jurists are represented by a 0, while Black jurists are represented by a 1.

A similar dummy variable entitled "jgender" was created to indicate the gender of the judge casting each vote, with 0 denoting a male jurist and 1 denoting a female jurist.

Finally, a variable entitled "JudgeParty" was created to indicate the political party of the judge casting the vote, determined by the political party of their appointing president. Here, a 0 denotes a Republican jurist, while a 1 denotes a Democrat.

Several new variables were also created to answer the second research question, which asks whether the presence of a Black jurist on an appellate panel influences the votes of the nonblack jurists of the panel, making cases more likely to be decided in favor of the prisoner. First, Songer's direct1 variable was recoded into a variable entitled "ruling". This variable is dichotomous; a 1 indicates that the appellate panel held for the prisoner, while a 0 indicates a ruling in favor of the other party. As previously mentioned, mixed directionality cases were

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[48] Jonathan P Kastellec, Race, Context, and Judging on the Courts of Appeals.

recoded as rulings for the other party, so they received zeroes under this variable. This is the dependent variable in this question, as compared to the dependent variable of individual votes in the first question.

Several variables were created to reflect the race, gender, and ideological composition of appellate panels, rather than individual jurists. The dummy variable "dpanel" codes for the racial diversity of a panel. Panels are either mixed, meaning that at least one Black jurist sits on it, or nonmixed, meaning that they contain only nonblack judges. A value of 0 indicates a nonmixed panel, while a 1 indicates a mixed panel.

The variable "gpanel" functions similarly to dpanel, revealing the gender composition of a panel and coding them as either mixed or nonmixed. Nonmixed panels, those that have only male judges, are coded as 0, while mixed panels, those with at least one female judge are coded as 1. Though panels of all women could technically be considered nonmixed, women are drastically underrepresented on America's judicial benches and the data set does not include instances of all-female panels.

"Ppanel", another variable created to answer this question, codes for the ideological composition of the appellate panel. As mentioned previously, the political affiliation of individual jurists was coded along a binary pattern, where a 0 is a jurist appointed by a Republican president and a 1 is a jurist appointed by a Democrat. Ppanel takes these values and assigns a 0 to those with an ideology code of 0 and a 1/3 to those with a code of 1, then sums them. In other words, conservative jurists each receive a 0, while liberal jurists receive 1/3. Thus, panels can have an ideology score ranging from 0, which denotes a panel of 3 judges appointed by Republicans, to a 1, which denotes a panel of 3 judges appointed by Democrats.

The first research question will be answered through a logistic regression that includes the variables prisvote (the dependent variable), jgender, jrace, JudgeParty, mood2020 (Stimson's policy mood variable), and NumFemjud. The second question will be answered through a logistic regression including the variables ruling (the dependent variable), dpanel, gpanel, ppanel, NumFemjud, and mood2020.The analysis is conducted with clustering on circuit as a means of controlling for geographic disparities in case outcomes and institutional variation.

Descriptive Statistics

The figures alluded to in this section can be found in Appendix B, while tables can be found in Appendix C.

As previously mentioned, the category of "civil rights claims of prisoners and those accused of crimes" includes nine more specific subsets of issues. Specifically, the data set includes: suit for damages for false arrest or false confinement, cruel and unusual punishment, due process rights in prison, the denial of other rights of prisoners (42 USC 1983 suits), denial or revocation of parole on due process grounds, other denial or revocation of parole, other prisoner petitions, excessive force used in arrest, and other civil rights violations alleged by prisoners. Of the 496 observations analyzed, 11.29% (56) are suits for damages for false arrest or false confinement, 6.45% (32) are cases of cruel and unusual punishment, 10.08% (50) are cases of due process rights in prison, 30.04% (149) are the denial of other rights of prisoners (42 USC 1983 suits), 4.84% (24) are cases for the denial or revocation of parole on due process grounds, 5.85% (29) are cases of other denial or revocation of parole, 14.72% (73) are other prisoner petitions, 6.45% (32) were cases of excessive force used in arrest, and 10.28% (51) were other civil rights violations alleged by prisoners (Figure 1).

As some jurists included in the Songer data set heard multiple cases, while others participated in none, it is more productive to examine the demographics of this data set as a function of total votes cast, rather than one of the total judges. Of the 1,488 votes cast throughout all of the studied cases, merely 4.3% (64) were cast by Black jurists. The remaining 95.7% (1,424) were cast by nonblack jurists. Of the votes cast by Black jurists, they voted in favor of the prisoner 39.06% (25) of the time. Nonblack jurists voted with the prisoner in 34.25% (488) of cases (Table 1).

Of the 1,488 votes cast overall, 92.23% (1,367) were cast by male jurists. 8.13% (121) were cast by female jurists. Male jurists decided in the favor of the prisoner in 34.53% of cases (372), while women held in favor of the prisoner 33.88% (41) of the time (Table 2). Thus, women and men judges decided in favor of the prisoner at equal rates.

Finally, of the 1,488 votes cast, 55.07% (798) were cast by jurists appointed by Republican presidents, while the remaining 44.93% (651) were cast by jurists appointed by Democratic presidents. Of the votes cast by Republican jurists, 30.33% (292) were cast for the prisoner. Democratic jurists held for the prisoner 39.94% (260) of the time (Table 3).

As the second research question deals with case outcomes as determined by the votes of panels, not the votes of individual jurists, it is pertinent to analyze the demographics of this portion of the data set, as well. Recall the variable dpanel, which indicates whether a panel is racially mixed, meaning it contains at least one Black judge, or nonmixed, meaning it contains only nonblack judges. Of the 496 cases included in this analysis, 87.3% (433) were heard by nomixed panels, while mixed panels heard only 12.7% (63). Nonmixed panels held for the prisoner in 34.18% (148) of cases, while mixed panels did the same 34.92% (22) of the time (Table 4).

Consider, now, the variable gpanel, which indicates whether a panel is mixed by gender, meaning it contains at least one female judge. Here, panels coded as nonmixed include only male jurists. Of the 496 cases, 78.23% (388) were heard by nonmixed panels, while 21.77% (108) were heard by mixed panels. Nonmixed panels held for the prisoner in 34.28% (133) of cases, while mixed panels held for the prisoner 34.26% (37) of the time (Table 5). Again, men and women hold for the prisoner at similar rates.

Finally, consider the variable ppanel, which indicates the ideological composition of each appellate panel. As a reminder, coding for this variable is done as follows: 0 indicates an all-Republican panel. "1/3" panels are those with one Democrat jurist and 2 Republicans. "2/3" panels have 2 Democrats and 1 Republican. Panels coded 1 have only Democrat judges sitting on them. Of the 496 cases, 19.76% (98) were decided by all-Republican panels. 1/3 panels heard 37.9% (188) of cases, while 2/3 panels heard 33.67% (167). All-Democrat panels heard 8.67% (43) of the cases. Of the cases that they heard, all-Republican panels held for the prisoner 22.45% (22) of the time. 1/3 panels and 2/3 panels held for the prisoner in 35.64% (67) and 35.33% (59) of cases, respectively. All-Democrat panels ruled in favor of the prisoner in 51.16% (22) of cases, a nearly 29-point increase from all-Republican panels (Table 6).

Results

Research Question One

Research question one asks whether Black jurists are more likely to rule in favor of prisoners in civil rights claims than their nonblack peers, with hypothesis one positing that, yes, Black jurists will be more likely than their nonblack peers to vote in favor of the prisoner in civil rights claims of prisoners and those accused of crimes. As aforementioned, in order to answer this question,

logistic regression was employed to evaluate the relationship between the race of a jurist and the vote that they cast. The gender and party of the jurist are controlled for, as well as public opinion in the year that the case was heard and the number of female jurists who serve on the court in which the case was heard.

Table Seven: The Effect of Juror Demographic Characteristics on Vote

Logistic regression

					Number of obs = 1,416
					LR chi2(5) = 34.34
					Prob > chi2 = 0.0000

Log likelihood = -899.8615 ⠀⠀⠀⠀⠀⠀⠀⠀⠀⠀⠀⠀⠀⠀⠀⠀ Pseudo R2 = 0.0187

prisvote	Odds ratio	Std. err.	z	P>|z|	[95% conf. interval]	
jrace	.8930433	.244013	-0.41	0.679	.5227478	1.525643
jgender	.6918753	.1462066	-1.74	0.081	.4572487	1.046895
JudgeParty	1.58206	.1858094	3.91	0.000	1.256757	1.991566
NumFemjud	1.163372	.0419717	4.19	0.000	1.08395	1.248613
mood2020	.9685934	.0155903	-1.98	0.047	.9385138	.9996369
_cons	2.321799	2.184844	0.90	0.371	.3671406	14.68307

Note: **_cons** estimates baseline odds.

Table 7 displays this model, which reveals an insignificant effect of the race of a jurist upon the prisvote variable. Again, prisvote denotes whether or not the jurist votes in favor of the prisoner. Note that the number of observations is lower than previously cited, as Stata automatically drops observations that were not coded under the mood2020 variable (mood2020 starts at the year 1952, while the examined section of the Songer data set includes cases as early as 1927). While jurist race does not appear significant, there is a large effect of both party and the number of female jurists on the court in this model. Both JudgeParty (judge ideology) and NumFemjud (number of women judges on the court) are significant at the 0.05 level, indicating a material effect on the vote that a jurist casts. Specifically, jurists who were appointed by Democrats have

higher odds of favoring the prisoner party. They are 1.58 times more likely than their Republican peers to vote in favor of the prisoner party, all else equal. Similarly, jurists who sit on courts whose membership has a greater percentage of women (up to 6 female jurists) are 1.16 times more likely to vote in favor of the prisoner than those whose courts lack a similar gender composition.
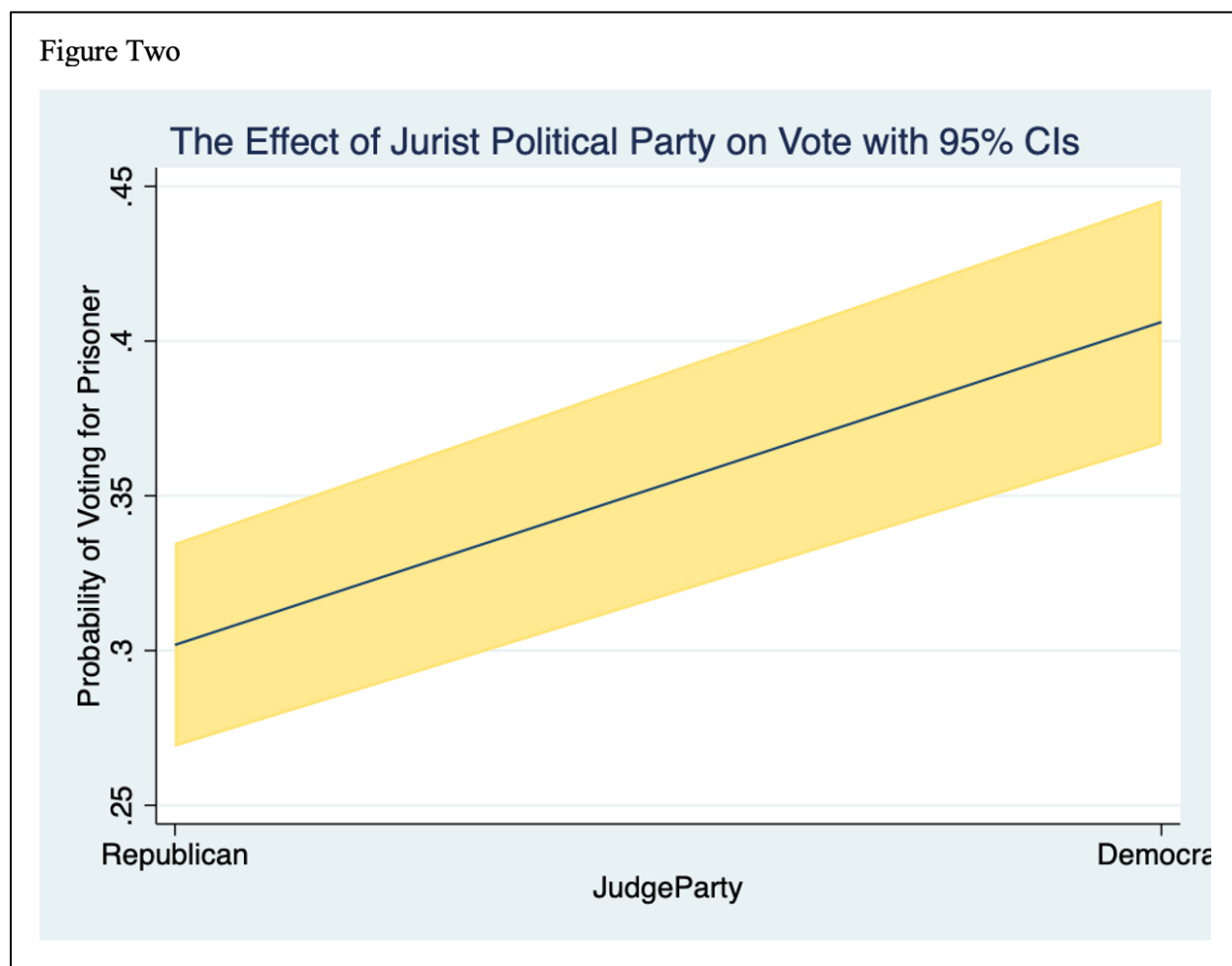
Figure Two

Figure 2 displays a margins plot for the variable JudgeParty. For the precise numerical values of the margins, see Appendix C (Table 8). As Figure 2 highlights, Republican judges have a 30.18% probability of voting in favor of the prisoner party in a civil rights case. This is a stark

ideological difference, as their Democratic counterparts have a 40.62% probability of voting for

the same party.

Figure Three

Effect of Court Composition on Vote with 95% CIs
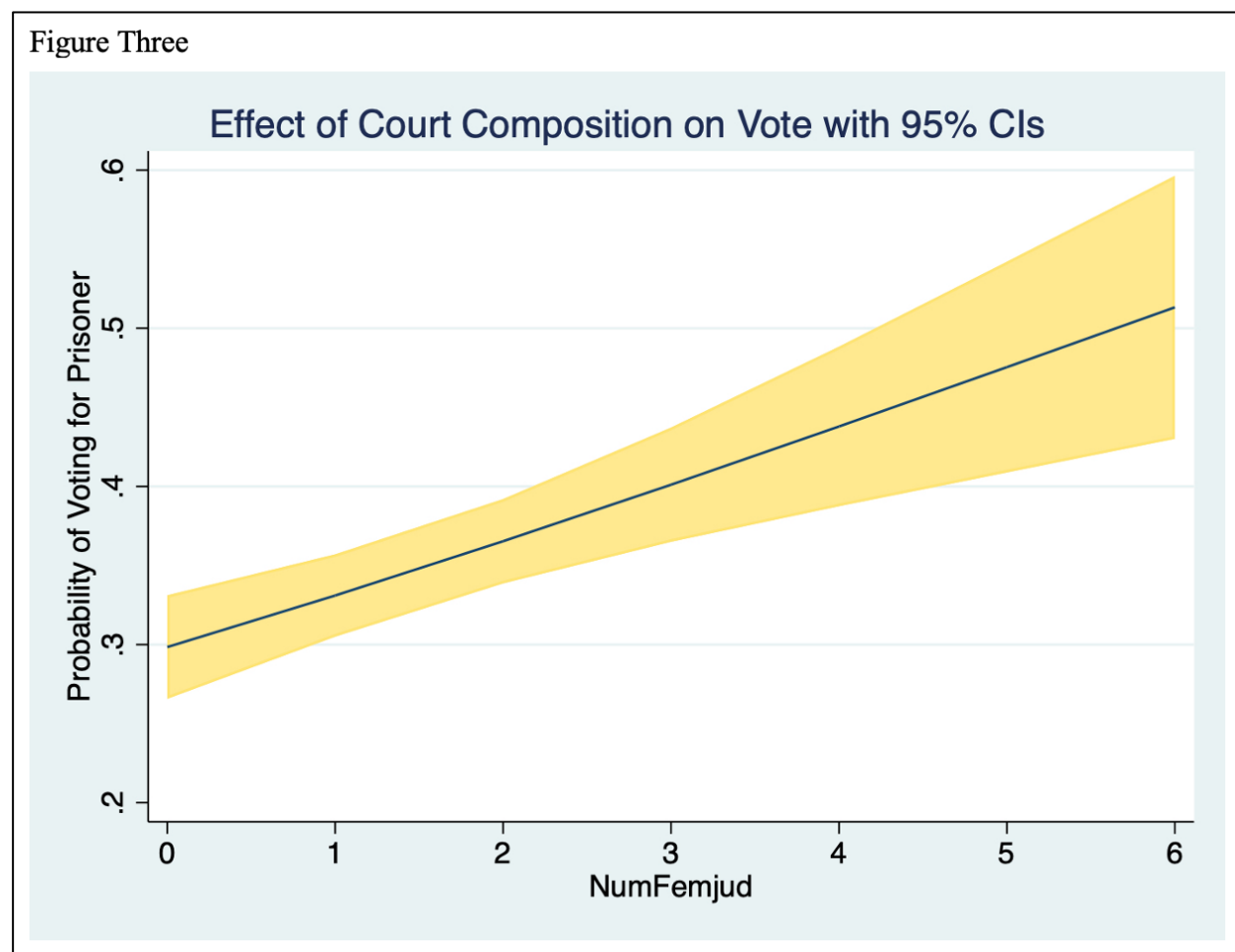
Similarly, Figure 3 displays a margins plot for the only other statistically significant

variable in this model, NumFemjud. For the precise numerical values of the margins, see

Appendix C (Table 9). This chart is particularly interesting, as this variable is not dichotomous,

but continuous. For a tabulation of the variable and further insight into how many women serve

on each appellate court, see Appendix C (Table 10). The difference that an additional female

jurist makes to a court (without even hearing a specific case) is clear; as this plot displays, votes

cast in appellate courts with no female jurists have a 29.84% probability of being cast in favor of

the prisoner. Add just one female judge to the court and this number becomes 33.1%. The probability continues to rise with each addition. Votes cast in courts with six female judges, the highest number coded under this variable, have a 51.33% probability of being cast in favor of the prisoner.

Ultimately, hypothesis one must be rejected. As the logistic regression model revealed, Black jurists cannot be said to be more likely than their nonblack peers to vote in favor of the prisoner in civil rights claims of prisoners and those accused of crimes. However, results indicate that judges appointed by Democrats and judges who work in courts with higher numbers of female judges do, in fact, vote in favor of the prisoner more often than their peers appointed by Republicans or in significantly male-dominated courts.

Research Question Two

Research question two asks whether the presence of a Black jurist on an appellate panel influences the votes of the nonblack jurists of the panel, making cases more likely to be decided in favor of the prisoner. Hypothesis two theorizes that yes, mixed panels, those consisting of at least one Black jurist, will be more likely to rule in favor of the prisoner than nonmixed panels, those with only nonblack jurists. As was the case for question one, question two employs a logistic regression model to measure the effects of an appellate panel's racial composition on the final ruling of that panel. In this model, the gender and ideological compositions of the panel, policy mood of the country, and the number of female judges on the court are controlled for. As aforementioned, the analysis is performed with clustering on circuit to control for potential institutional-level disparities.

Table 11

```
Logistic regression                              Number of obs =      485
                                                 Wald chi2(5)  =    21.97
                                                 Prob > chi2   =   0.0005
Log pseudolikelihood = -304.40721                Pseudo R2     =   0.0272

                                  (Std. err. adjusted for 12 clusters in circuit)

                            Robust
    ruling │ Odds ratio   std. err.       z     P>|z|      [95% conf. interval]
───────────┼────────────────────────────────────────────────────────────────────
    dpanel │   .826422     .2729495    -0.58    0.564      .4325817    1.578831
    gpanel │   .7361025     .194481    -1.16    0.246      .4385789    1.235461
    ppanel │  2.742602     .7959654     3.48    0.001      1.552833    4.843963
  mood2020 │   .9614501    .0296367    -1.28    0.202      .9050832    1.021327
 NumFemjud │  1.194377     .0676604     3.14    0.002      1.068862    1.334631
     _cons │  2.82013      4.929092     0.59    0.553      .0917314    86.70021

Note: _cons estimates baseline odds.
```

Table 11 illustrates this model. As was the case for the regression employed to answer the

first research question, the total number of observations has been automatically reduced by

limiting factors in the mood2020 data set. This model is also similar to the first in that only

NumFemjud and the variable dealing with ideology (in this case, ppanel) are statistically

significant at the 0.05 level. As a reminder, ppanel codes for the ideological composition of the

appellate panel hearing the case. 0 indicates an all-Republican panel, "1/3" panels are those with

one Democratic jurist and 2 Republicans, "2/3" panels have 2 Democrats and 1 Republican, and

panels coded 1 have only Democrat judges sitting on them.

Specifically, this model reveals ppanel to be the most significant predictor of case

outcome overall, indicating that appellate panels composed of Democratic jurists are 2.74 times

more likely to rule in favor of the prisoner than panels composed of Republican judges, a 174%

increase in probability. Figure 4 displays a margins plot that reinforces this difference; according

to the model, panels with no Democratic judges on them have a 25.01% probability of deciding a case in favor of the prisoner. By simply adding one Democratic judge to a panel, this probability rises to 31.76%. With each addition, the probability of ruling for the prisoner goes up; appellate panels with three Democratic judges on them hold for the prisoner party in 47.53% of cases, an over 22 percentage point increase from all-Republican panels. The importance of political ideology in judicial decisions is abundantly clear. For the precise numerical values of the margins, see Appendix C (Table 12).

Figure Four

The Effect of Panel Ideology on Case Outcome with 95% CIs
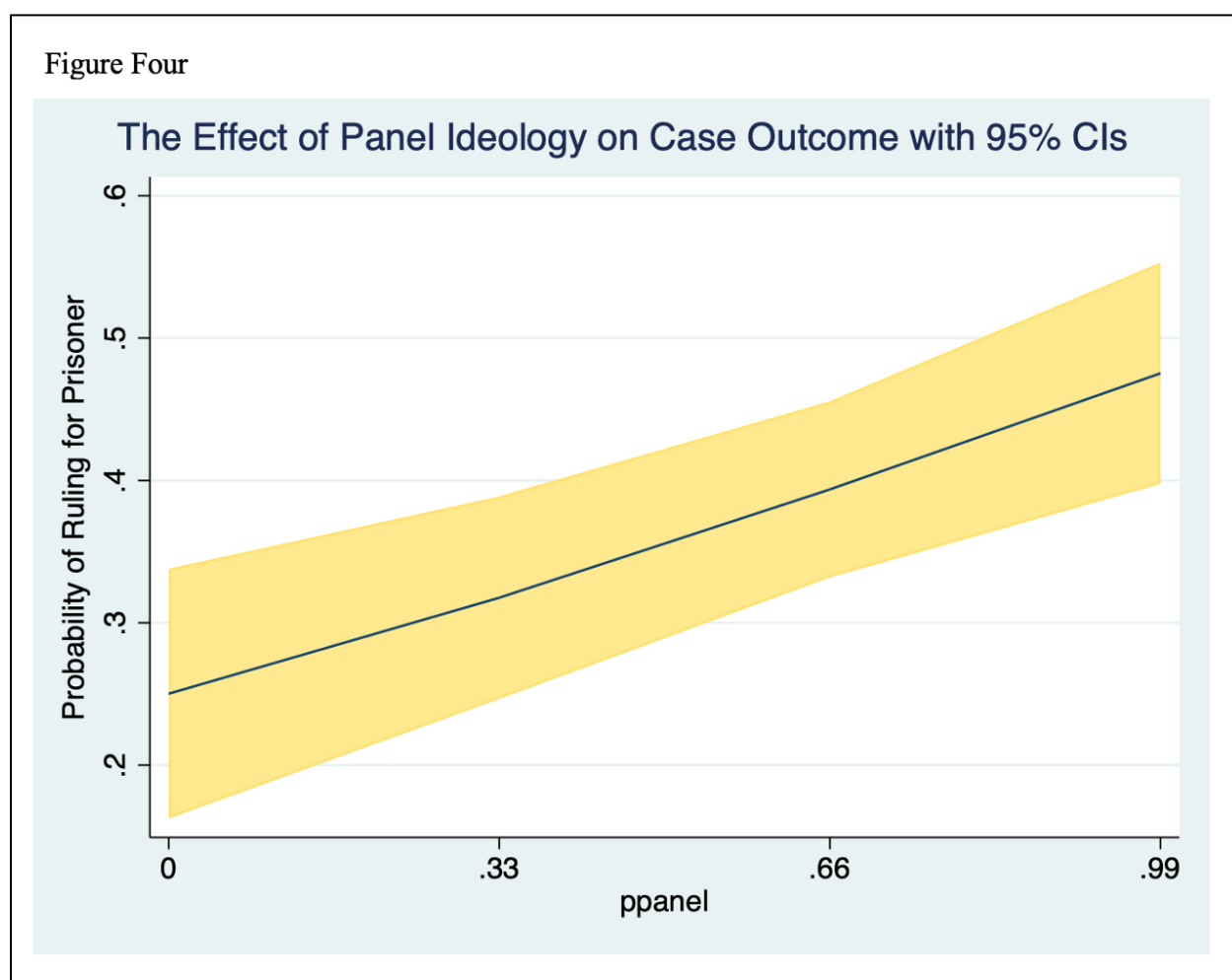
As indicated by the logistic regression model and the significant variable NumFedjud, appellate panels in courts with high numbers of female jurists are roughly 1.19 times, or 19%,

more likely to rule in favor of the prisoner in a civil rights case than similar panels in courts with

no women. Figure 5 displays a margins plot which reinforces this. For the precise numerical

values of the margins, see Appendix C (Table 13). As Figure 5 indicates, appellate panels in

courts with just one female jurist are roughly 4% more likely to rule in favor of the prisoner than

panels in courts with no women. Upon the addition of a second female judge, the probability

goes up another 4 percentage points, to 36.38%. This number continues increasing until the

maximum value of 6 female jurists on a court is reached, at which the probability that an

appellate panel in that court will rule in favor of the prisoner increases to 53.78%, a dramatic

increase from the 28.61% probability of panels in courts with no female jurists.

Figure Five
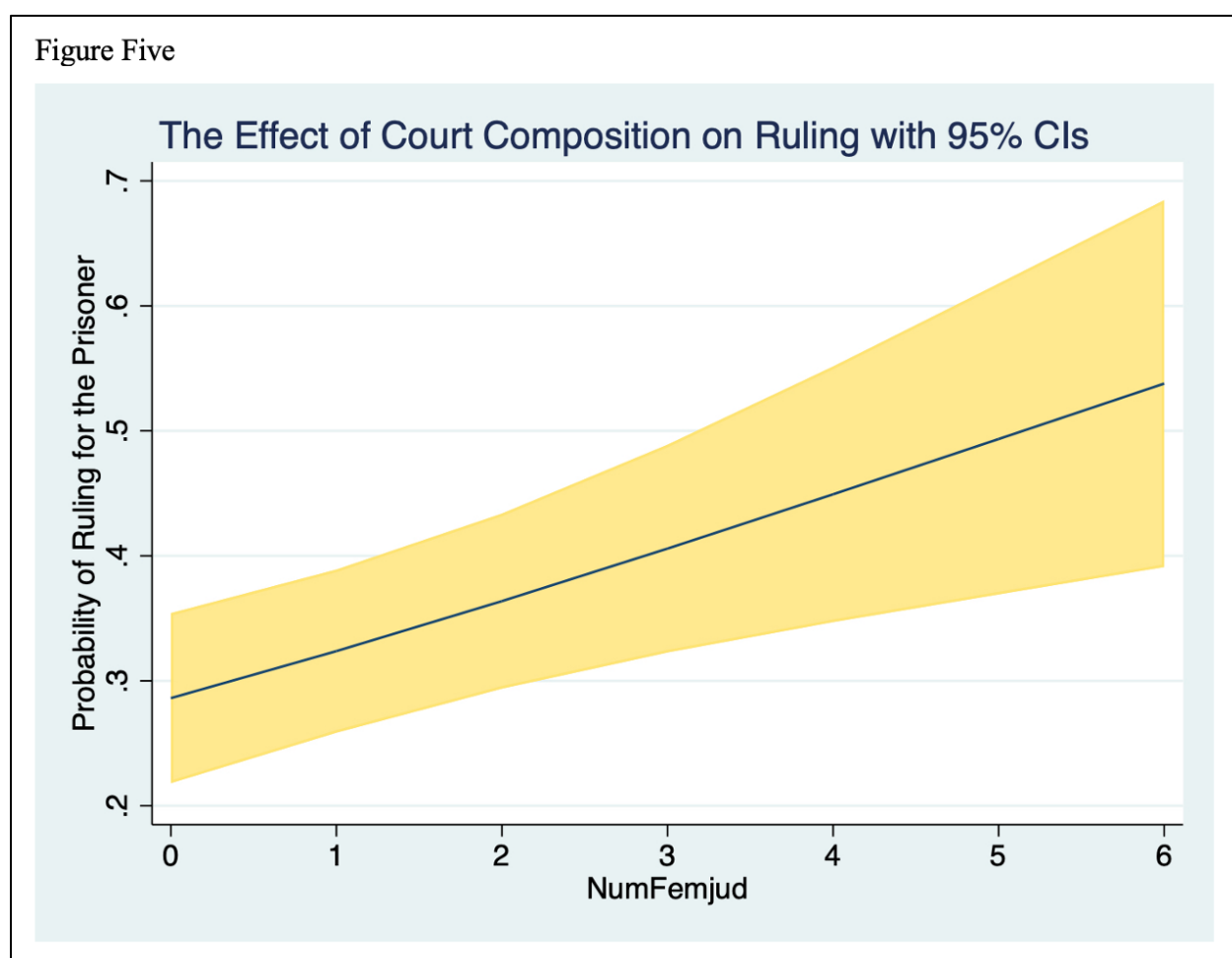
Considering all of the above, hypothesis two must be rejected. Racially mixed panels are not more likely than nonmixed panels to rule in favor of prisoners in civil rights cases, nor can a race-based panel effect be said to exist. However, the significance of the ppanel variable confirms the existence of an ideology-based panel effect in these cases. Adding one jurist appointed by a Democrat to a panel increases the probability that that panel will hold for the prisoner by over 6%. It is more than 22% more probable that an all-Democrat panel will hold for the prisoner than an all-Republican one.

Discussion

This study expands upon existing analyses of the relationship between a judge's identity and the votes that they cast, as well as the influence that their votes have upon those of their colleagues. Ultimately, the study found no meaningful relationship between a jurist's race and their propensity to hold for the prisoner in civil rights claims. Moreover, the study finds no significant relationship between the presence of a Black jurist on an appellate panel and the tendency of that panel to decide in favor of the prisoner.

The findings of this thesis are difficult to discuss, as it is very possible that the results are determined much more by the overwhelmingly small proportion of nontraditional jurists in the federal judiciary than by any other factor. Had more than a mere 64 votes out of the total 1,488 been cast by Black judges, it is possible that the results of each research question would have been very different. It is hard to find any statistically significant results with such a small sample size. Unfortunately, that is simply not the reality of judicial demographics in America. Thus, while the potential for race-based voting differences and a race-based panel effect in this issue

area cannot be ruled out with absolute certainty by the results of this thesis, they also cannot be said to exist.

These findings, like those of countless other studies, highlight the United States' failure to achieve descriptive representation in its most powerful institutions. As of 2019, African Americans made up roughly 10% of sitting judges on the lower courts, while Hispanic judges made up about 7%, and Asian Americans made up around 4%.[49] These groups account for 12.4%, 18.7%, and 6% of the overall American population, respectively.[50] This is in sharp contrast to White Americans who, despite making up only 45% of the population, represent at least 80% of the bench on nearly half of all U.S. Courts of Appeals.[51] As aforementioned, despite the results of this thesis not reflecting it, countless other studies indicate the tendency of nontraditional jurists to vote in favor of the interests of litigants with similar identities to them. Without these jurists on federal benches, there is the potential for countless Americans' cases to not be given the same consideration that they might otherwise receive. The Supreme Court hears a mere 2% of cases in any given year; if the lower courts, which decide the overwhelming percentage of legal issues in America, do not represent the nation's public symbolically and substantively, then that is a tremendous failure.[52]

Beyond the results of this thesis, it remains worthwhile to consider whether the tendency of judges to vote in favor of parties whose identities align with their own is a good thing. In

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[49] The Democracy and Government Reform Team, "Examining the Demographic Compositions of U.S. Circuit and District Courts," Center for American Progress (Center for American Progress, February 13, 2020), https://www.americanprogress.org/article/examining-demographic-compositions-u-s-circuit-district-courts/.

[50] Nicholas Jones et al., "2020 Census Illuminates Racial and Ethnic Composition of the Country," United States Census Bureau (U.S. Department of Commerce, October 15, 2021), https://www.census.gov/library/stories/2021/08/improved-race-ethnicity-measures-reveal-united-states-population-much-more-multiracial.html.

[51] The Democracy and Government Reform Team, Examining the Demographic Compositions of U.S. Circuit and District Courts.

[52] Ibid.

theory, the race of a judge should have no bearing on the way that they read, interpret, or rule on the law, which is written to be race neutral. In practice, however, this is not possible. While a logistic regression model can hold various demographic characteristics and circumstantial factors constant, there is no way for a jurist to effectively separate their upbringing, identity, and personal experiences from the way that they understand a case. As previously stated, before a judge is a judge, they are a person, whether Black or nonblack. This may very well cause them to more heavily weigh the claims of parties whose experiences and perspective they can more deeply understand and relate to, as various studies have reflected.[53] One can reasonably assume that nonblack jurists have the potential for this same tendency. Ask yourself, what kind of inequities is our justice system perpetuating if we stack benches with only White jurists, who also hold biases favoring parties that look like them? Is justice truly blind in that instance? If implicit bias cannot be removed from our legal system, then it must be balanced. How, otherwise, can one hope to address the previously mentioned legitimacy crisis the court is facing?[54] How is the public supposed to trust an institution so flawed in its membership that empirical studies into said institution cannot even be conducted in a statistically sound manner? The diversity of judicial benches presents itself as important in all of these instances.

Beyond the effects of race on judicial decision-making, consider this thesis' findings regarding the predictive power of political party on the final vote of a jurist in cases of prisoner civil rights claims. This power was found to be so strong that an ideology-based panel effect emerged, making Democratic panels more than 22% more likely than Republican panels to hold in favor of the prisoner. Previously, it was stated that it is impossible for a judge to completely

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[53] Chew and Kelley, The Realism of Race in Judicial Decision Making; Jonathan P Kastellec, Race, Context, and Judging on the Courts of Appeals.
[54] Kenneth S Klein, Truth and Legitimacy (In Courts).

separate their own identity, beliefs, and experiences from the way that they interpret the law. This finding indisputably supports that assertion. Additionally, it stands in direct opposition to the idea that America's judiciary is an apolitical body. In theory, a Democratic and Republican jurist should not come to different conclusions when presented with the same set of legal facts, yet the data indisputably indicates that they do. Findings like these are not confined to this issue; recall that Beim and Kastellec (2014) documented an ideology-based panel effect in death penalty cases, as well.[55] In an even more extensive analysis of the effects of ideology on federal appellate courts, Sunstein, Schkade, and Ellman (2004) documented ideology-based panel effects in cases handling affirmative action, sex discrimination, sexual harassment, disability, corporate issues, campaign finance, environmental regulations, contract clause violations, and Title VII claims.[56] These biases have not gone unnoticed by the public; a survey by the polling firm Selzer revealed that more than 6 in 10 Americans believe that justices on the Supreme Court, America's most influential court, base their decisions more on their own political views than on the law and Constitution.[57] This is yet another factor contributing to the judiciary's legitimacy crisis.

Admittedly, the findings of this paper have limits. As there is no way to truly know what causes a jurist to vote a certain way without being in the deliberation room with them, it is impossible to state with certainty that there is a casual link between political ideology and voting outcomes. However, one cannot deny that there is an interesting and statistically significant relationship between the two variables that warrants further consideration.

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[55] Deborah Beim and Jonathan P Kastellec, The Interplay of Ideological Diversity, Dissents, and Discretionary Review in the Judicial Hierarchy.

[56] Cass R Sunstein, David Schkade, and Lisa Michelle Ellman, "Ideological Voting on Federal Courts of Appeals: A Preliminary Investigation," JSTOR (ITHAKA, March 2004), https://www.jstor.org/stable/3202429?seq=1#metadata_info_tab_contents.

[57] John Kruzel, "Solid Majority Believes Supreme Court Rulings Based More on Politics than Law," The Hill (Nextstar Media, Inc., October 21, 2021), https://thehill.com/regulation/court-battles/577444-solid-majority-believes-supreme-court-rulings-based-more-on-politics.

Conclusion

The impact of identity upon judicial decision-making is a widely researched concept within the discipline of Political Science. However, despite this breadth of work, scholars have reached mixed conclusions regarding the extent to which a judge's demographic characteristics shape the way that they vote, if at all. Some have determined that identity is of the utmost importance, others have deemed it to have very little effect, while a third group claims that it only matters in cases in which identity is a salient issue. Thus, the issue warrants further exploration.

This thesis attempted to do just that, investigating the linkage between identity, votes cast, and the way that vote inspires those of other jurists on federal appellate courts. Ultimately, both hypotheses were rejected, as it was determined that Black jurists do not vote differently than their nonblack peers in issues of civil rights claims of prisoners and those accused of crimes. Similarly, the placement of a Black jurist on an otherwise nonblack panel does not have a measurable effect on the ultimate decision of the panel. Thus, it seems that at least in this particular instance, justice is, in fact, blind.

References

"28 U.S. Code § 292 - District Judges." Legal Information Institute. Legal Information Institute. Accessed December 5, 2021. https://www.law.cornell.edu/uscode/text/28/292.

Anderson, James M, and Paul Heaton. "How Much Difference Does the Lawyer Make? The Effect of Defense Counsel on Murder Case Outcomes." The Yale Law Journal. The Yale Law Journal, 2011. https://www.yalelawjournal.org/pdf/1105_8izvsf8m.pdf.

Anderson, Monica. "Vast Majority of Blacks View the Criminal Justice System as Unfair." Pew Research Center. Pew Research Center, August 12, 2014. https://www.pewresearch.org/fact-tank/2014/08/12/vast-majority-of-Blacks-view-the-criminal-justice-system-as-unfair/.

Baum, Lawrence. "Implementation of Judicial Decisions: An Organizational Analysis." SAGE Journals. SAGE Publications, January 1, 1976. https://journals-sagepub-com.libproxy.lib.unc.edu/doi/pdf/10.1177/1532673X7600400104.

Beim, Deborah, and Jonathan P Kastellec. "The Interplay of Ideological Diversity, Dissents, and Discretionary Review in the Judicial Hierarchy: Evidence from Death Penalty Cases." JSTOR. ITHAKA, July 22, 2014. https://www.jstor.org/stable/pdf/10.1017/s0022381614000619.pdf?refreqid=excelsior%3A34570cfed8931c89b9f492cb9fdc88de.

"Biographical Directory of Article III Federal Judges, 1789-Present." Federal Judicial Center. Federal Judicial Center. Accessed November 29, 2021. https://www.fjc.gov/history/judges/search/advanced-search.

Bonneau, Chris W, and Heather Marie Rice. "Impartial Judges? Race, Institutional Context, and U. S. State Supreme Courts." JSTOR. ITHAKA, 2009. https://www.jstor.org/stable/40421647?seq=1#metadata_info_tab_contents.

Boyd, Christina L, Lee Epstein, and Andrew D Martin. "Untangling the Causal Effects of Sex on Judging." Columbia Law School. The Trustees of Columbia University in the City of New York, April 9, 2010. https://web.law.columbia.edu/sites/default/files/microsites/law-theory-workshop/files/sex_paper.pdf.

Casillas, Christopher J, Peter K Enns, and Patrick C Wohlfarth. "How Public Opinion Constrains the U.S. Supreme Court." JSTOR. ITHAKA, January 2011. https://www.jstor.org/stable/25766255?seq=1#metadata_info_tab_contents.

Chew, Pat K, and Robert E Kelley. "The Realism of Race in Judicial Decision Making: An Empirical Analysis of Plaintiffs' Race and Judges' Race." Harvard Blackletter Law Journal. Harvard Law School, 2012. https://harvardblackletter.org/wp-content/uploads/sites/8/2012/11/HBK1021.pdf.

Cox, Adam B, and Thomas J Miles. "Judging the Voting Rights Act." SSRN. Elsevier, March 30, 2007. https://poseidon01.ssrn.com/delivery.php?ID=70400406500402100408200307401008710105000009304306008503007411100006408703009808302202810709906111603200808712507608508001808710205203001503301910002406400606411007203304912102310109301012710402900908309307003009307912000406611506403012411810211909 1&EXT =pdf&INDEX=TRUE.

"Criminal Justice Fact Sheet." NAACP. NAACP. Accessed December 4, 2021. https://naacp.org/resources/criminal-justice-fact-sheet.

The Democracy and Government Reform Team. "Examining the Demographic Compositions of U.S. Circuit and District Courts." Center for American Progress. Center for American Progress, February 13, 2020. https://www.americanprogress.org/article/examining-demographic-compositions-u-s-circuit-district-courts/.

Farhang, Sean, and Gregory Wawro. "Institutional Dynamics on the U.S. Court of Appeals: Minority Representation under Panel Decision Making." JSTOR. ITHAKA, October 2004. https://www-jstor-org.libproxy.lib.unc.edu/stable/3555020?pq-origsite=summon&seq=4#metadata_info_tab_contents.

Gramlich, John. "How Trump Compares with Other Recent Presidents in Appointing Federal Judges." Pew Research Center. Pew Research Center, January 13, 2021. https://www.pewresearch.org/fact-tank/2021/01/13/how-trump-compares-with-other-recent-presidents-in-appointing-federal-judges/.

Jones, Nicholas, Rachel Marks, Roberto Ramirez, and Merarys Ríos-Vargas. "2020 Census Illuminates Racial and Ethnic Composition of the Country." United States Census Bureau. U.S. Department of Commerce, October 15, 2021. https://www.census.gov/library/stories/2021/08/improved-race-ethnicity-measures-reveal-united-states-population-much-more-multiracial.html.

Kanter, Rosabeth Moss. *Men and Women of the Corporation*. New York, NY: Basic Books, 1993.

Kastellec, Jonathan P. "Race, Context, and Judging on the Courts of Appeals: Race-Based Panel Effects in Death Penalty Cases." OpenScholar@Princeton. Princeton University, October 6, 2020. https://scholar.princeton.edu/sites/default/files/jkastellec/files/kastellec_race_dp_paper_jsj_submission_for_web.pdf.

Kastellec, Jonathan P. "Racial Diversity and Judicial Influence on Appellate Courts." OpenScholar@Princeton. Princeton University, 2012. https://scholar.princeton.edu/sites/default/files/kastellec_racial_diversity_final_0.pdf.

Kearney, Joseph D, and Thomas W Merrill. "The Influence of Amicus Curiae Briefs on the Supreme Court." Legal Scholarship Repository. Digital Commons, 2000. https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=3356&context=penn_law_review.

Klein, Kenneth S. "Truth and Legitimacy (In Courts)." LAW eCommons. Loyola University Chicago School of Law, 2016. https://lawecommons.luc.edu/cgi/viewcontent.cgi?article=2578&context=luclj.

Kruzel, John. "Solid Majority Believes Supreme Court Rulings Based More on Politics than Law." The Hill. Nextstar Media, Inc., October 21, 2021. https://thehill.com/regulation/court-battles/577444-solid-majority-believes-supreme-court-rulings-based-more-on-politics.

Nava, Michael. "The Servant of All: Humility, Humanity, and Judicial Diversity." GGU Law Digital Commons. Golden Gate University School of Law, 2008. https://digitalcommons.law.ggu.edu/cgi/viewcontent.cgi?article=1973&context=ggulrev.

Page, Susan, Sarah Elbeshbishi, and Mabinty Quarshie. "Stark Divide on Race, Policing Emerges since George Floyd's Death, USA Today/Ipsos Poll Shows." USA Today. Gannett Satellite Information Network, March 5, 2021. https://www.usatoday.com/story/news/politics/2021/03/05/americans-trust-black-lives-matter-declines-usa-today-ipsos-poll/6903470002/.

Peresie, Jennifer L. "Female Judges Matter: Gender and Collegial Decisionmaking in the Federal Appellate Courts." JSTOR. ITHAKA, May 2005. https://www.jstor.org/stable/4135764?seq=1#metadata_info_tab_contents.

Root, Danielle, and Sam Berger. "Structural Reforms to the Federal Judiciary." Center for American Progress. Center for American Progress, May 8, 2019. https://americanprogress.org/article/structural-reforms-federal-judiciary/.

Root, Danielle, Jake Faleschini, and Grace Oyenubi. "Building a More Inclusive Federal Judiciary." Center for American Progress. Center for American Progress, October 3, 2019. https://americanprogress.org/article/building-inclusive-federal-judiciary/.

Scherer, Nancy. "Diversifying the Federal Bench: Is Universal Legitimacy for the U.S. Justice System Possible?" Northwestern University Law Review. Northwestern University School of Law, 2011. https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=1169&context=nulr.

Smith, Fred O. "Gendered Justice: Do Male and Female Justices Rule Differently on Questions of Gay Rights?" SSRN. Elsevier, December 6, 2005. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=864984.

Songer, Donald R, Reginald S Sheehan, and Susan B Haire. *Continuity and Change on the United States Courts of Appeals*. Ann Arbor, MI: The University of Michigan Press, 2000.

Songer, Donald R. "Attributes of U.S. Federal Judges Database." The Songer Project. Don Songer Project. Accessed December 4, 2021. http://www.songerproject.org/attributes.html.

Songer, Donald R. "Original U.S. Courts of Appeals Databases 1925 - 1996 Documentation." The Songer Project. Don Songer Project, October 21, 2008. https://nebula.wsimg.com/e3868245e358a0ef588fb7d7a31980a1?AccessKeyId=96203964 AD4677DE3481&disposition=0&alloworigin=1.

Songer, Donald R. "U.S. Courts of Appeals Databases." The Songer Project. Don Songer Project. Accessed December 4, 2021. http://www.songerproject.org/us-courts-of-appeals-databases.html.

Stephens, John Paul. "George W. Bush, Et Al., Petitioners v. Albert Gore, Jr., Et Al." Legal Information Institute. Cornell Law School, December 12, 2012. https://www.law.cornell.edu/supct/pdf/00-949P.ZD.

Stimson, James. "Data." James Stimson's Site. UNC Chapel Hill. Accessed March 3, 2022. https://stimson.web.unc.edu/data/.

Stubbs, Jonathan K. "A Demographic History of Federal Judicial Appointments by Gender and Race: 1789-2016." University of Richmond UR Scholarship Repository. University of Richmond School of Law, 2016. https://core.ac.uk/download/pdf/232784671.pdf.

Sunstein, Cass R, David Schkade, and Lisa Michelle Ellman. "Ideological Voting on Federal Courts of Appeals: A Preliminary Investigation." JSTOR. ITHAKA, March 2004. https://www.jstor.org/stable/3202429?seq=1#metadata_info_tab_contents.

Torres-Spelliscy, Ciara, Monique Chase, and Emma Greenman. "Improving Judicial Diversity." Brennan Center for Justice. Brennan Center for Justice at NYU Law, March 3, 2010. https://www.brennancenter.org/sites/default/files/2019-08/Report_Improving-Judicial-Diversity.pdf.

Unah, Isaac, and Ryan Williams. "Echoes of the Feminine Mystique: Women Judges and Intergenerational Change in the U.S. Courts of Appeals." *Journal of Law and Policy*, (Forthcoming).

Unah, Isaac, Kristen Rosano, and K Dawn Milam. "U.S. Supreme Court Justices and Public Mood." SSRN. Elsevier, 2015. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2584520.

Appendix A: Coding

	Variable Name	Coding	Variable Description
1	jrace	0=Nonblack 1=Black	Race of jurist
2	jgender	0=Male 1=Female	Gender of jurist
3	JudgeParty	0=Republican 1=Democrat	Political party of jurist, by appointing president
4	prisvote	0=Against prisoner 1=For prisoner	Vote cast
5	NumFemjud	# = # of female jurists	Number of female judges in a given court
6	mood2020	The higher the number, the more liberal the policy mood	Public opinion in a given year
7	ruling	0=Against prisoner 1=For Prisoner	Ruling of appellate panel
8	casetyp1	201= suit for damages for 202= cruel and unusual punishment 203= due process rights in prison 204= denial of other rights of prisoners -42 USC 1983 suits 205= denial or revocation of parole -due process grounds 206= other denial or revocation of parole 207= other prisoner petitions 208= excessive force used in arrest 209= other civil rights violations alleged by criminal defendants	Subtype of civil rights claim
9	dpanel	0=nonmixed panel (race) 1=mixed panel (race)	Racial composition of panel
10	gpanel	0=nonmixed panel (gender) 1=mixed panel (gender)	Gender composition of panel
11	ppanel	0=3 Republicans 1/3= 2 Republicans, 1 Democrat 2/3=1 Republican, 2 Democrats 3=3 Democrats	Ideological composition of panel
12	circuit	# = # of circuit	Circuit case was heard in

Appendix B: Figures

Figure One:

Proportion of Case Types in Data Set
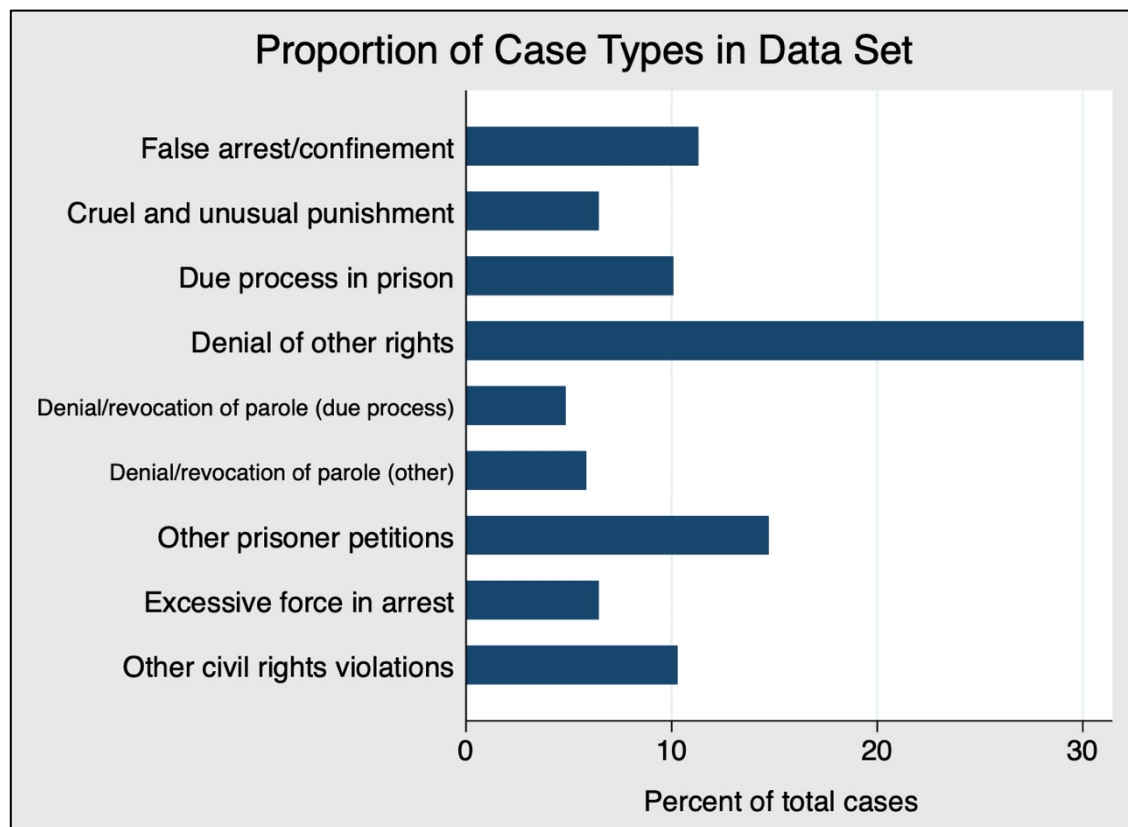
Appendix C: Tables

Table One: Breakdown of votes by jurist race

Key			
frequency *cell percentage*			

prisvote	jrace Nonblack	Black	Total
Other party	936 62.90	39 2.62	975 65.52
Prisoner	488 32.80	25 1.68	513 34.48
Total	1,424 95.70	64 4.30	1,488 100.00

Table Two: Breakdown of votes by jurist sex

Key			
frequency *cell percentage*			

prisvote	jgender Male	Female	Total
Other party	895 60.15	80 5.38	975 65.52
Prisoner	472 31.72	41 2.76	513 34.48
Total	1,367 91.87	121 8.13	1,488 100.00

Table Three: Breakdown of votes by jurist party

Key		
frequency *cell percentage*		

	JudgeParty		
prisvote	Republica	Democrat	Total
Other party	556	391	947
	38.37	26.98	65.36
Prisoner	242	260	502
	16.70	17.94	34.64
Total	798	651	1,449
	55.07	44.93	100.00

Table Four: Breakdown of panel decisions by racial composition

Key		
frequency *cell percentage*		

	dpanel		
ruling	Nonmixed	Mixed	Total
Other party	285	41	326
	57.46	8.27	65.73
Prisoner	148	22	170
	29.84	4.44	34.27
Total	433	63	496
	87.30	12.70	100.00

Table Five: Breakdown of panel decisions by gender composition

Key		
frequency *cell percentage*		

	gpanel		
ruling	Nonmixed	Mixed	Total
Other party	255	71	326
	51.41	14.31	65.73
Prisoner	133	37	170
	26.81	7.46	34.27
Total	388	108	496
	78.23	21.77	100.00

Table Six: Breakdown of panel decisions by ideological composition

Key		
frequency *cell percentage*		

	ppanel				
ruling	Republica	.33	.67	Democrat	Total
Other party	76	121	108	21	326
	15.32	24.40	21.77	4.23	65.73
Prisoner	22	67	59	22	170
	4.44	13.51	11.90	4.44	34.27
Total	98	188	167	43	496
	19.76	37.90	33.67	8.67	100.00

Table Eight: Margins, votes by jurist party

```
Adjusted predictions                              Number of obs = 1,416
Model VCE: OIM

Expression: Pr(prisvote), predict()
1._at: jrace       = .0451977 (mean)
       jgender     =  .085452 (mean)
       JudgeParty  =        0
       NumFemjud   = 1.464689 (mean)
       mood2020    = 58.47621 (mean)
2._at: jrace       = .0451977 (mean)
       jgender     =  .085452 (mean)
       JudgeParty  =        1
       NumFemjud   = 1.464689 (mean)
       mood2020    = 58.47621 (mean)
```

	Margin	Delta-method std. err.	z	P>|z|	[95% conf. interval]	
_at						
1	.3018286	.016792	17.97	0.000	.2689169	.3347402
2	.4061564	.0201053	20.20	0.000	.3667508	.445562

Table Nine: Margins, votes by court's gender composition

```
Adjusted predictions                                    Number of obs = 1,416
Model VCE: OIM

Expression: Pr(prisvote), predict()
1._at: jrace     = .0451977 (mean)
       jgender   =  .085452 (mean)
       JudgeParty = .4477401 (mean)
       NumFemjud =        0
       mood2020  = 58.47621 (mean)
2._at: jrace     = .0451977 (mean)
       jgender   =  .085452 (mean)
       JudgeParty = .4477401 (mean)
       NumFemjud =        1
       mood2020  = 58.47621 (mean)
3._at: jrace     = .0451977 (mean)
       jgender   =  .085452 (mean)
       JudgeParty = .4477401 (mean)
       NumFemjud =        2
       mood2020  = 58.47621 (mean)
4._at: jrace     = .0451977 (mean)
       jgender   =  .085452 (mean)
       JudgeParty = .4477401 (mean)
       NumFemjud =        3
       mood2020  = 58.47621 (mean)
5._at: jrace     = .0451977 (mean)
       jgender   =  .085452 (mean)
       JudgeParty = .4477401 (mean)
       NumFemjud =        4
       mood2020  = 58.47621 (mean)
6._at: jrace     = .0451977 (mean)
       jgender   =  .085452 (mean)
       JudgeParty = .4477401 (mean)
       NumFemjud =        5
       mood2020  = 58.47621 (mean)
7._at: jrace     = .0451977 (mean)
       jgender   =  .085452 (mean)
       JudgeParty = .4477401 (mean)
       NumFemjud =        6
       mood2020  = 58.47621 (mean)
```

	Margin	Delta-method std. err.	z	P>|z|	[95% conf. interval]	
_at						
1	.2984153	.0167019	17.87	0.000	.2656802	.3311504
2	.3310295	.0132939	24.90	0.000	.304974	.3570849
3	.3653519	.0136128	26.84	0.000	.3386713	.3920324
4	.4010993	.0184404	21.75	0.000	.3649568	.4372418
5	.4379308	.0257483	17.01	0.000	.3874651	.4883964
6	.4754594	.0340085	13.98	0.000	.408804	.5421149
7	.5132673	.0424337	12.10	0.000	.4300988	.5964357

Table Ten: Tabulation of NumFemjud variable

NumFemjud	Freq.	Percent	Cum.
0	633	42.54	42.54
1	291	19.56	62.10
2	162	10.89	72.98
3	237	15.93	88.91
4	66	4.44	93.35
5	87	5.85	99.19
6	12	0.81	100.00
Total	1,488	100.00	

Table Twelve: Margins, panel decisions by panel's ideological composition

```
Adjusted predictions                                Number of obs = 485
Model VCE: Robust

Expression: Pr(ruling), predict()
1._at: dpanel   = .1298969 (mean)
       gpanel   = .2226804 (mean)
       ppanel   =        0
       mood2020 = 58.44006 (mean)
       NumFemjud = 1.441237 (mean)
2._at: dpanel   = .1298969 (mean)
       gpanel   = .2226804 (mean)
       ppanel   =      .33
       mood2020 = 58.44006 (mean)
       NumFemjud = 1.441237 (mean)
3._at: dpanel   = .1298969 (mean)
       gpanel   = .2226804 (mean)
       ppanel   =      .66
       mood2020 = 58.44006 (mean)
       NumFemjud = 1.441237 (mean)
4._at: dpanel   = .1298969 (mean)
       gpanel   = .2226804 (mean)
       ppanel   =      .99
       mood2020 = 58.44006 (mean)
       NumFemjud = 1.441237 (mean)
```

	Margin	Delta-method std. err.	z	P>|z|	[95% conf. interval]	
_at						
1	.2501819	.0447618	5.59	0.000	.1624504	.3379135
2	.3176261	.0362926	8.75	0.000	.2464938	.3887584
3	.3937053	.0315647	12.47	0.000	.3318395	.4555711
4	.475314	.0396512	11.99	0.000	.397599	.553029

Table Thirteen: Margins, panel decisions by court's gender composition

```
Adjusted predictions                              Number of obs = 485
Model VCE: Robust

Expression: Pr(ruling), predict()
1._at: dpanel    = .1298969 (mean)
       gpanel    = .2226804 (mean)
       ppanel    = .4355876 (mean)
       mood2020  = 58.44006 (mean)
       NumFemjud =        0
2._at: dpanel    = .1298969 (mean)
       gpanel    = .2226804 (mean)
       ppanel    = .4355876 (mean)
       mood2020  = 58.44006 (mean)
       NumFemjud =        1
3._at: dpanel    = .1298969 (mean)
       gpanel    = .2226804 (mean)
       ppanel    = .4355876 (mean)
       mood2020  = 58.44006 (mean)
       NumFemjud =        2
4._at: dpanel    = .1298969 (mean)
       gpanel    = .2226804 (mean)
       ppanel    = .4355876 (mean)
       mood2020  = 58.44006 (mean)
       NumFemjud =        3
5._at: dpanel    = .1298969 (mean)
       gpanel    = .2226804 (mean)
       ppanel    = .4355876 (mean)
       mood2020  = 58.44006 (mean)
       NumFemjud =        4
6._at: dpanel    = .1298969 (mean)
       gpanel    = .2226804 (mean)
       ppanel    = .4355876 (mean)
       mood2020  = 58.44006 (mean)
       NumFemjud =        5
7._at: dpanel    = .1298969 (mean)
       gpanel    = .2226804 (mean)
       ppanel    = .4355876 (mean)
       mood2020  = 58.44006 (mean)
       NumFemjud =        6
```

	Margin	Delta-method std. err.	z	P>|z|	[95% conf. interval]	
_at						
1	.2861465	.0347155	8.24	0.000	.2181055	.3541876
2	.3237592	.0333147	9.72	0.000	.2584636	.3890548
3	.3637963	.035738	10.18	0.000	.293751	.4338415
4	.4058133	.0424204	9.57	0.000	.3226708	.4889558
5	.4492563	.0521794	8.61	0.000	.3469865	.551526
6	.4934875	.0634409	7.78	0.000	.3691456	.6178293
7	.5378208	.0748931	7.18	0.000	.3910331	.6846086