

WHITE SUPREMACY FROM THE BENCH

by
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Judges make important decisions in millions of cases a year across the country. Unlike other institutional players and unlike parties and their attorneys, judges are the only players in our adversarial legal system that are by design ostensibly neutral, impartial, and without bias.

Unfortunately, that legal fiction is not fact. Some judges do hold racial biases. A judge in Texas used racial slurs to describe Mexicans in his state in 2020. Also in 2020, a white judge in Louisiana referred to a deputy and a court clerk by the N-word, and the same year, a white Colorado judge also used the N-word in a conversation with court staff. A federal judge in Texas stated publicly that Black and Latino people are more violent than white people. A Jacksonville, Florida, judge said that Black people should go “back to Africa.” An Ohio judge referred to COVID-19 as the “China Virus.” In this Article, I have documented scores of instances of racial bias by judges since the year 2000.

Most judges, with years of education beyond that of the average American and with knowledge as to how racial discrimination gets litigated, would not be so careless as to say explicitly racist things, so that members of the public can have access to their words. We have to assume that the distressing stories of racism by judges represent the feelings of many more judges.

That members of the bench harbor racist views should not come as a surprise. Judges preside over deeply racist systems. We have long known, for example, that judges sentence Black defendants more harshly than their white counterparts, even controlling for criminal record, employment, and education. There are deep inequities in the legal system. The bench needs to be viewed critically as a tool and enforcer of racial oppression. Deep racial inequities have persisted in our country, and the law has addressed only some of the most egregious. Worse, judges have created legal doctrines to get around legal remedies offered

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by our elected representatives to keep people of color from recovering in court. White supremacy from the bench is an integral part of our legal system and an integral part of our legacy of racism in the United States.

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INTRODUCTION

Americans are having a national conversation about racism in the criminal legal system. With the proliferation of dash cameras, cell phone cameras, and police body cameras, many interactions between police and civilians are recorded so Americans have been able to see the disparate ways that police treat Black and Brown people when compared to their white counterparts. Television news and social media are filled with recordings of these interactions between police and the American citizenry.

Reformers and abolitionists have justifiably focused efforts in the post-George Floyd and post-Ferguson landscape on the police—an institution, as they describe it, that exists to subjugate people of color in our criminal legal system.¹ Many have focused on the ways that interactions between police and civilians have their roots in white supremacy. Because so many interactions are recorded, Americans have witnessed it with their own eyes.

And while police have enormous power on the streets, as do the prosecutors who bring the cases,² judges wield significant power over lives in courtrooms across

¹ See, e.g., *Mass Incarceration and Racial Oppression*, INNOCENCE PROJECT NEW ORLEANS, <https://ip-no.org/what-we-do/advocate-for-change/mass-incarceration-and-racial-oppression/> (last visited Apr. 18, 2023).

² See ANGELA J. DAVIS, *ARBITRARY JUSTICE: THE POWER OF THE AMERICAN PROSECUTOR* 5–6 (2007).

America. Judges are decision-makers in many instances, including everything from small claims court to lawsuits involving millions of dollars, or family matters like probate, divorce, custody, abuse, and neglect. And in the criminal context, they hold power over a person's liberty. They sentence, they decide whether evidence should be suppressed, they make decisions about jury selection, and they often have the power to dismiss cases. The power of judges in criminal cases has grown even more so now that we have a system of plea bargains, rather than a system of jury trials.³ Questions of credibility, relative culpability and responsibility vis-à-vis codefendants, and discretion at sentencing all fall squarely on judges. Doctrines of judicial deference mean that many of a judge's decisions are unreviewable unless it can be shown that the decision caused harm.⁴

I have previously focused on the seemingly intractable problem of white supremacy amongst police.⁵ I now turn my attention to the issue of racial bias from the bench. This is a decidedly less high-profile problem than that of interactions between police and ordinary citizens. Interactions between citizens, police, and judges are recorded rarely, especially prior to the COVID-19 pandemic. Most courtrooms do not allow audio or video recording or photography.⁶ Defense attorneys and prosecutors are often repeat players who may not want to make waves by reporting bias by a judge towards them or parties because they may worry about retribution by judges who are the decision-makers in most instances in court.⁷ But that does not mean that judges do not harbor racial animus. Despite the protection judges are afforded, there have been stories in the media from judicial conduct commissions and appellate courts about bias from the bench and in judges' private lives. This Article documents those stories from across our country to illustrate that the bench is not immune from white supremacy and that the legal system is one that is inherently unfair to people of color. It is the first law review article to focus on explicit racial bias by judges. By grappling with this topic, I hope to focus attention on how our legal system is infected with significant racial bias by even those who are meant to be neutral.

³ *Missouri v. Frye*, 566 U.S. 134, 143–44 (2012).

⁴ See generally Cynthia K.Y. Lee, *A New "Sliding Scale of Deference" Approach to Abuse of Discretion: Appellate Review of District Court Departures Under the Federal Sentencing Guidelines*, 35 AM. CRIM. L. REV. 1 (1997).

⁵ Vida B. Johnson, *KKK in the PD: White Supremacist Police and What to Do About It*, 23 LEWIS & CLARK L. REV. 205 (2019).

⁶ See *History of Cameras in Courts*, ADMIN. OFF. OF THE U.S. CTS., <https://www.uscourts.gov/about-federal-courts/judicial-administration/cameras-courts/history-cameras-courts> (last visited Apr. 18, 2023).

⁷ According to a 2020 report about New York judges, "[a]ttorneys described feeling powerless to raise complaints against judges who engaged in biased behaviors or made racially-charged comments against them or their clients." N.Y. UNIFIED CT. SYS., REPORT FROM THE SPECIAL ADVISER ON EQUAL JUSTICE IN THE NEW YORK STATE COURTS 61 (2020).

While there are many well-meaning judges, it should not be a surprise that there is racial bias among a substantial percentage. The 2009 article, *Does Unconscious Racial Bias Affect Trial Judges?*, found that judges do indeed harbor unconscious racial biases.⁸ These implicit biases are common amongst Americans of all races.⁹ When these implicit biases belong to actors in the legal system, they cause tremendous harm to people of color, and legal scholars have explored this disappointing phenomenon.

However, this Article focuses not simply on the important issue of judges' implicit racial biases that most Americans hold unconsciously or unwittingly, but also the explicit racial biases of some judges. In many cases, it is difficult to parse the two. When a person commits a racially insensitive act, it is hard to know if the person acted purposefully to hurt or unconsciously. For the victim it may not matter, especially in a legal setting where the outcome—that is, the legal decision—is the same whether the judge is acting on unconscious or conscious bias.

Unfortunately, both types of bias may be more common than many Americans want to believe. A not insignificant percentage of Americans consciously hold disturbing views about race, beyond just implicit thoughts. A 2017 poll found that almost ten percent of Americans thought that it was acceptable to hold neo-Nazi views.¹⁰ The proportion of white Americans who hold those views is likely higher than that of non-white Americans. When one considers that judges are disproportionately white,¹¹ it is certainly possible that at least ten percent of judges hold explicit racial biases.

While significant harms are inflicted on people of color by police, prosecutors, other state actors, and of course private citizens, these structural and individual inequities are enforced in court by judges. Parties, who are in many instances people of color, seek out judges to resolve their disputes or they are forced into court against their will. However, judges are the only player in our adversarial legal system who are by design ostensibly neutral, impartial, and without bias. Civil lawyers have ethical obligations that require them to advocate for their client, prosecutors may be

⁸ Jeffrey J. Rachlinski, Sheri Lynn Johnson, Andrew J. Wistrich & Chris Guthrie, *Does Unconscious Racial Bias Affect Trial Judges?*, 84 NOTRE DAME L. REV. 1195, 1221–26 (2009).

⁹ Tobiasz Trawinski, Araz Aslanian & Olivia S. Cheung, *The Effect of Implicit Racial Bias on Recognition of Other-Race Faces*, 6 COGNITIVE RSCH.: PRINCIPLES & IMPLICATIONS, no. 67, 2021, at 1, 9–13.

¹⁰ ABC NEWS & WASH. POST, TRUMP APPROVAL IS LOW BUT STEADY; ON CHARLOTTESVILLE, LOWER STILL 1 (2017), <https://www.langerresearch.com/wp-content/uploads/1190a1TrumpandCharlottesville.pdf>.

¹¹ See Democracy & Gov't Reform Team, *Examining the Demographic Compositions of U.S. Circuit and District Courts*, CTR. FOR AM. PROGRESS (Feb. 13, 2020), <https://www.americanprogress.org/article/examining-demographic-compositions-u-s-circuit-district-courts/>. In New York for example, where almost half of the population is nonwhite, less than a quarter of the judiciary are people of color as of 2020. N.Y. UNIFIED CT. SYS., *supra* note 7, at 32–35.

expected to support law enforcement and vice versa, and the defense attorney must zealously advocate for the accused. Not so for judges. While they are human, and despite what social science tells us about an individual's ability to control their biases, the law tells us to assume that judges are without any bias at all.¹²

Any biases are a delegitimizing force in the system. But holding racial bias is a partiality that undermines the integrity of the entire legal system in our racially diverse country. While one would hope that the defense attorneys, prosecutors, and other lawyers would not hold racial biases, we know of course that they do. Somehow, there is something particularly troubling about a judge, the decision-maker, harboring a prejudice with nothing to do with the facts of a particular case, but merely the color of the litigant's skin.

Sadly, there are judges who hold such explicit racial biases. Many of the stories from courts, the media, and disciplinary boards are unobtrusive and harrowing. A judge in Texas used racial slurs to describe Mexicans in his state in 2020.¹³ A white judge in Louisiana in 2020 referred to a deputy and a court clerk by the N-word.¹⁴ A white Colorado judge also used the N-word in a conversation with court staff in 2020.¹⁵ An Alabama judge said that the murder of George Floyd by police was justified and that he "pretty much got what he deserved."¹⁶ A federal judge in Texas stated publicly that Black and Latino people are more violent than white people.¹⁷ A

¹² Legal Info. Inst., *Unbiased Judge*, CORNELL L. SCH., <https://www.law.cornell.edu/constitution-conan/amendment-5/unbiased-judge> (citing *Snyder v. Massachusetts*, 291 U.S. 97, 116–17 (1934)) (last visited Apr. 18, 2023).

¹³ Angela Morris, *Texas Judge in Hot Water over Racial Slurs Against Mexicans*, TEX. LAW. (Dec. 22, 2020, 6:31 PM), <https://www.bloomberglaw.com/document/X25UC9CS000000?jsearch=hde45hjeim#jcite>; *In re Luitjen*, Pub. Admonition & Ord. of Additional Educ. CJC No. 20-0468 (Tex. Comm'n on Jud. Conduct Dec. 4, 2020), <http://www.scjc.texas.gov/media/46826/luitjen20-0468pubadm-oae-12420.pdf>.

¹⁴ Lateshia Beachum, *A Judge Resigns After Using the N-Word in Texts that She Says the Public Was Never Meant to See*, WASH. POST (Feb. 27, 2020, 4:31 PM), <https://www.washingtonpost.com/nation/2020/02/27/jessie-leblanc-resigns-racial-slur/>.

¹⁵ Caitlin O'Kane, *Colorado Judge Resigns After Using N-Word Multiple Times and Using Racially Insensitive Language*, CBS NEWS (Apr. 20, 2021, 6:50 AM), <https://www.cbsnews.com/news/natalie-chase-colorado-judge-resigns-N-word/>; *In re Chase*, 485 P.3d 65, 65–66 (Colo. 2021).

¹⁶ Debra Cassens Weiss, *Ethics Case Accuses Judge of Making Racist and Sexist Remarks, Muzzling N-Word, Criticizing Overweight People*, ABA J. (May 20, 2021, 3:54 PM), <https://www.abajournal.com/news/article/ethics-case-accuses-judge-of-making-racist-and-sexist-remarks-muzzling-f-word-criticizing-overweight-people>; *Jinks v. Ala. Jud. Inquiry Comm'n*, No. 1210133, 2022 Ala. LEXIS 103, at *15–16 (Ala. Oct. 21, 2022).

¹⁷ Ethan Bronner, *Complaint Accuses U.S. Judge in Texas of Racial Bias*, N.Y. TIMES (June 4, 2013), <https://www.nytimes.com/2013/06/05/us/federal-judge-in-texas-is-accused-of-racial-bias.html>; *In re Charges of Judicial Misconduct*, 769 F.3d 762, 773–75 (D.C. Cir. 2014), *aff'd*, *In re Complaint of Judicial Misconduct*, C.C.D. No. 14-01, at 3, 15 (U.S. Comm. on Jud. Conduct & Disability Feb. 19, 2015), https://www.uscourts.gov/sites/default/files/ccd-14-01_order-final-02-19-15.pdf.

Jacksonville, Florida, judge said that Black people should go “back to Africa.”¹⁸ A federal judge in Montana used his court email to circulate a racist joke about President Barack Obama in 2012.¹⁹ An Ohio judge referred to COVID-19 as the “China Virus.”²⁰ Altogether, I have documented scores of instances of racial bias by judges since the year 2000,²¹ but we should assume these headline-grabbing stories only represent a tiny fraction of the judges who hold conscious racial biases.

Most judges, with years of education beyond that of the average American and a bird’s-eye view of how racial discrimination gets litigated, would not be so careless as to say explicitly racist things so that members of the public can have access to their words. We have to assume that the notorious and distressing stories represent the feelings of many more judges with more discretion, thought control, and ability to employ filters to their words.

That members of the bench harbor racist views should not come as a surprise. We have long known, for example, that judges sentence Black defendants more harshly than their white counterparts, even controlling for criminal record, employment, and education.²² There are deep inequities in the legal system. The bench needs to be viewed critically as a tool and enforcer of racial oppression. Deep racial inequities have persisted in our country and the law has addressed only some of the most egregious.²³ Surveying legal rulings can confirm what a small percentage of judges have shown clearly: the law has been and is manipulated by judges to produce racially biased outcomes, reinforce racial hierarchies, and justify racism by law enforcement, private citizens, and government policies. Indeed, some of the country’s legal rules were developed by judges, rather than lawmakers. Worse, judges have

¹⁸ Larry Hannan, *Jacksonville Judge Accused of Racist and Sexist Comments Resigns*, FLA. TIMES-UNION (Jan. 23, 2017, 12:40 PM), <https://www.jacksonville.com/story/news/crime/2017/01/23/jacksonville-judge-accused-racist-and-sexist-comments-resigns/15739895007/>; *In re* Husley, Notice of Formal Charges No. SC16-1278, at 3 (Fla. Jud. Qualifications Comm’n July 19, 2016), https://efactssc-public.flcourts.org/casedocuments/2016/1278/2016-1278_notice_79144.pdf, *voluntarily dismissed*, No. SC16-1278, 2017 Fla. LEXIS 277 (Fla. 2017).

¹⁹ Korva Coleman, *Federal Judge Emails Racist Joke About Obama, then Apologizes*, NPR (Mar. 1, 2012, 10:28 AM), <https://www.npr.org/sections/thetwo-way/2012/03/01/147720865/federal-judge-emails-racist-joke-about-obama-then-apologizes>; *In re* Complaint of Judicial Misconduct, 751 F.3d 611, 619–21 (U.S. Comm. on Jud. Conduct & Disability Jan. 17, 2014).

²⁰ Cory Shaffer, *Groups Demand Lake County Judge in Ohio Apologize for Calling Coronavirus ‘China Virus’ in Bar Association Newsletter*, CLEVELAND.COM (Mar. 6, 2021, 2:32 PM), <https://www.cleveland.com/court-justice/2021/03/groups-demand-lake-county-judge-in-ohio-apologize-for-using-racist-term-for-coronavirus-in-bar-association-newsletter.html>.

²¹ See apps.

²² Mark Hansen, *Black Prisoners Are Given Longer Sentences Than Whites, Study Says*, ABA J. NEWS (Feb. 15, 2013, 7:22 PM), https://www.abajournal.com/news/article/black_prisoners_tend_to_serve_longer_sentences_than_whites; U.S. SENT’G COMM’N, DEMOGRAPHIC DIFFERENCES IN SENTENCING: AN UPDATE TO THE 2012 BOOKER REPORT 16–17 (2017).

²³ See, e.g., *Brown v. Bd. of Educ.*, 347 U.S. 483 (1954).

created legal doctrines to get around legal remedies offered by our elected representatives to keep people of color from recovering in court.²⁴ White supremacy from the bench is an integral part of our legal system and an integral part of our legacy of racism in the United States.

Not only do judges have the opportunity to inflict racial harms, they also arguably reinforce hierarchies that lead to racial biases in the act of judging itself. The judicial system is predicated on the idea that the judge is superior to the parties in front of them. The judge literally sits high, looking down on the litigants and witnesses. In many courtrooms, litigants, witnesses, and the public must stand when a judge enters a room and call the judge “your honor”; most importantly, the judge has the final say over the dispute. The judge’s word is law. Given that a disproportionate number of the parties in court are people of color and judges are disproportionately white, racial biases are bolstered by the courtroom setting itself.

While I am certainly not the first person to connect racism from the bench to the corrosive harms our criminal legal system delivers to Black and Latino people,²⁵ this Article ties those harms to explicit racial bias and posits that it is possible that, where judges have diminished the rights of people of color to uphold white supremacy, they have done so on purpose to harm Blacks, Latinos, Native people, and other people of color. While the actions of police, prosecutors, and other players have resulted in the inescapable racism of our legal system, I argue that the biases of judges are a significant part of the problem as well.

This Article will document explicit racial bias by judges and will proceed in several Parts. The Article will begin with an overview of the judicial system in the United States. In Part II, the Article next describes the racial impact of judicial racial bias. Part III demonstrates that judges across the United States have expressed racial bias by examining media accounts, disciplinary decisions, and appellate court rulings since the year 2000. The Article will conclude in Part IV.

²⁴ Qualified immunity is one example. See *Qualified Immunity*, EQUAL JUST. INITIATIVE, <https://eji.org/issues/qualified-immunity/> (last visited Apr. 18, 2023).

²⁵ See, e.g., Anthony C. Thompson, *Stopping the Usual Suspects: Race and the Fourth Amendment*, 74 N.Y.U. L. REV. 956 (1999); Ekow N. Yankah, *Pretext and Justification: Republicanism, Policing, and Race*, 40 CARDOZO L. REV. 1543 (2019).

I. THE BUSINESS OF JUDGES AND JUDGING

There are tens of thousands of judges across the United States and millions of cases that get decided by them. There are more than 1,700 federal judgeships authorized across over 200 federal courts.²⁶ But state courts make up most of the judiciary. There are another 30,000 judges in state court in this country.²⁷ Because each state is different, there is no uniform way that judges are chosen, disciplined, or fired.²⁸

Each year, over 100 million cases are brought in state courts, and several hundred thousand criminal and civil cases are brought in federal courts.²⁹ Whether it is a name change, adoption, divorce, lawsuit, criminal case, or probate matter, many Americans will likely appear in front of a judge at some point in their lives. And for those struggling in poverty, they are more likely to be obligated to come to court and spend more time there.³⁰ Landlord tenant courts, small claims courts, family courts, and the criminal punishment system may play an outsized role in the lives of America's poor people.³¹ Because of years of racial subordination and subjugation via land theft,³² wage theft,³³ and enslavement, people of color, particularly Black people, are more likely to struggle financially than their white counterparts.³⁴ As a result, Black people spend disproportionately more time as parties in court hearings than white people do.³⁵ People of color are very likely to be court involved in some fashion in their lives. That means that people of color are the most likely Americans to be subject to the whims and prejudices of judges.

²⁶ INST. FOR THE ADVANCEMENT OF THE AM. LEGAL SYS. (IAALS), FAQs: JUDGES IN THE UNITED STATES 3, 10–11 (2014), https://iaals.du.edu/sites/default/files/documents/publications/judge_faqs.pdf; *Court Role and Structure*, ADMIN. OFF. OF THE U.S. CTS., <https://www.uscourts.gov/about-federal-courts/court-role-and-structure> (last visited Apr. 18, 2023).

²⁷ IAALS, *supra* note 26, at 3.

²⁸ *Id.* at 3–8.

²⁹ *Id.* at 3.

³⁰ See SENT'G PROJECT, REPORT TO THE UNITED NATIONS SPECIAL RAPPORTEUR ON CONTEMPORARY FORMS OF RACISM, RACIAL DISCRIMINATION, XENOPHOBIA, AND RELATED INTOLERANCE 1, 7–10 (Mar. 2018).

³¹ See *id.* at 7–10; Chris Arnold, *Corporate Landlord Evicts Black Renters at Far Higher Rates than Whites, Report Finds*, NPR (June 3, 2021, 5:01 AM), <https://www.npr.org/2021/06/03/1001404416/corporate-landlord-evicts-black-renters-at-far-higher-rates-than-whites-report-f>.

³² Cheryl I. Harris, *Whiteness as Property*, 106 HARV. L. REV. 1707, 1763–65 (1993).

³³ *Id.* at 1741.

³⁴ *Id.* at 1758–59.

³⁵ There is an overrepresentation of Black Americans in the justice system. ELIZABETH HINTON, LESHAE HENDERSON & CINDY REED, VERA INST. OF JUST., AN UNJUST BURDEN: THE DISPARATE TREATMENT OF BLACK AMERICANS IN THE CRIMINAL JUSTICE SYSTEM (May 2018), <https://www.vera.org/downloads/publications/for-the-record-unjust-burden-racial-disparities.pdf>.

It is acknowledged by the legal system that most judges make mistakes.³⁶ Mistakes caused by judges are why there are appellate courts—to revisit decisions of judges. The assurance of appellate review to fix mistakes may be mostly symbolic. Most trial court decisions stand. Courts of appeals rarely reverse trial judges.³⁷ Appellate court judges are also judges and prone to the same cognitive biases as lower court judges.³⁸

A. *Elected or Appointed*

Judges get their jobs in a few different ways. Judges are either elected or appointed depending on the jurisdiction. In 26 states, judges are appointed by the governor, and in the others, judges must run for office.³⁹ In some of those states the elections are partisan, in which a political party must be declared by the candidate, while in some states the elections are nonpartisan.⁴⁰

Some believe that judges who do not have to run for election and re-election are likely to be less captive to the interests of others than those who need to solicit donations and votes.⁴¹ On the other hand, elected judges are more accountable to the community they serve and are easier to be rid of than those with long appointments.⁴² Terms for judicial tenure vary in state courts.⁴³

³⁶ See, e.g., FED. R. CIV. P. 60(b).

³⁷ Barry C. Edwards, *Why Appeals Courts Rarely Reverse Lower Courts: An Experimental Study to Explore Affirmation Bias*, 68 EMORY L.J. ONLINE 1035 (2019).

³⁸ Allison P. Harris & Maya Sen, *Bias and Judging*, 22 ANN. REV. POL. SCI. 241, 245 (2019).

³⁹ *Judicial Selection: Significant Figures*, BRENNAN CTR. FOR JUST., <https://www.brennancenter.org/our-work/research-reports/judicial-selection-significant-figures> (Oct. 11, 2022).

⁴⁰ *Id.*

⁴¹ For example, Justice O'Connor explained:

We of course want judges to be impartial, in the sense of being free from any personal stake in the outcome of the cases to which they are assigned. But if judges are subject to regular elections they are likely to feel that they have at least some personal stake in the outcome of every publicized case.

Republican Party of Minn. v. White, 536 U.S. 765, 788–89 (2002) (O'Connor, J., concurring); David Schultz, *Minnesota Republican Party v. White and the Future of State Judicial Selection*, 69 ALBANY L. REV. 985, 1010 (2006) (“[A]n appointed judiciary best promotes its independent role in a democracy as serving as a defender of minority rights, often despite majoritarian preferences.”); see also Dmitry Bam, *Recusal Failure*, 18 N.Y.U. J. LEGIS. & PUB. POL’Y 631 (2015).

⁴² Melinda Gann Hall, *The Controversy Over Electing Judges and Advocacy in Political Science*, 30 JUST. SYS. J. 284, 285–86 (2009).

⁴³ IAALS, *supra* note 26, at 6 (“In three states . . . judges enjoy life tenure or service to a mandatory retirement age of 70. . . . In many commission-based appointment states, judges serve a short initial term—typically at least one to three years—before being reselected for a full term. . . . In states where judges do not enjoy life tenure, judicial terms range in length from four years to 15 years.”).

Federal judges are appointed. Article III federal judges are appointed by the President for lifetime tenure.⁴⁴ This appointment often starts with a U.S. senator—who is from the same party as the President and from the state where there is a federal judicial vacancy—nominating the candidate to the President. Then the full Senate must confirm the candidate before they are installed as a federal associate judge.⁴⁵ Other federal court judges, like magistrates, are usually appointed by the district judges of the court in which they serve.⁴⁶ District of Columbia judges are also appointed by the President of the United States, but first suggested to the President through a judicial nominating committee since there are no senators representing the nation's capital.⁴⁷

Whether appointed or elected, most judges, as a result of having achieved their status, are extremely well connected politically. Either they were able to win an election and attract donors to do so, or they had a connection to a U.S. senator. As will be shown, judges—state and federal, elected and appointed—have demonstrated racial bias. The political capital possessed by many judges may insulate them from serious consequences from a scandal or from reversal by appellate courts in all but the most egregious circumstances.

B. *Discipline and Removal from Office*

Because of their lifetime tenure, federal judges can only be removed if impeached.⁴⁸ States judges who are elected can be removed by being voted out of office, but they can also be removed by state impeachment processes.⁴⁹

Though these mechanisms exist for removal of judges, they are rarely employed. Federal judges must be impeached by Congress.⁵⁰ Since 1803, more than

⁴⁴ U.S. CONST. art. III, § 1; *Article III Judges*, ADMIN. OFF. OF THE U.S. CTS., <https://www.uscourts.gov/judges-judgeships/about-federal-judges> (last visited Apr. 18, 2023).

⁴⁵ *Federal Judicial Nominations: 9 Steps from Vacancy to Confirmation*, CTR. FOR AM. PROGRESS (Jan. 29, 2013), <https://www.americanprogress.org/article/federal-judicial-nominations-9-steps-from-vacancy-to-confirmation/>.

⁴⁶ See 28 U.S.C. § 631(a) (“Where there is more than one judge of a district court, the appointment . . . shall be by the concurrence of a majority of all the judges of such district court, and when there is no such concurrence, then by the chief judge.”); see also *Article III Judges*, *supra* note 44 (explaining that bankruptcy judges are appointed “by a majority of the judges of the judges of the U.S. Court of Appeals for their circuit”).

⁴⁷ Jud. Nomination Comm’n, *JNC Application Process*, DC.GOV, <https://jnc.dc.gov/node/488382> (last visited Apr. 18, 2023).

⁴⁸ U.S. CONST. art. III, § 1; Douglass Keith, *Impeachment and Removal of Judges: An Explainer*, BRENNAN CTR. JUST., <https://www.brennancenter.org/our-work/analysis-opinion/impeachment-and-removal-judges-explainer> (May 6, 2022).

⁴⁹ See Keith, *supra* note 48.

⁵⁰ See U.S. CONST. art. I, § 2, cl. 5; *id.* art. III, § 1.

two hundred years ago, just over a dozen federal judges have been impeached.⁵¹ Only two state judges have been removed from the bench via impeachment processes in the last few decades.⁵²

In addition to removal from office through impeachment, judges can also be disciplined short of removal from the bench. The behavior of judges is governed by the ethical canons of the state in which they preside or by the federal judicial canons, the *Code of Conduct for U.S. Judges*.⁵³ The procedures for the discipline and sanctioning of judges at the state level vary wildly by jurisdiction. Sanctions can range from a private letter of reprimand to leave without pay to a recommendation that they be removed from the bench.⁵⁴

Even when a judge faces discipline, the process is a long one. Judicial officers are often afforded significant due process during these proceedings.⁵⁵ They are generally allowed to confront witnesses, call their own witnesses, and put on other evidence.⁵⁶ There are appellate processes that follow the initial determination in the event that the judge is found to have violated an ethical rule.⁵⁷

Judges can face discipline for a variety of transgressions, from failing to report financial interests to not working when required to abuses of power.⁵⁸ Nevertheless, accountability for judges is rare. Although thousands of complaints are filed against judges every year, fewer than one percent are believed to result in significant judicial discipline.⁵⁹ According to reporting by *NBC News*, even in states where public sanctions exist and discipline is employed, states choose to reprimand judges outside of public view more often.⁶⁰ For example, between 2016 and 2020 in Pennsylvania,

⁵¹ See *Impeachments of Federal Judges*, FED. JUD. CTR., <https://www.fjc.gov/history/judges/impeachments-federal-judges> (last visited Apr. 18, 2023).

⁵² Keith, *supra* note 48 (citing *Methods of Removing State Judges*, AM. JUDICATURE SOC'Y (2012), https://web.archive.org/web/20130115105653/https://ajs.org/ethics/eth_impeachment.asp).

⁵³ CODE OF CONDUCT FOR U.S. JUDGES vol. 2, pt. A, ch. 2 (ADMIN. OFF. OF THE U.S. CTS. 2019).

⁵⁴ CYNTHIA GRAY, AM. JUDICATURE SOC'Y, STATE JUST. INST., *A STUDY OF STATE JUDICIAL DISCIPLINE SANCTIONS* 6, 85 app. (2002).

⁵⁵ See generally Cynthia Gray, *How Judicial Conduct Commissions Work*, 28 JUST. SYS. J. 405, 409–14 (2007) (discussing the constitutional due process considerations in the various forms of judicial disciplinary proceedings).

⁵⁶ See MODEL RULES FOR JUD. DISCIPLINARY ENF'T §§ 2, r. 14 and 3, r. 22 (AM. BAR ASS'N 2018).

⁵⁷ Gray, *supra* note 55, at 416–17.

⁵⁸ RULES FOR JUD.-CONDUCT & JUD.-DISABILITY PROC. § 320 (ADMIN. OFF. OF THE U.S. CTS. 2019).

⁵⁹ Erik Ortiz, *Robed in Secrecy: How Judges Accused of Misconduct Can Dodge Public Scrutiny*, NBC NEWS (Dec. 26, 2021, 5:27 PM), <https://www.nbcnews.com/news/us-news/robed-secrecy-judges-accused-misconduct-can-dodge-public-scrutiny-rcna7638>.

⁶⁰ *Id.*

formal public charges were filed in 17 cases while private letters of reprimand were used in 172 cases during that same period.⁶¹

The discipline of judges is also often opaque to outsiders, difficult to navigate, and hard to understand. Despite a judge's role as a public servant, issues of employment are often treated very secretly and shielded from the public's view in most instances.

Judges are very powerful and many may fear them.⁶² Judicial conduct commission members may not be lawyers or judges depending on the state.⁶³ Generally, individuals who may have to work with a particular judge in the future may not want to make a complaint because they worry about the proceedings lacking confidentiality or someone who has seen an abuse of power by a judge may not feel empowered to register their concerns. It is also likely that those who benefit from a judge's bias, like prosecutors, have little incentive personally or institutionally to report it.

In addition to the lack of incentives, fear, and trepidation involved in reporting judges, some states make reporting judicial bias difficult.⁶⁴ Some states only accept complaints made by mail, rather than email or phone.⁶⁵ Alabama requires complaints to be notarized.⁶⁶ Some states ban anonymous complaints.⁶⁷

The legal system is also difficult to navigate even for attorneys. As a result, many lawyers and nonlawyers alike are unfamiliar with the judicial disabilities and tenure process and may not know that one can even make complaints about judges

⁶¹ *Id.*

⁶² Shelley C. Chapman, *I'm a Judge and I Think Criminal Court Is Horrifying*, MARSHALL PROJECT (Aug. 11, 2016), <https://www.themarshallproject.org/2016/08/11/i-m-a-judge-and-i-think-criminal-court-is-horrifying>.

⁶³ Gray, *supra* note 55, at 406.

⁶⁴ See, e.g., *Complaint Against Judges*, N.H. BAR ASS'N, <https://www.nhbar.org/dispute-with-an-attorney/grievances-against-judges/> (last visited Apr. 18, 2023); see Michael Berens & John Shiffman, *Holding Judges Accountable*, in REUTERS, THE TEFLON ROBE (2020), <https://www.reuters.com/investigates/section/usa-judges/> (noting that state judicial oversight commissions in about a dozen states require complaints against judges to be signed and notarized).

⁶⁵ See Michael Berens & John Shiffman, *Objections Overruled: Thousands of U.S. Judges Who Broke Laws or Oaths Remained on the Bench*, in REUTERS, THE TEFLON ROBE, *supra* note 64; INST. FOR THE ADVANCEMENT OF THE AM. LEGAL SYS. (IAALS), RECOMMENDATIONS FOR JUDICIAL DISCIPLINE SYSTEMS 12 (July 2018).

⁶⁶ *Complaint Process*, ALA. JUD. INQUIRY COMM'N, <https://jic.alabama.gov/complaint-process/> (last visited Apr. 18, 2023); Berens & Shiffman, *supra* note 65.

⁶⁷ See, e.g., *Complaint Process*, *supra* note 66; Berens & Shiffman, *supra* note 65; see IAALS, *supra* note 65, at 13 (noting that most state judicial conduct commissions require the complainant to identify him or herself on the complaint and sign it).

or that judges can face discipline.⁶⁸ It is often the complaints that are well documented and that cannot be ignored that get the attention of bodies with the ability to sanction judges.⁶⁹

State disciplinary bodies are often comprised of other judges and attorneys, arbiters of a judge's fate that may know the judge personally and professionally.⁷⁰ These are players with little incentive to hold politically connected judges accountable and a myriad of incentives to look the other way or protect these powerful people.

C. *Judges vs. Jurors*

Judges are, in many ways, like jurors. Jurors and judges sometimes have the same function. While judges are the final arbiters of decisions about the law,⁷¹ both judges and juries can make decisions about facts.⁷² Judges make fact-finding decisions in evidentiary motions, hearings and in bench trials.⁷³ In some jurisdictions, judges are the only fact finders in misdemeanor criminal cases, and in many states, judges, rather than jurors, decide facts in family court cases, including divorce, neglect, paternity, custody, and parental rights cases.⁷⁴

It is known, of course, that jurors can harbor racial bias in their decision-making.⁷⁵ Many mock jury studies have demonstrated this phenomenon.⁷⁶ One study

⁶⁸ See IAALS, *supra* note 65, at 12–14.

⁶⁹ See GRAY, *supra* note 54, at 3 (“Most complaints filed with judicial conduct commissions—generally more than 80%—are dismissed.”).

⁷⁰ Gray, *supra* note 55, at 406.

⁷¹ *Sparf v. United States*, 156 U.S. 51, 64 (1895).

⁷² *How Courts Work*, AM. BAR ASS'N (Sept. 9, 2019), https://www.americanbar.org/groups/public_education/resources/law_related_education_network/how_courts_work/juryinstruct/.

⁷³ FED. R. CIV. P. 52(a).

⁷⁴ See *CSP STAT Criminal*, COURT STATISTICS PROJECT, <https://www.courtstatistics.org/court-statistics/interactive-caseload-data-displays/csp-stat-nav-cards-first-row/csp-stat-criminal> (last visited Apr. 18, 2023) (under “Select criminal case type,” choose “Total Misdemeanor”; then under “Select caseload measure,” choose “Bench Trials”; and then under “Year,” choose “2021”); Ortiz, *supra* note 59 (“[J]udges exert near-absolute power in deciding who wins custody of children to who can get married to whether people go to jail.”); Harold P. Weinberger, Norman C. Simon & Samantha V. Ettari, *Bench Trials (Federal)*, AM. BAR ASS'N (2021), https://www.americanbar.org/groups/tort_trial_insurance_practice/committees/litigation-and-trial-practice/bench-trials-federal/#:~:text=Even%20on%20claims%20for%20which,trial%20before%20any%20dispute%20arises.

⁷⁵ Mike Morrison, Amanda DeVaul-Fetters & Bertram Gawronski, *Stacking the Jury: Legal Professionals' Peremptory Challenges Reflect Jurors' Levels of Implicit Race Bias*, 42 PERSONALITY & SOC. PSYCH. BULL. 1129, 1129–30 (2016).

⁷⁶ Tara L. Mitchell, Ryann M. Haw, Jeffrey E. Pfeifer & Christian A. Meissner, *Racial Bias in Mock Juror Decision-Making: A Meta-Analytic Review of Defendant Treatment*, 29 LAW & HUM. BEHAV. 621, 626 (2005).

of actual criminal trials found that the presence of at least one Black juror increased the chances of an acquittal by 16% in criminal cases, demonstrating that all-white juries are more likely to convict Black defendants.⁷⁷

In 2017, the U.S. Supreme Court tackled the issue of bias in jury deliberation in a case called *Pena-Rodriguez v. Colorado*.⁷⁸ Post-verdict jurors reported bias expressed by at least one juror against the defendant and a defense witness during deliberations because of their Mexican heritage and non-citizen status with respect to the witness.⁷⁹ Juror deliberations are held in confidence and take place outside of public view. The Court's decision in *Pena-Rodriguez* was the first to pierce that secrecy to vacate a conviction.⁸⁰

Jurors may be more racially representative of the community than judges.⁸¹ A 2019 report by the Center for American Progress showed that only 10% of lower federal court judges were Black, 7% were Hispanic, and 4% percent were Asian.⁸² This means that white people are overrepresented and people of color are underrepresented as judges, given that non-Hispanic white people make up less than 60% of the American population, Hispanic people of any race make up 18.7%, Black people make up 12.1%, and Asian people make up 6% of the U.S. population.⁸³

Decision-making by judges is arguably more secretive than that of jurors. Judges do not have to negotiate with others for unanimity as jurors do, so there is no reason to say aloud his or her actual reasoning. There is no one to confront a judge about why a decision is made or question them like a juror may face. On the other hand, judges may explain for the record why they credit a particular witness in a contested hearing. Implicit biases, like why a judge may trust the demeanor of a police witness over that of a criminal defendant during a motions hearing, may not enter into a judge's consciousness.⁸⁴ Further, any explicit bias that the judge

⁷⁷ Shamena Anwar, Patrick Bayer & Randi Hjalmarsson, *The Impact of Jury Race in Criminal Trials*, 127 Q. J. ECON. 1017, 1035–36 tbl.V (2012).

⁷⁸ 137 S. Ct. 855 (2017).

⁷⁹ *Id.* at 861–62.

⁸⁰ *Id.* at 874–75 (Alito, J., dissenting).

⁸¹ Juries are perceived as more racially and ethnically representative than judges. Mary R. Rose, Christopher Ellison & Shari Seidman Diamond, *Preferences for Juries over Judges Across Racial and Ethnic Groups*, 89 SOC. SCI. Q. 372, 375 (2008).

⁸² Democracy & Gov't Reform Team, *supra* note 11.

⁸³ Nicholas Jones, Rachel Marks, Roberto Ramirez & Merarys Ríos-Vargas, *2020 Census Illuminates Racial and Ethnic Composition of the Country*, U.S. CENSUS BUREAU (Aug. 12, 2021), <https://www.census.gov/library/stories/2021/08/improved-race-ethnicity-measures-reveal-united-states-population-much-more-multiracial.html>.

⁸⁴ Rodney J. Uphoff, *On Misjudging and Its Implications for Criminal Defendants, Their Lawyers and the Criminal Justice System*, 7 NEV. L.J. 521, 536–37 (2007) (explaining the difficulties of proving a biased judge's implicit biases).

may have can be carefully covered up with language that is devoid of evidence of bias.

Given that we know that all-white juries are more likely to convict Black defendants, and given that in many communities, judges are more likely to be white than the populations they serve, there is reason to worry that judges are just as, if not more, likely to succumb to racial bias in their decision-making as jurors are.

Jury bias is an important consideration when contemplating judicial bias. Studies and cases illustrate the existence of jury bias, and when one considers that judges may also harbor bias just as jurors do, it is reasonable to conclude that judges may harbor biases at the same, or even higher, rates as jurors.

D. Disqualification and Recusal of Judges

We know that judges possess bias in other contexts, and there are systems that try to address that type of unfairness. A judge can recuse him or herself from a case, or a party can make a motion for that relief in which the party states why it believes that the judge should not decide the case. Judges are expected to recuse themselves from a matter where they have an actual bias or prejudice against or in favor of a party.⁸⁵ In addition, they should recuse themselves as fact finders even if there is an appearance of partiality or impropriety to the public.⁸⁶ So even if there is no actual bias, it would be easy to imagine a situation where, based on a prior ruling or a relationship with a party or witness, in order to maintain the reputation of the court as a place where neutrality and fairness are expected, a judge should recuse himself or herself. Nevertheless, one legal scholar has stated that it is the most biased judges who are the least likely to recuse themselves.⁸⁷

II. EXPLICIT RACIAL BIAS IN DECISION-MAKING

Judges play a big role in the lives of anyone involved in criminal cases and civil disputes like divorce, child custody, landlord tenant cases, or other lawsuits. Unfortunately, we know that judges have demonstrated biases by sentencing Black, Native, and Latino people more harshly than their white counterparts.⁸⁸ Judges are

⁸⁵ MODEL CODE OF JUD. CONDUCT Canon 2 (AM. BAR ASS'N 2020).

⁸⁶ *Id.*

⁸⁷ Uphoff, *supra* note 84, at 537.

⁸⁸ SUSAN NEMBARD & LILY ROBIN, URB. INST., RACIAL AND ETHNIC DISPARITIES THROUGHOUT THE CRIMINAL LEGAL SYSTEM 6 (Aug. 2021), <https://www.urban.org/sites/default/files/publication/104687/racial-and-ethnic-disparities-throughout-the-criminal-legal-system.pdf>; David S. Abrams, Marianne Bertrand & Sendhil Mullainathan, *Do Judges Vary in Their Treatment of Race?*, 41 J. LEGAL STUD. 347, 350, 355–56 (2012) (finding that, while judges in Cook County, Illinois, differed in the degree to which race influenced their sentencing decisions, Black defendants “receive[d] longer sentences on average and [were] more than 30 percent more likely to be incarcerated than [were] white defendants”).

more likely to sentence Black defendants to jail than white defendants, even when one controls for criminal record and offense severity.⁸⁹ Judges also sentence Black defendants to longer prison terms than white defendants.⁹⁰ This has had grave ramifications, not only for the person whose liberty is deprived, but for the family of the person sentenced and their entire community. Incarceration causes deep trauma,⁹¹ loss of generational wealth for the family,⁹² increased chances of incarceration for the children of those incarcerated,⁹³ and loss of business for the neighborhood in which the person lives.⁹⁴ Racial bias, conscious or not, is extraordinarily damaging.

Unfortunately, sentencing is not the only place where we know that judges have exhibited racial biases. Because judges are prone to overvalue police knowledge,⁹⁵ they may be more likely to accept the testimony of white police officers over that of Black defendants. This means that Fourth and Fifth Amendment motions are likely to be resolved in favor of the government, rather than the individual who may have had his constitutional rights violated. It also means that where there are bench trials, instead of jury trials, it is likely that the defendant will be convicted.⁹⁶

The judicial harms inflicted on Black and Brown people in the legal system are not confined to criminal cases. Black parents are more likely to lose their children to the foster system.⁹⁷ Subjugated racial groups are more likely to be evicted from

⁸⁹ James C. McKinley Jr., *Study Finds Racial Disparity in Criminal Prosecutions*, N.Y. TIMES (July 8, 2014), <https://www.nytimes.com/2014/07/09/nyregion/09race.html> (discussing BESIKA LUKA KUTATELADZE & NANCY R. ANDILORO, NAT'L CRIM. JUST. REFERENCE SERV., DOC. NO. 247227, PROSECUTION AND RACIAL JUSTICE IN NEW YORK COUNTY—TECHNICAL REPORT (July 2014)).

⁹⁰ U.S. SENT'G COMM'N, *supra* note 22, at 2.

⁹¹ Mika'il DeVeaux, *The Trauma of the Incarceration Experience*, 48 HARV. C.R.—C.L. L. REV. 257, 259 (2013).

⁹² TERRY-ANN CRAIGIE, AMES GRAWERT & CAMERON KIMBLE, BRENNAN CTR. FOR JUST., CONVICTION, IMPRISONMENT, AND LOST EARNINGS: HOW INVOLVEMENT WITH THE CRIMINAL JUSTICE SYSTEM DEEPENS INEQUALITY 6, 18–19 (2020).

⁹³ Eric Martin, *Hidden Consequences: The Impact of Incarceration on Dependent Children*, NAT'L INST. JUST. J., May 2017, at 1, 2.

⁹⁴ Melissa S. Kearney, *The Economic Challenges of Crime & Incarceration in the United States*, BROOKINGS (Dec. 22, 2014), <https://www.brookings.edu/opinions/the-economic-challenges-of-crime-incarceration-in-the-united-states/>.

⁹⁵ See Anna Lvovsky, *The Judicial Presumption of Police Expertise*, 130 HARV. L. REV. 1995, 2002 (2017); Julia Simon-Kerr, *Systemic Lying*, 56 WM. & MARY L. REV. 2175, 2207–08 (2015); Keith Swisher, *Pro-Prosecution Judges: "Tough on Crime," Soft on Strategy, Ripe for Disqualification*, 52 ARIZ. L. REV. 317, 329 (2010).

⁹⁶ See generally KUTATELADZE & ANDILORO, *supra* note 89.

⁹⁷ Sarah Gonzalez & Jenny Ye, *Black Mothers Judged Unfit at Higher Rate than White Mothers in NJ*, WNYC NEWS (May 26, 2015), <https://www.wnyc.org/story/black-parents-nj-lose-custody-their-kids-more-anyone-else/>; Michelle Aslam, *In Travis County, Black Children More*

their homes than their white counterparts.⁹⁸ Immigrants of color are more likely to be denied entry to, or excluded from, the United States than white immigrants.⁹⁹ These traumatic, life-altering decisions and civil and criminal losses to families of color are presided over by judges. While police, prosecutors, social workers, and private individuals play roles in these harms, much of this structural racism is enforced by judges.

While it is the parties who have the most at stake in court, it is not simply parties who experience racism at the hands of judges. Many attorneys of color have experienced racism by judges; for example, many have the experience of being asked whether they are the indigent defendant despite being dressed in professional clothing.¹⁰⁰ Court staff have also experienced racism by judges.¹⁰¹ A Black detective in West Virginia was called “boy” by a magistrate there.¹⁰² The judge was given a written admonishment and ordered to do sensitivity training.¹⁰³ Enduring a humiliating indignity, potentially in public, as a person simply trying to carry out one’s job is not a trivial thing.

Judicial officers reveal racial biases from the bench in rendering their opinions, expressing their views in casual conversation with members of the courthouse staff, or in private conversation with friends or family members. Some of the headline-

Likely to Be Taken from Parents, TEX. OBSERVER (June 1, 2021, 9:00 AM), <https://www.texasobserver.org/in-travis-county-black-children-more-likely-to-be-taken-from-parents/>; Shanta Trivedi, *Police Feed the Foster Care-to-Prison Pipeline by Reporting on Black Parents*, NBC NEWS (July 29, 2020, 1:18 PM), <https://www.nbcnews.com/think/opinion/police-feed-foster-care-prison-pipeline-reporting-black-parents-ncna1235133>; Dorothy Roberts & Lisa Sangoi, *Black Families Matter: How the Child Welfare System Punishes Poor Families of Color*, APPEAL (Mar. 26, 2018), <https://theappeal.org/black-families-matter-how-the-child-welfare-system-punishes-poor-families-of-color-33ad20e2882e/>.

⁹⁸ Peter Hepburn, Renee Louis & Matthew Desmond, *Racial and Gender Disparities Among Evicted Americans*, EVICTION LAB (Dec. 16, 2020), <https://evictionlab.org/demographics-of-eviction/>.

⁹⁹ Emily Ryo & Reed Humphrey, *The Importance of Race, Gender, and Religion in Naturalization Adjudication in the United States*, 119 PROCS. NAT’L ACAD. SCIS., Feb. 22, 2022, at 3–4, tbl.1, No. e2114430119; Charles Kamasaki, *US Immigration Policy: A Classic, Unappreciated Example of Structural Racism*, BROOKINGS (Mar. 26, 2021), <https://www.brookings.edu/blog/how-we-rise/2021/03/26/us-immigration-policy-a-classic-unappreciated-example-of-structural-racism/>.

¹⁰⁰ It has even happened to Bryan Stevenson, a prominent human rights attorney and founder of the Equal Justice Initiative. Brief but Spectacular, *On America’s Racial Terrorism, ‘Our Silence Has Condemned Us,’* PBS NEWS HOUR, at 00:13 (Apr. 13, 2017), <https://www.pbs.org/newshour/brief/212675/bryan-stevenson>.

¹⁰¹ See, e.g., *In re Chase*, 485 P.3d 65, 65–66 (Colo. 2021); *In re Booras*, 500 P.3d 344, 346 (Colo. 2019).

¹⁰² *In re Chapman*, Complaint No. 22-2006, at 1 (Jud. Investigation Comm’n of W. Va. May 16, 2006), <http://www.courtsww.gov/legal-community/JICAAdmonishments/2006/22-2006,%20Magistrate%20Brenda%20Chapman.pdf>.

¹⁰³ *Id.* at 3.

grabbing stories told in this Article are the result of judges' friends and acquaintances who go to the press with information about what judges said, not at a work setting, but at home or other private setting.¹⁰⁴

Much of the racism I describe in the following Part is difficult to parse from structural racism and unconscious bias. Many judges themselves know that the criminal legal system is racist.¹⁰⁵ While some judges may take steps to address systemic and structural racism in the legal system, like attending unconscious bias training, others do not.¹⁰⁶ Perhaps some become judges to address racial bias and to be a fair judge righting the wrongs of the legal system.

Others may want to be judges because it not only gives them tremendous power over other people, but also because it gives them tremendous power over Black and Latino people in particular. Nevertheless, judges have tremendous power in our legal system. We have a system in which biases that are not complained about have no remedies, and even where there are objections about the conduct of the judge, we have legal rules in place that give judges the benefit of the doubt that they are neutral. Thus, whether intentional or not, the entire legal system does little to address the biases of judges.

III. THE QUIET PART OUT LOUD

The only way we know for certain what any other person is thinking is when they express it. This is, of course, also true for judges. Instances of explicit racial bias only become clear when a judge writes or says something that shows his or her thoughts. This Part documents over 50 instances of explicit racial bias by judges that my research has uncovered.¹⁰⁷ I focused only on incidents that took place between the years 2000 until 2022 to illustrate that this is not simply a problem of once upon a time. This means, for example, that older instances of explicit racial bias by judges, like Supreme Court Justice Hugo Black's membership in the Ku Klux Klan before he joined the court will not be discussed here.¹⁰⁸

¹⁰⁴ See, e.g., Jaclyn Peiser, *A Video Filled with Racist Slurs Was Taken at a Louisiana Judge's Home. She Apologized and Went on Unpaid Leave*, WASH. POST (Dec. 16, 2021, 7:33 AM), <https://www.washingtonpost.com/nation/2021/12/16/judge-michelle-odinet-racist-video-leave/>.

¹⁰⁵ See, e.g., Anna-Leigh Firth, *Most Judges Believe the Criminal Justice System Suffers from Racism*, NAT'L JUD. COLL. (July 14, 2020), <https://www.judges.org/news-and-info/most-judges-believe-the-criminal-justice-system-suffers-from-racism/>.

¹⁰⁶ For example, only 14 states held implicit bias trainings by the National Consortium on Racial and Ethnic Fairness in the Courts in 2014. *Implicit Bias Training*, NAT'L CONSORTIUM ON RACIAL & ETHNIC FAIRNESS IN THE CTS., <https://www.national-consortium.org/implicit-bias/implicit-bias-training> (last visited Apr. 18, 2023).

¹⁰⁷ See apps.

¹⁰⁸ William E. Leuchtenburg, *A Klansman Joins the Court: The Appointment of Hugo L. Black*, 41 U. CHI. L. REV. 1, 12–13 (1973).

Also omitted from this Part are instances of bias that may only be implicit and not a conscious thought about a person's race. Also not included in this Part are instances of judicial sexism, homophobia, or transphobia. I have chosen to include antisemitism and Islamophobia for two reasons. I recognize that both are discrimination based on religion, but both forms of hatred are predicated on the belief that people who adhere to these religions are members of an inferior race, regardless of whether such a thing as race even exists. This type of bias is often accompanied by racism as well. For the same reason, I have also included incidents of bias that could be described as xenophobia, where the person is nonwhite. By making these choices and limiting my research, I do not mean to suggest that sexism, homophobia, or transphobia are not significant problems in our judicial system. Of course, all types of biases against people based on immutable characteristics are wrong and should be condemned in anyone, especially judges.

I have divided into three parts the most common ways that instances of judicial racial bias come to light to those of us in the legal field—published judicial disciplinary outcomes, appellate decisions, and stories from the media. Of course, once a case makes its way into the public's awareness, say a viral video or audio recording of a judge using a racial epithet, there may be an inquiry into that judge's conduct by the state disciplinary board, and it could impact appeals of decisions by that judge. I have attempted to limit any repetition of the same incident reported in multiple arenas, but because some states shield the identity of the judge being investigated,¹⁰⁹ it is hard to accurately determine distinct incidents.

A. *Judicial Misconduct Opinions*

As discussed above, judges can face discipline when they misbehave. The sanctions can vary wildly. Judges can face mild rebukes or can face impeachment and removal from office. The American Bar Association has model, unenforceable guidelines that advise anything from private admonishments to removal from office for misbehavior.¹¹⁰

Judicial conduct commissions can be called on to address issues of racial bias by judges. Some state judicial commissions, such as the California Commission on Judicial Performance (CJP), publish reports on judicial misconduct involving various forms of bias.¹¹¹ The CJP's reports detail insults and assumptions directed towards courtroom staff, attorneys, and parties. For instance, California called out a

¹⁰⁹ Berens & Shiffman, *supra* note 65 (documenting judicial disciplinary opinions around the country, and noting that “3,613 cases from 2008 through 2018 in which states disciplined wayward judges but kept hidden from the public key details of their offenses—including the identities of the judges themselves”).

¹¹⁰ MODEL RULES FOR JUD. DISCIPLINARY ENF'T § 3, r. 17.4 (AM. BAR ASS'N 2018).

¹¹¹ See, e.g., *Annual Reports*, STATE OF CAL. COMM'N ON JUD. PERFORMANCE, https://cjp.ca.gov/annual_reports/ (last visited Apr. 18, 2023).

judge for characterizing the behavior of spitting and throwing rocks as “the kind of behavior I see in Middle Eastern clients,” and of dragging someone by the hair as “almost always a Hispanic client.”¹¹² Another judge made a joke about getting Black defendants to plead guilty by coming out to the bench in a white sheet and pointy hat.¹¹³ There were also racist comments made to courtroom players, rather than to the litigants themselves. For example, a judge told a lawyer from Ecuador to “lose the accent.”¹¹⁴ In 2017, California publicly censured a judge for a number of reasons, including commenting on a criminal defense attorney’s accent, then asking if she was a citizen of Mexico.¹¹⁵ When she replied she was an American citizen, he replied, “I wasn’t planning on having you deported.”¹¹⁶ A 2018 CJP decision publicly censured a judge after he retired due to his voluminous political, racist, anti-Muslim, anti-Black, and anti-immigrant Facebook posts.¹¹⁷

Other state judicial conduct commissions investigate and reprimand their judges. A South Dakota judge used an offensive term for Native Americans and faced consequences.¹¹⁸ A Texas judge was publicly admonished and ordered to receive 11 hours of instruction after saying that a Black defendant who had been arrested for public intoxication should “be hung . . . with a fucking noose around his neck.”¹¹⁹ A West Virginia judge told racist jokes and sent other inappropriate messages to a member of the public.¹²⁰ According to a report, a judge in Colorado allegedly referred to his courtroom clerk as “the little Mexican.”¹²¹ A Massachusetts judge made derogatory comments about immigrants at the border in a Facebook

¹¹² Public Admonishment of Judge Nancy Pollard, 2011 Ann. Rep. 17, 17–18 (Cal. Comm’n on Jud. Performance July 13, 2011).

¹¹³ Public Admonishment of Judge Harvey Giss, 2011 Ann. Rep. 16, 17 (Cal. Comm’n on Jud. Performance Mar. 16, 2011); *see also* Public Admonishment of Judge Richard S. Flier (Cal. Comm’n on Jud. Performance May 30, 1995), https://cjp.ca.gov/wp-content/uploads/sites/40/2016/08/Flier_95.pdf (publicly admonishment judge for calling an adult Black criminal defendant a “good boy”).

¹¹⁴ *In re Van Voorhis*, 48 Cal. 4th CJP Supp. 257, 276 (Cal. Comm’n on Jud. Performance 2003).

¹¹⁵ *In re Kreep*, 5 Cal. 5th CJP Supp. 1, 27 (Cal. Comm’n on Jud. Performance 2017).

¹¹⁶ *Id.*

¹¹⁷ Public Censure of Former Commissioner Joseph J. Gianquinto, 2018 Ann. Rep. 33, 33–34 (Cal. Comm’n on Jud. Performance Aug. 22, 2018).

¹¹⁸ *In re Fuller*, 798 N.W.2d 408, 415, 421 (S.D. 2011).

¹¹⁹ *In re Baldwin*, Pub. Reprimand & Ord. of Additional Educ., CJC Nos. 19-1291, 19-1160, at 1–2, 4 (Tex. Comm’n on Jud. Conduct Apr. 9, 2021), <http://www.scjc.texas.gov/media/46829/baldwin19-1297-19-1160pubrep-oe4921.pdf>.

¹²⁰ Public Admonishment of Charles N. Poe, Complaint No. 17-2021, at 2 (Jud. Investigation Comm’n of W. Va. Mar. 12, 2006), <http://www.courtswv.gov/legal-community/JICAdmonishments/2021/17-2021MagCharlesPoe.pdf>.

¹²¹ *In re Chase*, 485 P.3d 65, 65–66 (Colo. 2021).

post.¹²² A judge in North Carolina made disparaging comments about Mexican men's treatment of women in a case involving a man of Mexican heritage.¹²³ The judge ruled against the man in a civil family court matter.¹²⁴

In Mississippi, a judge was found to have been in violation of judicial canons in that state for telling Black attorneys that “all you African-Americans can go to hell” during a drug court conference in which she was in a breakout session.¹²⁵ A different Mississippi judge was removed from office, even though he'd already lost his bid for re-election, for assaulting a Black man and calling him the N-word.¹²⁶

A South Carolina magistrate judge said that one of the courthouse clerks was “dating [N-word]s,” so, “there was no telling what we might catch using the same bathroom as her.”¹²⁷ And although the Louisiana Supreme Court found that a judge there harbored a bias “against African Americans,” the court characterized it as “implicit bias” despite the fact that the judge said a number of things that suggested he was consciously thinking about the race of Black litigants, like “African American[s] talk about all kind of crazy things at all times. So you don't know when they mean anything. You don't even know what—if they talk to you about certain thing[s] this minute, the next minute, they talk to you about something else.”¹²⁸

While I have collected dozens of examples of judicial censure or admonition for racially charged comments,¹²⁹ state judicial conduct commissions rarely sanction judges despite thousands of complaints filed every year.¹³⁰ Oklahoma, for example, has not publicly sanctioned any judges in over a decade for any reason.¹³¹ This is despite the fact that at least one judge there used a derogatory term for non-citizens.¹³² It seems unlikely that judges there have made no transgressions worthy of discipline. There are a number of potential reasons for this lack of public discipline.

¹²² Duty to Report Perceived Judicial Misconduct, CJE Op. No. 2021-01 (Mass. Comm. on Jud. Ethics July 21, 2021), <https://www.mass.gov/opinion/cje-opinion-no-2021-01>.

¹²³ *In re Badgett*, 666 S.E.2d 743, 745 (N.C. 2008).

¹²⁴ *Id.*

¹²⁵ Miss. Comm'n on Jud. Performance v. Boland, 975 So. 2d 882, 884–85 (Miss. 2008).

¹²⁶ Miss. Comm'n on Jud. Performance v. Weisenberger, 201 So. 3d 444, 446–47, 450–52 (Miss. 2016).

¹²⁷ *In re Hutchins*, 661 S.E.2d 343, 345 (S.C. 2008).

¹²⁸ *In re Gremillion*, 204 So. 3d 183, 190, 194 (La. 2016).

¹²⁹ See app. B.

¹³⁰ Michael Berens & John Shiffman, *Emboldened by Impunity: With 'Judges Judging Judges,' Rogues on the Bench Have Little to Fear*, in REUTERS, THE TEFLON ROBE, *supra* note 64 (explaining that judicial conduct commissions in 38 states “issue private sanctions when judges misbehave”); see also GRAY, *supra* note 54, at 91–98 tbl.II.

¹³¹ Berens & Shiffman, *supra* note 130.

¹³² *Judge Refuses to Recuse Himself from Trial, Says He's Not a Racist*, NEWS 9 (Dec. 13, 2010, 11:26 AM), <https://www.news9.com/story/5e34fe2ae0c96e774b368f69/judge-refuses-to-recuse-himself-from-trial-says-hes-not-a-racist>.

The Illinois Judicial Inquiry Board misplaced or lost hundreds of complaints against judges.¹³³ Some commissions also chose to sanction on other grounds to avoid embarrassing a judge.¹³⁴ And many commissions are underfunded and understaffed.¹³⁵ Understaffing of these commissions, indifference to these important issues, and general neglect to the discipline of judges allows judges behavior to go uncorrected. It allows bad judges to keep judging, and ultimately means that the racism of judges is sanctioned and allowed to continue. Of course, this hurts no one more than people of color who must appear before the racist tribunals.

Even when disciplinary bodies do take action against judicial bias, they often take only symbolic steps—like a letter of reprimand—that allow judges to remain on the bench. For example, a New Jersey judge made antisemitic and racist quips from the bench and was admonished for doing so,¹³⁶ served several more years as a judge, retired at mandatory retirement age, and then was celebrated in the press for his sense of humor.¹³⁷ As of 2023, he was an attorney at a law firm that lauds his time on the bench.¹³⁸ He prospers, the law firm benefits, and racism endemic to our legal system continues to benefit whiteness.

B. *Appellate Courts*

In courts of record, anything a judge says in open court during the pendency of a case is recorded by an electronic recording system or a live court reporter.¹³⁹ As a result, what is said about a person's race during trial or jury selection is recorded. When arguments are made at the trial level that a judge has expressed a bias or made a biased observation in jury selection, courts of appeals have the opportunity to decide whether the trial judge's conduct warrants relief from the higher court.¹⁴⁰ Such complaints are rare.

¹³³ Berens & Shiffman, *supra* note 130.

¹³⁴ See, e.g., GRAY, *supra* note 54, at 47 (discussing Miss. Jud. Performance Comm'n v. Just. Ct. Judge, 580 So. 2d 1259, 1264 (Miss. 1991)).

¹³⁵ See, e.g., Kent Faulk, *Disorder in the Court: Alabama Commission that Investigates Misconduct on the Bench Faces Loss of Only Investigator*, ALABAMA.COM (Aug. 6, 2013, 7:18 PM), https://www.al.com/spotnews/2013/08/alabama_judicial_inquiry_commi.html.

¹³⁶ *In re Wertheimer*, Formal Complaint, ACJC No. 2009-245, at 2 (N.J. Advisory Comm. on Jud. Conduct Aug. 5, 2009), <https://www.njcourts.gov/sites/default/files/acjc/WertheimerComplaint.pdf>, *dismissed*, 13 A.3d 355 (N.J. 2011).

¹³⁷ Julia Terruso, *Union County Judge, Known for Sense of Humor, Retires After 28 Years*, NJ.COM (Feb. 12, 2012, 1:30 PM), https://www.nj.com/news/2012/02/union_county_superior_court_ju.html.

¹³⁸ *William L'E. Wertheimer*, DUGHI, HEWIT & DOMALEWSKI, <https://www.dughihewit.com/attorneys/william-le-wertheimer/> (last visited Apr. 18, 2023).

¹³⁹ Legal Info. Inst., *Court Reporter*, CORNELL L. SCH., <https://www.law.cornell.edu/wex> (last visited Apr. 18, 2023).

¹⁴⁰ *Norris v. United States*, 709 F. App'x 952, 957 (11th Cir. 2017).

Analysis of whether the bias exposed is worthy of overturning a judge's ruling is done under legal standards that grant deference to judges' decisions.¹⁴¹ At times, courts of appeals do not use words that accuse the judge of racial bias or prejudice, but instead use other words to describe the conduct.

One would expect, then, for there to be a great deal of opportunities for courts of appeals to address racial bias in decision-making. However, we know that appellate courts do not address every instance of racial discrimination or errant comment made by a trial judge. Not even close. Not every case gets taken up on appeal. When a party prevails or gets a requested resolution like a settlement, there would be no avenue for appeal.¹⁴² Another reason is that appellate courts, in general, only address issues preserved on the record.¹⁴³ So if trial counsel fails to make an objection, some judicial racism may go unchallenged. Unrepresented people may not know that they should appeal or challenge a ruling. There are several instances where a racist remark by a judge may not get objected to by either party. An attorney too afraid of the consequences of offending the judge in that case or future cases may make a quick calculus not to raise the issue. A party may be friendly with or fond of the judge and may not want to hurt the judge's feelings by raising an issue that might tarnish the judge's reputation or harm their relationship. An attorney who was unbothered by the comment or agrees with the judge is unlikely to raise the issue and preserve it for appeal.¹⁴⁴ Further, the lawyer or party may not be sophisticated enough to recognize the meaning of the offensive remark or comment. Indeed, one judge in Florida used a relatively obscure Italian slur for Black people in a case that came to light.¹⁴⁵ It is anyone's guess how long he had used the term in court before anyone understood the word's meaning.

I have documented a surprisingly small number of courts of appeals cases from across the country in this Article that tackle racial bias by a trial judge.¹⁴⁶ I have a few theories as to why this might be. First, courts of appeals may decide to focus rulings on a different legal issue to protect a judge's reputation.

¹⁴¹ See generally Richard L. Marcus, *Slouching Toward Discretion*, 78 NOTRE DAME L. REV. 1561 (2003); Robert G. Bone, *Who Decides? A Critical Look at Procedural Discretion*, 28 CARDOZO L. REV. 1961 (2007).

¹⁴² See Uphoff, *supra* note 87, at 536–37; Bone, *supra* note 141, at 1981–85.

¹⁴³ See FED. R. APP. P. 10.

¹⁴⁴ See Uphoff, *supra* note 87, at 536–37.

¹⁴⁵ Aris Folley, *Miami Judge Faces Suspension for Using Racial Slur to Refer to Black Defendant*, HILL (May 22, 2018, 10:35 AM), <https://thehill.com/blogs/blog-briefing-room/news/388758-miami-judge-faces-suspension-for-using-racial-slur-to-refer-to>; *In re Millan*, Notice of Formal Charges No. SC18-775, at 1–2 (Fla. Jud. Qualifications Comm'n May 21, 2018), https://efactssc-public.flcourts.org/casedocuments/2018/775/2018-775_notice_84109_notice2dformal20charges.pdf.

¹⁴⁶ See app. A.

Courts of appeals are deferential towards judges. In a Missouri case, a judge was alleged to have not fairly considered a *Batson* challenge¹⁴⁷ because the judge claimed he did not know who was white and who was Black (despite the fact that the judge presided over the first trial).¹⁴⁸ In denying the *Batson* challenge, the appellate court excluded evidence that the same judge had previously made a racist joke amongst other judges about how there were not any Black judges to cook for the white judges.¹⁴⁹ If one appellate court is willing to give a judge who made jokes at the expense of Black judges the benefit of the doubt that he cannot observe whether a person is Caucasian or African-American, how many more courts have simply sidestepped allegations of racism altogether?

In another case, the Eleventh Circuit failed to reverse a conviction and vacate a life sentence handed out by a federal judge who was recorded by his mistress discussing the case and the Black defendant's race.¹⁵⁰ According to the court, the district court did not err when it found that the defendant "failed to prove . . . there existed 'a serious risk of actual bias'" that would violate his rights.¹⁵¹ The court also affirmed the same trial court's decision not to credit testimony that the judge used the N-word, despite the other evidence of his racial bias.¹⁵² In this 2017 opinion, the court omitted that the district court judge was convicted of crimes himself, that the defendant was convicted of forcing mostly white women into prostitution, and significant portions of the conversation between the judge and his mistress that put the conversation in context.¹⁵³ Instead, the Eleventh Circuit defended the disgraced judge's words by pointing out that he was not the first person in the conversation to mention race.¹⁵⁴ The Eleventh Circuit's unwillingness to fully engage with the facts in order to protect the reputation of the judge and the system at the expense of someone sentenced by that judge is emblematic of the issues of racism in the criminal legal system.

On occasion, courts of appeals tackle issues of racism without naming it as racism. In a District of Columbia criminal case, a judge exposed her biases against

¹⁴⁷ Under *Batson v. Kentucky*, the Equal Protection Clause prohibits using peremptory strikes to exclude jurors on the basis of race. 476 U.S. 79, 89 (1986).

¹⁴⁸ *Smulls v. State*, 71 S.W.3d 138, 147 (Mo. 2002).

¹⁴⁹ *Id.* at 148–49.

¹⁵⁰ *Norris v. United States*, 709 F. App'x 952, 954–55, 957–58 (11th Cir. 2017).

¹⁵¹ *Id.* at 958 (quoting *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868, 884 (2009)).

¹⁵² *Id.*

¹⁵³ The *Norris* defendant had previously appealed the district court judge's ruling in 2016. *Norris v. United States*, 820 F.3d 1261 (11th Cir. 2016), *aff'd in part, rev'd in part Norris*, 709 F. App'x 952. In its 2016 opinion, the Eleventh Circuit provided more context surrounding the judge's alleged racial bias and mental incompetence, and remanded the case for an evidentiary hearing to consider whether the judge was actually biased against the defendant. *Id.* at 1263–64, 1266.

¹⁵⁴ *Norris*, 709 F. App'x at 957.

people from El Salvador after finding an accused Salvadoran man guilty in a bench trial.¹⁵⁵ After finding the defendant guilty of misdemeanor child sex abuse, the judge spoke about her belief that men from El Salvador sexualize girls at a young age.¹⁵⁶ While the District of Columbia Court of Appeals did reverse the trial judge, the opinion never uses the words race, racism, or xenophobia but instead discusses the case in terms of bias and whether an objective person might think that the judge may have ruled based on biases.¹⁵⁷ The appellate court goes out of its way to protect the judge's feelings and her reputation in its ruling by stating, "we do not draw any conclusion that the judge had an actual bias which influenced the verdict, or that the musings were not well intentioned. . . ."¹⁵⁸ Words of comfort or apology were not offered to the man convicted by the trial judge. The court's empathy towards the biased judge over the man convicted and sentenced by her is troubling.

In an unpublished opinion, the Court of Appeals for the state of Michigan remanded a case for a new sentencing hearing before a different judge after a trial judge sentenced a Salvadoran man for sexual assault far higher than what the sentencing guidelines called for.¹⁵⁹ The ruling was based in part on a statement the trial judge made at sentencing; the trial judge stated: "You, sir, are fodder for the people who believe that a wall should be built to keep Mexicans out of this country."¹⁶⁰ The appellate court made clear that it did not consider the judge's comments proof that "race, ethnicity, alienage, [or] national origin was used to impose [the] sentence" but found the comments "troubling."¹⁶¹ Instead, the court seemed primarily to remand the case because the prosecutor did not oppose a new sentencing hearing.¹⁶² One judge filed a concurrence in the case because of "the severity of the trial court's misconduct in discussing the race, ethnicity, nationality, sexuality, or religious beliefs of a criminal defendant while passing sentence."¹⁶³

The concurring judge wrote that the trial judge's conduct "makes a mockery of our justice system and the fundamental rights critical to a civilized people. This Court has a duty to take note of and stand up to such abuses of authority."¹⁶⁴ That only one judge from the panel was willing to point out how damaging the conduct of the trial judge was, is disappointing to say the least.

¹⁵⁵ *Mejia v. United States*, 916 A.2d 900, 901–02 (D.C. 2007).

¹⁵⁶ *Id.*

¹⁵⁷ *Id.* at 903.

¹⁵⁸ *Id.*

¹⁵⁹ *People v. Deleon*, No. 337134, 2019 WL 637793 (Mich. Ct. App. Feb. 14, 2019).

¹⁶⁰ *Id.* at *4.

¹⁶¹ *Id.*

¹⁶² *Id.* at *6.

¹⁶³ *Id.* at *6 (Krause, J., concurring).

¹⁶⁴ *Id.*

I found only a few cases in which a court expressed outrage about a white judge's treatment of a Black litigant. In an opinion issued in 2021, a panel of appellate judges in New York reduced a man's sentence after the white judge called a 41-year-old Black man "retarded" and suggested that his brain was not fully developed.¹⁶⁵ When the man called the judge racist, the judge ordered him gagged with masking tape.¹⁶⁶ The appellate court called the judge's comments "utterly racist," with "no place in our system of justice."¹⁶⁷ The appellate court also referred to the judge's order that the man be gagged as "draconian," and the man was resentenced to a five-year sentence from the previous sentence of 15 years.¹⁶⁸

In 2020, the Supreme Court denied certiorari to a Jewish man convicted of murder and sentenced to death.¹⁶⁹ The Texas judge who presided over his trial was both racist and antisemitic.¹⁷⁰ Years after the 2003 trial, when the judge was no longer on the bench, a news outlet reported that he regularly used the N-word to refer to Black defendants and had created a trust for his children which included a clause that kept them from receiving the money if they married anyone who was nonwhite or non-Christian.¹⁷¹ Additionally, shortly after the defendant's trial, the judge referred to him as a "fucking Jew."¹⁷² On a subsequent writ of habeas corpus application, a Texas appellate court granted the man a new trial in 2022.¹⁷³

With so few cases since 2000 where courts of appeals have addressed racism from trial courts, there must be a reason. Of course, most judges rule carefully and avoid slurs and offensive language. As discussed earlier, every instance of racism in a courtroom will not be objected to and taken up to a court of appeals. Also, for an appellate court to take up an issue, a party must file an appeal and brief the issue. So, choices by counsel may limit the number of cases heard by appellate courts.

But, nevertheless, there exists a discrepancy between the number of cases ruled on by judges who have been disciplined because of complaints against them and the appellate courts who address the issue that suggests that appellate courts are not being asked to rule on the issue or are avoiding it in their opinions. Even when they do rule, courts sometimes decide cases on other grounds. When courts avoid

¹⁶⁵ *People v. Johnson*, 150 N.Y.S.3d 401, 409 (N.Y. App. Div. 2021).

¹⁶⁶ *Id.* at 408.

¹⁶⁷ *Id.* at 409.

¹⁶⁸ *Id.* at 409–10.

¹⁶⁹ *Halprin v. Davis*, 140 S. Ct. 1200 (2020).

¹⁷⁰ *Id.* at 1200–01 (Sotomayor, J., statement respecting denial of certiorari).

¹⁷¹ Naomi Martin, *White, Straight and Christian: Dallas County Candidate Admits Rewarding His Kids if They Marry Within Race*, DALL. MORNING NEWS (May 18, 2018, 5:24 PM), <https://www.dallasnews.com/news/2018/05/18/white-straight-and-christian-dallas-county-candidate-admits-rewarding-his-kids-if-they-marry-within-race/>.

¹⁷² *Halprin*, 140 S. Ct. at 1200 (Sotomayor, J., statement respecting denial of certiorari).

¹⁷³ *Ex Parte Halprin*, No. WR-77,175-05, 2022 WL 1501022 (Tex. Crim. App. May 11, 2022) (not designated for publication).

squarely addressing allegations of racism by judges, appellate judges protect and reinforce white supremacy in the trial courts.

Courts of appeals judges who sit in judgment of trial court judges are, of course, judges. It is not hard to imagine that they relate to and empathize with the judges whose conduct and reasoning they are reviewing. Appellate judges are disproportionately white,¹⁷⁴ and may empathize less with the litigant and their plight than with the judge. Courts of appeals judges also are part of the same work community as trial judges. They may work in the same building, attend the same conferences, and are members of the same profession. They share socioeconomic status and educational background.¹⁷⁵ They likely shared similar career paths.¹⁷⁶ They may know each other socially as a result of their shared identities, professions, and income.

Courts of appeals can avoid ruling on an issue of judicial bias if they can find another legal issue on which to reverse. It may be much easier intellectually for a judge to find that a colleague committed an error in legal reasoning or applied the wrong standard than to recognize that they operated because of racial animus or unconscious bias. Judges have myriad reasons not to find that their colleague committed an error, not just in legal reasoning, but as a human being. Judges have many reasons to give each other the benefit of the doubt.

C. *Ripped from the Headlines Stories*

I have documented well over a dozen instances of racial bias just from news stories that have taken place since the year 2000.¹⁷⁷ When these newsworthy cases are combined with the instances of racial bias from judicial misconduct decisions and published appellate decisions, there are scores of instances of demonstrable explicit racial bias by judges in American courts.

In December 2021, a news story broke about a Louisiana criminal court judge after a video of her surfaced of she and her family watching a security video of a car break-in at her home.¹⁷⁸ She and her children are heard using the N-word to

¹⁷⁴ Democracy & Gov't Reform Team, *supra* note 11.

¹⁷⁵ See generally Michele Benedetto Neitz, *Socioeconomic Bias in the Judiciary*, 61 CLEV. ST. L. REV. 137 (2013).

¹⁷⁶ Lawyers who used to work for the government are overrepresented on the bench. Clark Neily, *Are a Disproportionate Number of Federal Judges Former Government Advocates?*, CATO INST. (May 27, 2021), <https://www.cato.org/study/are-disproportionate-number-federal-judges-former-government-advocates>.

¹⁷⁷ See app. C.

¹⁷⁸ Peiser, *supra* note 104; Leslie Turk, *Racist Remarks Captured in Video of Lafayette Judge's Family Cheering Footage of Foiled Burglary*, CURRENT (Dec. 13, 2021), <https://thecurrentla.com/2021/racist-remarks-captured-in-video-of-lafayette-judges-family-cheering-footage-of-foiled-burglary/>; see also *In re Odinet*, 328 So. 3d 1166 (La. 2021).

describe the Black alleged perpetrator of the car break-in outside of her home.¹⁷⁹ It is clear from the video that the judge used the N-word as she observed the confrontation between her adult children and the man, and then again repeated the slur as the family laughs at the security video of the incident.¹⁸⁰ At one point she says, “it’s a [N-word], like a roach.”¹⁸¹ The judge claimed no memory of her comments and blamed sedatives for her words.¹⁸² She eventually resigned from her position.¹⁸³

But unfortunately, that is not the only story about judges that made headlines in the news for racism. A state district court judge in Texas used racial slurs to describe Mexicans in his state in 2020.¹⁸⁴ A white judge in Louisiana in 2020 referred to a deputy and a court clerk by the N-word.¹⁸⁵ A white Colorado judge also used the N-word in a conversation with her court staff in 2020.¹⁸⁶ A probate judge in Alabama is alleged to have used many different racial slurs, including mouthing the N-word to his clerk, though he denies having done so.¹⁸⁷ He also implied that the murder of George Floyd by police was justified and that Floyd “pretty much got what he deserved.”¹⁸⁸

A judge in Pittsburgh referred to a black juror as “Aunt Jemimah” during a 2020 trial.¹⁸⁹ A Jacksonville, Florida, judge said that Black people should “go back to Africa.”¹⁹⁰ A different Florida judge for the Miami-Dade Circuit called a Black

¹⁷⁹ Peiser, *supra* note 104.

¹⁸⁰ *Id.*

¹⁸¹ *Id.*

¹⁸² *Id.*

¹⁸³ Vimal Patel, *Louisiana Judge Who Used Racial Slur in Video Resigns*, N.Y. TIMES (Jan. 1, 2022), <https://www.nytimes.com/2022/01/01/us/michelle-odinet-resigns-racial-slur.html>.

¹⁸⁴ Morris, *supra* note 13; *see also In re Luitjen*, Pub. Admonition & Ord. of Additional Educ. CJC No. 20-0468 (Tex. Comm’n on Jud. Conduct Dec. 4, 2020), <http://www.scjc.texas.gov/media/46826/luitjen20-0468pubadm-oae-12420.pdf>.

¹⁸⁵ Beachum, *supra* note 14.

¹⁸⁶ O’Kane, *supra* note 15; *see also In re Chase*, 485 P.3d 65, 65–66 (Colo. 2021).

¹⁸⁷ Cassens Weiss, *supra* note 16; *see also Jinks v. Ala. Jud. Inquiry Comm’n*, No. 1210133, 2022 Ala. LEXIS 103, at *15–16 (Ala. Oct. 21, 2022).

¹⁸⁸ Cassens Weiss, *supra* note 16.

¹⁸⁹ Mark Scolforo, *Judge Faces Ethics Charges Over Racist, Demeaning Comments*, ABC NEWS (Aug. 12, 2020, 1:12 PM), <https://abcnews.go.com/US/wireStory/judge-faces-ethics-charges-racist-demeaning-comments-72335001>; *In re Tranquilli*, Complaint No. 4 JD 2020, at 5 (Pa. Ct. of Jud. Discipline Aug. 12, 2020), <https://www.pacourts.us/Storage/media/pdfs/20210604/133958-file-9822.pdf>.

¹⁹⁰ Hannan, *supra* note 18; *see also In re Husley*, Notice of Formal Charges, No. SC16-1278, at 3 (Fla. Jud. Qualifications Comm’n July 19, 2016), https://efactssc-public.flcourts.org/casedocuments/2016/1278/2016-1278_notice_79144.pdf, *voluntarily dismissed*, No. SC16-1278, 2017 Fla. LEXIS 277 (Fla. 2017).

man a racial slur and, when confronted, resigned from the bench.¹⁹¹ An Ohio judge referred to COVID-19 as the “China Virus.”¹⁹² A judge in Washington state said disparaging things about the father of a black man killed by police.¹⁹³

A Kansas judge referred to a Black man as “boy” and used sexist terms towards women in a different context—he blamed his conduct on poor sleep due to a back problem.¹⁹⁴ A California judge made remarks to a Black defendant about “shucking and jiving.”¹⁹⁵ A 2006 article about New York’s secondary court system documented a judge asking a Lebanese woman if she was a terrorist, and a different judge using the N-word in open court to explain to a Black defendant, who the village judge had convicted in a bench trial, that the word “colored” used by a witness was not offensive.¹⁹⁶ A Wisconsin judge used derogatory terms, including “[N-word], wops, and [J]ews,” to describe a diverse neighborhood.¹⁹⁷ An Indiana judge used a racial slur in a dispute involving the judge and her ex-girlfriend, who is Black.¹⁹⁸ A

¹⁹¹ David Ovalle, *Miami Judge Who Used an Obscure Racial Slur Resigns from the Bench*, MIA. HERALD (July 13, 2018, 8:04 PM), <https://www.miamiherald.com/news/local/article214845940.html>; see also *In re Millan*, Notice of Formal Charges, No. SC18-775, at 2 (Fla. Jud. Qualifications Comm’n May 21, 2018), https://efactssc-public.flcourts.org/casedocuments/2018/775/2018-775_notice_84109_notice2dformal20charges.pdf, *voluntarily dismissed*, No. SC18-775, 2018 WL 4179591 (Fla. 2018).

¹⁹² Shaffer, *supra* note 20.

¹⁹³ Associated Press, *Judge Who Made Racist Comments on Hot Mic Intends to Retire*, SEATTLE TIMES (June 4, 2021, 5:12 AM), <https://www.seattletimes.com/seattle-news/washington-judge-who-made-racist-comments-on-hot-mic-says-hell-retire/>; see also *In re Zimmerman*, Statement of Charges, CJC No. 10260-F-193, at 2 (Wash. Comm’n on Jud. Conduct Dec. 3, 2021), https://www.cjc.state.wa.us/materials/activity/public_actions/open_cases/10260SoCFinal.pdf.

¹⁹⁴ Tim Carpenter, *Judge Accused of Bigotry, Racism in Disciplinary Case Seeks Mercy from Supreme Court*, KAN. REFLECTOR (Oct. 30, 2020, 6:22 PM), <https://kansasreflector.com/2020/10/30/judge-accused-of-bigotry-racism-in-disciplinary-case-seeks-mercy-from-supreme-court/>; Associated Press, *Kansas Judge Accused of Racial Bias with Cases Under Review*, NBC NEWS (Dec. 6, 2019, 9:12 AM), <https://www.nbcnews.com/news/us-news/kansas-judge-accused-racial-bias-cases-under-review-n1097061>; see also *In re Cullins*, 481 P.3d 774, 776–77 (Kan. 2021).

¹⁹⁵ *Ventura County Judge Censured for Offensive Remarks*, AP NEWS (Mar. 25, 2020), <https://apnews.com/article/censures-ca-state-wire-california-courts-b71b52b2cd144f058db920400af9a260>; see also Public Censure of Judge Jeffrey Bennett, 2020 Ann. Rep. 37, 37 (Cal. Comm’n on Jud. Performance Mar. 25, 2020).

¹⁹⁶ William Glaberson, *In Tiny Courts of N.Y., Abuses of Law and Power*, N.Y. TIMES (Sept. 25, 2006), <https://www.nytimes.com/2006/09/25/nyregion/25courts.html>.

¹⁹⁷ Daniel Bice, *Judge’s Racial, Ethnic Slurs Set off a Tempest*, MILWAUKEE J. SENTINEL (June 27, 2010), <https://archive.jsonline.com/watchdog/noquarter/97280534.html/>; see also Opinion, *Hard to See the Point*, MILWAUKEE J. SENTINEL (July 2, 2010), <https://archive.jsonline.com/news/opinion/97700364.html/>.

¹⁹⁸ Jeff D. Gorman, *Judge Gets Lifetime Ban for Bad Calls and Slur*, COURTHOUSE NEWS SERV. (Feb. 17, 2015), <https://www.courthousenews.com/judge-gets-lifetime-banfor-bad-calls-and-slur/>; see also *In re Bennington*, 24 N.E.3d 958, 964 (Ind. 2015).

Massachusetts judge retired with a six-figure pension after referring to a litigant as a “field [N-word]” in a conversation with another judge.¹⁹⁹ A South Carolina judge, who presided over a bond decision in the racially-motivated shooting at a Black church by a white man,²⁰⁰ had been previously censured in 2003 for use of the N-word.²⁰¹ He had used the word in addressing a Black defendant on his motion for bail reduction.²⁰²

It is not just state court judges who make headlines. Federal judges have embarrassed the bench too. Students reported a federal judge in Texas who stated publicly that Black and Latino people are more violent than white people during an event at the University of Pennsylvania in 2013.²⁰³ A federal judge in Montana used his court email to circulate a racist joke about President Obama in 2012.²⁰⁴ He claimed that he circulated the email, which he had received from his brother, because he was not a fan of then-President Obama, and not because he was racist.²⁰⁵

News reports of judges’ racist conduct may illustrate that the system for reporting judges has failed to be accessible. My research found cases that started with a

¹⁹⁹ Kevin Rothstein, *5 Investigates Obtains Secret Report into Judge’s Use of Racial Slur*, WCVB (Mar. 16, 2017, 6:30 PM), <https://www.wcvb.com/article/5-investigates-obtains-secret-report-into-judges-use-of-racial-slur/9143783>; see also Press Release, Massachusetts Commission on Judicial Conduct Resolves Complaint Against Retired Judge Michael C. Creedon Through Agreed Disposition (Oct. 17, 2016), <https://www.mass.gov/news/massachusetts-commission-on-judicial-conduct-resolves-complaint-against-retired-judge-michael-c-creedon-through-agreed-disposition>.

²⁰⁰ Keith O’Shea, Darran Simon & Holly Yan, *Dylann Roof’s Racist Rants Read in Court*, CNN (Dec. 14, 2016, 10:28 AM), <https://www.cnn.com/2016/12/13/us/dylann-roof-murder-trial/index.html>. At the 2015 pretrial hearing, the judge described victims on both sides of the church massacre. Abby Phillip, *The Charleston Magistrate Who Sparked a Debate About Who Is a Victim*, WASH. POST (June 21, 2015), https://www.washingtonpost.com/national/the-charleston-magistrate-who-sparked-a-debate-about-who-is-a-victim/2015/06/21/ef340330-184a-11e5-93b7-5eddc056ad8a_story.html (reporting that the judge opened the bond hearing with a statement that “[w]e have victims, nine of them. But we also have victims on the other side There are victims on this young man’s side of the family”).

²⁰¹ Steve Almasy, *Church Shooting Judge Used N-Word in Court, Received Reprimand*, CNN (June 20, 2015, 2:55 PM), <https://www.cnn.com/2015/06/19/us/church-shooting-judge-reprimand/index.html>; see also *In re Gosnell*, 621 S.E.2d 659 (S.C. 2005).

²⁰² *In re Gosnell*, 621 S.E.2d at 660–61.

²⁰³ Bronner, *supra* note 17; see also *In re Charges of Judicial Misconduct*, 769 F.3d 762, 773–75 (D.C. Cir. 2014), *aff’d*, *In re Complaint of Judicial Misconduct*, C.C.D. No. 14-01, at 3, 15 (U.S. Comm. on Jud. Conduct & Disability Feb. 19, 2015), <https://www.uscourts.gov/sites/default/files/ccd-14-01order-final-02-19-15.pdf>.

²⁰⁴ Bill Mears, *Judge Apologizes for Forwarding a Racist E-Mail Aimed at Obama*, CNN (Mar. 1, 2012, 9:18 PM), <https://www.cnn.com/2012/03/01/justice/montana-judge-racist-message/index.html>; see also *In re Complaint of Judicial Misconduct*, 751 F.3d 611, 619–21 (U.S. Comm. on Jud. Conduct & Disability Jan. 17, 2014).

²⁰⁵ Mears, *supra* note 204.

report to the media rather than the applicable disciplinary body. A benefit for an individual of going to the media, as opposed to a disciplinary body, about a judge who has said or done something racist, is anonymity. A reporter is more interested in proof than identifying the person reporting the conduct, whereas a disciplinary board often allows the accused person to confront their accuser, so the identity of the person making the accusation is shared with the judge.²⁰⁶ A person who wants some accountability for a judge who reports to a newspaper or television outlet does not have to worry about retaliation from the judge or an institutional player like a prosecutor or defender's office. And in most instances, the media has little incentive to protect the judge's reputation, the way a colleague sitting on another court or on a disciplinary board might. Similarly, going to the media delivers much quicker results than an opaque and slow disciplinary process. It should worry anyone who cares about fairness, justice, or the integrity of the system that the media is often a better option than our current judicial disciplinary system for those who want to report racially offensive behavior by a judge.

Despite the advantages offered by going to the media to report judicial bias, reliance on news media for reporting judicial bias is not a sufficient solution. For an instance of racial bias to make headlines, the media must know about the allegation of bias. However, not every jurisdiction allows cameras in courthouses.²⁰⁷ Most run-of-the-mill cases are hardly worthy of news attention and would not warrant reporters or even spectators from the general public. In any event, just like complaints, for the media to learn of a story involving a judge, someone must alert the media to the story. Fear of repercussions from the person tipping off the media may exist, depending on the role of the person reporting, especially considering that in most cases there are only a finite number of people in the courtroom—the litigants, their attorneys if the party is represented by counsel, their families, and courtroom staff. Additionally, an individual who has witnessed racially biased conduct or statements by a judge may not possess any familiarity with reaching out to the media, may not want attention, may agree with the behavior, or lack the necessary motivation to report it.

²⁰⁶ See Gray, *supra* note 55, at 416–17 (discussing judges' due process rights in judicial disciplinary proceedings); see also IAALS, *supra* note 65, at 13 (noting that, while "total anonymity precludes asking questions of, or providing feedback to, complainants, it protects vulnerable complainants," and discussing numerous examples of individuals who were "unwilling to complain without anonymity or, at a minimum, an assurance of confidentiality in the early stages of the investigation").

²⁰⁷ See, e.g., FED. R. CRIM. P. 53 (prohibiting broadcasting and taking photographs in criminal proceedings in federal courts). *But see* SARAH J. ECKMAN, CONG. RSCH. SERV., R44514, VIDEO BROADCASTING FROM THE FEDERAL COURTS: ISSUES FOR CONGRESS 10 (2019) (noting that most state courts and a few federal district courts and circuit courts allow recordings "under certain, limited circumstances").

Altogether I have documented over two dozen media reports of instances of racial bias by judges since 2000. We should assume, however, even when taken together, these headline-grabbing stories only represent a tiny fraction of the judges who hold racial bias. There are stories about judges saying offensive things left out of this discussion because the judges did not clearly show explicit bias.²⁰⁸ It is also worth explaining that other types of bias, like homophobia or misogyny, have also been shown amongst judges, but were not included in this discussion of racial bias.²⁰⁹ As suggested earlier, most judges should be savvy enough not to say their racist thoughts aloud.

Some will argue that this is a very small number, especially when one considers that there are tens of thousands of judges in the United States in state and federal courts.²¹⁰ But this misses the point. Even one of these incidents seriously undermines our understanding of “justice,” and we know that these judges that have been caught expressing racially biased thoughts do not represent the full number of judges who have these thoughts and impulses but are mature and sophisticated enough to resist expressing them aloud. Further, there are likely people in every courthouse around the nation who protect the reputation of judges out of affinity, loyalty, or fear. The fact that there are dozens of these stories of judicial racism should alarm everyone.

When incidents of racial bias take place in a courtroom or by a judge in front of others and it goes unreported, the behavior runs the risk of being reinforced. The judge may take that lack of shock or outrage to mean that the conduct was acceptable and may continue to engage in it. The judge might believe that, with no objections, everyone agrees with him or her and the beliefs are further engrained. Yet, in reality, the judicial officer’s respectability, power, and prestige may make court staff or the public too afraid to confront the topic. Or worse, the hearers of the words expressed may believe the statements about the subordinated racial group made by this respected and influential figure as truth. Both phenomena serve only to reinforce white supremacy and further subjugate people of color. White culture benefits

²⁰⁸ See, e.g., John Seasley, *Cook County Judge, Criticized for ‘Insensitive, Improper’ Racial Comments, Is Dumped from Bench*, INJUSTICE WATCH (June 5, 2019), <https://www.injusticewatch.org/news/2019/cook-county-judge-criticized-for-insensitive-improper-racial-comments-is-dumped-from-bench/>; Mark Caudill, *Judge Recuses Himself from Case, Does Not Address Alleged Racist Comments*, MANSFIELD NEWS J. (May 29, 2021, 7:48 AM), <https://www.mansfieldnewsjournal.com/story/news/2021/05/29/ansfield-judge-does-not-address-racially-charged-comments/7448161002/>.

²⁰⁹ See, e.g., Donald Padgett, *Judge Accused of Homophobia, Racism Wants Her Job Back*, ADVOCATE (Sept. 13, 2022, 11:18 AM), <https://www.advocate.com/news/2022/9/13/judge-accused-homophobia-racism-wants-her-job-back>; Michael Berens & John Shiffman, *Exploiting the Bench: The Long Quest to Stop a ‘Sugar Daddy’ Judge Accused of Preying on Women*, in REUTERS, THE TEFLON ROBE, *supra* note 64.

²¹⁰ IAALS, *supra* note 26, at 3.

from the racism in the legal system and people of color lose power, wealth, and autonomy.

We know from the structures that give judges the benefit of the doubt and protect them and their reputations that some judges sometimes say racist things. When one looks at the legal system, they may notice that judges make racist decisions, enforce racist laws, protect racism, and manipulate the law to get racist outcomes.

IV. THERE IS NO REFORMING THIS

American law and legal identity urge a view of neutrality, with judges as arbiters free from racial bias. Nevertheless, just as Americans possess racial bias, so does its law and its judges. Highlighting just some of the instances of demonstrable explicit and implicit racial bias serves as proof of this inescapable reality.

Courts are meant to be the institutions set up to act as a safeguard for individuals in disputes. However, judges have failed subordinated racial groups by repeatedly removing constitutional and statutory barriers to allow for legal discrimination against them, as seen by the doctrines of qualified immunity, voting rights, the Fourth Amendment, the Sixth Amendments, eminent domain, and others.²¹¹ As Professor Brandon Hasbrouk puts it in his 2022 article, *Movement Judges*, “Supreme Court precedent has been historically rights-restrictive and anti-Black.”²¹²

Advocacy by judges has impacted every facet of American life, including jury service, where people can live, how they must interact with police, and whether they must live with racial harassment in their employment. Simply put, there is racial bias in our court system; bias infects high courts and trial courts, and civil and criminal cases. There is no question that the criminal legal system is racist. America jails more Black men as a proportion of its population than South Africa did at the height of apartheid.²¹³

But it is not simply that judges preside over racist systems—they create them too. Courts invented qualified immunity to protect police from liability.²¹⁴ The Civil Rights Act of 1871, also known as the Ku Klux Klan Act, made it a crime for

²¹¹ See generally Brandon Hasbrouk, *Movement Judges*, 97 N.Y.U. L. REV. 631 (2022).

²¹² *Id.* at 645.

²¹³ Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*, in RACE, CRIME, AND PUNISHMENT: BREAKING THE CONNECTION IN AMERICA 23, 28 (Keith O. Lawrence ed., 2011).

²¹⁴ *Harlow v. Fitzgerald*, 457 U.S. 800, 806 (1982) (“[P]ublic officers require [qualified immunity] protection to shield them from undue interference with their duties and from potentially disabling threats of liability.”); see also *Jamison v. McClendon*, 476 F. Supp. 3d 386, 392 (S.D. Miss. 2020) (acknowledging the government’s interest in the qualified immunity doctrine, but asserting that the doctrine has gone too far and now serves to shield the police from accountability).

a government agent to deprive someone of their constitutional rights.²¹⁵ Section 1 of the Act is now codified as 42 U.S.C. § 1983; it is under this section that most civil actions against police officers are brought by civilians.²¹⁶ In interpreting the scope of § 1983, the Supreme Court developed the doctrine of qualified immunity.²¹⁷ The Court has since morphed and expanded the doctrine—today, judges may find that police have qualified immunity so long as there is no prior decision putting an officer on notice that the behavior violates a “clearly established law.”²¹⁸

As a result of this doctrine, developed in the 1980s, courts assume that if a police officer was working at the time of the incident and there is not a similar or even identical case on point that could warn an officer that the specific conduct was unlawful, the officer’s conduct was proper.²¹⁹

Judicial activism is not just aimed at protecting police, but employers as well. Judges have also made it much harder for plaintiffs to successfully prevail in claims

²¹⁵ Civil Rights Act of 1871, ch. 22, 17 Stat. 13 (codified as amended at 42 U.S.C. § 1983).

²¹⁶ U.S. COMM’N ON C.R., REVISITING *WHO IS GUARDING THE GUARDIANS?: A REPORT ON POLICE PRACTICES AND CIVIL RIGHTS IN AMERICA* 65 (2000).

²¹⁷ WHITNEY K. NOVAK, CONG. RSCH. SERV., LSB10492, *POLICING THE POLICE: QUALIFIED IMMUNITY AND CONSIDERATIONS 2* (2020). The Court established the modern qualified immunity test in a 1982 case in which the Court found for the plaintiff. *Harlow*, 457 U.S. at 817–19. For a discussion of the historical development of the qualified immunity doctrine, see *Jamison*, 476 F. Supp. 3d at 397–409. See generally David Rudovsky, *The Qualified Immunity Doctrine in the Supreme Court: Judicial Activism and the Restriction of Constitutional Rights*, 138 U. PA. L. REV. 23 (1989).

²¹⁸ The Court initially held that an officer was entitled to qualified immunity if he or she held a good faith belief that the conduct was proper, despite the statute’s silence on a good faith exception. NOVAK, *supra* note 217, at 2 (discussing *Pierson v. Ray*, 386 U.S. 547, 556–57 (1967)). In *Harlow*, the Court eliminated the subjective good faith element. Instead, the Court ruled that an officer is entitled to qualified immunity unless the officer’s conduct violates controlling precedent or, in limited circumstances, if the conduct is obviously unconstitutional. *Harlow*, 457 U.S. at 817–19; see also *Wilson v. Layne*, 526 U.S. 603, 617 (1999); *Hope v. Pelzer*, 536 U.S. 730, 741 (2002).

²¹⁹ Joanna C. Schwartz, *Police Indemnification*, 89 N.Y.U. L. REV. 885, 892–94 (2014). For example, officers were entitled to qualified immunity where their foreseeable actions created the very results they claimed their presence was there to avoid. *Ramirez v. Guadarrama*, 3 F.4th 129 (5th Cir. 2021). In *Ramirez*, officers responded to a 911 call reporting that a man was threatening to kill himself. Once the officers arrived at the family’s home, the man poured gasoline over himself. Aware of the fact that tasing the man would light him on fire, the officer nevertheless tased the gasoline-soaked man. The man died and the family’s home was destroyed by the fire set by police. Jacob Sullum, *5th Circuit Grants Qualified Immunity to Cops Who Ignited a Suicidal, Gasoline-Drenched Man by Tasing Him*, REASON (Feb. 18, 2021, 12:15 PM), <https://reason.com/2021/02/18/5th-circuit-grants-qualified-immunity-to-cops-who-ignited-a-suicidal-gasoline-drenched-man-by-tasing-him/>; see also *Corbitt v. Vickers*, 929 F.3d 1304, 1315–23 (11th Cir. 2019).

of employment discrimination.²²⁰ While serving on the Seventh Circuit before she was a Supreme Court Justice, Amy Coney Barrett upheld the dismissal of a racial discrimination lawsuit where the plaintiff's supervisor called him the N-word.²²¹ Acknowledging that "[t]he N-word is an egregious racial epithet," she nevertheless found that the plaintiff could not "win simply by proving that the word was uttered. He must also demonstrate that [the supervisor's] use of this word altered the conditions of his employment and created a hostile or abusive working environment."²²² In upholding the dismissal of the lawsuit she and the rest of the panel ignored testimony that the former employee who heard the word uttered at work suffered psychological distress and concluded that he lost his job because of his "poor track record," not due to racial discrimination.²²³

In the 2018 article, *Explicit Bias*, Vanderbilt Law Professor Jessica Clarke illustrates how judges disregard a significant amount of explicit bias—racial, gender, and religious—in employment discrimination law through a doctrine known as "stray remarks" that keeps from jurors' ears racially biased comments made by the employer.²²⁴ The stray remarks doctrine "finds no support in any employment discrimination statute" but has been adopted by courts to limit evidence of discrimination in discrimination cases.²²⁵

In *Movement Judges*, Professor Hasbrouck illustrates how the Supreme Court has made it harder for people of color to recover in housing discrimination cases under the Fair Housing Act.²²⁶ The Court has made it "impracticable for plaintiffs to carry their burden of proof, while simultaneously making it easy for the state to justify discriminate conduct."²²⁷

In addition to making employment discrimination easier by individuals, courts have made discrimination by states in voting practices within reach as well. The Supreme Court has eviscerated the protections offered by the 1965 Voting Rights

²²⁰ For example, use of the N-word and other racially derogatory terms, even in the presence of the plaintiff, may be insufficient to establish an employment discrimination claim. *See, e.g.*, *Frazier v. Sabine River Auth.*, 509 F. App'x 370, 374 (5th Cir. 2013) (ruling that employer's use of the N-word, the word "Negreet," and a noose gesture "were isolated and not severe or pervasive enough" to create a hostile work environment); *Nelson v. United Parcel Serv., Inc.*, 337 F. App'x 561, 563 (7th Cir. 2019) (holding that supervisor's comment that she was going to "fire that [N-word]" was not direct evidence of racial bias because the decision to fire the plaintiff was made by someone else).

²²¹ *Smith v. Ill. Dep't of Transp.*, 936 F.3d 554, 560–62 (7th Cir. 2019).

²²² *Id.* at 561.

²²³ *Id.*

²²⁴ Jessica A. Clarke, *Explicit Bias*, 113 NW. U. L. REV. 505, 540–47 (2018).

²²⁵ *Id.* at 540.

²²⁶ Hasbrouck, *supra* note 211, at 645 (citing *Tex. Dep't of Hous. & Cmty. Affs. v. Inclusive Cmty. Project, Inc.*, 576 U.S. 519 (2015)); Fair Housing Act, 42 U.S.C. §§ 3601–3619, 3631.

²²⁷ Hasbrouck, *supra* note 211, at 645.

Act meant to keep states from discriminating against people of color.²²⁸ In the most recent voting rights opinion, the Court allowed Arizona, a swing state, to impose voting restrictions, despite the fact that § 2 of the Voting Rights Act outlaws any discrimination (intentional or not), and despite the lower court's finding that the Arizona laws had a disparate impact on Black and Latino voters.²²⁹ Rather than protect the rights of its citizens, the Court paved the way for disenfranchisement of people of color with the boogeyman of voter fraud.

But this is not the first time that the Supreme Court has limited the protections of the Voting Rights Act for people of color. The Court held that another provision of the Act was unconstitutional in 2013 in the case *Shelby County v. Holder*.²³⁰ Chief Justice Roberts, writing for the majority, struck down the provisions of the Voting Rights Act that mandated that states with a history of discrimination get preclearance before making changes to their voting procedures.²³¹ Since the Court's decision in *Shelby County*, more than 1,000 polling places in Black neighborhoods have been closed, making it harder for Black people to vote.²³² Judicial activism in this realm undermined democracy to facilitate the disenfranchisement of people of color.

In addition to eroding the statutory protections designed to protect citizens, courts have also limited the protections offered by the U.S. Constitution in many diverse areas in ways that harm Black people and other people of color.

Judges have stripped away individuals' rights in a number of legal decisions that limit the clear text of the Fourth Amendment's prohibition on searches and seizure except with probable cause.²³³ The Supreme Court's rulings in *Terry v.*

²²⁸ *Id.* at 642–43; see *Shelby Cnty. v. Holder*, 570 U.S. 529 (2013) (holding that the coverage formula in 42 U.S.C. § 1973b(b) is unconstitutional); *id.* at 560–67 (Ginsburg, J., dissenting) (discussing the origins and gradual deterioration of the Voting Rights Act of 1965).

²²⁹ *Brnovich v. Democratic Nat'l Comm.*, 141 S. Ct. 2321, 2330–34 (2021) (construing 42 U.S.C. § 1973(a)); *id.* at 2366–67 (Kagan, J., dissenting).

²³⁰ 570 U.S. 529.

²³¹ *Id.* at 536–40, 550–57.

²³² Matt Vasilogambros, *Polling Places Remain a Target Ahead of November Elections*, PEW (Sept. 4, 2018), <https://www.pewtrusts.org/de/research-and-analysis/blogs/stateline/2018/09/04/polling-places-remain-a-target-ahead-of-november-elections>; Nicquel Terry Ellis, *Report: Supreme Court Ruling Caused Mass Polling Place Closures Across Southern USA*, USA TODAY (Sept. 12, 2019, 2:59 PM), <https://www.usatoday.com/story/news/nation/2019/09/12/report-court-ruling-caused-mass-voting-place-closures-southern-u-s/2272866001/>.

²³³ The text of the Fourth Amendment provides, “The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizure, shall not be violated, and no Warrants shall issue, but upon probable cause” U.S. CONST. amend. IV.

Ohio,²³⁴ *Whren v. United States*,²³⁵ and *Illinois v. Wardlow*²³⁶ allowed police to search and seize people on less than probable cause, and scholars have pointed out that the disproportionate victims of these traumatic encounters with the police have been people of color.²³⁷ Of course, suspicion—the currency of Fourth Amendment probable cause justifications—is highly subjective with a long history of police being suspicious of innocuous behavior of Black people, as supported by the statistics about the harassment suffered by Black people at the hands of police.²³⁸

While the Court ignores race in *Terry*, it embraced its use as a factor to stop people of Mexican descent.²³⁹ In *United States v. Brignoni-Ponce*, the Court sanctioned the border patrol's use of a persons' ethnic appearance as a part of the basis for a Fourth Amendment seizure.²⁴⁰ The Court wrote: "The likelihood that any given person of Mexican ancestry is an alien is high enough to make Mexican appearance a relevant factor, but standing alone it does not justify stopping all Mexican-Americans to ask if they are aliens."²⁴¹ Here, it appears that the Court felt fine about American citizens being stopped by the state because of their appearance, so long as they do not appear to be white.

In *Illinois v. Wardlow*, the Supreme Court expanded the impact of *Terry* even further by holding that refusal to cooperate with police (*e.g.*, flight) coupled with presence in a "high crime" neighborhood together provide sufficient reasonable suspicion for an officer to conduct a stop.²⁴² This was a departure from previous doc-

²³⁴ 392 U.S. 1 (1968).

²³⁵ 517 U.S. 806, (1996); *see also* Thompson, *supra* note 25, at 960 ("The Supreme Court's 1996 decision in *Whren v. United States* . . . would seem to remove the Fourth Amendment from the equation.").

²³⁶ 528 U.S. 119 (2000).

²³⁷ *See, e.g.*, NEMBARD & ROBIN, *supra* note 88, at 3–4; Emma Pierson, Camelia Simoiu, Jan Overgoor, Sam Corbett-Davies, Daniel Jenson, Amy Shoemaker, Vignesh Ramachandran, Phoebe Barghouty, Cheryl Phillips, Ravi Shroff & Sharad Goel, *A Large-Scale Analysis of Racial Disparities in Police Stops Across the United States*, 4 NATURE HUM. BEHAV. 736 (2020); Edith Perez, Note, *Don't Make a Run for It: Rethinking Illinois v. Wardlow in Light of Police Shootings and the Nature of Reasonable Suspicion*, 32 U. FLA. J. L. & PUB. POL'Y 361, 143–45 (2022); Adam B. Wolf, *The Adversity of Race and Place: Fourth Amendment Jurisprudence in Illinois v. Wardlow*, 528 S. Ct. 673 (2000), 5 MICH. J. RACE & L. 711, 716–22 (2000).

²³⁸ *See* Perez, *supra* note 237, at 146–47; Hunter J. Rodgers, *Terry, Traffic Stops, and Tragedy: Conflicts and Concerns in the Wake of Kansas v. Glover*, 19 SEATTLE J. FOR SOC. JUST. 251, 271–75 (2020).

²³⁹ Thompson, *supra* note 25, at 977–78 (discussing the Court's attempt "to square [its] refusal to deal with race in *Terry* . . . with the Court's readiness in *Brignoni-Ponce* and *Martinez-Fuerte* to allow race to be a factor in searches and seizures . . .").

²⁴⁰ 422 U.S. 873 (1975).

²⁴¹ *Id.* at 886–87. *See generally* Thompson, *supra* note 25, at 976–78.

²⁴² *Illinois v. Wardlow*, 528 U.S. 119, 124–25 (2000).

trine that allowed citizens to refuse to cooperate with police without creating suspicion that would legally justify a seizure.²⁴³ Because Black people and Latino people are more likely to reside in “high crime” communities, they are more likely to be subject to over policing.²⁴⁴ The impact of *Wardlow* is that police can justify encounters in which a person of color flees police, without additional reason beyond presence in a neighborhood that the police have deemed to have above average crime. Yet the Court showed little interest in discussing how its decision would impact people of color.²⁴⁵ On the other hand, some state courts and lower federal courts now recognize that Black people have innocent and good reasons to run from the police.²⁴⁶

The Supreme Court in *Whren* allowed police to stop a person based on his race as long as there was some other legal basis for the stop, even if it was pretextual.²⁴⁷ Again, it is judges that have allowed police to stop, harass, and search people based on their race as long as there is a legal excuse or believed excuse. Legal scholar and Professor Ekow Yankah has written, “the Supreme Court has consciously obscured the corrosive role race plays in the everyday experiences of so many.”²⁴⁸ These cases, taken individually, but certainly when taken together, illustrate a judicial system that is unbothered by the daily harassment suffered by people of color by the state.

The racism endemic to our legal system is no surprise given the country’s history of enslavement, Jim Crow, and other instances of legalized subjugation that have been propped up by our legal system. While legal observers can point to instances in which our courts ended legal racial discrimination in some fashion to outlaw some forms of discrimination, strengthen individual rights and constitutional protections, such as *Shelley v. Kramer*,²⁴⁹ *Brown v. Board of Education*,²⁵⁰ *Loving v. Virginia*,²⁵¹ and *Batson v. Kentucky*,²⁵² subsequent court decisions have indeed

²⁴³ *Id.* at 124; see Wolf, *supra* note 237, at 714–15 (discussing Florida v. Bostick, 501 U.S. 429, 437 (1991)).

²⁴⁴ See Lauren J. Krivo, Christopher J. Lyons & María B. Vélez, *The U.S. Racial Structure and Ethno-Racial Inequality in Urban Neighborhood Crime, 2010-2013*, 7 SOCIO. RACE & ETHNICITY 350, 351 (2021) (discussing ethnoracial inequality in high crime neighborhoods, and whether “these inequalities reflect differences in offending or some combination of racialized enforcement (e.g., differential policing or profiling of non-White neighborhoods”).

²⁴⁵ See Jonathan Bender, *Illinois v. Wardlow: The Supreme Court Dodges the Race Bullet in Fourth Amendment Terry Stops*, 78 DENV. U. L. REV. 125, 143–45 (2000).

²⁴⁶ See, e.g., *Commonwealth v. Warren*, 58 N.E.3d 333, 342 (Mass. 2016); *Miles v. United States*, 181 A.3d 633, 641–42 (D.C. 2018).

²⁴⁷ *Whren v. United States*, 517 U.S. 806, 816 (1996).

²⁴⁸ Yankah, *supra* note 25, at 1550.

²⁴⁹ 334 U.S. 1 (1948).

²⁵⁰ 347 U.S. 483 (1954).

²⁵¹ 388 U.S. 1 (1967).

²⁵² 476 U.S. 79 (1986).

gone in the other direction since the 1982 decision in *Kemp* that allowed discrimination to go unchecked unless an individual can prove intentional racism. Meanwhile, racial discrimination in jury selection persists²⁵³ and schools are still segregated in most American cities.²⁵⁴

For the reasons discussed in this Article, narratives of neutrality or colorblindness can no longer be meaningfully sustained about judges, or the laws enforced and created by them. Our legal system has so much racism baked into it, and judges create it, protect it, and sustain it.

We simply have to confront that some judges harbor explicit racial bias, as exposed in this Article, while most others likely suffer from implicit racial bias. Removing individual judges with the poor judgment to use racial slurs or make offensive comments in a public courtroom might symbolize that courts will not tolerate racism, but what it actually does is simply prop up the institution as a neutral or even benign one, when in fact the actions of most courts suggest otherwise. Occasional discipline or even removing a judge here or there may help legitimize a racially problematic system without acknowledging the true extent of the significant problem of racism built into our way of resolving disputes and attempts at addressing public safety.

While it may be disappointing to a society, media, and a legal profession that reveres judges to realize that judges may be no less racist than other players in the legal system, this truth must be confronted. Hate crimes have increased in the United States.²⁵⁵ Domestic terrorism by those with far-right views is the biggest threat to our national security.²⁵⁶ Membership in white supremacist groups is on the rise, with some groups gaining increased political influence.²⁵⁷ White supremacist propaganda is also more pervasive than in any other time in recent history.²⁵⁸

²⁵³ James E. Coleman, Jr., *The Persistence of Discrimination in Jury Selection: Lessons from North Carolina and Beyond*, CHAMPION, June 2018, at 28.

²⁵⁴ Sequoia Carrillo & Pooja Salhotra, *The U.S. Student Population Is More Diverse, But Schools Are Still Highly Segregated*, NPR (July 14, 2022, 5:13 AM), <https://www.npr.org/2022/07/14/1111060299/school-segregation-report>.

²⁵⁵ Christina Carrega & Priya Krishnakumar, *Hate Crime Reports in US Surge to the Highest Level in 12 Years, FBI Says*, CNN (Oct. 26, 2021, 2:05 PM), <https://www.cnn.com/2021/08/30/us/fbi-report-hate-crimes-rose-2020/index.html>; Press Release, FBI Nat'l Press Off., FBI Releases 2020 Hate Crime Statistics (Aug. 30, 2021), <https://www.fbi.gov/news/pressrel/press-releases/fbi-releases-2020-hate-crime-statistics>.

²⁵⁶ Joanna Walters & Alvin Chang, *Far-Right Terror Poses Bigger Threat to US than Islamist Extremism Post-9/11*, GUARDIAN (Sep. 8, 2021, 3:00 PM), <https://www.theguardian.com/us-news/2021/sep/08/post-911-domestic-terror>.

²⁵⁷ CASSIE MILLER & RACHEL CARROLL RIVAS, S. POVERTY L. CTR., *THE YEAR IN HATE & EXTREMISM 2021*, at 5–8, 10–12 (2022).

²⁵⁸ *White Supremacist Propaganda Spikes in 2020*, ANTI-DEFAMATION LEAGUE (May 3, 2022), <https://www.adl.org/white-supremacist-propaganda-spikes-2020>; Kanishka Singh, *White Supremacist Propaganda in U.S. Hit Record in 2020, Group Says*, REUTERS (Mar. 17, 2021, 2:40 AM),

And white supremacist viewpoints have once again entered mainstream political discourse.²⁵⁹ Judges are part of these systems and are just as vulnerable to the propaganda and packaging of these worldviews as any other member of the public, whether or not we want to acknowledge and confront it.

White judges benefit from the legal systems that reward them with the most power, the most money, and the most prestige of any other player in the system. Most judges have no incentive to challenge the racist status quo that benefits them and their families.

It is important to remember that judges have chosen, as a career, to sit in judgment of others. This system is built on the idea that judges are wiser than the rest of us and that they can and should resolve the disputes of others. This system says that judges alone are the arbiters of the behavior of others. Armed police officers enforce judges' orders—this is a significant power. Viewpoints that further the belief that individual judges are worthy of their superior role, and that the litigants who appear before them are the inferior party,²⁶⁰ may be very attractive to some who seek out the profession. The legal system supports that viewpoint.

And every day a disproportionate number of white people sit in judgment over a disproportionate number of people of color. Thus, because the system is set up for white judges to be superior to Black parties, the daily experience of judging may reinforce both implicit and explicit racial biases. This racial hierarchy exists even when its devoid of racial slurs. Not only do people who are attracted to the view that they are superior pursue judicial appointments, but this view is supported and reinforced in the act of judging itself.

Reformers might advocate for things like bias training, proportional prosecutions, financial incentives, or public disciplinary boards. Indeed, the American Bar Association urged in 2020 that state court judges undergo training on implicit racial bias.²⁶¹ However, while judges are offered implicit bias training, bias training is rarely *required* for judges; rather, it is usually simply offered to them.²⁶² Hours of bias training simply cannot be sufficient to undo a mindset, a career of experiences,

<https://www.reuters.com/article/us-usa-white-supremacy/white-supremacist-propaganda-in-u-s-hit-record-in-2020-group-says-idUSKBN2B917P>.

²⁵⁹ Simon Clark, *How White Supremacy Returned to Mainstream Politics*, CTR. FOR AM. PROGRESS (July 1, 2020), <https://www.americanprogress.org/article/white-supremacy-returned-mainstream-politics/>.

²⁶⁰ Many people are also treated as inferior by judges, as Professor Abbe Smith points out in her article, *Judges as Bullies*. See generally Abbe Smith, *Judges as Bullies*, 46 HOFSTRA L. REV. 253 (2017).

²⁶¹ RESOL. 116G (AM. BAR ASS'N 2020); Melissa Heelan Stanzione, *ABA Group Urges Implicit Bias Training for Judges, Lawyers*, BLOOMBERG L. (July 28, 2020, 1:51 AM), <https://news.bloomberglaw.com/us-law-week/proposal-seeks-implicit-bias-training-for-judges-lawyers>.

²⁶² For example, in New York, bias training is generally not required. N.Y. UNIFIED CT. SYS., *supra* note 7, at 47.

and ingrained beliefs perhaps held since childhood. Nor do implicit racial biases get at explicit racism. Decades ago in his 1997 article, *Affirmative Action and the Criminal Law*, Professor Paul Butler argued that there exists in law a tension between the ideals of equality and the reality of white supremacy and argued for a race-conscious approach to the criminal legal system.²⁶³ Pleas for change have gone ignored. No action has been taken in any way to meaningfully reform the judicial system.²⁶⁴ Just as racial justice activists have called for the abolition of police and prison, we should similarly call for our system of resolving disputes—courts, as they exist now—to be abolished and replaced with another system.

As discussed earlier, instances of judicial misconduct do not always get reported. There is a myriad of disincentives to reporting a judge, and the process is difficult and opaque. Complaints are lost, dismissed, or not credited. Even in the rare case in which a judge is disciplined, he or she may very well simply return to their positions. For example, a recent *Reuters* investigation showed that thousands of judges were disciplined for displays of bias, breaking the law, or other misconduct, yet 90% were allowed to retake the bench.²⁶⁵

Our legal system puts too much power over millions of disputes and thus, millions of human lives, into the hands of the purportedly infallible. That system refuses to acknowledge the bias at play in our incredibly flawed legal scheme. A system that recognizes the fallibility of our system, and all of the individual players in it, is the only one that will bring fewer harms to people of color. Throughout the history of our legal system, much effort has been spent on trying to give this flawed system legitimacy and to insist in its fairness, despite the ample evidence to the contrary.

There is no way to extinguish racism from our judicial system, especially if we refuse to admit it is there. The laws enforced are often rooted in white supremacy. The punishments and resolutions the legal system offers are often racist. The act of judging itself reinforces white supremacy. The number of racist incidents in judges' private and professional lives documented here makes the point.

²⁶³ Paul Butler, *Affirmative Action and the Criminal Law*, 68 U. COLO. L. REV. 841, 844 (1997).

²⁶⁴ See Alexander, *supra* note 213, at 30.

²⁶⁵ Berens & Shiffman, *supra* note 65.

APPENDIX

Appendix A. Appellate Court Cases

Jurisdiction	Cases
District of Columbia	<i>Mejia v. United States</i> , 916 A.2d 900 (D.C. 2007).
Georgia	<i>Norris v. United States</i> , 709 F. App'x 952 (11th Cir. 2017).
Kansas	<i>State v. Smith</i> , 423 P.3d 530 (Kan. 2018).
Michigan	<i>People v. Deleon</i> , No. 337134, 2019 WL 637793 (Mich. Ct. App. Feb. 14, 2019).
Missouri	<i>Smulls v. State</i> , 71 S.W.3d 138 (Mo. 2002).
New York	<i>People v. Johnson</i> , 150 N.Y.S.3d 401 (N.Y. App. Div. 2021).
Texas	<i>In re Halprin</i> , 788 Fed. App'x 941 (5th Cir. 2019), <i>cert. denied sub nom.</i> <i>Halprin v. Davis</i> , 140 S. Ct. 1200 (2020).

*Appendix B. Judicial Disciplinary Opinions*¹

Jurisdiction	Cases
Alabama	<p><i>Jinks v. Ala. Jud. Inquiry Comm'n</i>, No. 1210133, 2022 Ala. LEXIS 103 (Ala. Oct. 21, 2022).</p> <p><i>In re Patterson</i>, Final Judgment, No. 62 (Ala. Ct. of the Jud. Oct. 27, 2022), https://judicial.alabama.gov/docs/judiciary/COJ62_FinalJudgment.pdf.</p>
Alaska ²	<i>In re Dooley</i> , 376 P.3d 1249 (Alaska 2016).
Arizona	<p><i>In re Carpenter</i>, 17 P.3d 91 (Ariz. 2001).</p> <p><i>In re Holt</i>, Order, No. 13-035 (Ariz. Comm'n on Jud. Conduct May 31, 2013), https://www.azcourts.gov/portals/137/reports/2013/13-035.pdf.</p> <p><i>In re Sulley</i>, Statement of Charges, No. 14-114 (Ariz. Comm'n on Jud. Conduct June 19, 2014), https://www.azcourts.gov/portals/137/reports/2014/14-114.pdf, <i>aff'd</i>, No. 14-114, 2014 Ariz. LEXIS 175 (Ariz. Sept. 23, 2014).</p>

¹ Every state and the District of Columbia has established a judicial conduct commission for investigating (and in some cases disciplining) complaints against judges. Cynthia Gray, *How Judicial Conduct Commissions Work*, 28 JUST. SYS. J. 405, 407 tbl.1 (2007). The publication practice of judicial conduct commissions varies—some states post disciplinary opinions on their websites, some summarize the sanctions in annual reports, and in states where the state supreme court issues the sanctions, the sanctions are published in an official reporter. In general, judicial conduct proceedings are confidential, and the complaints are not made public until formal charges are issued. *Id.* at 411–15. A comprehensive analysis is thus difficult (if not impossible), especially considering that fact that “[i]n the vast majority of judicial misconduct cases, judges are disciplined privately.” Michael Berens & John Shiffman, *Objections Overruled: Thousands of U.S. Judges Who Broke Laws or Oaths Remained on the Bench*, in REUTERS, THE TEFLON ROBE (2020), <https://www.reuters.com/investigates/section/usa-judges/>; see also Gray, *supra*, at 412–13 (explaining that many commissions have the authority to resolve complaints informally or through private sanctions).

² The Alaska Commission on Judicial Conduct publishes annual reports documenting the number of allegations of racial, ethnic, or gender bias in a given year. See, e.g., 2019 ALASKA COMM'N ON JUD. CONDUCT ANN. REP. tbl.10 (2); 2018 ALASKA COMM'N ON JUD. CONDUCT ANN. REP. tbl.10 (2); 2017 ALASKA COMM'N ON JUD. CONDUCT ANN. REP. tbl.10 (9); 2011 ALASKA COMM'N ON JUD. CONDUCT ANN. REP. tbl.10 (3); 2008 ALASKA COMM'N ON JUD. CONDUCT ANN. REP. tbl.10 (1).

Arkansas	<p>Jud. Discipline & Disability Comm'n v. Maggio, 440 S.W.3d 333 (Ark. 2014).</p> <p>Letter of Censure and Recommendation to Suspension Without Pay to the Arkansas Supreme Court, from Ark. Jud. Discipline & Disability Comm'n to Judge Bourne (Aug. 1, 2022), https://www.jddc.arkansas.gov/wp-content/uploads/2022/08/Bourne-Sanction-080122.pdf.</p>
California ³	<p><i>In re Van Voorhis</i>, 48 Cal. 4th CJP Supp. 257 (Cal. Comm'n on Jud. Performance 2003).</p> <p>Public Admonishment of Judge Harvey Giss, 2011 Ann. Rep. 16 (Cal. Comm'n on Jud. Performance Mar. 16, 2011).</p> <p>Public Admonishment of Judge Nancy Pollard, 2011 Ann. Rep. 17 (Cal. Comm'n on Jud. Performance July 13, 2011).</p> <p><i>In re Krep</i>, 5 Cal. 5th CJP Supp. 1 (Cal. Comm'n on Jud. Performance 2017).</p> <p>Public Censure of Former Commissioner Joseph J. Gianquinto, 2018 Ann. Rep. 33 (Cal. Comm'n on Jud. Performance Aug. 22, 2018).</p> <p>Public Censure of Judge Jeffrey Bennett, 2020 Ann. Rep. 37 (Cal. Comm'n on Jud. Performance Mar. 25, 2020).</p>
Colorado ⁴	<p><i>In re Booras</i>, 500 P.3d 344, 346 (Colo. 2019).</p> <p><i>In re Chase</i>, 485 P.3d 65 (Colo. 2021).</p>

³ See also CAL. COMM'N ON JUD. PERFORMANCE, SUMMARY OF DISCIPLINE STATISTICS 1990–2009 app. at 14, tbl.A-8.1 (documenting types of conduct resulting in discipline, and reporting nine disciplinary actions taken between 2000 and 2009 due to “Bias/appearance of bias toward a particular class”).

⁴ The Colorado Commission on Judicial Discipline lists the number of allegations of “bias, prejudice, or lack of impartiality” in its annual reports. See, e.g., 2020 COLO. COMM'N ON DISCIPLINE ANN. REP. 10 (37); 2019 COLO. COMM'N ON DISCIPLINE ANN. REP. 9 (49); 2018 COLO. COMM'N ON DISCIPLINE ANN. REP. 10 (50); 2017 COLO. COMM'N ON DISCIPLINE ANN. REP. 10 (37); 2016 COLO. COMM'N ON DISCIPLINE ANN. REP. 10 (26).

Connecticut ⁵	<i>In re</i> Cofield, Memorandum of Decision, No. J2008-079 (Conn. Jud. Rev. Council Feb. 27, 2009), https://portal.ct.gov/JRC/Left-Nav/Public-Hearing/j2008079 .
Delaware	No relevant reports.
District of Columbia	No relevant reports.
Florida	<i>In re</i> Husley, Notice of Formal Charges, No. SC16-1278 (Fla. Jud. Qualifications Comm'n July 19, 2016), https://efactss-public.flcourts.org/casedocuments/2016/1278/2016-1278_notice_79144.pdf . <i>In re</i> Millan, Notice of Formal Charges, No. SC18-775 (Fla. Jud. Qualifications Comm'n May 21, 2018), https://efactss-public.flcourts.org/casedocuments/2018/775/2018-775_notice_84109_notice2dformal20charges.pdf .
Georgia	<i>Inquiry Concerning a Judge</i> , 566 S.E.2d 310 (Ga. 2002).
Hawaii	No relevant reports.
Idaho	No relevant reports.
Illinois	<i>In re</i> Golniewicz, No. 02 CC 1 (Ill. Jud. Inquiry Bd. Nov. 15, 2004), https://jib.illinois.gov/content/dam/soi/en/web/jib/documents/orders-from-courts-commission/golniewicz.pdf .
Indiana	<i>In re</i> Bennington, 24 N.E.3d 958 (Ind. 2015).
Iowa	No relevant reports.
Kansas	<i>In re</i> Cullins, 481 P.3d 774 (Kan. 2021).

⁵ The Connecticut Judicial Review Council documents the number of judicial complaints alleging “bias/discrimination/prejudice/partiality (*i.e.*, *ADA*, *gender*, *racial*, *general*)” in its annual reports. *See, e.g.*, 2021 CONN. JUD. REV. COUNCIL ANN. REP. pt. VII, at 10 (30); 2020 CONN. JUD. REV. COUNCIL ANN. REP. pt. VII, at 10 (56); 2019 CONN. JUD. REV. COUNCIL ANN. REP. pt. VII, at 11 (17); 2018 CONN. JUD. REV. COUNCIL ANN. REP. pt. VII, at 11 (35); 2017 CONN. JUD. REV. COUNCIL ANN. REP. pt. VII, at 11 (29).

Kentucky	<i>In re</i> McLaughlin, Public Reprimand (Ky. Jud. Conduct Comm’n Dec. 29, 2014), https://kycourts.gov/Courts/JCC%20Actions%20Documents/2014PublicReprimandMcLaughlin.pdf .
Louisiana	<i>In re</i> Ellender, 889 So. 2d 225 (La. 2004). <i>In re</i> Gremillion, 204 So. 3d 183 (La. 2016). <i>In re</i> Odinet, 328 So. 3d 1166 (La. 2021).
Maine	No relevant reports.
Maryland	<i>In re</i> Stewart Mays, CJD Nos. 2015-069, 2015-108 (Md. Comm’n on Jud. Disabilities Sept. 20, 2016), https://mdcourts.gov/sites/default/files/import/cjd/pdfs/cjd2016069x108chargesexhibita.pdf .
Massachusetts	Duty to Report Perceived Judicial Misconduct, CJE Op. No. 2021-01 (Mass. Comm. on Jud. Ethics July 21, 2021), https://www.mass.gov/opinion/cje-opinion-no-2021-01 . Press Release, Massachusetts Commission on Judicial Conduct Resolves Complaint Against Retired Judge Michael C. Creedon Through Agreed Disposition (Oct. 17, 2016), https://www.mass.gov/news/massachusetts-commission-on-judicial-conduct-resolves-complaint-against-retired-judge-michael-c-creedon-through-agreed-disposition .
Michigan	<i>In re</i> Chmura, Formal Complaint, No. 56 (Mich. Jud. Tenure Comm’n 2000), <i>rev’d</i> , 626 N.W.2d 876 (Mich. 2001). 2009 MICH. JUD. TENURE COMM’N ANN. REP. § IV, pt. C.3, at 28. ⁶
Minnesota	No relevant reports.
Mississippi	Miss. Comm’n on Jud. Performance v. Boland, 975 So. 2d 882 (Miss. 2008).

⁶ Nonpublic proceeding in which “judge made inappropriate remarks concerning the ethnicity of a party and an attorney.”

	<p>Miss. Comm'n on Jud. Performance v. Brown, 37 So. 3d 14 (Miss. 2010).</p> <p>Miss. Comm'n on Jud. Performance v. Weisenberger, 201 So. 3d 444 (Miss. 2016).</p>
Missouri	No relevant reports.
Montana	<i>In re</i> Complaint of Judicial Misconduct, 751 F.3d 611 (U.S. Comm. on Jud. Conduct & Disability Jan. 17, 2014). ⁷
Nebraska	<i>In re</i> Lindner, 710 N.W.2d 866 (Neb. 2006).
Nevada	<i>In re</i> Del Vecchio, No. 0802-1008 (Nev. Comm'n on Jud. Discipline Nov. 6, 2008), https://judicial.nv.gov/uploadedFiles/judicialnv.gov/content/Discipline/Dicisions/2008-11-06_0802-1008_DelVecchio_FindingsoffactConclusionsofLawandImpositionofDiscipline.pdf .
New Hampshire	<i>In re</i> Jones, Reprimand, No. JC-10-069-C (N.H. Jud. Conduct Comm. July 9, 2011), https://www.courts.nh.gov/sites/g/files/ehbemt471/files/documents/2021-07/admnreprimand-judgemichaeljones.pdf .
New Jersey	<p><i>In re</i> Convery, Formal Complaint, ACJC Nos. 2008-122, 2008-136 (N.J. Advisory Comm. on Jud. Conduct Apr. 1, 2009), https://www.njcourts.gov/sites/default/files/acjc/ConveryComplaint.pdf, <i>aff'd</i> 991 A.2d 213 (N.J. 2010).</p> <p><i>In re</i> Citta, Formal Complaint, ACJC Nos. 2008-180, 2008-256 (N.J. Advisory Comm. on Jud. Conduct Apr. 1, 2009), https://www.njcourts.gov/sites/default/files/acjc/CittaComplaint.pdf, <i>aff'd</i> 991 A.2d 213 (N.J. 2010).</p> <p><i>In re</i> Wertheimer, Formal Complaint, ACJC No. 2009-245 (N.J. Advisory Comm. on Jud. Conduct Aug. 5, 2009), https://www.njcourts.gov/sites/default/files/acjc/WertheimerComplaint.pdf, <i>dismissed</i>, 13 A.3d 355 (N.J. 2011).</p>

⁷ In general, complaints against U.S. federal district court judges are investigated by the U.S. Committee on Judicial Conduct and Disability. See RULES FOR JUD.-CONDUCT & JUD.-DISABILITY PROC. § 320, art. V (ADMIN. OFF. OF THE U.S. CTS. 2019).

New Mexico	<i>In re</i> Castaneda, Order, No. S-1-SC-35842 (N.M. Feb. 12, 2018), https://www.nmjsc.org/wp-content/uploads/2018/02/35842-Order-Accepting-Resignation.pdf .
New York	<i>In re</i> Mulroy, 731 N.E.2d 120 (N.Y. 2000). <i>In re</i> Pennington, Determination, 2004 C.J.C. Ann. Rep. 139 (N.Y. Comm'n on Jud. Conduct Nov. 3, 2003). <i>In re</i> Ellis, Determination, 2008 C.J.C. Ann. Rep. 123 (N.Y. Comm'n on Jud. Conduct July 24, 2007). <i>In re</i> Senzer, Determination, 2020 C.J.C. Ann. Rep. 137 (N.Y. Comm'n on Jud. Conduct Oct. 9, 2019). <i>In re</i> Tawil, Determination, 2020 C.J.C. Ann. Rep. 158 (N.Y. Comm'n on Jud. Conduct Dec. 12, 2019). <i>In re</i> Sucher, Stipulation (N.Y. Comm'n on Jud. Conduct Oct. 12, 2021), https://cjc.ny.gov/Determinations/S/Sucher.Paul.E.2021.10.12.STIP.RED.pdf .
North Carolina	<i>In re</i> Badgett, 666 S.E.2d 743 (N.C. 2008).
North Dakota	No relevant reports.
Ohio	Disciplinary Counsel v. Cox, 862 N.E.2d 514 (Ohio 2007). Disciplinary Counsel v. Porzio, 153 N.E.3d 70 (Ohio 2020). Complaint, Disciplinary Counsel v. Carr, No. 2021-1518, 2022 WL 10205860 (Ohio Oct. 18, 2022).
Oklahoma	No relevant reports.
Oregon	No relevant reports.
Pennsylvania	<i>In re</i> Brown, 907 A.2d 684 (Ct. of Jud. Discipline of Pa. 2006). <i>In re</i> Tranquilli, Complaint No. 4 JD 2020 (Pa. Ct. of Jud. Discipline Aug. 12, 2020), https://www.pacourts.us/Storage/media/pdfs/20210604/133958-file-9822.pdf .
Rhode Island	No relevant reports.

South Carolina	<p><i>In re</i> Gosnell, 621 S.E.2d 659 (S.C. 2005).</p> <p><i>In re</i> Hutchins, 661 S.E.2d 343 (S.C. 2008).</p>
South Dakota	<p><i>In re</i> Fuller, 798 N.W.2d 408 (S.D. 2011).</p>
Tennessee	<p><i>In re</i> Lammey, Public Reprimand, Nos. B19-7753, B19-7777 (Tenn. Bd. of Jud. Conduct Nov. 15, 2019), https://www.tncourts.gov/sites/default/files/docs/lammey_reprimand_letter_only_2019_11_18.pdf.</p> <p><i>In re</i> Ledsinger, Public Reprimand, No. B20-8233 (Tenn. Bd. of Jud. Conduct Sept. 28, 2020), https://www.tncourts.gov/sites/default/files/docs/jere_ledsinger_reprimand_2020_09_28.pdf.</p>
Texas	<p><i>In re</i> McElroy, Voluntary Agreement to Resign from Jud. Off. in Lieu of Disciplinary Action, CJC Nos. 00-0454, 00-0640 (Tex. Comm'n on Jud. Conduct Nov. 5, 2001), http://www.scjc.texas.gov/media/46582/mcelroy00-0454-jp00-0640-jpresignation.pdf.</p> <p><i>In re</i> Zepeda, Voluntary Agreement to Resign from Jud. Off. in Lieu of Disciplinary Action, CJC Nos. 03-0107, 03-0275, 03-0632-JP (Tex. Comm'n on Jud. Conduct Mar. 1, 2004), http://www.scjc.texas.gov/media/46602/zepeda03-0107-jp03-0275-jp03-0632-jpresignation.pdf.</p> <p><i>In re</i> Charges of Judicial Misconduct, 769 F.3d 762, 773–75 (D.C. Cir. 2014), <i>aff'd</i>, <i>In re</i> Complaint of Judicial Misconduct, C.C.D. No. 14-01, at 3, 15 (U.S. Comm. on Jud. Conduct & Disability Feb. 19, 2015), https://www.uscourts.gov/sites/default/files/ccd-14-01order-final-02-19-15.pdf.</p> <p><i>In re</i> Luitjen, Pub. Admonition & Ord. of Additional Educ. CJC No. 20-0468 (Tex. Comm'n on Jud. Conduct Dec. 4, 2020), http://www.scjc.texas.gov/media/46826/luitjen20-0468pubadm-oae-12420.pdf.</p> <p><i>In re</i> Baldwin, Pub. Reprimand & Ord. of Additional Educ., CJC Nos. 19-1291, 19-1160 (Tex. Comm'n on Jud. Conduct Apr. 9, 2021), http://www.scjc.texas.gov/media/46829/baldwin19-1297-19-1160pubrep-oae4921.pdf.</p>

	<p><i>In re</i> Black, Pub. Warning, CJC Nos. 21-0135, 21-0780, 21-0791, 21-0792, 21-0795 (Tex. Comm'n on Jud. Conduct Apr. 7, 2022), http://www.scjc.state.tx.us/media/46879/black21-0135etalpub-warn-4722.pdf.</p>
Utah	No relevant reports.
Vermont	No relevant reports.
Virginia	No relevant reports.
Washington	<p><i>In re</i> Martin, Stipulation, Agreement & Ord. of Censure, CJC No. 4185-F-125 (Wash. Comm'n on Jud. Conduct June 2, 2006), https://www.cjc.state.wa.us/materials/activity/public_actions/2006/4185%20Martin%20Stipulation%20FINAL.pdf.</p> <p><i>In re</i> Chow, Stipulation, Agreement & Ord. of Admonishment, CJC No. 5299-F-134 (Wash. Comm'n on Jud. Conduct Oct. 24, 2007), https://www.cjc.state.wa.us/materials/activity/public_actions/2007/5299%20Chow%20Stipulation%20Final.pdf.</p> <p><i>In re</i> Stolz, Stipulation, Agreement & Ord. of Admonishment, CJC No. 5456-F-138 (Wash. Comm'n on Jud. Conduct Aug. 1, 2008), https://www.cjc.state.wa.us/materials/activity/public_actions/2008/5456%20Stolz%20Stipulation.pdf.</p> <p><i>In re</i> Poyfair, Stipulation, Agreement & Ord. of Censure, CJC No. 6691-F-153 (Wash. Comm'n on Jud. Conduct May 4, 2012), https://www.cjc.state.wa.us/materials/activity/public_actions/2012/6691_Poyfair_Stip.pdf.</p> <p><i>In re</i> Wulle, Amended Comm'n Decision & Ord., CJC No. 6707-F-154 (Wash. Comm'n on Jud. Conduct Jan. 9, 2013), https://www.cjc.state.wa.us/materials/activity/public_actions/2012/6707_Wulle_Amended_Decision.pdf.</p> <p><i>In re</i> Ladenburg, Stipulation, Agreement & Ord. of Reprimand, CJC No. 7599-F-163 (Wash. Comm'n on Jud. Conduct Feb. 20, 2015), https://www.cjc.state.wa.us/materials/activity/public_actions/2015/7599_Ladenburg_Stip_v2.pdf.</p>

	<p><i>In re</i> North, Stipulation, Agreement & Ord. of Admonishment, CJC No. 8583-F-174 (Wash. Comm’n on Jud. Conduct Dec. 8, 2017), https://www.cjc.state.wa.us/materials/activity/public_actions/2017/8583FinalStip.pdf.</p> <p><i>In re</i> Zimmerman, Statement of Charges, CJC No. 10260-F-193 (Wash. Comm’n on Jud. Conduct Dec. 3, 2021), https://www.cjc.state.wa.us/materials/activity/public_actions/open_cases/10260SoCFinal.pdf.</p> <p><i>In re</i> Mahoney, Stipulation, Agreement & Ord. of Reprimand, CJC No. 10807-F-20 (Wash. Comm’n on Jud. Conduct Sept. 9, 2022), https://www.cjc.state.wa.us/materials/activity/public_actions/2022/10807StipulationFINAL.pdf.</p>
West Virginia	<p><i>In re</i> Fouty, No. 5-2000 (Jud. Investigation Comm’n of W. Va. Mar. 1, 2000), http://www.courtsww.gov/legal-community/JICAdmonishments/2000/5-2000%20Magistrate%20Carol%20Fouty.pdf.</p> <p>Public Admonishment of Charles N. Poe, No. 17-2021 (Jud. Investigation Comm’n of W. Va. Mar. 12, 2006), http://www.courtsww.gov/legal-community/JICAdmonishments/2021/17-2021MagCharlesPoe.pdf.</p> <p><i>In re</i> Chapman, No. 22-2006 (Jud. Investigation Comm’n of W. Va. May 16, 2006), http://www.courtsww.gov/legal-community/JICAdmonishments/2006/22-2006,%20Magistrate%20Brenda%20Chapman.pdf.</p>
Wisconsin ⁸	No relevant reports.
Wyoming	No relevant reports.

⁸ See 2021 WIS. JUD. COMM’N ANN. REP. app. at 10, tbl.A-3 (documenting the subjects of judicial complaints resulting in informal resolution, and reporting 65 complaints of “Intemperate courtroom conduct (e.g., yelling, rudeness, inappropriate language)” between 1985 and 2021).

Appendix C. Media

Jurisdiction	Media Citation
Alabama	Debra Cassens Weiss, <i>Ethics Case Accuses Judge of Making Racist and Sexist Remarks, MOUTHING N-WORD, Criticizing Overweight People</i> , ABA J. (May 20, 2021, 3:54 PM), https://www.abajournal.com/news/article/ethics-case-accuses-judge-of-making-racist-and-sexist-remarks-mouthing-f-word-criticizing-overweight-people .
Arkansas	Max Brantley, <i>Judge Mike Maggio Withdraws from Court of Appeals Race; Acknowledges Web Postings</i> , ARK. TIMES (Mar. 5, 2014, 9:49 PM), https://arktimes.com/arkansas-blog/2014/03/05/judge-mike-maggio-withdraws-from-court-of-appeals-race-acknowledges-web-postings .
California	<i>Ventura County Judge Censured for Offensive Remarks</i> , AP NEWS (Mar. 25, 2020), https://apnews.com/article/censures-ca-state-wire-california-courts-b71b52b2cd144f058db920400af9a260 .
Colorado	Caitlin O’Kane, <i>Colorado Judge Resigns After Using N-Word Multiple Times and Using Racially Insensitive Language</i> , CBS NEWS (Apr. 20, 2021, 6:50 AM), https://www.cbsnews.com/news/natalie-chase-colorado-judge-resigns-N-word/ . Kirk Mitchell, <i>Colorado Appeals Judge Who Called Colleague “the Little Mexican” in Email Resigns Amid Allegations of Racism, Impropriety</i> , DENVER POST (Jan. 10, 2019, 5:52 PM), https://www.denverpost.com/2019/01/10/colorado-appeals-judge-laurie-booras-resigns/ .
Florida	Larry Hannan, <i>Jacksonville Judge Accused of Racist and Sexist Comments Resigns</i> , FLA. TIMES-UNION (Jan. 23, 2017, 12:40 PM), https://www.jacksonville.com/story/news/crime/2017/01/23/jacksonville-judge-accused-racist-and-sexist-comments-resigns/15739895007/ . David Ovalle, <i>Miami Judge Who Used an Obscure Racial Slur Resigns from the Bench</i> , MIA. HERALD (July 13, 2018, 8:04 PM), https://www.miamiherald.com/news/local/article214845940.html .

Georgia	Bill Rankin, <i>North Georgia Judge Who Used N-Word in Open Court Resigns</i> , ATLANTA J.-CONST. (Jan. 21, 2016), https://www.ajc.com/news/local/north-georgia-judge-who-used-word-open-courtresigns/n9m4QbAlAXBE63ltR85oTK/ .
Illinois	Debra Cassens Weiss, <i>Judge Who Told Black Defendant ‘You Were Never a Slave’ Fails to Win Retention</i> , ABA J. (June 6, 2019, 9:26 AM), https://www.abajournal.com/news/article/judge-who-told-black-defendant-you-were-never-a-slave-fails-to-win-retention .
Indiana	Jeff D. Gorman, <i>Judge Gets Lifetime Ban for Bad Calls and Slur</i> , COURTHOUSE NEWS SERV. (Feb. 17, 2015), https://www.courthousenews.com/judge-gets-lifetime-banfor-bad-calls-and-slur/ .
Kansas	Tim Carpenter, <i>Judge Accused of Bigotry, Racism in Disciplinary Case Seeks Mercy from Supreme Court</i> , KAN. REFLECTOR (Oct. 30, 2020, 6:22 PM), https://kansasreflector.com/2020/10/30/judge-accused-of-bigotry-racism-in-disciplinary-case-seeks-mercy-from-supreme-court/ .
Louisiana	<p>Lateshia Beachum, <i>A Judge Resigns After Using the N-Word in Texts that She Says the Public Was Never Meant to See</i>, WASH. POST (Feb. 27, 2020, 4:31 PM), https://www.washingtonpost.com/nation/2020/02/27/jessie-leblanc-resigns-racial-slur/.</p> <p>Jaclyn Peiser, <i>A Video Filled with Racist Slurs Was Taken at a Louisiana Judge’s Home. She Apologized and Went on Unpaid Leave</i>, WASH. POST (Dec. 16, 2021, 7:33 AM), https://www.washingtonpost.com/nation/2021/12/16/judge-michelle-odinet-racist-video-leave/.</p>
Massachusetts	Kevin Rothstein, <i>5 Investigates Obtains Secret Report into Judge’s Use of Racial Slur</i> , WCVB (Mar. 16, 2017, 6:30 PM), https://www.wcvb.com/article/5-investigates-obtains-secret-report-into-judges-use-of-racial-slur/9143783 .
Montana	Korva Coleman, <i>Federal Judge Emails Racist Joke About Obama, then Apologizes</i> , NPR (Mar. 1, 2012, 10:28 AM), https://www.npr.org/sections/thetwo-way/2012/03/01/147720865/federal-judge-emails-racist-joke-about-obama-then-apologizes .

New Jersey	Mary Pat Gallagher, <i>Two N.J. Judges Face Ethics Charges Over Derogatory Comments from Bench</i> , LAW.COM (Apr. 7, 2009, 12:00 AM), https://www.law.com/almID/1202429708595/ .
New York	<p>Graham Rayman, <i>Upstate NY Judge's Racist Comments from the Bench Get Burglar 10 Years off His Sentence</i>, N.Y. DAILY NEWS (July 2, 2021, 11:39 AM), https://www.nydailynews.com/new-york/nyc-crime/ny-judge-racist-remarks-20210702-avtcai2dyncdvhs2ojbysbixm-story.html.</p> <p>William Glaberson, <i>In Tiny Courts of N.Y., Abuses of Law and Power</i>, N.Y. TIMES (Sept. 25, 2006), https://www.nytimes.com/2006/09/25/nyregion/25courts.html.</p>
Ohio	Cory Shaffer, <i>Groups Demand Lake County Judge in Ohio Apologize for Calling Coronavirus 'China Virus' in Bar Association Newsletter</i> , CLEVELAND.COM (Mar. 6, 2021, 2:32 PM), https://www.cleveland.com/court-justice/2021/03/groups-demand-lake-county-judge-in-ohio-apologize-for-using-racist-term-for-coronavirus-in-bar-association-newsletter.html .
Oklahoma	Judge Refuses to Recuse Himself from Trial, Says He's Not a Racist, NEWS 9 (Dec. 13, 2010, 11:26 AM), https://www.news9.com/story/5e34fe2ae0c96e774b368f69/judge-refuses-to-recuse-himself-from-trial-says-hes-not-a-racist .
Oregon	Stephanie Volin, <i>Exclusive: The Oregon Commission on Judicial Fitness and Disability Drops Mic on Rapping Judge Susie Norby</i> , MEDIUM (June 4, 2022), https://stephanievolin.medium.com/exclusive-the-oregon-commission-on-judicial-fitness-and-disability-drops-mic-on-rapping-judge-7641df7ceea9 .
Pennsylvania	David K. Li, <i>Judge Who Allegedly Called a Juror 'Aunt Jemima' off the Bench in Pennsylvania</i> , NBC NEWS (Feb. 7, 2020, 12:07 PM), https://www.nbcnews.com/news/us-news/judge-who-allegedly-called-juror-aunt-jemima-bench-pennsylvania-n1132581 .
South Carolina	Steve Almasy, <i>Church Shooting Judge Used N-Word in Court, Received Reprimand</i> , CNN (June 20, 2015, 2:55 PM), https://www.cnn.com/2015/06/19/us/church-shooting-judge-reprimand/index.html .

Texas	<p>Angela Morris, <i>Texas Judge in Hot Water over Racial Slurs Against Mexicans</i>, TEX. LAW. (Dec. 22, 2020, 6:31 PM), https://www.bloomberglaw.com/document/X25UC9CS000000?jcsearch=hde45hjeim#jcite.</p> <p>Ethan Bronner, <i>Complaint Accuses U.S. Judge in Texas of Racial Bias</i>, N.Y. TIMES (June 4, 2013), https://www.nytimes.com/2013/06/05/us/federal-judge-in-texas-is-accused-of-racial-bias.html.</p> <p>Jolie McCullough, <i>Judge in Texas Border Crackdown Accused of Using Racist Slur Against Migrants</i>, TEXAS TRIBUNE (Aug. 22, 2022, 1:00 PM), https://www.texastribune.org/2022/08/22/texas-migrant-judge-racist-slur/.</p>
Virginia	<p>Bill Alexander, <i>Some Biased Judges Get Caught, Most Don't</i>, NBC NEWS (Mar. 16, 2004, 10:49 AM), https://www.nbcnews.com/id/wbna4534724.</p>
Washington	<p>Associated Press, <i>Judge Who Made Racist Comments on Hot Mic Intends to Retire</i>, SEATTLE TIMES (June 4, 2021, 5:12 AM), https://www.seattletimes.com/seattle-news/washington-judge-who-made-racist-comments-on-hot-mic-says-hell-retire/.</p> <p>Aaron Allen, <i>NAACP Demands King County Judge's Resignation for Use of the N-Word</i>, SEATTLE MEDIUM (May 18, 2022), https://seattlemedium.com/naacp-demands-king-county-judges-resignation-for-use-of-the-n-word/.</p>
Wisconsin	<p>Daniel Bice, <i>Judge's Racial, Ethnic Slurs Set off a Tempest</i>, MILWAUKEE J. SENTINEL (June 27, 2010), https://archive.jsonline.com/watchdog/noquarter/97280534.html/.</p>