

They're There, Now What?: The Identities, Behaviors, and Perceptions of Black Judges

by

Taneisha N. Means

Department of Political Science  
Duke University

Date: \_\_\_\_\_

Approved:

\_\_\_\_\_  
Kerry L. Haynie, Supervisor

\_\_\_\_\_  
Guy-Uriel Charles

\_\_\_\_\_  
Christopher D. Johnston

\_\_\_\_\_  
Jack Knight

\_\_\_\_\_  
Paula D. McClain

Dissertation submitted in partial fulfillment of  
the requirements for the degree of Doctor  
of Philosophy in the Department of  
Political Science in the Graduate School  
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2016

ABSTRACT

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## **Abstract**

Prior to the Civil Rights Movement, fewer than fifty black judges had been elected or appointed to the American judiciary. As of May 2016, there are almost one thousand black U.S. state and federal judges. As the number of black judges has increased, one question arises: have American courts been altered purely by this substantial increase? One expectation—and, at times, a prediction—behind the increased descriptive representation of African Americans in the judicial branch is that their mere presence would alter the judiciary. Many individuals, such as activists and scholars, anticipated that these judges of color would substantively represent black interests. It was suspected and predicted that black Americans in the judiciary would enhance equality and justice by being aware of, responsive to, and advocating for African Americans. This expectation about the expected role of black judges derives partly from theoretical work on political representation, racial group identity, and racial group consciousness, and studies of black elites' behavior in other American political institutions.

Despite expectations and predictions, there is little corresponding scholarly consensus regarding whether black judges possess a racial group identity and group consciousness, and represent black interests. This is precisely where this project seeks to intervene and explore, if not settle, the matter of whether black judges possess a racial group identity and group consciousness, and represent black interests from the bench. It addresses a set of interrelated questions relevant to

understanding whether we can view black judges as representatives in ways that are similar to how we view other political officials and whether we can and should view the courts as representative institutions. I examine these questions using a multi-method approach and diverse materials.

This research, which engages the scholarship on representation, group consciousness, judicial behavior, and candidate perceptions, offers new insights into the lives, perceptions, and behavior of black judges, as well as manifestations of representation in the judiciary. This dissertation argues that, despite the general reluctance to use the term “representation” when referring to judges, black judges can be considered representatives, similar to the ways we typically think about legislators. By developing and advancing what I call a theory of *advocative representation*, which is a theory that takes into consideration the backgrounds, experiences and identifications of judges to understand them as representatives and their behavior on the bench as representation, I broaden the conceptualization and the theory behind representation in the judicial branch. My study finds that black judges possess a sense of racial group identity and racial group consciousness, and they also behave as representatives. Because this research considers the perspectives, identities, perceptions, and behavior of black judges, we are able to arrive at a more comprehensive understanding of racial representation in the judicial branch and the importance of having African Americans on the courts.

## **Dedication**

To my grandmother Bobbie, my parents Ralph and Bridgette, and my husband Ray

# Contents

Abstract.....	iv
Dedication.....	vi
List of Tables.....	xii
List of Figures.....	xiv
Acknowledgements.....	xv
Chapter 1. Introduction.....	1
‘Representation’ of African Americans in the Judiciary.....	8
The Concept of Representation in the Judicial Context.....	14
Increasing Descriptive Representation of African Americans in the Judiciary.....	20
Black Judges, Background Characteristics, and Life Experiences.....	26
Black Judges, Racial Group Identity, and Racial Group Consciousness.....	28
Black Judges, Substantive Representation, and Judicial Behavior.....	31
Advocative Representation: Theorizing Substantive Representation in the Judiciary.....	35
Data and Methodology.....	36
The Dissertation Roadmap.....	39
Chapter 2. The U.S. Military, HBCUs, Black Legal Representation and Civil Rights Activity: The Educational and Professional Backgrounds of Black Judges.....	44
Black Judges in the 20 <sup>th</sup> Century.....	45
Black Judges in the 21 <sup>st</sup> Century.....	47
Data and Methods.....	51

The Civil Rights Generation of Black Judges Appointed to the Federal Bench, 1930-1972 .....	53
The Post-Civil Rights Generation of Blacks Appointed to the Federal Bench, 1972-Present.....	58
Discussion: Understanding Black Judges' Life Experiences .....	64
Conclusion .....	70
Chapter 3. Race, and Group Membership, Identity and Consciousness: The 'Color' of Black Judges' Souls .....	72
Race, Racial Identity and Racial Group Consciousness.....	77
Racial Group Identity.....	78
Racial Group Consciousness .....	80
Black Judges and Racial Group Membership, Identity, and Consciousness.....	83
Theory and Expectations .....	88
Data and Methodology .....	93
Results .....	100
Identifying as 'Black' and 'African American' .....	100
Experiencing Racial Discrimination.....	101
Maintaining a Connection to the Black Community .....	105
Perceiving and Understanding Racial Discrimination and Bias in the Black Community .....	111
Mobilized to Make a Difference .....	118
Discussion.....	122
Conclusion .....	125
Chapter 4. Black Judges and Black Representation in the U.S. Judicial System .....	127

Substantive Racial Representation in American Political Institutions .....	134
Black Judges, ‘Representation’, and the Judicial System .....	136
Advocative Representation: Theorizing Representation in the Judiciary .....	143
Black Judges and Advocative Representation .....	148
Data and Methods .....	150
Advancing Black Interests in the Judiciary .....	156
They don’t see things are gray .....	158
Some ‘facts’ just don’t make sense... ..	160
Being able to be a voice... ..	165
Really? A gang member? Why do you believe that?... ..	170
Getting Cultural Competency .....	172
This is not your final stopping point... ..	176
It doesn’t mean everybody gets a get out of jail card free but everybody doesn’t go to jail.....	180
I’m not afraid to ride public transportation... ..	183
I can relate to folk who come before me .....	185
It’s a long way of saying I have a preference... ..	189
If not them, then who? .....	194
Discussion and Conclusion .....	197
Chapter 5. Race and the American Public’s Impression of Black Judges .....	204
Research on Impressions of Black Public Officials .....	209
The Perceptions of Black Political Candidates and Political Officials .....	211
Whites’ Perceptions of Black Political Candidates and Political Officials .....	218

Blacks' Perceptions of Black Political Candidates and Political Officials .....	221
Theory and Expectations .....	222
Data and Design .....	225
Participants.....	226
Experimental Design.....	229
Measures .....	230
Results .....	235
The Effect of a Judge's Race on Perceptions of Impartiality .....	235
White and Black Perceptions .....	240
Discussion.....	248
Chapter 6. Conclusion: Race and Representation on the American Bench .....	253
Major Findings .....	254
Black Judges and the U.S. Military, HBCUs, Black Legal Representation and Civil Rights Activity .....	254
Black Judges, Racial Group Identity and Racial Group Consciousness.....	255
Black Judges and Advocative Representation .....	256
Impressions of Black Judges .....	257
Implications .....	258
Appendix A: Example of a Judge's Biography from the Federal Justice Center .....	263
Appendix B: Interview Questionnaire .....	264
Appendix C: Experimental Stimuli .....	266
Appendix D: Experimental Conditions .....	267
Appendix E: Histograms of the Dependent Variables .....	268

Bibliography ..... 269

Biography ..... 297

## List of Tables

Table 1: Racial Profile of the Current State and Federal Judiciary, the Legal Profession, and the U.S. Population .....	23
Table 2: Black Judges Appointed to the Federal Bench, 1928-1972 .....	54
Table 3: Characteristics of Black Judges Appointed to the Federal Bench, 1928-1972.....	57
Table 4: Black Judges Appointed to the Federal Bench, 1972-2014 .....	59
Table 5: Characteristics of Black Judges Appointed to the Federal Bench, 1972-2014.....	63
Table 6: Interviewee Information .....	96
Table 7: Chapter Themes.....	99
Table 8: Interviewee Information .....	153
Table 9: Summary of the Themes Identified in the Interviews .....	193
Table 10: Chapter Expectations.....	224
Table 11: Demographic Characteristics of Sample.....	228
Table 12: Percentage of Sample Assigned to Each Experimental Conditions.....	230
Table 13: Dependent Variable Wording and Measurement Information from Survey..	232
Table 14: Key Independent Variable Wording and Measurement Information from Survey .....	234
Table 15: OLS Model of the Effect of a Judge’s Race on Perception of Impartiality (Hypotheses 1a, 1b, and 1c) – General Impartiality .....	237
Table 16: OLS Model of the Effect of a Judge’s Race on Perception of Impartiality (Hypotheses 1a, 1b, and 1c) – Black Preferential Treatment.....	238
Table 17: OLS Model of the Effect of a Judge’s Race on Perception of Impartiality (Hypotheses 1a, 1b, and 1c) – Race-related Cases .....	239
Table 18: OLS Model of the Effect of a Judge’s Race on White Americans’ Perception of Judicial Fairness (Hypothesis 2a) – General Impartiality .....	242

Table 19: OLS Model of the Effect of a Judge’s Race on White Americans’ Perception of Judicial Fairness (Hypothesis 2a) – Black Preferential Treatment .....	243
Table 20: OLS Model of the Effect of a Judge’s Race on White Americans’ Perception of Judicial Fairness (Hypothesis 2a) – Race-related Cases .....	244
Table 21: OLS Model of the Effect of a Judge’s Race on Black Americans’ Perception of Judicial Fairness (Hypothesis 2b) – General Impartiality .....	245
Table 22: OLS Model of the Effect of a Judge’s Race on Black Americans’ Perception of Judicial Fairness (Hypothesis 2b) – Black Preferential Treatment.....	246
Table 23: OLS Model of the Effect of a Judge’s Race on Black Americans’ Perception of Judicial Fairness (Hypothesis 2b) – Race-related Cases .....	247

## **List of Figures**

Figure 1: African American State Judge Population Distribution, 2010. .... 24

Figure 2: African American Lower Federal Judge Population Distribution, 2016. .... 24

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## Chapter 1. Introduction

*I would hope that a wise Latina woman with the richness of her experiences would more often than not reach a better conclusion than a white male who hasn't lived that life... I further accept that our experiences as women and people of color affect our decision.*

- **Justice Sonia Sotomayor** (2001)

In 2009, President Barack Obama nominated Sonia Sotomayor to the U.S. Supreme Court. Justice Sotomayor had a great deal of support from the Latino/a masses and advocacy groups. She also had support from Democratic and Independent U.S. senators. For instance, most of the Democrats and Independents present when her nomination went to the floor of the Senate voted “yes.” There were, however, a number of opponents of her confirmation, mainly conservative activists and Republican politicians. In fact, only twenty-three percent of the Republicans in the Senate, or nine of the forty Republican senators, voted “yes” in support of her being confirmed to the nation’s highest court (Zhou and Tse 2009).

In public statements about the nomination, most senators focused on Sotomayor’s ability to be fair notwithstanding her ethnicity and her gender. They specifically questioned her ability to “set aside her biases,” and decide cases neutrally and “based upon the rule of law” (R-Nebraska Senator Mike Johanns and R-Arizona Senator John Kyl quoted in Zhou and Tse 2009). Senator Lisa Murkowski (R-Alaska), for example, said, “My decision to oppose Judge Sotomayor’s nomination is not based upon partisanship, ideology or the recommendations of any outside interest group. It is the product of reservations I have about the positions that Judge

Sotomayor has taken in speeches on multiple occasions over a period of years” (Zhou and Tse 2009). Similarly, Senator John Ensign (R-Nevada) stated, “Judge Sotomayor’s record and testimony provide uncertainty and doubt that she will rule with a fair and impartial adherence to the rule of law” (Zhou and Tse 2009). R-South Carolina Senator John Thune said, “I am also concerned that Judge Sotomayor has a record of bringing her personal views into her decision making philosophy rather than deciding cases based on precedent and fidelity to the law” (Zhou and Tse 2009). Senator Bob Corker (R-Tennessee) said, “I believe Judge Sotomayor views the Supreme Court as more of a policy-making body where laws are shaped based on the personal views of the justices” (Zhou and Tse 2009). Finally, Senator Sam Brownback (R-Kansas) communicated that he, too, questioned her impartiality: “I think Judge Sotomayor is absolutely wrong, and that we do a disservice to law and society when we don’t transcend our personal sympathies and prejudices. Judge Sotomayor’s view is contrary to the words engraved above the Supreme Court’s entrance: equal justice under law” (Zhou and Tse 2009).

Aside from the public statements senators made in response to Sotomayor’s nomination, which illustrated their doubt that the self-identified “Wise Latina” could be fair in adjudicating on the bench, malicious comments were made by numerous conservative political commentators. Newt Gingrich, former Republican Speaker of the U.S. House of Representatives, took to Twitter and branded Justice Sotomayor a “racist” in the wake of her nomination. “Imagine a judicial nominee said ‘my experience as a white man makes me better than a Latina woman’ new racism is no

better than old racism. White man racist nominee would be forced to withdraw. Latina woman racist should also withdraw” (Khan and Tapper 2009). Similarly, conservative radio host Rush Limbaugh referred to Justice Sotomayor as a “racist:” “Here you have a racist – you might want to soften that, and you might want to say a reverse racist” (Barr 2009). Additionally, Limbaugh said “She is an affirmative action case extraordinaire, and she has put down white men in favor of Latina women” (Mooney 2009). In all, during her confirmation Justice Sotomayor was referred to as “not that smart,” an “angry woman,” a “bully,” and a “racist,” by several renowned conservatives, including Newt Gingrich, Rush Limbaugh, Jeff Sessions, Ann Coulter, and Bill O’Reilly (Rodriguez 2011).

While Justice Sotomayor was eventually confirmed, and thus became the first Hispanic U.S. Supreme Court justice and the first racial minority female justice, her wise-Latina statement and the controversy surrounding her confirmation, raise profound questions for law and political science regarding the experiences and identities of racial minority judges, and their decision-making behavior. It also raises questions about what it means substantively to have increased racial diversity in the judiciary. Do, as Justice Sotomayor suggested, women and racial minority judges have unique experiences, and do these experiences affect their decisions and behavior? That is, should we expect racial minority judges to represent their racial group interests? Are racial minority judges widely perceived to have biases that affect how they decide cases, or do the quotes above simply reflect typical partisan political rhetoric that characterizes judicial confirmation

hearings? The epigraph to this chapter implies racial minority judges have distinctive life experiences and those life experiences often lead them to render distinctive decisions, and it also implies that both racial minority judges and the public think of judges of color as exhibiting distinctive judicial behavior. This project engages these topics and addresses these questions by examining the experiences, identities, behaviors, and perceptions of black judges.<sup>1</sup>

The central question addressed in this project is do black judges provide representation to black Americans? To answer this overarching question, the project focuses on a subset of interrelated secondary questions. For instance, what are the life experiences of black judges? Do black judges exhibit a racial group identity and a racial group consciousness? How do black judges behave on the bench? Are black judges perceived as being incapable of deciding court cases fairly

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<sup>1</sup> It is becoming increasingly difficult to focus on African Americans and white Americans given that Latinos and Asian Americans, but other groups as well, are increasingly making up a larger proportion of the U.S. population and the state and federal judiciaries. While it may have been preferable to study other racial and ethnic minority groups, the reality is that although racial and ethnic minorities now make up 10.1 percent of the state judiciary and 25.9 percent of the federal bench (see Table 1), black judges have and continue to represent the largest racial minority group in the justice system. Additionally, compared to other racial groups, black Americans have a history of possessing a racial group identity and consciousness that often leads to distinctive behavior in the political arena (e.g., Dawson 1994; Hayne and Watts 2010). Furthermore, in other contexts, black politicians are known to represent African Americans by making decisions in line with black interests and in response to issues African Americans are concerned with (e.g., Haynie 2001; Brown 2014). While this project focuses on black judges, in the future, it will be important for scholars, including myself, to determine whether or not other judges, such as Latino/a judges, Asian American judges, American Indian judges, judges who identify as LGBTQ, and white judges, have a group identity and consciousness, and exhibit decision-making behavior that is in response and in line with the interests of a particular group. Researchers in political science have already begun assessing the group identity and consciousness of Latinos/Latinas, Asian Americans, Muslims, American Indians, and white Americans, however, this research has yet to reach consensus regarding the group identity and consciousness of these groups, and whether these groups behave in the political sphere with the group interests and concerns in mind (e.g., Stokes 2003; Masuoka 2006; Sanchez 2006; Jamal 2005; Wong, Lien, and Conway 2005; Jardina 2014; McDermott and Sampson 2005).

and based upon the rule of law? While these questions are important for America's democracy, African Americans' right to be represented, the confidence and legitimacy of the judiciary, and understanding black judges and their behavior, these questions remain understudied in research on courts and the judiciary.

Political representation is an important attribute of democracy and scholars have consistently demonstrated that diversity in political institutions matters for what those institutions do and how they do it. Justice Sotomayor's contention that her race and gender affects her professional conduct has been found to have real meaning in other contexts like legislatures and city councils.<sup>2</sup> Although extant research on race and representation provide us with reasons to expect black judges to represent black interests, court scholars have yet to reach a consensus about the extent to which black judges behave in ways that are in line with the interests of African Americans and in response to issues African Americans are often concerned with. Therefore, it is unclear if black judges represent black interests and change the judiciary in similar ways that black legislators and other black political officials change the U.S. Congress, state legislatures, and other political institutions.<sup>3</sup>

Evidence consistently shows that African Americans and white Americans have different perceptions of the judicial system and receive differential treatment within it (e.g., Alexander 2012; Cole 1999; Demuth and Steffensmeier 2004; Doerner

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<sup>2</sup> For instance, scholars have found that the gender of legislators affects the policymaking process (Bratton and Haynie 1999; Thomas and Welch 1991; Reingold 2008; Swers 2002), as well as race (Bratton and Haynie 1999; Haynie 2001; Orey, Smooth, Adams, Harris-Clark 2007; Brown 2014).

<sup>3</sup> See Hanna Pitkin (1967) *The Concept of Representation*, for more information. Also see Jane Mansbridge's work on representation (1999, 2000, 2003, 2011).

and Demuth 2010; Higgins, Wolfe, Mahoney, and Walters 2009; Sun and Wu 2006). Understanding some of the ways black judges behave and the factors affecting their behavior will be helpful in determining if black judges create a more just, sensitive, understanding and responsive justice system. How can, and perhaps do, black judges help address the persistent and pervasive racial bias in the criminal justice system?<sup>4</sup>

Third, understanding the effect of race on the public's perception of judges is important for understanding the legitimacy and levels of confidence in the courts, especially as both the country and courts continue to diversify along racial lines in the 21<sup>st</sup> century.<sup>5</sup> The judiciary's legitimacy and effectiveness is contingent upon public trust and confidence in the courts (Gibson & Caldeira 2009). Theoretically, a democratic government and its primary political institutions are only considered legitimate if they are representative of the public (Cohen 1997; Wills 2001; Vargas 2008, 1427).<sup>6</sup> When the courts are not representative of the larger population, minorities, in particular, often perceive them as biased "instruments of oppression"

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<sup>4</sup> State and federal courts adjudicate several million cases a year (Donovan, Smith, and Mooney 2012). Furthermore, the courts play a policymaking role (Casper 1976) and there is virtually no political question that "arises in the United States that is not resolved, sooner or later, into a judicial question" (Tocqueville 1945). Thus, judges and the courts play an important role in society and in the lives of Americans.

<sup>5</sup> Scholars have also illustrated that black Americans in government positions affects the attitudes and actions of both black Americans and white Americans (e.g., Gay 2001, 2002; Bobo and Gilliam Jr. 1990; Mansbridge 1999; Williams 1998; Theobald and Haider-Markel 2008; Tate 2003; Banducci, Donovan, and Karp 2004; Scherer and Curry 2010).

<sup>6</sup> Scholars note that increased perceptions of legitimacy can subsequently increase compliance with policy (Hibbing and Theiss-Morse 2001; Tyler 1990, 2001).

(Wynn and Mazur 2003, 781).<sup>7</sup> Ultimately, since the court acquires at least some legitimacy not only by what it actively does, but by what it looks like, , this study can join the scholarly discourse on factors that affect the extent to which black and white Americans have support for and confidence in the judiciary. Furthermore, since the project examines perceptions of judges, it may shine light on potential factors influencing the levels of support for racial minority electoral candidates and appointees (e.g., Hurwitz and Lanier 2003; Engstrom 1989; Engstrom and Caridas 1991; Holmes 2007; Killian 2008; Bratton and Spill 2001; Beiner 2007; Asmussen 2011; Solowiej et al. 2005).

Finally, black judges represent an understudied group in both Race, Ethnicity, and Politics and Judicial Politics, although this group, with their increased presence in the federal and state judiciaries, are playing a larger role in redefining and reforming the American justice system. While much is known about the life experiences and identities of black masses, black political officials, and white jurists, scholars have yet to fully understand the experiences and identities of black judges (e.g., Smith 1983; Washington 1994). Therefore, studying the experiences and identities of black judges is significant in and of itself, but it is also important because scholars continue to expect black judges to behave distinctively once they reach the bench and this belief is at least partly predicated on the idea that black judges' experiences have been, and identities are, largely shaped by them being

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<sup>7</sup> Some scholars note that when the courts are not representative of the larger population, they are actually perceived *more* favorably by some subpopulations (Sherer and Curry 2010).

racial minorities in a racialized social system that values and privileges whiteness (Bonilla-Silva 1997).

### ***'Representation' of African Americans in the Judiciary***

The concept of representation is derived from the base word represent, which is fairly easy to define – it technically means to act in place of or on behalf of someone else. Representation, however, can be a deceptively complex subject of study and concept theoretically (e.g., Pitkin 1967; Mansbridge 1999, 2000, 2003, 2011; Rehfeld 2009; Dovi 2002). In politics, representation generally describes how political officials stand in on behalf of individuals or a group of individuals.

The origin of representation is not easily traced, however, from the framers through their written work, including The Federalist Papers and the nation's founding documents, it is apparent that at the founding, the U.S.' founding fathers perceived representation as a fundamental right for most persons within the U.S.<sup>8</sup> In

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<sup>8</sup> I say *most* persons within the U.S. were guaranteed the right to be represented within the American government, because several groups were not to be represented. For example, in Federalist Paper 54, the primary concern was the representation of black enslaved persons in relation to taxation and representation. Madison described the representation that would be afforded to black slaves because they were considered both people and property by laws – every three out of five slaves would be counted for representation purposes. Other groups that were underrepresented included individuals who did not own property and women. Generally, citizens were granted representation in the government through their voting rights. Therefore, slaves, white men without property, women, other racial minorities, and individuals who could not vote, were typically not represented because these individuals did not have the necessary political access via electoral politics to choose their representatives. In Federalist Paper 36, Hamilton articulates who he perceives will be representatives in government, “proprietors of land, of merchants, and of members of the learned professions,” although he perceives these elite individuals will “truly represent all those different interests and views.” Moreover, while he sees societal elites as most likely to be chosen as representatives, Hamilton says “The door ought to be equally open to all; and I trust, for the credit of

fact, according to Cohen (1997) and Wills (2001), the founding fathers intended for the U.S. to become and expected the U.S. to remain legitimate as a democratic government (i.e. Representative Democracy) because they created a political system that derived its powers from citizens and guaranteed its citizens and their interests would be represented. In essence representation was essential to the nation's republican form of democracy.

Also evident from the framers' writings is their belief that representatives are legislators and the nation's representative bodies are legislatures, especially the U.S. House of Representatives, and therefore, representation is provided for in the legislative realm (e.g., The Federalist Papers 24, 35, 58; Article I of the Constitution). In other words, the framers intended the nation's legislative body, the U.S. Congress, to be the branch of government that would carry out the representation function. The court was not intended to be a representative institution and judges were not meant to represent. For example, in Federalist Paper 24, Hamilton said the "legislature was to be a popular body, consisting of the representatives of the people periodically elected." Additionally, in Federalist Paper 78, Hamilton is clear that he perceives it is the legislature, and not the judiciary, that is a representative body: "Federal judges serving in good behavior protects judges from the 'representative

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human nature, that we shall see examples of such vigorous plants flourishing in the soil of federal as well as of State legislation."

body'...in a republic it is a no less excellent barrier to the encroachments and oppressions of the representative body.”

While the concept of ‘representation’ was used long before the 20<sup>th</sup> century (i.e., Burke 1774), Hanna Pitkin (1967) is often credited for her work on this subject. In her book, *The Concept of Representation* (1967), Pitkin articulates and outlines four theories of representation important to politics: descriptive representation, substantive representation, formalistic representation, and symbolic representation. While these four theories of representation, among others that have been derived such as passive representation, active representation, representative bureaucracy, dyadic and collective representation, and discursive representation, have been used a great deal in political science research (e.g., Meier 1976, 1993; Celis, Childs, Kantola, and Krook 2008; David 1983; Lawless 2004; Tate 2001; Theobald and Haider-Markel 2009; Gay 2001; Haider-Markel, Joslyn, and Kniss 2000; Bobo and Gilliam 1990; Weissberg 1978; Hill and Hurley 2003; Hill, Jordan and Hurley 2015; Hurley 1982; Stimson, MacKuen, and Erikson 1995), three types have been particularly prominent in research in REP – descriptive, symbolic and substantive representation.<sup>9</sup> Additionally, these three types of representation have been particularly important types in democracies.

Descriptive representation is the “making present of something absent by resemblance or reflection, as in a mirror or in art” (Pitkin 1967:11). Thus, a racial

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<sup>9</sup> I will only explore the concepts ‘descriptive representation’ and ‘substantive representation’ as they relate to racial and ethnic representation. This is consistent with other studies examining racial and ethnic representation (e.g., Haynie 2001; Scherer and Curry 2010).

group is descriptively represented when the institutions that govern it accurately mirrors or resembles the important characteristics of the community (i.e., race). For African Americans, this means having African American in positions of power within political institutions. In the legislative context, African Americans are descriptively represented when African Americans are present in the national legislature and state legislatures. In the bureaucracy context, African Americans are descriptively represented when African Americans are elected, appointed, or simply hired in important bureaucratic organizations. Finally, in the judicial context, African Americans are descriptively represented when they are elected or appointed as judges.

Pitkin (1972) describes symbolic representation as the ways a representative “stands for” the represented. That is, symbolic representation is the particular meanings that a representative has for those being represented. Symbolic representation is understood by the response to the representative by the individuals being represented. For example, this means seeing the representative and the political institution as legitimate, and having support for and trust in the actions of the political officials. For example, Theobald and Haider-Markel (2009) find that African Americans are more likely to perceive police actions as legitimate if black police officers are present. Also, Scherer and Curry (2010) find that African Americans see courts with African American judges as much more legitimate than courts with less racial diversity. Scholars that study voter turnout also find that black representatives symbolically represent black Americans by politically

empowering them, increasing their level of political engagement, and making them more attentive to political affairs (Gay 2001; Mansbridge 1999; Philpot and Walton 2007).

Finally, substantive representation refers to the content of the actions of the representative when those actions are taken in the interest of the group being represented (Pitkin 1972: 209). Substantive representation, therefore, is concerned with what political officials do on behalf of certain groups they are associated with and are representing. For the black Americans, this means having political officials who behave in manners and pursue goals that respond to the group's needs and interests. African Americans are substantively represented when legislators, bureaucrats, and judges make decisions that adhere to, respond to, or are in accordance with the interests and concerns of African Americans. For example, black legislators

In brief, descriptive representation is concerned with a representative's presence, symbolic representation is concerned with the response invoked by the representative and substantive representation is concerned with a representative's behavior. Each of these types of representation enhance democracy. Descriptive representation is important for individuals previously excluded from the benefits of democracy and individuals who have been disenfranchised and oppressed. Additionally, descriptive representation is important in a democracy because the U.S.' power as a republican government resides in the citizens being represented in the government's decision-making bodies.

Scholars note that descriptive representation is also important for symbolic representation. Scholars demonstrate that descriptive representation is important for having trust and legitimacy in political institutions and the government as a whole (Wills 2001; Scherer and Curry 2010; Mansbridge 1999; Theobald and Haider-Markel 2009). For example, Mansbridge (1999) argues that descriptive representation increases the “attachment to the polity of members of the group” (628). Moreover, scholars find that black descriptive representatives effect the level of political engagement, especially voter turnout, among African Americans, who tend to be politically empowered and more attentive to political affairs when they are represented by someone that looks like them (e.g., Banducci, Donovan and Karp 2004; Bobo and Gilliam 1990; Gay 2001; Mansbridge 1999; Philpot and Walton 2007; Rocha, Tolbert, Bowen and Clark 2010).

Descriptive representation is significant also because it has been shown to induce and enhance substantive representation. (Mansbridge 1999; Pitkin 1967; Dovi 2002; Haynie 2001; Brown 2014). Numerous studies of Congress, state legislatures, and local legislatures show that black politicians are much more likely than white politicians to provide black people with substantive representation by behaving in ways that are beneficial to and advance their interests (e.g., Brown 2014; Haynie 2001; Bratton and Haynie 1999; Nicholson-Crotty, Grissom, and Nicholson-Crotty 2011; Farrell, Ward, and Rousseau 2009; Ward, Farrell, and Rousseau 2009). The substantive representation of the interests and concerns of groups, especially those formally disenfranchised and oppressed, is critical for a

democracy, which is expected to reflect and take into consideration the interests and concerns of its citizens.

### **The Concept of Representation in the Judicial Context**

While legislative and bureaucracy studies often use the concepts of symbolic, descriptive representation and substantive representation to describe and understand the presence and behavior of black political officials, court scholars have tended not to incorporate these concepts into their research (Ifill 1998). According to some scholars, using the concept of representation in the judicial context, elicits hostility from both judges and the legal profession as a whole. For instance, Ifill (1998) says, “Racial diversity on the courts is almost never discussed in the more forceful language of rights and representation...Indeed, to describe judges as representatives is to invite hostility from both the bench and the bar” (97).

There are several reasons scholars tend not to use the concepts and language of representation in the judicial context. First, as I discuss above, the framers of the U.S. Constitution neither intended the court to be a representative institution nor judges to be representatives. Courts and judges were intended to be neutral arbiters of conflict and disputes, as opposed to arenas in which group interests are advanced via judicial behavior. Thus the conventional understanding by scholars and laypeople alike is that judges and courts are fair and impartial arbiters, that operate in accordance with and in deference to established law and precedent. Chief Justice

of the Supreme Court of the U.S. John G. Roberts, Jr. expressed this understanding at his confirmation hearing for Chief Justice of the United States:

Judges are like umpires. Umpires don't make the rules, they apply them. The role of an umpire and a judge is critical. They make sure everybody plays by the rules, but it is a limited role...Judges have to have the humility to recognize that they operate within a system of precedent shaped by other judges equally striving to live up to the judicial oath, and judges have to have modesty to be open in the decisional process to the considered views of their colleagues on the bench.<sup>10</sup>

A second reason scholars have not thought of judges as political representatives is, as a condition to serving, judges take an oath to be impartial. That is, they swear to uphold a principle of justice that requires their decisions to be based on objective criteria, such as precedent and legal principles, the law, and case facts (American Bar Association's Model Code of Judicial Conduct Canon 3B 1972 quoted in Wynn and Mazur 2003: 772; 28 U.S. Code § 453). For example, each judge or justice of the U.S. takes the following oath before taking the bench: "I, \_\_\_ [full legal name], do solemnly swear (or affirm) that I will administer justice without respect to persons, and do equal right to the poor and to the rich, and that I will faithfully and impartially discharge and perform all the duties incumbent upon me as \_\_\_ [position] under the Constitution and laws of the United States. So help me God" (28 U.S. Code § 453). Judges are, therefore, not expected to be representatives

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<sup>10</sup> Excerpts from the opening statement of John G. Roberts, Jr. at his confirmation hearing for Chief Justice of the United States are available here: <http://www.uscourts.gov/educational-resources/educational-activities/chief-justice-roberts-statement-nomination-process>.

since the dictates of the judicial profession require them to be guided by the law, legal principles and precedent, and case facts, and not group interests.<sup>11</sup>

Third, judges are often viewed as a monolithic group; they have, for the most part, gone through similar processes to become judges (Stumpf 1998). For example, no matter who the judge is, s/he has likely received law training (Stumpf 1998; Goldman, Slotnick, and Schiavoni 2013; Goldman, Slotnick, Gryski, and Zuk 2000; Goldman, Schiavoni, and Slotnick 2008), and law school socializes its students similarly by teaching its students the same techniques and values (Erlanger and Klegon 1978; Lortie 1959; Bodenheimer 1947). Beyond going to law school, which provides judges' initial contact with the legal profession and is the very basis of their legal careers, most judges also served as a law intern and/or clerk, and had formal experience as an attorney (Stumpf 1998; Goldman, Slotnick, and Schiavoni 2013; Goldman, Slotnick, Gryski, and Zuk 2000; Goldman, Schiavoni, and Slotnick 2008). Additionally, many judges learn how to be knowledgeable and experienced judges through a "judicial socialization process" (Carp and Wheeler 1972, 359). Given this similar education and professional background, and socialization processes, judges are thought to have developed a similar outlook that overshadows any individual characteristics like race, gender, class, and religion.

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<sup>11</sup> Furthermore, the implementation of institutional mechanisms such as lifetime tenure and salary protection in the federal judiciary and judicial performance evaluations and popular elections in state judicial systems suggests there is a desire to ensure judges are independent and yet accountable (Wynn and Mazur 2003; Brody 2008).

Fourth, until the 1960s, judges largely had similar educational, economic, and social backgrounds and were perceived as having similar interests, perspectives, and outlooks (e.g., Stumpf 1998; Goldman, Slotnick, and Schiavoni 2013; Goldman, Slotnick, Gryski, and Zuk 2000; Goldman, Schiavoni, and Slotnick 2008). Prior to the Civil Rights Movement when the courts began diversifying significantly along gender and racial lines, both the federal and state judiciaries could largely be described as homogeneously white, and male. Early 20<sup>th</sup> century judges came “from a very narrow stratum of American society”, and were “home-grown fellows who [were] moderately conservative and staunchly committed to the status quo...local boys who made good” (Carp, Stidham, and Manning 2017, 210 and 261). Therefore, only in the last fifty years has there been enough of an increase in the presence of racial minority and white female judges to make the judiciary more heterogeneous, and thus occupied with individuals who have diverse educational, economic, and social backgrounds and distinctive interests, perspectives, and outlooks (e.g., Goldman and Saronson 1994; Goldman, Slotnick, Gryski, and Zuk 2001; Goldman, Schiavoni, and Slotnick 2009; Goldman, Slotnick, and Schiavoni 2013; Carp, Manning and Stidham 2013; Smith 1983; Washington 1994; Glynn and Sen 2015; Moyer and Haire 2015; Boyd 2015; Haire and Moyer 2015).

Finally, conventional wisdom in the legal profession says representation is what lawyers do and adjudication is what judges do (e.g., Ewing 2000). Lawyers are viewed as being responsible for counseling and advocating for clients. Their primary function is to represent the self-interest of their client. Judges, on the other hand, are

viewed as being responsible for analyzing legal arguments fully and fairly, being open to case facts, and deciding cases according to the rule of law. That is, they are responsible for adjudicating cases and resolving disputes. Therefore, generally, the bench is expected to adjudicate and the bar is expected to advocate and legally represent.

Despite resistance to the use of the concept of representation in the judicial context, the concept is now largely used in studies of the court and judges (e.g., Alozie 1988; Ifill 1998; Graham 1990; Bonneau and Rice 2009; Scherer and Curry 2010; Segal 2000; Kestel 2013, 2015). These scholars generally, albeit implicitly, acknowledge that the principles of representation can be applied to judges, who can be elected and nonelected officials, and clearly operate in a non-legislative context. This is similar to scholars who have adopted the language of representation in their studies of police officers, bureaucrats, and other non-elected officials, and other non-legislative contexts (Hindera 1993; Meier and Nicholson-Crotty 2006; Theobald and Haider-Markel 2009). This literature demonstrates that the bureaucracy also performs representational functions. For example, Meier, Wrinkle, and Polinard (1999) study the representational nature of Black education bureaucrats and they find that Black students perform better when there are Black teachers present in schools. Additionally, after analyzing data from 50 states between 1990 and 2006, Zhu and Walker (2013) find that both minority healthcare professionals and minority teachers contribute to reduced minority teen birth rates. Studies such as

these, again, demonstrate that the bureaucracy and individuals who are not elected to represent can still perform representational functions.

Beyond implicitly acknowledging that the principles of representation can be applied to judges, judicial scholars accept that circumstances and discretion permits, political officials can, and often do, act and make decisions in a manner that benefits members of groups to which they are a part of (e.g., Bratton and Haynie 1999; Brown 2014; Haynie 2001; Hinderer 1993; Meier and Nicholson-Crotty 2006; Theobald and Haider-Markel 2009). Finally, scholars concede that if age, gender, ideology and experience can influence judges in some cases, race and other salient background characteristics might also influence judges' behavior (Manning, Carroll, and Carp 2004; Glynn and Sen 2015; Segal and Cover 1989; Gillman 2001; Epstein and Knight 1997).

Like many political officials, judges exercise great powers and have some discretion available to them. Therefore, it is possible that judges might purposefully act and decide in a manner that benefits certain groups (e.g., Merrill 1992; Fischman 2014; Beim and Kastellec 2014; Knight and Epstein 1996).<sup>12</sup>

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<sup>12</sup> For example, Merrill (1992) notes that decisions of superior courts are the most powerful form of precedent and are "legally binding on lower courts," while there is discretion in determining whether to follow the decisions of coordinate or concurrent, and inferior courts (Merrill 1992, 970-972, and 1006). Ultimately, judges make judgmental calls in every case by, for example, deciding to give more or less deference to particular precedent and principles, determining what the facts of a case are, and how they should interpret vague laws. Thus, while they may endeavor to preserve the authority and consistency of the legal system by consistently adhering to laws and precedents, they can make discretionary calls and decisions that benefit members of groups to which they are a part (Fischman 2014; Beim and Kastellec 2014).

In this sense, judges can function as representatives and representation is a concept that can be applied to the judicial context. While judges are not required to represent certain groups like legislators, and are not held accountable in the same way legislators are, they nevertheless, by virtue of the discretion they are afforded, can function as representatives of groups or group interests. Regarding black judges, it is not unreasonable to expect that they might indeed provide descriptive, symbolic, and or substantive representation to black Americans.

### ***Increasing Descriptive Representation of African Americans in the Judiciary***

Robert Morris, the first Black judge in the U.S., was appointed to Boston, Massachusetts's Magistrate Court in 1852 (Smith 1983). Over the next century, fewer than fifty judges presided over state or federal courts (Smith 1983). In 1960, there were less than fifty active state and federal court judges who were considered racial/ethnic minorities (Woodson 1934; Bonneau 2001; Hurwitz and Lanier 2003; Bratton and Spill 2002). This trend changed in the 1960s with the black Civil Rights Movement championing the representation of black Americans in political offices, the Voting Rights Act which (re)enfranchised black voters, and conscious efforts by presidents to diversify the judiciary.

In the last fifty years the courts have increasingly diversified along racial lines. By the beginning of the 1970s, more Black judges had been appointed and elected to the bench. In the 1970s, there were more than one hundred and fifty state

judges who were racial and ethnic minorities (four percent of all judges) and by 1989, there were nearly five hundred black judges nationwide (Reddick, Nelson, and Caufield 2009). Furthermore, recent studies illustrate that racial minorities are being appointed and elected to judgeships at a greater rate than before (Walker, Spohn, and Delone 1996). In 2000, the percentage of racial and ethnic minority judges was roughly thirteen percent (Reddick, Nelson, and Caufield 2009).

Table 1 presents the racial profile of the state and federal judiciary, lawyers, and the U.S. population as of May 2016. Currently, racial and ethnic minorities make up ten percent of the state judiciary and roughly twenty percent of the federal judiciary, while white judges represent eighty percent of the federal judiciary and ninety percent of the state judiciary. After white jurists, black judges are the largest racial group present in both state and federal judiciaries. Black jurists make up roughly six percent of state judges and eleven percent of federal judges. Figures 1 and 2 reveal that the African American judicial population is concentrated in the Northeast and the South.<sup>13</sup> As of 2010, the five states with the largest number of black state judges are Illinois (102), California (87), Louisiana (51), New York (48), and New Jersey (41). As of May 2016, the five states with the largest number of black U.S. District Courts and Courts of Appeals judges are California (16), New York (12), Michigan (10), Florida (9), and Virginia (9).

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<sup>13</sup> This concentration of African American judges in the Northeast and South is similar to the concentration of the African American population in the South, or the “Black Belt,” where blacks were concentrated during the days of slavery,” and the northeast, where more than 6 million African Americans relocated during The Great Migration from the rural south (McClain and Stewart 2014, 37; Harrison 2012)

In comparison with figures for the overall U.S. population, in 2016, black judges are still underrepresented at both the state and federal level. Although black judges remain underrepresented, the percentage change between the number of black judges in 1960 and in 2016 is remarkable. As mentioned previously, there were fifty black judges in the U.S. in 1960 (Bonneau 2001; Hurwitz and Lanier 2003; Bratton and Spill 2002). By 2016 this number has grown to roughly nine hundred, an increase of more than 1530% over the last 55 years.

**Table 1: Racial Profile of the Current State and Federal Judiciary, the Legal Profession, and the U.S. Population**

<i>Race/Ethnicity</i>	<i>State Judges (2010)<sup>14</sup></i>		<i>Federal Judges (2016)<sup>15</sup></i>		<i>Lawyers (2015)<sup>16</sup></i>		<i>U.S. Pop. (2014)<sup>17</sup></i>
	Number	%	Number	%	Number	%	%
Asian	122	1.1	29	2.1	20,160	3.4	5.4
Black	665	5.9	151	11.1	33,865	4.8	13.2
Latino	320	2.8	97	7.2	28,630	3.7	17.4
American Indian	13	0.1	2	0.1	1,730	0.2 <sup>18</sup>	1.2
Other <sup>19</sup>	24	0.2	1	0	-	-	0.2
White, non-Hispanic	10,200	89.9	1,083	79.9	786,730	88.1	62.1
Minority total	1,144	10.1	280	20.7	84,385	9.7	37.4
Total	11,344	-	1,355	-	871,115	-	-

Note: *These statistics include all 50 states, but does not include U.S. territories. Also, some percentages do not add up to 100 because the percentages are rounded to the nearest tenth.*

<sup>14</sup> <http://apps.americanbar.org/abanet/jd/display/national.cfm>

<sup>15</sup> <http://www.afj.org>

<sup>16</sup> Source: 2010, U.S. Census, Bureau of the Census; also see, [http://www.americanbar.org/content/dam/aba/administrative/market\\_research/lawyer-demographics-tables-2015.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/market_research/lawyer-demographics-tables-2015.authcheckdam.pdf)

<sup>17</sup> <http://quickfacts.census.gov/qfd/states/00000.html>

<sup>18</sup> Lawyers' Committee for Civil Rights Under Law, "Answering the Call for a More Diverse Judiciary" (Washington, D.C., 2005), available online at <http://www.lawyerscommittee.org/2005website/publications/images/judicialdiversity.report.pdf>

<sup>19</sup> "Other" consists of individuals that did not fall under the main racial/ethnic categories.

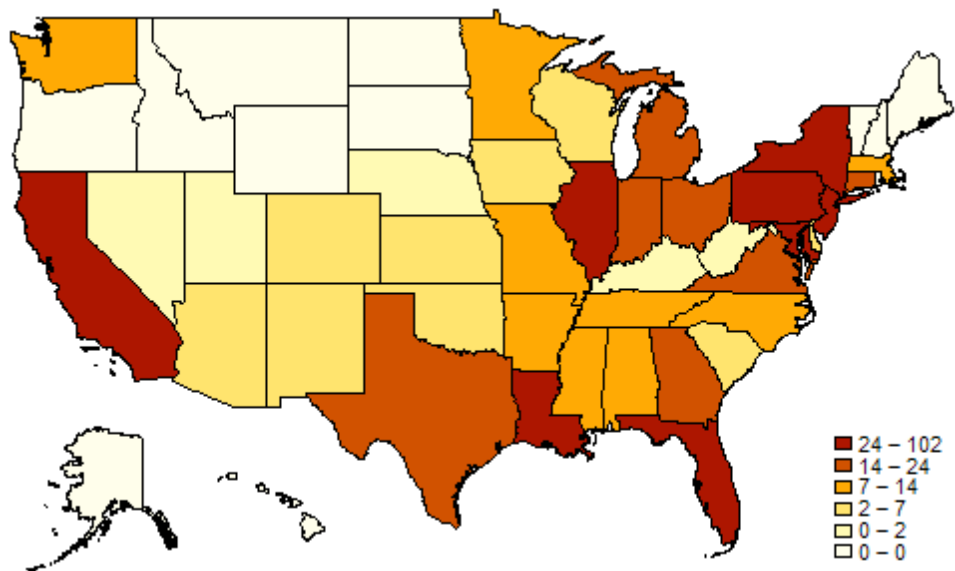


Figure 1: African American State Judge Population Distribution, 2010.

Source: National Database on Judicial Diversity in State Courts

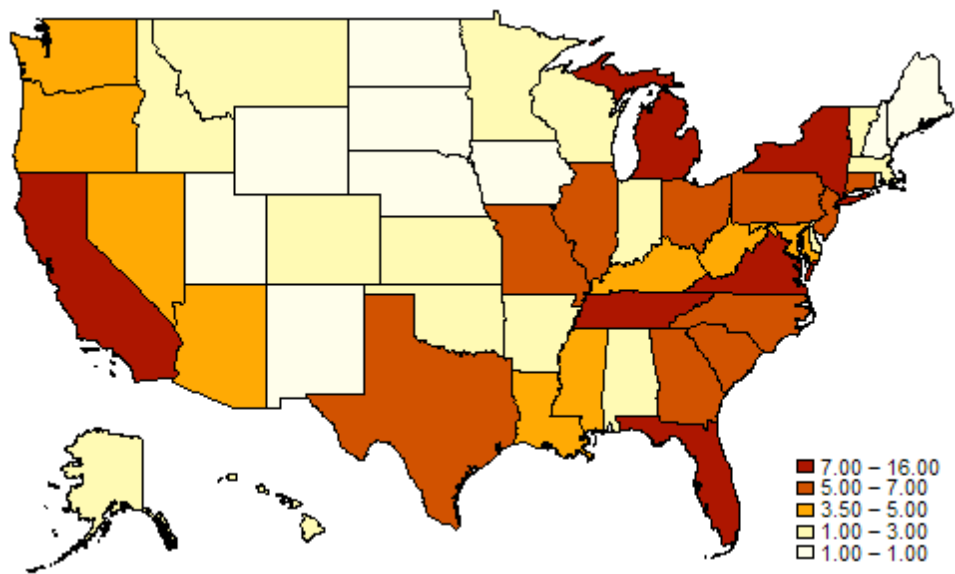


Figure 2: African American Lower Federal Judge Population Distribution, 2016.

Source: Federal Judicial Center

Because black judges have been appointed and elected in record numbers to both the state and federal bench in the post-civil rights era, court scholars now say that black jurists are “worthy of heightened analysis” (Carp, Manning and Stidham 2008, 319).<sup>20</sup> In other words, since the 1970s scholars have shown an increased interest in understanding who these judges are, how they reach the bench, and what they do on the bench once they are there. That is, scholars have tried to understand whether or not black judges, who descriptively represent black Americans, also symbolically and substantively represent black Americans and their interests.

There is now a large, and growing body of literature on black judges, but few of these studies systematically examine the backgrounds of black judges, why black judges might represent black Americans’ interests and respond to black Americans’ concerns, and whether or not black judges symbolically and substantively represent black Americans and black interests.<sup>21</sup> This study seeks to address this deficit in our

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<sup>20</sup> Because most 20<sup>th</sup> century scholars focused their analyses on the backgrounds of black attorneys, there are more studies of black lawyers than there are of black judges (Woodson 1934; Edwards 1959; Goldman 1972; Shuman 1970; Tollett 1972; Smith 1983; Davis 1985). Also, several factors led to this increase in black judges. Among other reasons, at the federal level, President Carter made an effort to appoint African Americans, and other racial minorities and white women, to the federal bench (Goldman 1978, 1981; Gotschall 1983). Another important factor was the passage of the Voting Rights Act in 1965 (VRA), which decreased racial discrimination in voting and improved the registration and turnout of black Americans. With more African Americans at the polls, African Americans were elected much more frequently to the state bench (Engstrom 1994; Roth 2014).

<sup>21</sup> Currently, there are large bodies of literature on the perspectives and backgrounds of black judges (Shuman 1970; *Judicature* Staff 1973; Uhlman 1978; Smith 1983; Washington 1994; Goldman and Saronson 1994; Goldman, Slotnick, Gryski and Zuk 2001), perceptions of the courts and court decisions, and the trust and confidence the public has in the justice system (e.g., Bartels and Johnston 2013; Gibson 1989, 2008, 2012; Hough, Jackson, Bradford, Myhill and Quinton 2010; Gibson and Caldeira 2012; Nownes and Glennon 2015; Cann and Yates 2015), the behavior of black judges (e.g., Uhlman 1978; Steffensmeier and Britt 2001; Bonneau and Rice 2009; Chew and Kelley 2009; Kastellec 2013, 2015; Welch, Combs, and Gruhl 1988), the levels of, and how to, increase judicial diversity (e.g., Asmussen 2011; Hurwitz and Lanier 2003; Graham 2004; Solowiej et al. 2005; Solberg

knowledge by examining the backgrounds and experiences of black judges, whether or not they possess a racial group identity and racial group consciousness that would lead them to represent black Americans' interests on the bench, whether or not they behave in ways that demonstrate they substantively represent black Americans and black interests, and how they are perceived by African Americans and other individuals in America.

### ***Black Judges, Background Characteristics, and Life Experiences***

Underlying the belief that black judges will have distinctive decision-making tendencies is the presumption that to some extent, black judges have distinctive backgrounds and experiences that make them similar to each other and different than their non-black counterparts. Studies substantiate this belief by illustrating there are often important characteristics in the backgrounds of black judges that are not present in the backgrounds of white judge (Shuman 1970; *Judicature* Staff 1973; Smith 1983; Washington 1994; Goldman, Slotnick, Gryski and Zuk 2001; Goldman, Schiavoni, and Slotnick 2009; Goldman, Slotnick, and Schiavoni 2013). For instance, black judges are often victims of racial discrimination, active politically in local politics and in civil rights, employed in a prosecutor's office or served in the military at some point prior to becoming a judge, consider themselves 'liberals' and identify

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and Bratton 2005; Hurwitz and Lanier 2003, 2008; Ifill 1997), and the importance of having diversity in the courts (e.g., Beiner 2002; Ifill 2000; Onwuachi-Willig 2005; Wynn and Mazur 2003).

with the Democratic party, and mostly trained at black educational institutions, especially Howard University (Shuman 1970; Smith 1983; Washington 1994; *Judicature* Staff 1973; Goldman and Saronson 1994; Goldman, Slotnick, Gyski and Zuk 2001; Goldman, Schiavoni, and Slotnick 2009; Goldman, Slotnick, and Schiavoni 2013).<sup>22</sup>

It would appear that black judges have some distinctive background characteristics.<sup>23</sup> Unfortunately, there are two issues with this conclusion. First, most of the studies that focus exclusively on black judges are more than twenty years old and the black judges they interviewed, surveyed, and researched for those studies were born in the early 20<sup>th</sup> century (e.g., Shuman 1970; Smith 1983; Washington 1994). Second, while they provide some evidence to suggest that current black judges have distinctive backgrounds, recent studies do not focus on black jurists. Instead, researchers merge white female federal court appointees and racial minority federal court appointees into one category and report the findings of the entire group, without being mindful that there may actually be distinctions

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<sup>22</sup> Unfortunately, scholars combine 21<sup>st</sup> century racial minority judges and white female judges into one undifferentiated category to compare them to white male judges (Slotnick 1984; Goldman 1995; Goldman and Slotnick 1997; Goldman and Slotnick 1999; Goldman, Slotnick, Gyski and Zuk 2001; Goldman, Schiavoni, and Slotnick 2009; Goldman, Slotnick, and Schiavoni 2013). While it is preferable to include contemporary work here that compared black judges to white judges, that work is not available. Therefore, I present research here that shows black judges, along with white women and other racial minorities, have different background characteristics and follow different paths to the federal bench.

<sup>23</sup> Although after examining the backgrounds of black and white trial court judges on the “Metro City Bench,” Uhlman (1978) concluded that pre-judicial careers of black judges and white judges are often similar. Uhlman’s conclusion was based on members of both groups being active in local politics prior to ascending to the bench and receiving high quality legal training. Findings in recent studies, however, contradict Uhlman’s conclusion and indicate there are a number of race-related background differences (Goldman and Saronson 1994; Goldman, Slotnick, Gyski and Zuk 2001; Goldman, Schiavoni, and Slotnick 2009; Goldman, Slotnick, and Schiavoni 2013).

within the category. Thus, while scholars have examined the backgrounds and characteristics of 20<sup>th</sup> century black judges (e.g., Shuman 1970; Uhlman 1978; Smith 1983; Washington 1994) and have evaluated the characteristics of 21<sup>st</sup> century minority appointees to the lower federal courts (e.g., Goldman, Schiavoni, and Slotnick 2009; Goldman, Slotnick, and Schiavoni 2013), it is not clear what the experiences of 21<sup>st</sup> black jurists are and how those experiences compare to the experiences of their predecessors. By examining their backgrounds and characteristics this project seeks to highlight some of the life experiences of current black jurists (Dawson 1994; Gurin, Hatchett, and Jackson 1989; Chong and Rogers 2005).

### ***Black Judges, Racial Group Identity, and Racial Group Consciousness***

Black Americans' political behavior is understood to be a function of a racial group identity and racial group consciousness (Dawson 1994; Tate 1994, 2010; Gurin, Hatchett, and Jackson 1989; Chong and Rogers 2005; McClain et al. 2009).<sup>24</sup> For African Americans, possessing a racial group identity and racial group consciousness involves black Americans perceiving a connection to other in-group members, perceiving that being black, or being perceived as black, has affected one's

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<sup>24</sup> Racial group identity is an "awareness of belonging to a certain group and having a psychological attachment to that group based on a perception of shared beliefs, feelings, interests, and ideas with other group members," and racial group consciousness is defined as "in-group identification *politicized* by a set of ideological beliefs about one's group's social standing, as well as a view that collective action is the best means by which the group can improve its status and realize its interests" (McClain et al. 2009, 474 and 476).

experiences in life and life chances, believing that collective action is essential to accomplishing blacks' interests and improving the group's status in America (Dawson 1994; Simien 2005; Smith 2014; Gurin, Hatchett, and Jackson 1989; Tate 1994). Like most African Americans, black politicians, especially black legislators, are also believed to have a strong racial group identity and racial group consciousness (e.g., Broockman 2013; Whitby 1997; Shuman 1970; Smith 1983; Washington 1994).

While scholars frequently imply that black judges are connected to their racial group members, understand the interests of black Americans, and act on their behalf while on the bench (e.g., Steffensmeier and Britt 2001; Uhlman 1978; Segal 2000; Spohn 1991; Welch, Combs, and Gruhl 1988; Walker and Barrow 1985; Chew and Kelley 2008; Boyd 2015; Farhang and Wawro 2004; Kastlelec 2013; Mann 1993), this topic has generally been understudied with regards to black judges. There is, however, some interview data that suggests black judges possess a racial group identity and racial group consciousness (e.g., Shuman 1970; Smith 1983; Washington 1994). By "providing legal services to the black community" and devising "a means of achieving social justice within the existing [political] structure" in their pre-bench careers, black judges were perceived to be connected to the black community and black interests (Shuman 1970, 225). In his study, Michael Smith created a "rough index of degrees of race consciousness" using black judges' civil rights activity, and concluded that because a substantial number of the judges in his study were contributors, workers, or officers in one or more of the civil rights

organizations, black judges in the 20<sup>th</sup> century could be understood as possessing a racial consciousness (1983, 123). Finally, black judges interviewed by Linn Washington alluded to possessing a group identity and consciousness by revealing they were deeply concerned about the dire conditions of many black Americans, had personal experiences with racism as children, lawyers, and even judges, and believed racism was a central aspect of American society and the adjudication process (1994).

Although some studies report black judges have a sense of racial group identity and racial group consciousness, the majority of these studies focus on black judges who sat on the bench in the mid-to-late 20<sup>th</sup> century and were heavily involved in the civil rights movement, and thus are quite dated. Works by Shuman (1970), Smith (1983), and Washington (1994), for example, are over twenty years old and the judges who are active on the bench today may differ from the judges who were sitting on the bench in the mid-and late-20<sup>th</sup> century. Scholars such as Smith (2014) already note generational differences among African Americans with regards to their perceptions and outlook on life. Researching the racial group identity and racial group consciousness of black judges will determine whether or not current black judges identify with and feel connected to other African Americans, endure racialized experiences like many of their black counterparts, perceive racial discrimination to be an issue affecting the black community, and feel compelled to behave with the group in mind while on the bench.

## ***Black Judges, Substantive Representation, and Judicial Behavior***

Substantive representation is the theory of representation that, although has been prominent in Race, Ethnicity and Politics scholarship, is underutilized in court studies. Scholars largely acknowledge and understand that black politicians', especially legislators, feel connected to the black community and other African Americans, and are "intrinsically motivated to advance blacks' interests" (e.g., Broockman 2013). Court scholars, however, have rarely made this argument. Two theories have primarily been advanced to explain why black judges' decision-making will likely reflect they are concerned about and responsive to African Americans' interests and African Americans while on the bench. One theory is that black judges, like other African Americans, are likely to have personally encountered and experienced inequality and racial discrimination, and this experience with discrimination makes them sympathetic to individuals and claims involving discrimination (e.g., Beiner 1999; Farhang and Wawro 2004, 301; Steffensmeier and Britt 2001, 752). The other theory is that black judges will generally support disadvantaged and oppressed populations when they appear in court because black judges are likely to be liberal and see themselves as liberal (e.g., Welch, Combs, and Gruhl 1988, 127; Segal 2000, 140). While I concur with scholars who say experiencing racial discrimination and being liberal help explain why black judges might have distinctive decision-making behavior in favor of African Americans, I argue that understanding whether or not the black judges currently occupying our courts identify as belonging to the racial group, feel linked to or close to average

black Americans, experience racism, consider their group membership as important to their life, and are mobilized by their identity to behave in distinctive ways in the judiciary is important because of the understood connection between black Americans and black politicians' group identity, group consciousness, and political behavior (Bratton and Haynie 1999; Broockman 2013; Brown 2014; Haynie 2001; Nicholson-Crotty, Grissom, and Nicholson-Crotty 2011; Orey, Smooth, Adams, Harris-Clark 2007).

For the most part, scholars demonstrate that the presence of black officials in legislatures and bureaucratic organizations increases the likelihood that black-interests will be advanced and represented within political institutions (Bratton and Haynie 1999; Haynie 2001; Canon 1999; Orey, Smooth, Adams, Harris-Clark 2007; Brown and Frank 2006; Ward, Farrell, and Rousseau 2009; Theobald and Haider-Marker 2008; Farrell, Ward, and Rousseau 2009; Nicholson-Crotty, Grissom, and Nicholson-Crotty 2011). There is also some evidence that black Americans and black interests are improved or increased with the presence of black judges (e.g., Kastellac 2012, 2015; Chew and Kelley 2009; Welch, Combs, and Gruhl 1988; Scherer 2004; Bonneau and Rice 2009). For instance, some black judges are more even-handed in their decision to incarcerate Black and white offenders than white judges (Welch, Combs, and Gruhl 1988; Abrams, Bertrand, and Mullainthan 2008; Engle 1971:226-227). Additionally, some black judges are sympathetic to defendants and rule for the accused and prisoners, plaintiffs in racial harassment, employment discrimination,

and death-penalty cases, more than white judges (Gotschall 1986; Smith 1983; Tiede, Carp, and Manning 2010; Kastellac 2012, 2015).

Most scholars who study the nature of the representation in the judiciary focus almost exclusively on the final case vote. That is, many researchers have examined whether or not black judges find defendants guilty or not guilty, the length of the sentence they give to defendants, and whether or not they vote in favor of (i.e., liberally) in cases dealing with black-issues. Scholars have largely overlooked activities beyond final case votes, which may limit the extent to which we are able to understand whether or not, and how, black judges represent black interests and black Americans.

Focusing on final court case votes in the judicial context is similar to studies in the legislative context. Scholars wanting to understand whether or not black legislators and other racial minority legislators substantively represent black interests have often focused on final legislative votes, or roll call votes (e.g., Swain 1995; Grose 2005; Casellas 2010). Understanding that roll-calls are only one segment of the legislative process, numerous scholars such as Bratton and Haynie (1999), Brown (2014), Haynie (2001), and Whitby (2002) drew attention to analyzed the behaviors of legislators in other dimensions. In doing so, they revealed that black legislators have policy priorities that correlate with the interests and concerns of black Americans, and that they are often the individuals in Congress and state legislators to propose legislation that reflect black Americans' interests and address black Americans' concerns. This literature that looks at what legislators do

beyond roll call voting has helped us to better understand how black legislators substantively represent black interests in legislatures.

Similar to the legislative process, in the judicial context, the final vote black judges make in cases is but one important part of their decision-making behavior. Just like legislators, judges do more than vote in a case. Judges make decisions the entire time they are on the bench, and make multiple decisions in most cases. For instance, depending on the level and type of judge, judges can determine what cases they hear, what they say during judicial conferences and in interactions with other judges and lawyers, what they write in their legal opinions, whether to issue felony indictments in criminal cases, what evidence will be permitted during trials, whether or not there are issues during jury selection and how to address those issues, which witnesses are approved, whether or not a plea deal or bail is appropriate, what bail amount and restitution is proper, whether or not a jury sentence is fitting for the crime committed, what can be said by lawyers and witnesses during trials, what jurors should take into account or not consider when making their decisions, control the courtroom and the actors in it, hire court staff, the commentary provided during sentencing, and so on (Ifill 1997; Solomon 2011; Stith 2008). Given these activities and responsibilities, it is clear that judges' behavior and discretion is not limited to their final decision in cases. Therefore, examining black judges' behavior to understand whether or not they provide representation should not be restricted to final case decisions. By expanding what qualifies as 'representation' in the judicial context, I suspect that we may find that

black judges represent African Americans and black interests in a number of ways from the bench.

### **Advocative Representation: Theorizing Substantive Representation in the Judiciary**

Scholars, thus far, have failed to recognize important dimensions of racial representation in the judiciary, and that black judges might exhibit distinctive decision-making behavior in the interests of black Americans. In this project, one of the central arguments I make is, based on the attitudes and behaviors of black judges, social scientists should expand conceptualizations of representation. In doing so, we are likely to enhance and advance our understanding of how institutions and their primary actors provide group specific substantive representation, notwithstanding the fact they were designed and intended to be neutral and arbiters of conflicts and disagreements. In this study I help expand our understanding of representation by advancing the theory of *advocative representation*. This theory takes into consideration the backgrounds, experiences and identifications of black judges to understand them as representatives and their behavior on the bench as representation, akin to the representation provided by legislators.<sup>25</sup>

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<sup>25</sup> I intend and anticipate that *Advocative Representation* will enhance and advance our understanding of the behavior of minority judges and what it means to have minority judges in the courts. This theory can also be utilized to help understand the behavior of other officials not traditionally expected to represent group interests.

Advocative representation theory is a theory about how representation can and does occur in public institutions with no expressed or widely recognized representation functions. As applied to courts, the theory posits that despite the constitutional and formal dictates about their roles, the legal and judicial socialization process of the judicial profession, and conventional expectations regarding courts and judicial behavior, judges sometimes purposefully behave in the interests of particular groups, thereby transforming courts into representative institutions. Advocative representation can be best understood as a function of a judge's salient group identities and group consciousness, and can result from both intentional actions and unintended consequences related to a judge's presence in a court. This study focuses on black judges and the advocative representation provided to black people.

### ***Data and Methodology***

While scholars have greatly expanded our knowledge about black judges in the last fifty years, there are a number of questions that remain unanswered. Examining black judges' background characteristics and experiences, whether or not they possess a racial group identity and racial group consciousness, their behavior on the bench, and how they are perceived by the mass public will further expand our knowledge about black judges and the implications of having them on the bench. The questions central to this project about the experiences, identities, behaviors, and perceptions of black judges require the analyses of multiple data,

qualitative and quantitative. The primary data sources utilized are published judicial biographies, in-depth semi-structured interviews, and an experiment embedded in a nationally-representative survey.

To understand some of the experiences of black judges, I analyze published judicial biographies of the 211 African American judges confirmed to the U.S. federal judiciary between 1789 and November 2014.<sup>26</sup> Each biography contains a judge's education, professional, and judicial career background.<sup>27</sup> Please see Appendix A for a copy of a judicial biography. This data is particularly appropriate for this project because "[t]he resumes are derived from sources that are available to the public, although no other source provides the complete record of the judges' nomination, Senate confirmation, and service on the federal courts."

To understand the life experiences not available in published biographies, and the identities and behaviors of black judges, I analyzed in-depth semi-structured face-to-face interviews with black state and federal judges. Elite interviewing is an appropriate methodology for this study because black judges are treated as experts about the topics discussed (Leech 2002; Dexter 2012). Who

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<sup>26</sup> While an analysis of the backgrounds of black state court judges would have provided information about the experiences and backgrounds of lower-court black judges, published biographies are not readily available for most state judges. The biographies that are available rarely contain the same information since they are compiled by different people and for different reasons. For example, Ballotpedia.com is an online American politics encyclopedia that contains judicial biographies of many American judges, but it is an edited site that allows contributions by both staff members and some non-staff members. Additionally, prior to joining the federal bench, most federal judges served at some point on a state court.

<sup>27</sup> The U.S. Federal Judicial Center (FJC), the education and research agency for the federal courts, is a directory that contains the biographies of all judges confirmed since 1789 to the U.S. District Courts, the U.S. Courts of Appeals, the Supreme Court of the U.S., the former U.S. Circuit Courts, and the federal judiciary's courts of special jurisdiction.

better to shed light on the experiences, identities, and behaviors of black judges, than black judges?<sup>28</sup> I interviewed a total of 30 black judges, who served on benches in Ohio, Illinois, Nevada, Louisiana, North Carolina, and Virginia. 29 of the judges were state judges and 1 was a federal judge. 14 of the judges interviewed were male and 16 were female. The judges were interviewed between February 2013 and February 2016, and the interviews typically lasted one hour. In the interviews, I asked my respondents about their life experiences, identities, and behavior, and their perspectives on judicial selection, public opinion about judges and the courts, and judicial roles.

Finally, for this project, I incorporate data from a randomized experiment embedded in a nationally-representative adult survey, the 2014 Cooperative Congressional Election Study (CCES). Respondents first read a fictitious judge's biography and then they responded to a battery of questions, or shared their perceptions, about the judge they read about. The experiment tested how judges' race and gender affects public perceptions of judges' ability to be fair, behavior, character traits, and political ideology. The total sample for the experiment is 1,000 American adults, with 874 being non-Hispanic white and black Americans.

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<sup>28</sup> As the researcher, I was "willing, and often eager to let the interviewee[s] teach...[me] what the problem, the question, [and] the situation" was (Dexter 2012, 6-7). As judges, the respondents were unquestionably "well-informed or influential people...unwilling to accept the assumptions with which the investigator... [started]; they insist[ed] on explaining to [me] how they see the situation, what the real problems are as they view the matter" (Dexter 2012, 6-7).

## ***The Dissertation Roadmap***

*They're There, Now What*, which engages with scholarship on representation, black socialization, racial group membership, identity and consciousness, judicial decision-making and behavior, and perceptions of political candidates and politicians, seeks to offer new insights into the experiences, lives, behaviors, and perceptions of black judges. Additionally, it attempts to capture myriad manifestations of substantive representation that black judges provide to African Americans. In the subsequent chapters of this dissertation, I examine the experiences, identities, behaviors, and perceptions of black judges.

Specifically, chapter 2 focuses on the paths by which black judges arrive at the bench. Not surprisingly, there are similarities in the backgrounds and experiences of black judges, a conclusion reached by examining interviews with black judges and the published biographies of all of the black federal judges confirmed to the federal bench between 1789 and November 2014. This chapter finds that there are important social, educational and professional characteristics, and thus experiences, in the backgrounds of black judges; many black judges have worked for black advocacy groups, provided legal representation for low-income black individuals, attended one of the nation's Historically Black Colleges and Universities, and experienced or witnessed racial discrimination.

The findings of Chapter 2 lead directly to the primary arguments advanced in Chapter 3, mainly that black judges' backgrounds and experiences often inform their identities and their decisions, and many black judges possess a racial group identity

and consciousness. In their interviews, black judges reveal that the factors that have helped many African Americans develop and preserve a racial group identity and consciousness are present in their own lives. This chapter, which gives voice to the experiences and identities of Black judges, demonstrates that black judges self-identify as belonging to the 'black' racial group, feel connected to other African Americans and to the black community, perceive racial discrimination as one of the primary issues affecting the black community, and report being mobilized to work to create a more just, responsive, respectful, and receptive system of justice.

Whether or not black judges can be viewed as representatives in the judicial system is the focus of Chapter 4. In this chapter, using interviews with black judges, I share the extent to which black judges perceive themselves to represent the Black community. Additionally, this chapter presents the myriad ways that black judges behave on the bench and the rationale black judges employ to defend that behavior. In short, this chapter presents evidence that many black judges, both consciously and unconsciously, represent African Americans and the black community in their behavior on, and sometimes even off, the bench. Black judges illustrate that to best understand the importance of having African Americans in the judiciary scholars need to look beyond judges' final case votes.

While the previous chapter focuses on the self-reported behavior of black judges, Chapter 5 centers on the perceptions of black judges' behavior. Scholars note that various black judges have been asked to recuse themselves from cases that involve black litigants and/or are concerned with racial discrimination (e.g., Wasby

1991; Ifill 1997; Ogletree Jr. 1999; McClellan 2005). These recusal motions often allude to the perception that black judges are unable to behave in a fair and unbiased manner in cases that involve matters of race. While some scholars believe that black judges are largely viewed by the public as incapable of deciding racial issues fairly (Bell 1999), there is little systematic research on how black judges are perceived by the public. Scherer and Curry (2010) is one of the first studies to examine how the descriptive representation of African Americans in the judiciary are perceived by African Americans and other groups. They found that African Americans view diverse courts much more positively than courts lacking racial diversity, although white Americans were more positive when courts were less racially diverse.

Most of the existing research on the public's perceptions of black political candidates and politicians indicates that generally, they are perceived much more negatively than their white counterparts (e.g., Williams 1990; Citrin, Green and Sears 1990; Terkildsen 1993; Sigelman et al. 1995; McDermott 1998; Piston 2010; Moskowitz and Stroh 1994; Reeves 1997; Berinsky 1999; Gay 2001; Herron and Sekhon 2005; Washington 2006; Haynie 2001, 2002; Howell 2007; Ansolabehere and Fraga 2013). Does being black also influence the public's perception of black judges?

Some studies examine the judicial qualification ratings by the American Bar Association's (ABA) Standing Committee on the Federal Judiciary, and judicial performance evaluations (JPEs), which have become a major component of the state

judicial selection process, to understand perceptions of black state and federal judges.<sup>29</sup> Examining ABA ratings, Lott Jr. (2001), Haire (2001), and Sen (2014a, 2014b) find that white female and black appeals court nominees are more likely than white male judges to get lower ratings, and this is even after controlling for important factors such as education and professional background. The scores from JPEs also indicate the presence of bias against racial minorities and White women (Gill 2014; Gill, Lazos, and Waters 2011; Gill and Retzl 2013).

While most studies of perceptions of black judges focus on lawyers' perceptions, only one study examined how individuals in the mass public perceived black judges, and this study found that black judges are routinely viewed more negatively than their white counterparts (Matland and Shepherd 2004). Unfortunately, existing literature in Race, Ethnicity and Politics rarely examines black judges, and the extant literature on perceptions of black federal and state judges rarely studies the perceptions of the mass public (e.g., Lott Jr. 2001; Haire 2001; Sen2014a, 2014b; Gill 2014; Gill, Lazos, and Waters 2011; Gill and Retzl 2013). Thus, whether or not black judges are perceived by the mass public as incapable of deciding court cases in a fair manner and based upon the rule of law is unclear. Using an experiment embedded in a nationally-representative survey, this chapter, Chapter 5, explores the effects of race and racial attitudes on how the mass public perceives black judges. The chapter reveals that, once the race of the

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<sup>29</sup> These JPEs are meant to measure the performance of sitting state judges so the electorate can be informed at the polls during elections.

respondent is taken into account, black judges are perceived much more positively than white judges, by black Americans. White Americans' perception of black judges, however, differs from their perception of white judges in one significant way – black judges are perceived to provide preferential treatment to black litigants.

Finally, in the concluding chapter, the purpose of this project is revisited, I summarize the overall findings, and I offer conclusions and implications of the present study. The chapter closes with a discussion of the limitations of the current project, and relevant and related questions that warrant further scientific exploration.

#### **A Note on Nomenclature**

I use the terms black, black Americans, and African Americans interchangeably in this dissertation. According to various scholars, a majority of Americans of African descent do not have a preference between the terms 'black' and 'African Americans' (Sigelman, Tuch, and Martin 2005; Smith 1992). For instance, according to Sigelman, Tuch, and Martin (2005) there is roughly a 1 percent difference between Americans of African descent who prefer to be called black (48.1 percent) and those who prefer to be called African American (49.2 percent).

## **Chapter 2. The U.S. Military, HBCUs, Black Legal Representation and Civil Rights Activity: The Educational and Professional Backgrounds of Black Judges**

In Chapter 1 I introduced the concept of advocative representation and provided an argument for its importance in the presence and behavior of black. Underlying the theory of advocative representation is the presumption that black judges have characteristics in the backgrounds (e.g. educational and professional experiences) that increase their racial group consciousness, which ultimately leads them to substantively represent black group interests while on the bench. For example, black judges have few ties to the power structure, are often less active in politics, have more experience being former judges than prosecutors, and, due to coming from “less financially secure backgrounds,” have been educated at public institutions for their undergraduate and law school degrees (e.g., Goldman and Saronsen 1994, 71; Slotnick 1984; Walker and Barrow 1985). One reason studying these different paths to the bench is important is because personal backgrounds and life experiences are linked to the development of racial group identity and group consciousness among African Americans in society (e.g., Uhlman 1978, 458; Dawson 1994; Gurin, Hatchett, and Jackson 1989; Tate 1994).

Previous research has revealed black judges, like other black political officials, have some distinctive background characteristics. For instance, black judges are often born in the South into working-class families, attend black

education institutions, are active in civil rights, self-identify as Democrat and liberal, and are employed in all-black law firms, in prosecutor's office, or by the military (e.g., Shuman 1970; *Judicature* Staff 1973; Smith 1983; Washington 1994). But the subjects of this earlier research were black judges who were born in the early 20<sup>th</sup> century. What about the present generation of black judges? Do they have the same distinctive backgrounds as black jurists born much later? If so, what do these background characteristics mean for the experiences that contemporary black judges are likely to have had prior to ascending to the bench, and in turn, is their judicial behavior influenced by these life experiences? These are the primary questions I address in this chapter. Using published biographies, I examine the educational and professional backgrounds of black judges appointed to the federal bench during the Civil Rights and Post-Civil Rights eras to better understand some of the life experiences of black judges based on their background characteristics, and to understand how those experiences and characteristics may affect their racial group identity and consciousness.

### ***Black Judges in the 20<sup>th</sup> Century***

Some studies focused exclusively on investigating the backgrounds of 20<sup>th</sup> century black judges (Shuman 1970; *Judicature* Staff 1973; Smith 1983; Washington 1994; Uhlman 1978). That is, scholars researched the backgrounds of black judges who were born in the early 20<sup>th</sup> century and were serving during the civil rights era. Most of the judges who responded to the studies of civil rights era black judges were

between 45 and 64 years of age and were born between 1909 and 1927 (Smith 1983, 32; *Judicature* Staff 1973; Washington 1994). Using in-depth interviews and surveys, researchers noted a number of similarities in these black judges' backgrounds.

Scholars found that 20<sup>th</sup> century black judges were born in the South and into working-class families (*Judicature* Staff 1973; Smith 1983; Washington 194). Smith's (1983) analysis revealed that in 1972-1973, although most black judges were born in the South, many of them had emigrated from the South to other parts of the country, especially the North (31). More than half of his respondents – a total of 185 black judges – were from working-class backgrounds, one-third said they came from middle-class backgrounds, and less than ten percent of his respondents reported coming from upper-class backgrounds (Smith 1983, 33).

Most 20<sup>th</sup> century black judges were trained at black educational institutions, with a sizeable proportion being trained at Howard University (Smith 1983). Also, 20<sup>th</sup> century black judges largely classified themselves as active in civil rights as members of civil rights organizations, financial contributors of civil rights organizations, attorneys of civil rights organizations, and officers of popular civil rights organizations (Smith 1983). They were mainly members of the NAACP and the Urban League. Few black judges were, however, members of Congress of Racial Equality (CORE), Southern Christian Leadership Conference (SCLC), and the Student Nonviolent Coordinating Committee (SNCC), what Smith (1983) referred to as “the lesser-known, younger, and more militant civil rights groups” (71).

In terms of partisan identification and political ideology, most older generation black judges identified with the Democratic Party and self-identified as liberal (*Judicature* Staff 1973; Smith 1983). 20<sup>th</sup> century's black judges also typically obtained their judgeships through an appointment instead of an election (*Judicature* Staff 1973; Smith 1983).

Finally, with regards to their careers prior to ascending to the bench, most 20<sup>th</sup> century black judges had been affiliated with all-black law firms and had been employed in a prosecutor's office (Smith 1983). A few of them, however, held a high position in a public bureaucracy such as the director of an agency (*Judicature* Staff 1973). Finally, many of them had served in the military at some point (*Judicature* Staff 1973; Smith 1983; Washington 1994).<sup>1</sup>

### ***Black Judges in the 21<sup>st</sup> Century***

Recent scholarship focusing on judges appointed in the post-civil rights era compares lower federal court white female and racial minority appointees to white male appointees.<sup>2</sup> As expected, these comparisons often reveal numerous

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<sup>1</sup> It makes sense that so many 20<sup>th</sup> century black judges were drafted because prior to becoming an all-volunteer military, the military drafted many American men between 1940 and 1973 to fill vacancies in the U.S. armed forces.

<sup>2</sup> As mentioned in the introduction, scholars combine racial minority judges and white female judges into one undifferentiated category, "nontraditional appointees," to compare them to white male judges (Slotnick 1984; Goldman 1995; Goldman and Slotnick 1997; Goldman and Slotnick 1999; Goldman, Slotnick, Gryski and Zuk 2001; Goldman, Schiavoni, and Slotnick 2009; Goldman, Slotnick, and Schiavoni 2013). While it is preferable to include contemporary work here that compared black judges to white judges, that work is not available. Therefore, I present research here that shows black judges, along with white women and other racial minorities, have different background characteristics and follow different paths to the federal bench.

background differences between the two groups, and sheds light on some of the similarities of 21<sup>st</sup> century African American judges. White female and racial minority appointees nominated to the U.S. District Court and U.S. Courts of Appeals are more likely to have come from the judiciary as state judges or federal magistrates or held a political or government lawyer position (Goldman and Saronson 1994; Goldman, Slotnick, Gryski and Zuk 2001; Goldman, Schiavoni, and Slotnick 2009; Goldman, Slotnick, and Schiavoni 2013). Conversely, White male appointees were more likely to have come from a private law firm (Goldman and Saronson 1994; Goldman, Slotnick, Gryski and Zuk 2001; Goldman, Schiavoni, and Slotnick 2009; Goldman, Slotnick, and Schiavoni 2013). White female and racial minority appointees were also more likely to have previous judicial experience compared to white male appointees (Goldman and Saronson 1994; Goldman, Slotnick, Gryski and Zuk 2001; Goldman, Schiavoni, and Slotnick 2009; Goldman, Slotnick, and Schiavoni 2013).

Additionally, white female and racial minority appointees are more likely to be younger than white male appointees. For example, Clinton's white female and racial minority appointees to the lower federal courts are markedly younger than his white male appointees, by an average of five to six years (Goldman and Saronson 1994; Goldman, Slotnick, Gryski and Zuk 2001). Nevertheless, both groups are typically in their fifties when they are appointed to the lower federal courts. The undergraduate educational profiles of white female and racial minority appointees and white male appointees are similar, suggesting no major differences in the type

of institutions attended (Goldman and Saronson 1994; Goldman, Slotnick, Gryski and Zuk 2001; Goldman, Schiavoni, and Slotnick 2009; Goldman, Slotnick, and Schiavoni 2013). Law school profiles, however, show that white female and racial minority appointees are much more likely than white male appointees to have attended a public law school, and much less likely to have attended a private or Ivy League law school (Goldman and Saronson 1994; Goldman, Slotnick, Gryski and Zuk 2001; Goldman, Schiavoni, and Slotnick 2009; Goldman, Slotnick, and Schiavoni 2013).

White male appointees have also often come from more financially secure backgrounds (Goldman and Saronson 1994; Goldman, Slotnick, Gryski and Zuk 2001; Goldman, Schiavoni, and Slotnick 2009; Goldman, Slotnick, and Schiavoni 2013). Also, they have a much higher net worth than their white female and racial minority counterparts (Goldman and Saronson 1994; Goldman, Slotnick, Gryski and Zuk 2001; Goldman, Schiavoni, and Slotnick 2009; Goldman, Slotnick, and Schiavoni 2013). White female and racial minority appointees are also much more likely to identify or affiliate with the Democratic Party (Goldman and Saronson 1994; Goldman 1997; Goldman, Slotnick, Gryski and Zuk 2001; Goldman, Schiavoni, and Slotnick 2009; Goldman, Slotnick, and Schiavoni 2013; Carp, Manning, and Stidham 2013). White male appointees, however, were much more likely to identify or affiliate with the Republican Party or consider themselves “Independents” (Goldman and Saronson 1994; Goldman 1997; Goldman, Slotnick, Gryski and Zuk 2001;

Goldman, Schiavoni, and Slotnick 2009; Goldman, Slotnick, and Schiavoni 2013; Carp, Manning, and Stidham 2013).

Finally, white female and racial minority appointees are less active in the political party prior to their nomination (Goldman and Saronson 1994; Goldman, Slotnick, Gryski and Zuk 2001; Goldman, Schiavoni, and Slotnick 2009; Goldman, Slotnick, and Schiavoni 2013). That is, white male appointees are much more likely to have past party activism than their counterparts (Goldman and Saronson 1994; Goldman, Slotnick, Gryski and Zuk 2001; Goldman, Schiavoni, and Slotnick 2009; Goldman, Slotnick, and Schiavoni 2013).

While scholars have examined the backgrounds and characteristics of 20<sup>th</sup> century black judges (e.g., Shuman 1970; Uhlman 1978; Smith 1983; Washington 1994) and have evaluated the characteristics of 21<sup>st</sup> century white female and racial minority appointees to the lower federal courts (e.g., Goldman, Schiavoni, and Slotnick 2009; Goldman, Slotnick, and Schiavoni 2013), it is not clear what the experiences of 21<sup>st</sup> black jurists are and how those experiences compare to the experiences of their predecessors. In other words, the extant literature fails to focus on, and examine the, backgrounds and characteristics of 21<sup>st</sup> century black judges, and therefore fails to understand some of their life experiences. By examining their backgrounds and characteristics this project will be in a position to speak to some likely life experiences of current black jurists and how those experiences might influence black judges' identity and consciousness, and thus judicial behavior. Given the prior research on the distinctive backgrounds of black judges (e.g., Smith 1983;

Goldman and Saronson 1994; Goldman, Slotnick, Gryski and Zuk 2001; Goldman, Schiavoni, and Slotnick 2009; Goldman, Slotnick, and Schiavoni 2013), I anticipate that black judges in the 21<sup>st</sup> century will have some distinctive background characteristics, and that these characteristics will work together to enhance the racial group identity and consciousness of black judges, and aid in Black judges' understanding of the relationship between race, power, and inequality.

### ***Data and Methods***

To understand some of the experiences of black judges, I conducted inductive analysis, which allows me to identify themes and similarities in the backgrounds of black judges (Thomas 2006). To conduct inductive analysis, I analyzed published judicial biographies of the 211 African American judges confirmed to the U.S. federal judiciary between 1789 and November 2014.<sup>3</sup> The U.S. Federal Judicial Center (FJC), the education and research agency for the federal courts, is a directory that includes the biographies of all judges confirmed since 1789 to the U.S. District Courts, the U.S.

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<sup>3</sup> While an analysis of the backgrounds of black state court judges would have provided information about the experiences and backgrounds of lower-court black judges, published biographies are not readily available for most state judges. The biographies that are available rarely contain the same information since they are compiled by different people and for different reasons. For example, Ballotpedia.com is an online American politics encyclopedia that contains judicial biographies of many American judges, but it is an edited site that allows contributions by both staff members and some non-staff members. Additionally, prior to joining the federal bench, most federal judges served at some point on a state court.

Courts of Appeals, the Supreme Court of the U.S., the former U.S. Circuit Courts, and the federal judiciary's courts of special jurisdiction.<sup>4</sup>

I used the Biographical Directory of Federal Judges, which contains the service record of all judges presidentially appointed during good behavior who have served since 1789 in the federal judiciary. The biographical directory also contains a limited amount of personal data to identify the judges. A brief resume of education and professional career provides background for the judge's judicial career. Please see Appendix A for an example of a biographical entry. What makes these FJC data particularly suitable for this project is that "[t]he resumes are derived from sources that are available to the public, although no other source provides the complete record of the judges' nomination, Senate confirmation, and service on the federal courts."

Each biographical entry, or judge's biography, includes the judge's full name; birth and death dates (if applicable); and places of birth and death (if applicable), when available. Within the biographical entry, the record for each federal court on which a judge served begins with the date of nomination and the nominating president. Recess appointments are also noted. The record indicates the preceding judge or the statute authorizing a new judicial appointment. The dates of the Senate confirmation and the commission follow. The commission signed by the president provides the judge with the authority to take the oath of office and begin service on

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<sup>4</sup> This data is publicly available: <http://www.fjc.gov>.

the court. It is the only start date that is available for all judges since 1789, and is used in the database to mark the beginning of service.

My approach to this available-data research is to perform secondary analysis on the 211 biographies. To conduct the secondary analysis, I read through the biographies looking for commonalities between the judges. In doing so, I discovered that there are four similarities: military background, professional experience working for a racial advocacy organization, professional experience working as a legal aid or public defender, and educational experience attending a Historically Black College and University for law school or undergraduate degree. I re-examined the bios and highlighted any reference to these four similarities. The subsequent section details the results of my analysis, which I divide into Civil Rights Generation judges and post-Civil Rights Generation judges.

### **The Civil Rights Generation of Black Judges Appointed to the Federal Bench, 1930-1972**

The Civil Rights Era is generally perceived to have begun in the late 1920s and ended in the early 1970s, although one scholar who extensively studied this era in history suggests the most important years are between 1930 and 1970 (McAdam 1999). During this era, activists involved in the Civil Rights Movement among other things, championed the representation of Blacks in political office. This demand for descriptive representation was answered in the judiciary. At what some consider the height of the Civil Rights Movement, the 1940s and 1950s, President Harry S.

Truman appointed William Henry Hastie, the first Black judge to the lower federal court bench on October 21, 1949.<sup>5</sup> Between 1949 and 1970, a total of 19 Blacks were appointed to the federal courts, with 3 of those 19 judges receiving appointments to more than one federal judgeship (See Table 2).

**Table 2: Black Judges Appointed to the Federal Bench, 1928-1972**

<i>President</i>	<i>Number of Black Judges Appointed to the U.S. Supreme Court</i>	<i>Number of Black Judges Appointed to the U.S. Courts of Appeals</i>	<i>Number of Black Judges Appointed to the U.S. District Courts</i>	<i>Total Number of Black Judges Appointed to the Federal Courts</i>
Truman	0	1	0	1
Eisenhower	0	0	0	0
Kennedy	0	1	2	3
Johnson	1	2	7	9
Nixon	0	0	5	5
<b>Total</b>	<b>1</b>	<b>4</b>	<b>14</b>	<b>19</b>

*Source: Federal Judicial Center.*

When examining the background of Black judges appointed during the Civil Rights Era, three similarities are revealed (see Table 3). First, 44 percent of the Black judges went to historically Black colleges or universities (HBCUs) for their undergraduate or law school education. Thurgood Marshall, Joseph Cornelius Waddy, Robert Lee Carter, and Barrington Daniels Parker Sr. attended Lincoln University for their undergraduate education. William Benson Bryant attended

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<sup>5</sup> It should be noted that in 1945, Harry Truman appointed Chicago attorney Irvin C. Mollison, a Black male, to the U.S. Customs Court sitting in New York. However, when scholars refer to the lower federal courts, they are typically only referring to the U.S. District Courts and the U.S. Courts of Appeals.

Howard University for his undergrad, Damon Jerome Keith attended West Virginia State University, and Wade Hampton McCree Jr. attended Fisk University. All of the Civil Rights-generation Black judges who attended an HBCU for law school graduated from Howard University – Thurgood Marshall, William Benson Bryant, Damon Jerome Keith, Spottswood William Robinson III, Joseph Cornelius Waddy, and Robert Lee Carter. Altogether, 7 judges received an undergraduate degree, and 6 judges received a law degree, from an HBCU.

Another similarity between some of the Black judges appointed during the Civil Rights Era is the number of them who had been employees of the National Association for the Advancement of Colored People (NAACP). Thurgood Marshall, Constance Baker Motley, Spottswood William Robinson III, and Robert Lee Carter, 25 percent of the Civil Rights Era Black judges, held an official position within the NAACP. Thurgood Marshall served in the Baltimore, Maryland Regional Office of the NAACP between 1934 and 1940. His titles included counsel (1934-1936), special assistant counsel (1936-1938), and special counsel (1938-1940). In addition, he became the Director and counsel for the NAACP Legal Defense and Educational Fund in 1940, and held that position until John F. Kennedy nominated him to a seat on the Second Circuit United States Court of Appeals bench in 1961. Constance Baker Motley served as an attorney for the NAACP Legal Defense and Educational Fund for the twenty years prior to her nomination by Lyndon B. Johnson to the Southern District of New York United States District Court (1945-1965). Spottswood William Robinson III held two positions in the NAACP. He was the counsel and

representative for the NAACP Legal Defense and Education Fund between 1948 and 1950, and was the Southeast regional counsel for the NAACP between 1951 and 1960. Finally, Robert Lee Carter work for the NAACP between 1944 and 1968. He was a legal assistance for one year (1944-1945), an assistant special counsel between 1945 and 1956, and was general counsel between 1956 and 1968. Together, what this means is that between the years of 1934 and 1968, the NAACP employed at least one Black judge from the Civil Rights Era.

The final similarity amongst the Civil Rights Era Black judges is their military backgrounds. 56 percent of the Black judges appointed during the Civil Rights Era served in the military. One of the judges served in the Navy, James Benton Parsons, and 1 served in the Air Force, Clifford Scott Green. The other seven judges - Thurgood Marshall, Wade Hampton McCree Jr., William Benson Bryant, Damon Jerome Keith, Aubrey Eugene Robinson Jr., Robert Lee Carter, and Lawrence Warren Pierce - served in the army. Therefore, a little more than half of the Black judges on the federal bench during the Civil Rights Era had United States military experience.

Table 3: Characteristics of Black Judges Appointed to the Federal Bench, 1928-1972

<i>President</i>	<i>Judge</i>	<i>HBCU (U)</i>	<i>HBCU (L)</i>	<i>NAACP</i>	<i>Mili.</i>
Truman	William Henry Hastie	No	No	No	No
Eisenhower	-	-	-	-	-
Kennedy	Thurgood Marshall	Yes	Yes	Yes	No
	Wade Hampton McCree Jr.	Yes	No	No	Yes
	James Benton Parsons	No	No	No	Yes
Johnson	William Benson Bryant	Yes	Yes	No	Yes
	Aloysius Leon Higginbotham Jr.	No	No	No	No
	Damon Jerome Keith	Yes	Yes	No	Yes
	Thurgood Marshall	Yes	Yes	Yes	No
	Wade Hampton McCree Jr.	Yes	No	No	Yes
	Constance Baker Motley	No	No	Yes	No
	Aubrey Eugene Robinson Jr.	No	No	No	Yes
	Spottswood William Robinson III	-	Yes	Yes	No
	Spottswood William Robinson III	-	Yes	Yes	No
Joseph Cornelius Waddy	Yes	Yes	No	No	
Nixon	Robert Lee Carter	Yes	Yes	Yes	Yes
	Clifford Scott Green	No	No	No	Yes
	Barrington Daniels Parker Sr.	Yes	No	No	No
	Lawrence Warren Pierce	No	No	No	Yes
	David Welford Williams	No	No	No	No

\*HBCU (U) = Attended an HBCU for the undergraduate degree

\*\*HBCU (L) = Attended an HBCU for the law degree

Source: Federal Judicial Center.

## **The Post-Civil Rights Generation of Blacks Appointed to the Federal Bench, 1972-Present**

According to Douglas McAdam (1999), a leading scholar on social movements, the Civil Rights Era came to a close in the early 1970s when, in 1972, Richard R. Nixon was reelected to the United States presidency. The wheels for diversifying the bench, however, were already in motion from prior presidential efforts and pressure from Black interest groups. In the post-Civil Rights Era Black judges have been appointed to the bench in unprecedented numbers, although this is especially true under presidents belonging to the Democratic Party. The diversification trend really began with Jimmy Carter's vow to remake the federal bench by nominating more women and racial minorities to the bench (Goldman 1981). Together, although the number of Black judges that were appointed by each president varies, since 1972, a total of 194 Blacks have been appointed to a federal judgeship (See Table 4).

**Table 4: Black Judges Appointed to the Federal Bench, 1972-2014**

<b><i>President</i></b>	<b><i>Number of Black Judges Appointed to the U.S. Supreme Court</i></b>	<b><i>Number of Black Judges Appointed to the U.S. Courts of Appeals</i></b>	<b><i>Number of Black Judges Appointed to the U.S. District Courts</i></b>	<b><i>Total</i></b>
Nixon	0	0	1	1
Ford	0	0	3	3
Carter	0	9	28	37
Reagan	0	1	6	7
G.H.W.B	1	2	10	11
Clinton	0	9	53	61
G.W. Bush	0	6	18	24
Obama	0	9	42	50
<b>Total</b>	<b>1</b>	<b>36</b>	<b>161</b>	<b>194</b>

*Source: Federal Judicial Center.*

The Black judges appointed to the federal bench in the post-Civil Rights Era are similar on a number of fronts. First, this group, like their predecessors, has some experience working for the NAACP (See Table 5). 3 percent of this generation of judges held official positions within the NAACP: 4 of those judges were appointed during Carter's administration and the other former NAACP employee was appointed by Clinton. Clyde S. Cahill Jr. worked for the NAACP as the Chief legal advisor between 1958 and 1965. Joseph Woodrow Hatchett served as the NAACP Legal Defense and Educational Fund's cooperating attorney from 1966 until 1966. Nathaniel Raphael Jones was employed by the NAACP from 1969 until 1979 in the role of general counsel. Gabrielle Anne Kirk McDonald, the NAACP Legal Defense and Educational Fund's staff attorney in the New York City office, worked between 1966 and 1968. Finally, between 1970 and 1971, David H. Coar served as a legal intern in the NAACP Legal Defense and Educational Fund's New York City office. In sum, although not to the same extent as their predecessors, post-Civil Rights-generation Black judges worked for what many consider the nation's premier Black interest group.

A second similarity among Black judges appointed after 1972 is the high number who attended HBCUs (See Table 5). 31 percent attended an HBCU for their undergraduate degree. For example, Reginald C. Lindsay (Morehouse College), Charles Alexander Shaw (Harris-Stowe State College), Audrey B. Collins (Howard University), Richard Cannon Erwin (Johnson C. Smith University), and Brian Curtis Wimes (Texas Southern University) all received their undergraduate degree from

one of the United States' HBCU. Additionally, 12 percent of Black judges from this era chose to attend an HBCU for their law school education. Examples include Richard Cannon Erwin (Howard University), Joseph Woodrow Hatchett (Howard University), and Consuelo Bland Marshall (Howard University). Although less Black judges from this era went to HBCUs, it is clear that still, a sizeable number decided to attend an HBCU for either their undergraduate or law school education.

Third, similar to the Black judges appointed in the prior era, judges appointed in the post-Civil Rights Era have experience serving in the U.S. armed forces. Specifically, roughly a quarter of the post-Civil Rights Era Black judges, 24 percent to be exact, have experience working in the military (See Table 5). Similar to the Civil Rights Generation of Black judges, the majority of those who served in the military, served in the United States Army. Clarence Cooper (Army), Wilkie D. Ferguson Jr. (Army), Henry Bramwell (Army), James Wynn Jr. (Army), and Terry J. Hatter Jr. (Air Force), are some examples of this group of judges with backgrounds in the military. Ultimately, although significantly less Black judges in the post-Civil Rights Era served in the military in comparison to their predecessors, 49 out of 194 Black judges served in this nation's armed forces.

Finally, an additional factor was revealed while looking at the backgrounds of post-Civil Rights Generation Black judges that did not appear, at all, in the backgrounds of judges appointed prior to 1972. 23 percent of this post-Civil Rights generation of Black judges had experience working as a public defender or legal aid attorney. Examples include: Henry Lee Adams Jr. who served as a Reginald Herber

Smith fellow for the Duval County Legal Aid Association, 1969-1970, and an Assistant Public Defender for the Fourth Judicial Circuit in Florida between 1970 and 1972, Clarence Cooper who worked as an attorney for the Legal Aid Society in 1967, Wiley Young Daniel who was the Director of Wayne County Neighborhood Legal Services, 1974-1976, Terry J. Hatter Jr. who served as an Assistant Public Defender in Cook County, Illinois between 1961 and 1962, and Arenda Laretta Wright Allen who served as an Assistant Federal Public Defender for the Eastern District of Virginia, 2005-2011. As previously mentioned, experience as a public defender was not a factor in the background of Black judges from the Civil Rights Era, although, this is likely due to the fact that the United States Supreme Court case *Gideon v. Wainwright* (372 United States 335) was not decided until 1963.<sup>6</sup> Accordingly, public defenders did not become a regular part of the criminal justice system for the indigent until the end of the Civil Rights Era. Ultimately, close to one quarter of the Black judges appointed in the post-Civil Rights Era have experience as public defenders.

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<sup>6</sup> In *Gideon v. Wainwright*, the United States Supreme Court justices ruled that it was unconstitutional, according to the Sixth Amendment, to not provide legal counsel free of charge to individuals who could not afford to hire an attorney.

**Table 5: Characteristics of Black Judges Appointed to the Federal Bench, 1972-2014**

<b><i>President</i></b>	<b><i>NAACP</i></b>	<b><i>HBCU (U)*</i></b>	<b><i>HBCU (L)**</i></b>	<b><i>Military</i></b>	<b><i>Public Defender</i></b>
Nixon	0/1	0/1	0/1	0/1	0/1
Ford	0/3	1/3	0/3	3/3	0/3
Carter	4/37	11/37	10/37	20/37	4/37
Reagan	0/7	4/7	2/7	4/7	1/7
G.H.W. Bush	0/11	2/11	1/11	4/11	0/11
Clinton	1/61	29/61	7/61	9/61	18/61
G.W. Bush	0/24	7/24	0/24	3/24	5/24
Obama	0/50	7/50	3/50	4/50	16/50
<b>Total</b>	<b>5/194</b>	<b>61/194</b>	<b>23/194</b>	<b>47/194</b>	<b>44/194</b>

\*HBCU (U) = Attended an HBCU for the undergraduate degree

\*\*HBCU (L) = Attended an HBCU for the law degree

*Source: Federal Judicial Center.*

## ***Discussion: Understanding Black Judges' Life Experiences***

Scholars contend that having a high sense of racial group consciousness helps explain African Americans' political behavior. Racial group consciousness is "in-group identification *politicized* by a set of ideological beliefs about one's group's social standing, as well as a view that collective action is the best means by which the group can improve its status and realize its interests" (McClain et al. 2009, 476). It is developed by an individual first identifying with, and being identified as belonging to, the racial group (i.e. racial group membership), and then feeling connected with in-group members (i.e., racial group identity) (Chong and Rogers 2005; Dawson 1994; McClain and Stewart 2014).

Are there characteristics in the backgrounds (e.g. educational and professional experiences) of black judges that may lead them to develop a racial group consciousness, which may, in turn, lead them to substantively represent black group interests while on the bench? The biographies of black federal judges reveal a number of social and professional characteristics that black judges have in common, which I believe are likely to influence the development of a racial group consciousness. I am going to examine, briefly, the following four characteristics and articulate how they can be seen as potential factors influencing the racial group consciousness of black judges: HBCUs, NAACP and other civil rights organizations and activity, the U.S. military, and legal representation of economically disadvantaged.

A significant number of black judges from the Civil Rights Era and post-Civil Rights Era attended HBCUs for either their undergraduate education or their law school education. That a number of black judges attended HBCUs during the Civil Rights Era is not entirely unexpected. During the early and mid-20<sup>th</sup> century, black students faced challenges due to growing up in a country where segregation in education was legal and opportunities for higher learning were limited. Specifically, doors to Ivy League institutions and other predominantly white institutions (PWIs), public and private alike, frequently denied admission to Black students simply on the basis of race. For example, Thurgood Marshall was denied admission to the University of Maryland's Law School because he was Black. In addition, for those Black students who actually attended PWIs, a number of them argued that the environments at these PWIs were hostile to Black students (Astin 1975). It is because of this overt racism at both the personal and systemic level that HBCUs were erected or at least grew in number, and served the increasing number of Black students who simply could not, or preferred not to, attend other institutions. After legal segregation in education ended and a number of institutions established affirmative action policies, Black students began attending PWIs in larger numbers than ever before, however, a significant number of Black students, including Black judges, continue to attend HBCUs (Fries-Britt and Turner 2002). But, why does it matter if a significant number of Black judges attended an HBCU for their undergraduate or law school educations?

HBCUs' primary mission is serving the educational needs of the nation's Black community, but these institutions do not just represent sources of educational opportunity. The extant literature indicates that attending an HBCU is significant for the development of Black students academically and with regards to their identity. Fleming (2001) and Outcalt and Skewes-Cox (2002) show that Black students at HBCUs seem more comfortable socially, more satisfied with their education, and demonstrate higher academic achievement. HBCUs also "offer students greater exposure to Black academic role models with whom they can identify" (Van Camp, Barden, Sloan, and Clarke 2009: 458). But, perhaps most relevant for the current project, scholars such as Van Camp, Barden, Sloan, and Clarke (2009), Gilbert, So, Russell, and Wessel (2006), Watt (2006), Constantine and Watt (2002), Gurin and Epps (1975), and Baldwin, Duncan and Bell (1987) find that Black students attending HBCUs exhibit stronger racial pride, often feel more connected to other Blacks than Black students who attend PWIs, and possess a racial group consciousness. In fact, some Black students actually choose to attend HBCUs with a "desire to be around other Black students and to have opportunities for racial self-development" (Van Camp, Barden, Sloan, and Clarke 2009: 464). Therefore, because HBCUs provide an environment in which racial pride is developed and connections between Black students and other Blacks are fostered, it is likely that Black judges who attend HBCUS have experiences and feelings that significantly influence the development of a racial group consciousness. Specifically, because racial group consciousness includes feeling connected to other Blacks, attending an HBCU puts

Black judges in a physical space in which this type of feeling is a likely consequence of the relationships that are fostered in the classroom and in the living spaces.

In addition to attending HBCUs, data in this chapter demonstrates that a significant number of Black judges from the Civil Rights Era, and a small number from the Post-Civil Rights Era, were employed by the NAACP. Employment by the NAACP, especially the NAACP Legal Defense and Educational Fund, one of the nation's oldest Black litigation interest groups, is significant when thinking about its purpose, which was to use the United States courts to uphold and further develop the rights that Blacks possessed or wanted to possess. In this organization some of the top legal minds interested in the civil rights of Blacks and actively used their skill as attorneys to advance those rights. The organization is now mostly known for its victory in attacking racial segregation in the case *Brown v. Board of Education of Topeka* (1954 and 1955), although briefly looking at the history of the NAACP LDF, they have had legal victories in a variety of legal areas including desegregation, educational equality, barriers to voting, redistricting, employment discrimination, housing discrimination, and fair sentencing. Literature illustrates that this organization was extremely important during the civil rights movement as it led the fight for desegregation and the end to racial inequality. Ultimately, given that a significant number of Black federal judges worked for the NAACP, it is logical to think that the interest group's goals and work is telling of the values held and issues that were important to the judges. Fighting for the civil rights of Blacks while

working for the NAACP is likely to enrich Black judges' identification with the Black community, and thus positively influences their racial consciousness development.

Another important similarity among Black judges is having a background in the United States military. We see in the backgrounds of both the Civil Rights and Post-Civil Rights generations of Black judges that many had backgrounds in the military, and mostly in the United States army.<sup>7</sup> This experience in the military is significant for racial development due to the historical and persisting racial discrimination issues present in the military (Lentz-Smith 2009; Ferrell 2011), which has been shown to prime former Black soldiers to become active in fighting for racial equality in and outside of the military. For example, Michelle Alexander (2012) asserts that “[t]he blatant contradiction between the country’s opposition to the crimes of the Third Reich against European Jews and the continued existence of a racial caste system in the U.S. was troubling for Black soldiers” (p. 36). Additionally, in her work on Black soldiers during and after World War I, Adrienne Lentz-Smith (2009) shows that after experiencing racism in the military, Black soldiers often became engaged in political activism and become active in initiatives to end racial discrimination even after being discharged from the military. What this all means is that due to their military experience, Black judges might be more

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<sup>7</sup> History tells us that conscription in the United States lasted from 1940 until 1973, and during that time men were susceptible to being drafted to fill vacancies in the United States military forces when positions were unable to be filled voluntarily. Therefore, it is reasonable to suspect that for some of the Civil Rights generation judges who served in the military, there may have been some who did not voluntarily join the United States military. Unfortunately, judicial biographies do not include information on whether a judge was drafted or voluntarily served in the military.

conscious of racial discrimination in the United States which connects them to other Blacks who, too, perceive racial discrimination. In addition, after being discharged from the military, Black judges' heightened consciousness about racial discrimination and desire to fight racial discrimination might mobilize them to fight discrimination from their position of power - the bench.

Finally, at least in the post-Civil Rights Era, a significant number of Black judges served as public defenders. Public defenders are dedicated to the legal defense and representation of indigent persons charged with crimes who cannot afford private attorneys. Due to the fact that Blacks are arrested and incarcerated at grossly disproportionate rates throughout the U.S. and these individuals often come from low-income backgrounds (Alexander 2012; Mauer 2009), it is likely that they are more likely to receive representation from a public defense attorney than whites. By providing legal assistance to, and representing the destitute, who are often Black, Black public defenders are often able to see racial bias at work firsthand in the criminal justice system (Alexander 2012: 223-230). Ultimately, due to one quarter of the Black judges appointed in the post-Civil Rights Era having experience as public defenders, it is likely that this group possesses an enlightened perspective about racial inequality which can serve as a factor that would strengthen their racial group consciousness.

## ***Conclusion***

Overall, educational and employment experiences are likely to have particular implications for the racial identity and racial group consciousness of Black judges. Specifically, judges who attended HBCUs, served in the military, or worked for the NAACP or as public defenders are likely to have an enhanced racial group consciousness and a heightened understanding of the relationship between race, power, and inequality. Furthermore, they are likely to be empowered and mobilized to play an active role in eradicating racial bias due to their position given their racial group consciousness. It should be noted that although a significant number of Black judges did not attend HBCUs, work for the NAACP, work as a public defender, or serve in the military, due to being Black, they, similar to their Black counterparts who are not judges, are still likely to possess a racial group consciousness due to residing in a racialized society (Omi and Winant 1994). At the end of the day, we see that despite some Blacks belonging to the nation's economic, social, and political elite, it is likely that they remain psychologically connected to average Blacks (Hochschild 1995; Cose 1993; Dawson 1994).

While there are some similarities between white judges and black judges such as being affluent as judges, having prior prosecutorial experience, attending a prestigious law school, serving in the military, and receiving a relatively high rating from the American Bar Association (Goldman 1965, 1972, 1974, 1981, 1989, 1993, 2009; Goldman and Saronson 1994; Goldman, Slotnick, Gryski, and Zuk 2001; Goldman, Schiavoni, and Slotnick 2009; Goldman, Slotnick, and Schiavoni 2013),

there are a number of distinct characteristics that black judges appointed to the federal bench have in common that do not appear in the backgrounds of white judges based on my examination of federal judges' biographies. Specifically, unlike a number of white judges, many black judges appear to have attended HBCUs for their undergraduate or law school educations. Instead, white judges typically attend PWIs for higher education. In addition, an examination of the backgrounds of white judges' appointed during and after the Civil Rights Era reveal they, unlike their Black counterparts, do not have experience working for the NAACP/ NAACP LDF or other black civil rights organizations. Moreover, prior to being appointed to the federal bench, white judges are more likely to have worked in a private law practice or as prosecutors, than as public defenders, which means, they are less likely to have encountered and legally represented economically disadvantaged populations. In the end, there are a number of similarities in the backgrounds of black judges that I believe are likely to influence the development of a racial group consciousness among these judges.

### **Chapter 3. Race, and Group Membership, Identity and Consciousness: The ‘Color’ of Black Judges’ Souls**

*Opponents of Thomas’s confirmation to the Supreme Court were not questioning the color of his skin. They were questioning the color of his soul, his heart, his concern about the weak, the poor, minorities, and Native Americans.*

**- A. Leon Higginbotham Jr. (Washington 1994)**

*When your whole life has been affected by racial discrimination, you have to be moved by those issues.*

**- Judge Wilson (Personal Interview, April 4, 2013)**

*Being black is something that I don’t think you can separate yourself from. People who say they don’t think about being black are really delusional. It is something that affects everything, ok, a lot of what you do. Something I had to learn to be proud of and not wear the badge of shame.*

**- Judge Hall (Personal Interview, October 24, 2014)**

*Everything is viewed through that prism. There’s no way to get away from it because even if I could get away from it, the folks around me can’t get away from it. I mean, it’s the first thing they notice about me. So as a result, I am conscious of the fact that that is the first thing they know about me. I am looking to see how they are going to use that. So we have that dance until I can get to the point where I feel comfortable with them and probably until they can get to the point where they feel comfortable with me. These people we’re talking about that say they are colorblind, I’m sorry but I’m scared of them. I really am. Anybody that tells me that they’re color blind, then I say there is something wrong with your eyes. Because, basically, this is more than just color. This has to do with culture. It has to do with the way that people who were raised in my community see the world versus the way the people were raised in your community see the world and all of those can be compatible. It also means that there’s some differences and sometimes those differences can be stark and we need to at least be cognizant of the fact that those differences are out there.*

**- Judge Clark (Personal Interview, December 19, 2013)**

Scholars have long recognized the solidarity that exists among African Americans in terms of their political attitudes and behavior (Dawson 1994; Haynie and Watts 2010; Tate 2010; Gurin, Hatchett, and Jackson 1989; Chong and Rogers

2005). Researchers assert that black group consciousness helps explain the political attitudes and behavior of black Americans, which are virtually homogenous (McClain et al. 2009; Verba and Nie 1972; Shingles 1981; Tate 1994; Dawson 1994; Miller et al. 1981; Olsen 1970). Black group consciousness involves members of the racial group perceiving a connection to the larger black community and perceiving one's race as having affected one's experiences in life and life chances, which together, lead to the belief that collective action is essential to accomplishing the group's interests and to improving the group's overall social and political status in society. Although measured and operationalized differently, scholars assert that, generally, the role of group consciousness in the political behavior of African Americans is that it motivates them politically, "helps structure information about political and social reality," and guides them when they make political decisions (Allen, Dawson, and Brown 1989, 435; Verba and Nie 1972; Shingles 1981; Miller et al. 1981; Dawson 1994; Harris-Lacewell and Junn 2007).

It was largely expected that because black Americans generally possess a racial group consciousness, most black politicians would also have a sense of racial group consciousness. This group consciousness would prime black politicians to work to improve the status of African Americans in society by advocating for the group's interests within their respective political entity. This was the expectation for black elected officials such as legislators and mayors, and even for those African Americans sitting on the bench as judges.

The expectation that black judges would essentially behave in ways favorable to the black community has existed since they first ascended to the bench in significant numbers in the post-Civil Rights Era (e.g., Ifill 1997, 2000; Beiner 2002; Johnson and Fuentes-Rohwer 2005). Although generally not studied, scholars presumed that black judges would exhibit distinctive judicial behavior due to the possession of a group consciousness (e.g., Steffensmeier and Britt 2001; Uhlman 1978; Segal 2000; Spohn 1991; Welch, Combs, and Gruhl 1988; Walker and Barrow 1985; Chew and Kelley 2008; Boyd 2015; Farhang and Wawro 2004; Kastellec 2013; Mann 1993). That is, many scholars expected that, because of their experiences growing up as members of a group that has been marginalized and is often discriminated against, black judges would be more likely to understand the experiences of Black litigants, be responsive to the interests of the black community, and possess a racial group consciousness.

Steffensmeier and Britt (2001), for example, assert that black judges are likely “responsive to some constituencies different from those of white judges,” because their perspectives develop from them having “grown up and lived” as African Americans (752). Similarly, Mann (1993) and Goldman (1979) suggest that black judges will be more receptive and responsive to the concerns of black defendants due to them having faced racial discrimination themselves, or at least knowing someone who has been mistreated by the justice system. Unfortunately, these studies that posit black judges possess a racial group consciousness do not provide much evidence to support their claim. This is understandable given that few

scholars have conducted research that focus on whether or not black judges possess a group consciousness.

While many African Americans have high levels of racial group identity and consciousness (Dawson 1994; Tate 1994), black judges differ from average black Americans in important ways. Unlike the black masses, they are an elite societal population economically, socially, and politically (Allen, Dawson, and Brown 1989; McDermott 1994). This is significant because on some measures, middle-class and better educated blacks express less racial consciousness. Therefore, black judges might not possess high levels of racial group identity and group consciousness that many scholars believe they do. But, there is a possibility that black judges do possess a racial group consciousness. Scholars suggest black political officials such as African American legislators, who, like black judges, are an elite societal population, have feelings of group identification and consciousness, which is what leads them to advance black Americans' interests (Broockman 2013; Whitby 1997).<sup>1</sup> Black judges, however, differ from other black political officials too. For instance, because they self-select to be socialized within a recognized conservative discipline (i.e. the legal profession), which some legal scholars suggest opposes progress and resists change and significant reforms, and due to the internalization of the norms of their discipline, black judges are likely to have experienced substantial attitude and

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<sup>1</sup> While there is a rich body of literature on group identification and consciousness among the black masses (e.g., Gay 2004), little research has been focused on group identification and consciousness among political elites (Broockman 2013, 534).

identity changes that may have led to lower levels of racial group identity and consciousness (Bodenheimer 1947, 222-226; Erlanger and Klegon 1978; Berman 2003, 15). Ultimately, it is unclear that black judges can be viewed as possessing a racial group consciousness. This is the primary aim of this chapter.

To answer this question about black judges' racial group identity and consciousness, this chapter asks specifically, do black judges identify with and feel connected to other African Americans, endure racialized experiences like many of their black counterparts, perceive racial discrimination to be an issue affecting the black community, and feel compelled to behave with the group in mind while on the bench. These questions encompass the key factors that have helped black Americans develop and maintain a racial group consciousness (McClain and Stewart 2014; McClain et al. 2009).

After first discussing the meaning and measurement of racial group consciousness, I then discuss how some of the existing literature on black judges provide some hints as to whether or not black judges have a sense of racial group consciousness. Next, I describe the data and methodology used for my analyses of in-depth interviews with black judges. Finally, I present my results and discuss their significance and implications. Relying on interviews with current and former black state and federal judges, I find that many black judges possess a sense of racial group consciousness.

## ***Race, Racial Identity and Racial Group Consciousness***

Although ‘racial group membership,’ ‘racial group identity,’ and ‘racial group consciousness’ are related, these terms are often problematically used interchangeably despite the fact that they are distinct concepts and phenomena. Paula D. McClain, *et al* disentangle these concepts in a 2009 article. They define racial group membership as the “assignment of an individual into a particular group based on characteristics that are specific to that group, in accordance with widely held intersubjective definitions” (McClain et al. 2009, 473). They define racial group identity as an “awareness of belonging to a certain group and having a psychological attachment to that group based on a perception of shared beliefs, feelings, interests, and ideas with other group members” (McClain et al. 2009, 474). Finally, racial group consciousness is defined by them as “in-group identification *politicized* by a set of ideological beliefs about one’s group’s social standing, as well as a view that collective action is the best means by which the group can improve its status and realize its interests” (McClain et al. 2009, 476). Since an individual’s racial group consciousness is conditional on that individual’s racial group membership (i.e., black Americans identifying as black) and racial group identity (i.e., black Americans feeling connected with in-group members), this chapter assesses both racial group membership and identity with respect to black judges, but it focuses on the racial group consciousness of black judges

## **Racial Group Identity**

Whether or not black Americans possess a racial group identity is an important question for scholars who study Race, Ethnicity, and Politics. That is, numerous scholars have tried to understand whether or not black Americans have an awareness of being black and a psychological attachment to the racial group, and feel close to, or connected with, other blacks. One of the first studies to take note of racial group identity was Matthews and Prothro's seminal study, *Negroes and the New Southern Politics* (1966). In their study, Matthews and Prothro attempted to assess the psychological closeness that seemed to exist among black Americans. Their measure, "closeness to other Negroes," captured both the interest blacks had in other members of the race and the extent to which they identified with other members of the race (Matthews and Prothro 1966, 446).

Since Matthews and Prothro's study, numerous scholars have (re) conceptualized and (re)operationalized 'black group identity.' Some scholars, such as Dawson (1994), focus on whether black Americans feel their fate and individual life is linked to the lives of other black Americans. Other scholars, such as Broman et al. (1988) and Harris (1995), conceptualize racial group identity among black Americans as "an awareness of and identification with a racial group based on feelings of in-group closeness" (McClain et al. 2009, 474). Yet, other scholars, such as Allen et al. (1989), Harris-Lacewell and Junn (2007), and McClain et. al. (2009), see black identity as a "multidimensional construct consisting in part of the physical, psychological, sociopolitical, and cultural elements of life for blacks in the United

States” (McClain et al. 2009, 474). What is clear is that regardless of the specific operationalization of the concept, the perception of the group’s status within America’s racialized social system, and the closeness, or connection, that black Americans have with each other are an important aspects of black identity (McClain et al. 2009; Harris 1995).

Since the 20<sup>th</sup> century, survey data illustrate black Americans frequently report being aware of the racial group, they identify with the racial group, and they report feeling close to other group members (Dawson 1994; Simien 2005; Smith 2014; Gurin, Hatchett, and Jackson 1989; Tate 1994). Gurin, Hatchett, and Jackson (1989) report that 93 percent of the black respondents in the 1984 National Black Election Study (NBES) identified being close to other blacks in terms of feelings (75-81). After analyzing data from the 1984 and 1988 NBES, Tate (1994) concluded that “[t]he majority of Blacks believe that what happens to the group affects them personally” (25). Black Americans in other national surveys, such as the 1993 National Black Politics Survey, the 1996 NBES, the 2004-2005 National Politics Survey, the 2007 Center on African American Politics and Society Survey, and the 2008 Black Politics and Society Survey, also articulate feeling that they share a common fate with other U.S. blacks and feel close to, or a connection with, their in-group members. While we know the majority of black Americans have a black group identity given that they express feeling close to other racial group members in national surveys, the extent to which black judges are connected to their in-group members (or have a black group identity) is unsettled.

## **Racial Group Consciousness**

Racial group consciousness is the extent to which one is aware of and identify with, or feel connected to other group members, and the extent to which they feel that the group's social and status should be improved through the collective action of group members (Brown 1931; Ferguson 1938; Verba and Nie 1972; Shingles 1981; Miller et al. 1981; Harris-Lacewell and Junn 2007). A racial group consciousness can be developed or activated in a number of ways. Possessing a racial group identity, or belonging to, and feeling a connection with, a racial group that is socially stratified can result in the development of a racial group consciousness (Conover 1988; Gurin et al. 1980; Miller et al. 1981; Omi and Winant 1994, 1; Dawson 1994; McClain et al. 2009, 476). Additionally, scholars, such as Miller et al. (1981), suggest that group consciousness can be activated by a perception that one's group has been/is discriminated against in society.

Although scholars "for the most part, have employed a consistent definition and understanding of the concept," there is a lack of consensus among scholars regarding how to identify and measure racial group consciousness (McClain et al. 2009, 476).<sup>2</sup> Scholars have focused on whether one identifies as a racial minority, whether or not one feels a sense of closeness to in-group members, whether one believes that one's fate is linked to the fate of the group, whether one perceives that

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<sup>2</sup> For an overview of the scholarly measures of racial group consciousness, see McClain et al. 2009, 476-477.

the group is discriminated against in society, and whether collective action is essential to overcoming the group's unequal status in society. But advancements in survey methods in the late 20<sup>th</sup> century resulted in scholars being able to directly measure group consciousness.<sup>3</sup>

Black consciousness is a specific example of racial group consciousness. Because of their shared experiences and history within the United States, African Americans have developed a sense of racial group consciousness (Dawson 1994; Tate 1994). Due to the collective experience of being treated as undifferentiated group members, instead of as individual persons, black Americans tend to feel that their fates are linked to other black Americans. Consequently, African Americans use

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<sup>3</sup> Olsen (1970) focused on whether a respondent identified as a member of an "ethnic community." Using responses to open-ended questions about problems and conflict they faced in their personal lives, in their community, and in the United States, Verba and Nie (1972) counted the number of times black respondents referred to race, and used that number to indicate the level of one's group consciousness. Shingles (1981) used Verba and Nie's measure in his study that set out to understand the connection between group consciousness and political behavior. But, in the same year, Miller et al. (1981) developed a four element group consciousness measure: group identification, preference for members of one's own racial group and dislike for out-groups (i.e. polar affect), satisfaction or dissatisfaction with the group's status and power in the U.S. compared to out-groups (i.e. polar power), and the belief that a group's political and social standing in society is significantly influenced by either an individual or group's shortcomings, or structural inequities (i.e. individual versus system blame). With his path-breaking monograph, Dawson (1994) changed how scholars study racial group consciousness. He produced a measure that links perceptions of individual self-interest to perceptions of racial group interest. With his black utility heuristic-based "linked-fate" measure, Dawson focused on one's belief that what happens generally to black people in the United States will affect what happens in that individual's personal life.<sup>3</sup> Leighley and Vedlitz (1999) focus on closeness among blacks as an indicator of racial group consciousness. Harris-Lacewell and Junn (2007) used Miller et al.'s (1981) four measures, and created two additional group consciousness measures to test for racial group consciousness: how important one feels their race is to their politics, and whether it is more important to be Black, American, or both Black and American. Marschall (2011) measures group consciousness through a focus on trust among group members. Ultimately, at the present time, most scholars argue that because group consciousness has several dimensions, which are seen in the concept's definition, group consciousness should be investigated using multiple measures, such as the measures developed by scholars such as Miller et al. (1981), Harris-Lacewell and June (2007), Dawson (1994), Leighley and Vedlitz (1999), Marschall (2011), and Sanchez and Vargas (2016).

the well-being of the entire racial group as a proxy for the well-being of the individual self when behaving in the political arena. This proxy-guided-behavior leads to similar political attitudes and political behavior among African Americans.

Racial group consciousness is one of, if not *the* best explanation for the political attitudes and behaviors of black Americans. For example, black consciousness helps explain the partisan affiliation of blacks. Research on party identification, that does not take race into account, tells us that Americans who are well-off financially have a tendency to be more conservative and supportive of the Republican Party (Verba and Nie 1972; Green, Palmquist, and Schickler 2004). When taking race into account, we find that this trend does not hold for blacks the way it typically holds for other racial groups. Specifically, blacks in the middle-class are much more like their black lower-class counterparts than they are like whites in the middle-class. Essentially, racial group consciousness helps us understand why it is that despite increasing intragroup class differences, blacks have remained practically solidified in their support for the democratic party and liberal political candidates since 1964 (Haynie and Watts 2010).

Black consciousness also helps explain black Americans' voting behavior, support or opposition to particular pieces of public policy, perceptions of political institutions, preferences for descriptive representatives, approval or disapproval of the way a particular politician is performing in office, and even interest in the political arena and political affairs (e.g., Miller et al. 1981; Bobo and Gilliam 1990; Shingles 1981; Tate 1991; Gay and Tate 1998; Liu, Austin, and Orey 2009;

Schildkraut 2013a, 2013b; Wong and Cho 2005; Dawson 1994; Howell 2007; Gallup 2016). Although scholars now largely acknowledge the racial group consciousness possessed by average Black Americans, and the importance of possessing a racial group consciousness for the political attitudes and behavior of blacks, court scholars know little about whether or not black judges identify with the black community, experience racism, and possess a racial group consciousness.

### ***Black Judges and Racial Group Membership, Identity, and Consciousness***

The expectation that black judges identify with their racial group, possess a black group identity, and have a sense of black consciousness led to a significant amount of scholarly research on the judicial decision-making behavior of black judges. The extent to which black judges actually acknowledge and articulate having a racial group membership, identity and consciousness, however, is overlooked in the literature and represents a neglected area of scholarly inquiry. In fact, to date, no quantitative studies exist that assesses the extent to which black judges identify as belonging to their racial group, feel linked to or close to average black Americans, experience racism, consider their group membership as important to their life, and are mobilized by their identity to behave in distinctive ways in the judiciary. There are, however, two qualitative studies that provide some clues about the identity and consciousness of black judges.

Michael David Smith (1983)'s monograph *Race Versus Robe: The Dilemma of Black Judges* presents the backgrounds of black judges and the influence of those backgrounds on the judges' job-related attitudes. The first part of his book presents the family status and legal socialization of black judges, and examines the recruitment of black judges and their pre-bench civil rights activity. The second part of the book focuses on the impact of different factors on black judges' job-related attitudes.

By studying the civil rights activity of the black judges, Smith (1983) was able to create a "rough index of degrees of race consciousness" (123). Most of the black judges he interviewed described some activity in the race equality movement. "Substantial numbers were contributors, workers, and most importantly, officers in one or more of the civil rights organizations. Almost all of them confined their activities to the more moderate National Association for the Advancement of Colored People (NAACP) and the Urban League," versus Students Nonviolent Coordinating Committee (SNCC) or Congress for Racial Equality (CORE) (Smith 1983, 123). Smith concluded that due to their activity, they appeared to be "more reformers than revolutionaries" (Smith 1983, 123). The respondents who reported being very active in civil rights were more favorable to an energetic or activist judiciary, whereas the respondents who were moderately active in the fight for increased racial equality were less approving of activism among jurists (Smith 1983, 124).

Smith (1983) also demonstrated that Black judges were deeply concerned for the conditions of black Americans. His respondents were disturbed by the pervasive racial discrimination they perceived in the everyday lives of black people, as well as the racial bias they admitted existed within the criminal justice system. Although Smith's respondents felt some racial progress had been made in this country in the last 20 years, many of them argued the country has far to go to achieve racial equality. Their concern about the welfare of black Americans and the quest for racial equality was shown to be pervasive in the lives, legal careers, and bench attitudes of black judges (Smith 1983).

Finally, the respondents in Smith's (1983) study shared personal experiences with racism. They described experiencing racial discrimination and racism as children, lawyers, and even judges. The significance of these experiences to the attitudes of black judges cannot be overstated – their experiences resulted in the attitude they adopted regarding their behavior and their judicial role. Essentially, “[p]rovoked by racial experiences, black judges have adopted an attitude of judicial activism” (Smith 1983, 125). That is, they report engaging in certain activities that reflect them being connected to and concerned with the black community (Smith 1983).

Linn Washington (1994), currently an Associate Professor of Journalism at Temple University and a former Special Assistant to the Chief Justice Robert N.C. Nix Jr. of the Supreme Court of Pennsylvania, also authored a book that hints that black judges might possess a group identity and consciousness, although that was not the

primary focus of the book. Washington's book, *Black Judges on Justice*, is based on Washington's interviews with fourteen black trial court and appellate court U.S. jurists from federal, local, and state benches. Washington categorizes his judicial interviewees into three generations of black judges – Front Line, Pioneers, and the Future. Some of the notable black judges interviewed in his study include A. Leon Higginbotham, the first African-American judge on the United States District Court for the Eastern District of Pennsylvania, Constance Baker Motley, the first black female federal court judge, and Bruce Wright, an active black New York State Supreme Court justice.

In the book, Washington's respondents candidly shared their views on the courts, the role of (black) judges within the criminal justice system, and the reform that is needed to create a more justice legal system. Multiple themes emerged from their narratives: the law is supreme and can work as an instrument of social change, racism is a central aspect of American society and is an issue within the adjudication process, and in order to improve the criminal justice system, reform is necessary.

Although Washington did not explicitly set out to address the extent to which black judges possess a racial group consciousness, his book does shed some light on the racial identification of black judges, their perceptions of and experiences with discrimination, and the connection they have to other blacks. For example, Judge A. Leon Higginbotham discussed a personal experience he had with racial discrimination: “[Charles] Elliot was the president of Purdue in 1944, the year I entered as a sixteen-year old freshman. There were only a dozen Black students

when I entered Purdue, which at the time had about six thousand white students. All of the Black students lived in a separate house. We slept in the attic, which had no heat. After two winter months of going to bed every night wearing earmuffs, four pairs of socks, and sometimes a jacket, I decided to go talk with the university's president. I felt we should at least have heat, and I asked President Elliot if we could have a section – a segregated section – of any dormitory on campus that had heat. Elliot looked me in the eye and told me the law didn't require the university to allow colored students in a dormitory. He told me either to accept things as they were or leave – leave immediately.” Like Higginbotham, the other judges interviewed for Washington's book indicate that they identify as “black judges” and not “judges who are black,” that they have personally experienced racism, and that because their racial identity is significant to their life, it is significant to their job (Washington 1994).

While Washington (1994) and Smith (1983) did not explicitly set out to study racial group identity and consciousness among 20<sup>th</sup> century black jurists, the data they gathered could be used for such a purpose. Based on their qualitative data, it is clear that at least some of the judges feel connected to the black masses, have experienced and understand racism, and feel compelled to engage in activism while on the bench (Washington 1994; Smith 1983). Unfortunately, their texts are now over twenty years old and the judges who are sitting on the bench today may differ from the judges who were sitting on the bench in the late 20<sup>th</sup> century.

The judges in both studies were born in the early 20<sup>th</sup> century. Therefore, their experiences as people of color may be different from the experiences of black judges in the 21<sup>st</sup> century, who were born in the mid- and late- 20<sup>th</sup> century. Chapter 2, for example, highlights several differences between judges who served during the Civil Rights Era and those who serve in the Post-Civil Rights Era. Given the fact that other scholars note generational differences among blacks with regards to their perceptions and outlook on life (e.g., Smith 2014), it is important to understand whether or not the black judges active on America's benches in this century are similar to their predecessors with regards to their racial identity, experiences with racism, and connection to the black community. The current chapter intervenes in the literature and assesses whether or not 21<sup>st</sup> century black jurists resemble their 20<sup>th</sup> century black counterparts in terms of possessing a racial group identity and consciousness.

### ***Theory and Expectations***

The U.S. is a racialized social system (Bonilla-Silva 1997, 2001; Sears, Sidanius, and Bobo 2000; Delgado and Stefancic 2012). Race matters profoundly for everyone's identity, life experiences, and opportunities. Additionally, in America, economic, political, and social rewards are allocated differently based on individuals perceived race. For example, there are persistent racial disparities between races, but especially between white Americans and racial minorities, in employment, housing, healthcare, wealth, and education. Although legal racial discrimination in

the U.S. effectively ended in the 1960s, discrimination has persisted and continues to be pervasive. Not only are individual acts of discrimination prevalent (Bonilla-Silva 2003; Feagin 1991), but systemic and institutional discrimination has also been perpetual (Watts-Jones 2002; Bonilla-Silva 1997; Pager and Shepherd 2008; Darity and Mason 2004). Ultimately, according to critical race theorists, racism is, and has always been, central to American society (Bell 1992; Harris 1993; Delgado and Stefancic 2012). Because of the treatment of black Americans in the U.S. and the history of discrimination and racism at the individual and institutional levels, many black Americans feel connected to in-group members, possess a racial group consciousness, and behave in ways in the political arena that indicate they bear in mind the needs of the larger community (Dawson 1994; Tate 1994).

But not all black Americans possess a racial group consciousness or the same level of racial group consciousness (Allen, Dawson, and Brown 1989; McDermott 1994). That is, African Americans who belong to the middle-class and have higher levels of education have been shown to occasionally differ from their lower-class and less-educated counterparts in terms of their sense of racial consciousness and connection to the black community. Allen, Dawson, and Brown (1989) and McDermott (1994) reveal that on some measures, middle-class blacks express less racial consciousness and this can result in distancing or a disconnection from the black community. Allen, Dawson, and Brown (1989), for example, conclude that “[h]igher placement in the social structure has negative effects on...closeness to the

black masses, and closeness to black elites,” which results in a situation in which “those of higher status feel more distant from black people” (435).

Since black judges are an elite societal population economically, socially, and politically, although not to the same extent white judges are (e.g., Goldman, Schiavoni and Slotnick 2008; Goldman, Slotnick, and Schiavoni 2013), they represent a distinct subsection of the black population. They, unlike many of their black counterparts, belong to the middle-class and have exceptionally high levels of education. Given their socioeconomic status and education, they may not feel close or connected to the black masses, may not feel concerned with issues that affect the larger black population, and may not feel obliged to behave in ways that would indicate they have a sense of group consciousness.

Additionally, there may be a disconnect between black judges and average African Americans due to their profession, which might lead to low levels of racial group identity and consciousness among black judges (e.g., Washington 1994; Wright 1973, 22). For instance, Bruce Wright, a former judge of the Criminal Court of the City of New York wrote about the “predominance of mute and bland conduct among black judges” (Wright 1973, 22). In his article “Black Brood on Black Judges,” he said:

No matter how “liberal” black judges may believe themselves to be, the law remains essentially a conservative discipline, and those who practice it, conform. Judges who are black tend to keep a low profile. They strive not to rock the boat in which they wish to succeed by promotion...Black judges, in short, are pillars of the black bourgeoisie. . . [and] have become preoccupied with status, as opposed to black progress (Wright 1973, 23).

In his assertion, Wright is making a point that most individuals, upon entry into their profession, are socialized to adopt new statuses and learn new roles, which influences their attitudes and personal and professional identities (Brim and Wheeler 1966; Sachs 2003; Austin 2002; Weidman, Twale, and Stein 2001; Coombs 1978; Pitkala and Mantyranta 2003; Bucher and Stelling 1977). The legal profession, and in particular, law school “teach[es] techniques and transmit[s] appropriate values” that many scholars suggest are fundamentally conservative (Erlanger and Klegon 1978, 11; Lortie 1959; Bodenheimer 1947). Law school is now known to fundamentally change law students’ “modes of thinking,” with many law pupils perceiving that “the biggest change they had undergone was in learning to ‘think like a lawyer,’ i.e., to distinguish a legal from a nonlegal issue, to see the various sides of a problem to reason formally and logically, and to express themselves clearly, concisely, and unemotionally (Erlanger and Klegon 1978, 30). Given that the legal profession is fairly conservative and shapes modes of thinking, law school may challenge and influence the identity and consciousness of black judges via its socialization process (Edwards 1971; Shuman 1970; Tollett 1972). In short, socialization to professional attitudes and values in the legal profession may have an important influence on the racial group identity and consciousness of black judges, because most professional socialization intentionally, albeit gradually, shape one’s beliefs, attitudes, and behavior.

We might expect that black judges will not possess a racial group consciousness due to the socialization of judges into the “conservative” legal

profession and the findings regarding group identity and consciousness among middle-class and highly-educated African Americans (Bodenheimer 1947; Lortie 1959; Erlanger and Klegon 1978; Allen, Dawson, and Brown 1989; McDermott 1994). But, because of the centrality of race in America, and the personal and institutional discrimination that is both pervasive and persistent in the lives of lower- and higher- income and educated African Americans, I suspect that many, but not necessarily all, black judges can be viewed as possessing a racial group consciousness.<sup>4</sup> Specifically, I expect that Black judges will self-identify with the black community.

McClain and Stewart (2014), Sigelman, Tuch and Martin (2005) and Smith (1992) note that most black Americans identify as either 'Black' or 'African American'; regardless of the specific terminology they use, they identify as belonging to the racial group. Thus, I expect that black judges in this study will also identify as 'Black' or 'African American' and as belonging to the racial group. Second, since middle-class and highly-educated blacks, such as black political officials and professionals, feel connected and responsive to the black community (Broockman 2013), I expect black judges will feel connected to the black community. Third, given that America is still a racialized social system (Bonilla-Silva 1997) and many middle-

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<sup>4</sup> Like other scholars who study racial group consciousness among African Americans (e.g., Dawson 1994), I do not suspect that all black judges in this study are the same and can be viewed, given their responses to questions about their racial identification, experiences in life, and perceptions of the issues facing the black community, as having a sense of community or racial group consciousness. Instead, like other scholars, I suspect that because of differences in experiences, backgrounds, socioeconomic statuses, socialization, and ideology, some judges will be viewed as not possessing a racial group consciousness.

class black Americans experience racial discrimination (e.g., Cose 1993; Hochschild 1995; Feagin 1991), I expect black judges to report that they, too, have personally been victims of racial discrimination and consider their race as a significant factor affecting their life experiences. Fourth, because many African Americans perceive racism is widespread against blacks in the U.S., I expect that black judges will understand and perceive that discrimination remains a primary factor affecting the black community. Finally, given their life experiences and their connection with the black community, I expect that black judges will feel compelled or obliged to behave in ways that benefit the group. That is, they will see having judges who have a sense of community and consciousness as important in their occupation. In sum, I expect that Black judges generally will possess a racial group identity and consciousness.

### ***Data and Methodology***

While current scholars studying racial group identity and consciousness largely use survey data (e.g., Dawson 1994; Tate 1994), no survey exists that asks judges about their group identity and consciousness and due to costs, low response rates by judges to surveys (Smith 1983), and the inability of surveys to capture sufficient depth and details, it was not feasible for me or preferred by me to field a survey of African American judges. The data I use to determine whether black judges identify with African Americans and exhibit group consciousness comes from in-depth interviews I conducted with thirty black judges. Interview data provides an opportunity to learn about black elites' life experiences, how they identify racially,

and whether they have a connection with African Americans and the black community (Washington 1994; Smith 1983). While it was not their objective, Washington (1994) and Smith (1983) both found interesting information about black judges' group identity and group consciousness by interviewing black judges. Given that understanding black judges' group identity and consciousness is my primary aim, I am very likely to get a good sense of their identity and consciousness because in the interviews, I am able to ask the specific questions that are necessary to assess my hypothesis (i.e., black judges generally will possess a racial group identity and consciousness).

There are, however, several disadvantages to using interview data to understand black judges' group identity and consciousness.<sup>5</sup> For instance, interviewers can guide interviewees in a special direction with their behavior. That is, through verbal or signals/cues, respondents might be guided to give answers the respondent believes the researcher wants or expects to hear. It may also be the case that, because I am also black, black judges may respond to my questions in a way that prevents them from appearing different from our racial group counterparts (Adida, Ferree, Posner, and Robinson 2014). Additionally, respondents might consciously or unconsciously lie in their interviews, and researchers have no real way of knowing if a respondent is lying. But according to scholars, these disadvantages of face-to-face interviews can be diminished by using an interview

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<sup>5</sup> These are also issues in survey data (De Vaus 2013; Seidman 2013).

protocol, and by the interviewer being aware of these issues, asking for examples to illustrate respondents' points, and making a conscious effort to not giving verbal and signals/cues about researchers' expectations (Opdenakker 2006; Denscombe 2003; Adida, Ferree, Posner, and Robinson 2014; Seidman 2013). Accordingly, to address these issues, I researched and abided by appropriate face-to-face interviewing techniques, I utilized an interview protocol (Appendix B), I asked respondents to give examples to illustrate their points, and I did not indicate verbally or through signals/cues my expectations or beliefs on the topics discussed. See Table 6 for interviewee characteristics. Please note that the names utilized in this chapter are pseudonyms and no identifying references are made.

**Table 6: Interviewee Information**

<b>#</b>	<b>Pseudonym</b>	<b>Region</b>	<b>Gender</b>	<b>Race/Ethnicity</b>
1.	Smith	Midwest	Male	Black
2.	Brown	Midwest	Male	Black
3.	Johnson	Midwest	Female	Black
4.	Jones	Midwest	Male	Colored
5.	Williams	Midwest	Male	African American
6.	Davis	Midwest	Female	Black or A.A.
7.	Miller	Midwest	Female	Black
8.	Wilson	South	Male	Black
9.	Wood	South	Female	Black or A.A.
10.	Taylor	South	Male	Black
11.	Clark	Midwest	Male	Black or A.A.
12.	White	Midwest	Female	Black
13.	Moore	Midwest	Female	Black
14.	Thompson	West	Male	Black
15.	Allen	West	Female	Black
16.	Martin	South	Male	African American
17.	Hall	South	Female	Black or A.A.
18.	Adams	South	Female	Black or A.A.
19.	Thomas	South	Male	Black
20.	Wright	South	Male	Black or A.A.
21.	Baker	South	Female	Black
22.	Hill	South	Female	Black
23.	Anderson	South	Male	Black
24.	Lewis	South	Male	Black
25.	Harris	South	Female	Black
26.	Wood	South	Male	African American
27.	King	South	Female	Black
28.	Jackson	South	Female	Black
29.	Lee	South	Female	African American
30.	Green	South	Female	Black

In this chapter, questions from the interviews that I describe in chapter 1 and present in Appendix B are analyzed in this chapter. The specific data presented in this chapter are the judges' responses to the following set of questions that were asked verbatim in each interview:

*Racial group membership:* "In regards to racial and ethnic classification, how would you classify yourself?"

*Racial group identity:* "To what extent would you say you are connected to the black community?"

*Racialized experiences:* "Do you think that your race and gender affects and has affected your experiences in life, and perspectives about life and issues in society?"

*Perceptions of discrimination:* "Do you think that there are certain issues that disproportionately affect the Black community? If yes, what are they?"

*Mobilized to represent:* What can Black judges do for the justice system? For the black community?

The analyses for this chapter was conducted in two main parts: an intra-interview analysis and inter-interview analysis. The intra-interview analysis involved listening and an in-depth reading of each interview and the inter-interview analysis involved me comparing all of the interviews. For my intra-interview analysis, I listened to each interview again in order to develop a comprehensive understanding of the interviews and the data that would be incorporated into the chapter. Then, I read through each interview transcript, line-by-line. At this point, I was able to focus on some of the pertinent information that would be derived from each interview. I "coded/indexed" the interviews, or labeled words, phrases, sentences, and sometimes entire sections that were relevant to the issues intended

to be addressed in this chapter. The codes constructed are the codes relevant to understanding whether or not black judges possess a racial group consciousness. Specifically, I used the following codes in the analysis "*Racial group membership*," "*Racial group identity*," *Racialized experiences*," *Perceptions of discrimination*," and "*Mobilized to represent*." These codes also became the central themes or categories in the study since they are crucial to understanding whether or not black judges have a sense of racial group consciousness. These categories are also the main themes described in the subsequent section of this chapter. Please see Table 7 for the chapter's themes and illustrative quotations.

**Table 7: Chapter Themes**

<b><i>Theme</i></b>	<b><i>Example of Illustrative Quotation</i></b>
Theme 1: Racial group membership	“I am unapologetically black” (Judge Smith, Personal Interview, April 4, 2014)
Theme 2: Racial group identity	“One of the things I like to do is to go to the schools. To see someone who looks like them, actually comes out and sits with them, and talks to them about the processes of the judicial system to them” (Judge Jackson, Personal Interview, February 16, 2013).
Theme 3: Racialized experiences	“Some little white boy who was about my age, he took issue with me at the water fountain and he pushed me and he said words to me too. That’s one thing I remember” (Judge Adams, Personal Interview, October 24, 2014).
Theme 4: Perceptions of discrimination	“That is how I look at our judicial system, and really every system in America, but you know when you look at the disparities with the number of African Americans coming to the judicial system, they are sentenced more harshly and so on and so forth, you probably know those statistics and could go on forever, no one is addressing race. In fact, there is always this tremendous attempt to not talk about race” (Judge Hall, Personal Interview, October 24, 2014).
Theme 5: Mobilized to represent	“But I think it’s bigger. That gets to the issue of purpose and with that, if you understand what your purpose is. I hope that while I’m here and when I’m gone, they gonna know that I was here” (Judge Moore, Personal Interview, December 20, 2013).

After listening to, reading and coding each interview individually, I began my inter-interview analysis. I compared transcripts to see if there were similarities between what the judges said in their interviews. That is, I reviewed the transcripts to assess the extent to which black judges identified as belonging to the racial group, identifying with other blacks, had personal racialized experiences, perceived discrimination against blacks, and were mobilized to represent in the judiciary. The subsequent section presents this analysis.

## ***Results***

### **Identifying as ‘Black’ and ‘African American’**

When asked how they classify themselves racially, 97% of the black judges interviewed in the study responded by saying they were either “black” or “African American.” Judge Smith, for instance, said, “I am unapologetically black” (Personal Interview, April 4, 2014). Judge Green, a black female judge from the South stated, “A little joke I’ve told, I was black before I was a woman, a girl. Regardless of what gender I came out, I was going to be black” (Personal Interview, March 8, 2013). Similarly, Judge Wilson said, “That’s debatable (laughs!). More importantly, how does everybody else classify me? You know? Now talk to Tiger Woods, ask him how does he classify himself, he said ‘well, I’m Cablinasian.’ But it doesn’t matter what he thinks, you know. How do people who look at him on TV think about him? He’s black! I’m Black! He can be all the other stuff he wants to try to be, but he is black” (Personal Interview, April 4, 2013).

One judge differed significantly from the other black judges in how he identified racially. Although he agreed to the interview, which he knew early on was a study of black judges, when asked how he classifies himself racially, he responded by saying “colored.” In sum, although the question I asked was open-ended and the judges had the opportunity to choose the terminology to describe their racial group membership, the majority of the black judges in this study identified as being either ‘black’ or ‘African American.’

### **Experiencing Racial Discrimination**

When asked to what extent their race and gender has affected their life experiences, twenty-five of the thirty judges interviewed reported being victims of, or experiencing, discrimination at some point in their personal lives. Sometimes that discrimination involved law enforcement officers in racial profiling incidents, other times that discrimination was being disadvantaged in terms of not being bused to school or having to receive old, used textbooks.

Some judges shared experiences with racial discrimination from their childhoods. When asked about race affecting his life experiences, Judge Adams shared discrimination he remembered from when she was a child. “Way back when I was a child, I grew up in a little town in western [a southern state]. There were very few black people really, but enough of us that we had our own school and my mother was a teacher there. I can remember us being maybe 8 or 9 and there was a water fountain, not the main one but the one kind of at the end of town. I went over

to it. I don't even remember if I took a drink. Some little white boy who was about my age, he took issue with me at the water fountain and he pushed me and he said words to me too. That's one thing I remember. I used to walk to school sometimes too and I remember passing these little white girls and they would say 'hey nigger' and I would say 'hey cracker.' I would keep right on going" (Personal Interview, October 24, 2014).

Judge Wood also shared a personal experience he had growing up during segregation. "Well, I am an African American who was born during the time of segregation and my life growing up in a segregated city in the south makes me who I am. I think, again, that my experiences have a lot to do with who I am and how I do what I do...I'm from Alabama, I told you that - Birmingham. I remember when I was a kid, when it came time to pay your taxes in Birmingham, you went down to the courthouse to pay your taxes. They had this beautiful park around the courthouse, beautiful, but black folks couldn't sit in there. Black folks, we couldn't stop until we got to that courthouse and paid them taxes and came back out of there. That's within my timeframe" (Judge Wood, Personal Interview, February 16, 2013).

Additionally, Judge Taylor described his personal experiences with discrimination from his childhood. "I grew up black. Went to a colored high school. Many of the people who rode a bus passed my house were going to a school different from the one I was going to, while I walked to school. The busses usually at the white school, when they would get a new bus, they would send the old bus to the black school. Same thing with books. I guess I was in high school before I ever got a

new book furnished by the state. We got the books from the white school. I've seen the discrimination in many ways. I'm a victim of it. So, I'm obviously very conscious of that" (Personal Interview, November 8, 2013).

While discussing his childhood, Judge Lewis noted that he was cognizant of the fact that he was treated differently than white males. To him, being looked at "more harshly" was a form of discrimination. "I think that being a black male, doors open for you, but you are subject to, I believe, to stricter standards. I think you are watched under a more careful eye. Anything that you do is seriously scrutinized versus a white male, he does something, he may have more leniency. I grew up in a small town and I saw a lot of that. So, I see that sometimes there's leniency towards them, towards whites. I may have been looked at a little more harshly. Things of that nature" (Judge Lewis, Personal Interview, February 16, 2013).

While some judges described racialized experiences from their childhood, other judges described racialized experiences from their adulthood. Judge Thomas shared his personal experiences with racism living as an adult black man: "I have experienced women, white females, being afraid of me when I'm out in public where they will move to the other side of the road when they are walking or turn on their panic alarm when I am walking through a parking lot approaching them. So, I've experienced those things. Yes, those are the things I've experienced. There's one other thing. I have been told, or was told by a college counselor that I should not major in economics because blacks don't do well in that field" (Judge Thomas, Personal Interview, October 24, 2014). Additionally, Judge Thomas said

“experiences of being told, either directly or indirectly, you can’t come in or you can’t go there. Or, you’re at the end of a table and there’s a conversation, and you aren’t part of it. You understand those” (Judge Thomas, Personal Interview, October 24, 2014).

Judge White, a black female judge from the Midwest, shared being racially profiled by police with her brother in a Midwestern state while she was an acting prosecutor:

I can remember when I was a prosecutor and I was in the car with my younger brother who had been in an accident probably the year before, and his case finally settled. And what young people do, he went out and bought him a little Cadillac and everything. And he probably was, let me see, he was out of the military so maybe he was 26-years-old. And I was in the car with him and he got pulled over. And soon as the police pulled up they said “Jackpot. Where are the drugs?” They didn’t ask him. So, I was trying to like hide my face because I knew those two officers and they knew I was a prosecutor, and I wanted to see what they were doing. So, he was like “What are you talking about?” They were like “I know this is not your car. Did you steal it? You know, where did you get this car black boy.” And this was in the 90s. So, he had, yes, because I was a prosecutor so it was at least 94. They called him “Black boy” and just everything. I was just sitting in the car with my head down and they were like “Is this your little bitch? Your whore?” I am not lying! And that, you know, experience. I couldn’t wait for them to see my face. They were like “Step out the car.” And he was like “What?” You know, “Why are you stopping me? If it’s a speeding ticket, I have my license and I have insurance.” “Step out the car. We are going to search your car.” He said, “I’m not giving you permission to search my car.” They said, “Well if we find something, we are going to write on the report that you gave us permission.” And so they were like “Step out the car! You too, ma’am.” When I stepped out, I said “Hey officer.” When they looked up, they said “Oh, Prosecutor --- [her first name]!” and they were like “Oh, we’re sorry, we’re sorry, let him go! (Judge White, Personal Interview, December 19, 2013).

There were also judges who, without discussing specific childhood or adulthood experiences, said that being black has affected their life experiences. For example, Judge Wilson described experiencing discrimination in every aspect of his life. “Being black in America, in the south, are you kidding me? Everything you do is affected by your race. Everybody who comes in contact with you is conscious of what your race is. You are treated accordingly. I just can’t say enough about that. You black in the south... whew. You grew up in Ohio? You Black in Ohio too then! (laughs). But see, now, my experiences are much different than yours because you are much younger and you are a female. So, times have changed” (Personal Interview, April 4, 2013).

### **Maintaining a Connection to the Black Community**

The black judges interviewed in this study report that they are connected to black Americans and the black community. They used specific pronouns that suggested they see themselves as a part of a discrete group. Additionally, they conveyed being connected to the black masses via the organizations they participate in or are members of, their social activities, and their families.

The vast majority of the judges interviewed used pronouns like “we” and “us” to refer to other black Americans. This suggests that they feel a sense of belonging to the black racial group that includes them. For instance, while discussing the underrepresentation of black judges in his state, Judge Wood said, “To a degree we, minorities/Blacks, are responsible for a part of that. We don’t vote. We don’t

participate to the degree that we can to make a difference to make things change” (Personal Interview, February 16, 2013). In his statement, he not only uses the pronoun “we,” but he explicates exactly what he means by the term in case it was unclear. Additionally, later in his interview, while discussing why “black folks” are afraid of going to the courthouse, he says that it is precisely because, “we associate the court house with bad things. Going to jail, getting lynched, taking your property, that is the historical view of black folks and the courthouse. And rightfully so. But again, we have to change that” (Judge Wood, Personal Interview, February 16, 2013). Finally, in her interview, Judge Allen said that she is cognizant of the way “they describe and the way in which they label us” (Personal Interview, April 2, 2015).

In their interviews, many of the black judges also referred to the black community as “my community,” “our community,” or “the community.” This implies they see themselves (and sometimes even me, the black researcher) as a part of the black community. For example, while discussing her electoral supporters, Judge Allen said the majority of the black Americans in her district supported her candidacy. When asked why she thought that was, she replied “I think it was my relationship with my community” (Personal Interview, April 2, 2015). Likewise, Judge Moore, in her interview, said, “[t]here’s a difference in our culture, vernacular,” while discussing the importance of black judges to the judiciary (Personal Interview, December 20, 2013).

Besides the terms used in their interviews to describe other black Americans and the black community, some black judges also described specific ways that they felt exemplified the connection they have with the black community. Some judges talked about being connected to other blacks by visiting predominately black schools, and yet other judges talked about being connected to the black community via church, beauty routines such as hair care, eating and shopping, and organizations they are members of.

For example, Judge Jackson talked about going into the black community and to predominately black schools. She said she values this community-engagement aspect of her job because she is able to connect with the community that she declares raised her. “One of the things I like to do is to go to the schools. To see someone who looks like them, actually comes out and sits with them, and talks to them about the processes of the judicial system to them” (Personal Interview, February 16, 2013).

Judge Thompson, Judge Allen, and Judge Adams described being connected to the black community through their predominately black fraternities and sororities (Judge Thompson, Personal Interview, April 2, 2015; Judge Allen, Personal Interview, April 2, 2015; Judge Adams, Personal Interview, October 24, 2014). They said in their area, where black Americans make up a minority of the population, black organizations such as fraternities and sororities are a key part of the black community. In their areas, they say their particular respective national fraternity and sorority are active in the community. They described serving food in homeless

shelters, visiting local schools to speak with black children, organizing legal clinics, sponsoring scholarships at local colleges and universities, and even speaking at community events.

Judge Brown described belonging to a community of black political elites and how he feels these individuals are connected to the community and have an obligation to the community:

I strongly believe that when you are an African American lawyer, police officer, or political office holder, that you owe it to your community to make a difference to the large, to something beyond you and your family. For example, if you come to this job and your only goal is to do just like those who have never suffered as African Americans have suffered, and have never felt the pain of being discriminated against. Although you felt it, you are not going to now look with more informed eyes and ears than those who are not in our community, you know. You are not an addition. You are not a substantive addition to solving the problem. ... One of the issues about diversity is that you need people. There's two. One is, they need to be able to see people who look like them. Well that's a very basic level. ... My idea of diversity is you need not only that difference but you need a more substantive difference. And that those people of color who are now coming into the system, need to be able to make a substantive difference to the people of color and the people that have been neglected of justice that they deserve. ... He never surfaced on any issues that address particular issues our community has: whether it was the recruitment and promotion of African Americans in office, whether it was the reporting of renegade police officers that run roughshod over our young black males, whether it's, making sure the individuals in the office of African Americans don't get maltreated (Personal Interview, April 4, 2014).

Judge Hall also talks about her connection to the black community that is made possible by the organizations to which she is a member. She stated, "As I have gotten more comfortable in my role, and I am definitely a people person, and I have conversations with people who come before me. They realize I am not in there to be

their friend and I'm not in there to give them a break or a free pass, but I am in there because I care about the community. ... I think I maintain ties with the black political community primarily – black political caucus, black lawyers' association, those kinds of associations. I am not very tied into like the lower-income population. I have certainly done projects in the lower income black community, like legal clinics, and beautification projects" (Personal Interview, October 24, 2014).

Judge Adams, too, describes having a connection to the black community. She describes being heavily connected even though she does not live in the black community. "I attend a black church, active in a black sorority, in another civic organization. I don't live in a black community; I live in a mixed community. But I would say I am fairly well connected to the black community" (Personal Interview, October 24, 2014).

Like Judge Adams, Judge Martin describes being connected through the black church. "As I mentioned early, my father is still a preacher. He is now in a higher position in the -- [name] church. Where instead of being over one church, he is now over twenty churches. So, that keeps me connected. Just being a judge keeps me stay connected because of how judges come into office. You know, you always have to stay out there in the public – attending events and just staying relevant to the people, keeping your name out there. I attend a lot of events in African American community" (Personal Interview, October 24, 2014).

Judge Thomas reports that his connection to the black community is through his family. Although he is now a part of the black middle-class and is able to live in

an integrated neighborhood, his family remain lower-class black Americans and he considers them to live in a predominately black area of town. “Well, you know at this point the black community is experiencing the same socioeconomic bifurcation that the white community has experienced. In essence, there is a black middle class that may not have as much contact with those of a lower socioeconomic status. So therefore, my contact with the black community, is related to my own socioeconomic classification. So, the only connection I have right now with other blacks in the community are through my family members primarily who would be probably classified in a lower economic group” (Judge Thomas, Personal Interview, October 24, 2014).

Finally, Judge Allen is connected through her desire to spend her free time with in-group members (Judge Allen, Personal Interview, April 2, 2015). While discussing her judicial evaluation, she reported that much of the criticism she received was about her not wanting to eat lunch with or spend time with other White judges and lawyers (Judge Allen, Personal Interview, April 2, 2015). In their evaluations, she said they would write “She prefers black people. She only talks to black people. She only goes to lunch with black people. She only does this with black people” (Judge Allen, Personal Interview, April 2, 2015). In response to their criticism, she said, “It’s amazing that they find that insulting when they live in a land where they go and do whatever with each other on a regular basis. The fact that I don’t want to be a part of that is very troubling for them, and my social life I get to

spend it with who I want to spend it with and I'm not trying to assimilate into anything" (Judge Allen, Personal Interview, April 2, 2015).

### **Perceiving and Understanding Racial Discrimination and Bias in the Black Community**

When asked what the primary issues are facing the black community, twenty-eight of the thirty black judges reported racial discrimination as one of the principal issues facing and affecting the racial group. The judges describe discrimination in the criminal justice system, discrimination with regards to treatment by law enforcement, discrimination in judicial selection, and even routine discrimination. It is evident that many black judges see discrimination and racism as prevalent and pervasive issues for U.S. blacks.

Some judges, such as Judge Wilson, Judge Johnson, Judge Adams, Judge Williams, and Judge Hall indicate that there is rampant racial bias in the world, but the criminal justice system in particular (Judge Wilson, Personal Interview, April 4, 2013; Judge Johnson, Personal Interview, April 4, 2014; Judge Adams, Personal Interview, October 24, 2014; Judge Williams, Personal Interview, April 4, 2014; Judge Hall, Personal Interview, October 24, 2014). Additionally, their statements express the sentiment that they do not think the courts deal with racial bias at all. Finally, they perceive that there are "so many opportunities for discrimination...and racial bias...to rear its ugly head and lead to disparities we see" (Judge Hall, Personal Interview, October 24, 2014). While these judges do not much provide much detail

in their individual statements, many of their black judicial colleagues were more explicit with what they meant by discrimination is an inevitable reality for black Americans.

Judge Smith, for example, discussed racial discrimination by way of considering black Americans in his city being imprisoned after being victims of illegal arrests. He said the city is compensating many citizens for the illegal arrests, and the majority of the money went to citizens arrested by one particular corrupt white police officer (Personal Interview, April 4, 2014). For Judge Smith, the worse part is that many of those cases came before the court he sits on currently and the white judges on that court, many of whom are still his colleagues, did not find anything wrong with the discriminatory treatment of the black individuals appealing those cases.

[Name of the city] has been compensating citizens for false or illegal arrests. They didn't break it down by race, but I would submit that the majority, the vast majority, are African Americans. You see there is a police officer who has had a number of cases come before the court, and his name is -- -- [name of the officer]. His confessions were coerced. Now, I have to take cases on a case by case basis. We've had some of those cases. But you see it should be problematic to the citizenry for us to have paid out a [amount] dollars. Something must be wrong, something must have gone wrong. You see, I should also add that all those cases came to this court and were affirmed the first time they came through. Now, I wasn't on the court then. I wasn't up here then. But a lot of those cases were affirmed the first time through. So, something has gone wrong where the system is not catching those cases (Personal Interview, April 4, 2014).

Judge Hall goes into detail about racial bias in the judicial system and how she views this problem and the non-response to this problem. "I think it's [racial

bias] being completely ignored. I think the best example I've heard is if you have a tank full of fish and you woke up one morning and one fish was dead, you would take the fish out and examine the fish. But if you woke up one morning and all the fish in the tank were dead, you would then look at the water. That is how I look at our judicial system, and really every system in America, but you know when you look at the disparities with the number of African Americans coming to the judicial system, they are sentenced more harshly and so on and so forth, you probably know those statistics and could go on forever, no one is addressing race. In fact, there is always this tremendous attempt to not talk about race. I don't know how you can address it if you don't talk about it. They don't want to talk about it" (Personal Interview, October 24, 2014).

Judge Martin also argues that racial injustice and disparate policing are the primary issues in the black community right now. "It's been very prevalent lately. There are policing issues that disproportionately affect African Americans. In fact, that is the most prevalent issue right now. If I was to talk more about it, I would probably talk more about that issue. Just how African Americans are treated in the judicial system and policing...when I step into a court room... or dealing with traffic court, and I see 60-70% African American, I think dang, 60-70% around here driving are not African American. Or, even in misdemeanor court with marijuana. It makes you wonder" (Personal Interview, October 24, 2014).

In his interview, Judge Clark described, briefly, his understanding of the prevalence of racial bias in sentencing. He said, "You see distinct and stark

differences in outcomes between what happens to people of color and what happens to white folks when they get caught up in the system” (Personal Interview, December 19, 2013).

Judge Smith described growing up in a segregated community in a Midwestern state and witnessing the disparate treatment of black Americans by law enforcement officers:

I recognize that a lot of the decisions that were made by police officers were based on race. And where I lived. And I saw it. I observed it. I never saw the police take any action against kids when I lived in Hyde Park. When I moved to the AA section of the city, in the segregated part of the city, I saw the police act unnecessarily. For essentially the same acts! / I am probably reversed more on this court, the appellate court, than any other judge in criminal cases. There’s a reason, and the reason goes back to the way we started. I grew up in an integrated and segregated community. No other judge on this court has had my experiences. No other judge interprets the constitution The way I interpret it. Therefore, since I am different, from the white people who sit on the reviewing court, it should not be surprising given my experiences that I arrive at a different result. I told you, in Hyde Park, the police respond one way. In the segregated community I lived in, the police responded a different way, which lets me know that officers do make decisions that are based on things other than objective factors (Personal Interview, April 4, 2014).

Judge Thomas describes racial discrimination as an important issue facing the black community in the arrests of black individuals. However, he provides some context and explains where he thinks the discrimination stems from. “Law enforcement generally, specifically, the drug arrests, arrests for domestic violence...Now I don’t think the black community has recovered from slavery and segregation, Jim crow, or whatever you want to call it because at one point in our history after the Civil War particularly in some southern states, the judicial system

participated in a further subjugation of blacks to economically disenfranchise through vagrancy laws, people working in coal mines and steel mines to pay off misdemeanor fines to pay off court costs and dying in those occupations without ever being able to accumulate wealth, that continued even through the 1950s with the veterans act where blacks were not allowed to qualify for veteran loans and buy home. The vestiges of those practices are basically responsible” (Judge Thomas, Personal Interview, October 24, 2014).

Judge Harris, a black female judge from the south, said that racism is the greatest weakness in the criminal justice system and the greatest issue affecting the black community. “We are in the slave state of – [name of the state], and all of the vestiges of that slavery are still there. Although we are in positions of authority, we can still see it. You have not see the disdain and the disrespect of the president that you see here. Same thing in this town, -- -- [name of town], there is a black mayor. At any point if he begins to show any strength, as long as he is not placating, then of course he is a bad mayor. As long as he is placating, then he is good. Same thing with judges. If you placate or you are a white-safe-negro, then you are a good judge. But if you take the law and interpret the law correctly and apply the law correctly and if it doesn’t happen to be as some people want it to be applied, then in this state, there is the opportunity to file anonymous judicial complaints” (Personal Interview, February 16, 2013).

In addition to black judges saying that racial discrimination in policing and the criminal justice system are major issues facing the black community, the

interviewees also identify racial discrimination in judicial selection, which limits the political representation of black Americans, as an issue affecting the black community. The entire sample of judges interviewed for this study argue that race affects judicial selection, and that, in particular, being black, makes it more difficult to be elected or appointed to the bench. Judge Williams mentioned that whilst it has historically been extremely difficult to elect and appoint judges to a Midwestern state, certain other racial groups, Irish and other white judges in his area in particular, are always able to be elected (Judge Williams, Personal Interview, April 4, 2014).

Judge Smith also considers the struggle to achieve adequate descriptive representation of minorities in the judiciary as a major issue related to racial discrimination. In his interview, he described the coalition between black legislators and judges, and others, which created an electoral system that made it possible for black judges to be elected in larger numbers. According to him, this effort was necessary to address the racism that was inherent in the other system. “These blacks who spearheaded the effort did not wait for anyone to confer power. Whites in the system are there to maintain the status quo. Blacks needed to take power and control, and they did” (Personal Interview, April 4, 2014). Judge Lewis also describes needing a reformed election system to get elected in his Southern state, which acknowledges the racially polarized voting in judicial elections in his area (Engstrom and Caridas 1991). “I was elected in [location]. Not saying I could not win in an area-wide election, but having an opportunity to run in a minority district I

think increased my chances of winning” (Judge Lewis, Personal Interview, February 16, 2013).

Still, some judges described witnessing and understanding other forms of discrimination against African Americans. Judge Wilson, for example, shared his reaction to the murder of Emmett Till. “I can remember when I was growing up, Blacks were getting hung. You know? For looking at White women. Like Emmett Till. One of my most vivid memories, when I was a teenager, was seeing Emmitt Till’s picture on that JET magazine cover. I can see it right now! I don’t have to see it. It’s in my mind. I was afraid to go out of the house for weeks after that. That type of thing, and other things too, and even as a lawyer, you hear story about other black lawyers getting locked up.”

Judge Lee described witnessing racial discrimination, and how that fundamentally affected her life. “I don’t think I would be a judge but for the fact that I’m African American and female. I think that the things that I observed as a child, injustices, the fact that I had a problem with the way some people had access to justice or what I considered a good life, that made me want to take on an avenue or career that would allow me to effectuate change. I grew up in the sixties with Dr. King and them. There was an advocacy aspect to what they did, but I felt true change occurred in the court” (Judge Lee, Personal Interview, February 16, 2013).

Finally, Judge Martin shared his experience attending a predominately white college and his activism against discrimination being showcased on his campus “I went from there [a segregated, predominately black high school] to – [university

name] state university, which was a big difference. But I chose to go there on purpose, because I knew race was an issue and I wanted to learn to be comfortable in a historically white environment, which in mind was what the business world was like so it was going to help me later on in life ...my first year, the Klan marched through and we, the African American students protested, and they changed the time so their march was during spring break” (Personal Interview, October 24, 2014).

### **Mobilized to Make a Difference**

When asked what black judges can do for the justice system and for the black community, twenty-five of the thirty black judges interviewed were clear that having them on the bench is essential to creating a more understanding, fair, anti-racist, and responsive justice system. That is, they describe their identity and experiences as being vital to their perspectives and understanding. They vehemently disagree with the notion that black judges and white judges are alike. Instead, they say it is their presence that creates a judicial system that is more conscious and that they differ from their colleagues in important and distinctive ways. Their narratives reveal that most of them are mobilized by their identity and feel obligated to go to the bench and behave in a way that will help the black community. In other words, black judges are mobilized to make a difference.

Judge Hall said black judges provide a distinctive perspective that white judges cannot possess, since a judge’s perspective hinges on that judge’s life

experiences. She insinuates that it is precisely because black Americans and white Americans have different life experiences that they have different perspectives. She also describes the role black judges can play in the judiciary. “You don’t need race alone, but race, usually again, brings some of the shared experiences. The experience of a white male today in America is very different from the experiences of an African American male or female. ...They [Black judges] can make sure they are addressing issues. You have the opportunity to transfer power. ...Being able to use that power and influence, not in a bad way, but being able to use that power and influence to respond and do some of the things that can show the community that we haven’t forgotten them” (Personal Interview, October 24, 2014).

Judge Martin describes what he considers to be the importance of having black judges on the bench. “You don’t want to have a jury trial and all the jurors be white. And you say that’s a jury of my peers? Well, I don’t hang with anyone that looks like that. That doesn’t really feel like my peers. So same thing. ...Everybody comes from different walks of life and it adds lots of different perspectives you can learn from. That’s good because in court, the same thing. You get all kind of people in front of you” (Personal Interview, October 24, 2014).

Judge Thomas describes the connection between his experiences and his perspective, and how this connection makes it important for him, and individuals like him, to be on the bench. “There’s a need for a different perspective that minorities bring to the bench with respect to their childhood experiences, their experiences as adults, and they probably bring a different perspective to the issue of

fairness and compassion. You know, I think judges are first of all public servants. Their life experiences, at least my life experiences, give me an opportunity to find resolutions to legal issues which allow people to be productive in our society” (Judge Thomas, Personal Interview, October 24, 2014).

Judge Moore also explains why she feels it is important to have black judges, however, her focus is on having “conscious” judges:

Challenge of having minorities, but if they are so assimilated, do they really give the diversity we are looking for? There’s a difference in our culture, vernacular, so you have to be able to change the hats. The issue of race is becoming more challenging. The challenge is to phrase it so it’s palatable...Diversity is critical. If, again, you know you get Clarence Thomas, just because you are black, especially when you look at racism that is institutionalized, blacks can be an instrument of perpetuating that racism because they don’t want to rock the boat, they don’t want to be perceived as the angry black person, they don’t want to be perceived as the “black” judge. So, diversity if you understand why you are here. So again, this is the concern with the new generation, do they understand that? And some may say, I’m not here to represent anybody. They might be like Charles Barkley who says I’m just out here to play ball. That’s all I’m doing. But I think it’s bigger. That gets to the issue of purpose and with that, if you understand what your purpose is. I hope that while I’m here and when I’m gone, they gonna know that I was here (Personal Interview, December 20, 2013).

Like Judge Moore, Judge Thompson talks about the importance of having black judges who are aware and connected to the black community. “Unfortunately, I am going to use Clarence Thomas as an example. You want minorities coming to the bench who care. Who remember what they’re part of. They may not have had bad things happen to them personally, but they saw family and friends, and they are

aware of that. It doesn't mean everybody gets a get out of jail card free but everybody doesn't go to jail" (Judge Thompson, Personal Interview, April 2, 2015).

Judge Lee also talks about coming up at a time when the judicial system was becoming more diverse and the importance of that diversity:

It is difficult for people to come before a court or any type of tribunal to feel that there is an element of fairness when nobody looks like them. When nobody appears to truly appreciate the experiences they've gone through or are going through. And so I think it is very important in any aspect to feel like there is an ability to have your message heard and understand – not just heard but heard and understand. I think that diversity both in terms of race and gender allows for that understanding to take place. Not necessarily use sympathy, but appreciate the backgrounds and experiences of the people in front of them. ...I truly believe the most qualified should get positions. I think, however, as a backdrop, qualifications include book learning, life experiences. We want judiciary systems to truly appreciate the persons in front of them and to that extent race and gender are important because I don't think, and I don't mean no disrespect, but I don't think white males understand what either black or white females, or black males, experience. And so I think that you do have to, as a backdrop, to have a truly representative and appreciative and diverse system, you do have to have some element that takes into consideration did I make an A or B, but also my experiences and what do I bring to the table that needs to be considered (Personal Interview, February 16, 2013).

Judge Wilson also shares his perspective on what it means to have diversity in the judiciary. "By appearing in courts, I saw sometimes minorities weren't getting a fair shake. Sometimes discretionary calls, discretionary decisions, and if the judge doesn't understand the life conditions that bring people into that courtroom, in my opinion, they aren't really able to ascertain a proper judgment. They don't know what you've been through. They don't know why you've did what you did. Not knowing where you've been they can't adequately address your decision-making

process...you know, when you are on the bench, you aren't born a judge. You know, you have your own life experiences and everything that you've been through up through the time you become a judge. It is a part of your personality. So, it has to have an affect on who you are and the decisions you make. But you don't make your decisions based on race, but your life experiences enable you to make proper decisions, ideally" (Personal Interview, April 4, 2013).

### ***Discussion***

There is a rich body of literature on the judicial decision-making of both black and white judges. These studies, which are primarily quantitative in nature, use final case outcomes and sentencing data to draw conclusions about the influence of race on the behavior of judges. When the explanatory variable 'race' is statistically significant in empirical quantitative models (i.e. ascribed race), researchers conclude that racial identity and consciousness is the cause of the distinctive behavior. In other words, scholars infer or deduce from statistically significant explanatory 'race' variables that the ascribed race of judges, which they posit signifies the identity and consciousness of judges, are significant predictors of judicial behavior. Although this methodology certainly has its advantages, especially given the fact that most judicial decision-making datasets do not include information on the racial group identity and consciousness of judges, this method of analysis does not fully capture the identities of black judges. This method also does not explain *how* those identities influence black judges' behavior.

This chapter, therefore, contributes to the literature on judicial behavior and on black judges by addressing whether or not black judges possess a racial group identity and consciousness. In the interviews, I specifically asked black judges whether or not they identify with and feel connected to blacks, endure racialized experiences like many of their black counterparts, perceive racial discrimination to be an issue affecting the black community, and are mobilized by their identity to participate in an informed manner in the political arena. The judges demonstrated that the factors that have produced and nurtured a racial group consciousness among average black Americans are also present among many black judges.

In addition to the social science research (Smith 1992; Sigelman, Tuch and Martin 2005), polling companies, such as Gallup, demonstrate that when asked, the vast majority of black Americans identify as either 'black' or 'African American' and there is no strong consensus among black Americans for the specific term used to describe their racial group. When asked about their racial group membership, all but one of the black judges interviewed said they were black or African American. One judge responded "colored," but he, too, considered himself as a part of the black racial group. The interview data reveal that, even when unrestricted and free to select which racial group they belong to and the terminology used to describe that racial group, they, like the majority of their black counterparts who are not judges, see themselves as part of the black racial group and consider the concepts 'black' and 'African American' as most appropriate in defining their racial group.

Using survey data, scholars, such as Tate (1994) and Gurin, Hatchett, and Jackson (1989), show that the majority of African Americans report feeling close to, and connected with, other group members. The same can be said of the judges interviewed in this study. Most of the black judges interviewed expressed being connected to the black community. Besides the terms used in their interviews to describe other black Americans and the black community, some black judges communicated specific ways that they felt exemplified the connection they have with the black community. While some judges said they were connected via their community engagement projects, such as visiting predominately black schools and talking to black youth, other judges talked about being connected to the black community due to their families, religious practices, recreational activities, and the organizations they belong to.

Black Americans are frequently victims of racial discrimination and racism (Bonilla-Silva 1997, 2003; Feagin 1991; Pager 2008; Cose 1993; Alexander 2012; Bobo 2015). Consequently, many black Americans consider discrimination as a major factor affecting the group. The majority of the judges interviewed in this study report that being black has also affected their life experiences, opportunities, and how they were perceived. Additionally, some of the black judges reported enduring personal racialized experiences. Finally, like the black masses, black judges believe discrimination against African Americans is widespread and ongoing, and represents one of the main issues disproportionately affecting the black community.

Finally, black judges suggested they had a sense of obligation or they felt compelled to go to the bench given that they possess more “informed eyes and ears” (Judge Brown, Personal Interview, April 4, 2014) and since they “come from the minority communities,” “they are aware of the problems and the differences between the two communities” (Judge Taylor, Personal Interview, November 8, 2013). Like their black counterparts (Dawson 1994; Tate 1994), black judges report being mobilized to engage in behaviors on the bench that will help bring about political and social change. When asked what black judges can do for the justice system and for the black community, the majority of them were clear that their presence on the bench is essential to creating a more empathetic, sympathetic, just, anti-racist, and responsive justice system.

## ***Conclusion***

The data and analysis presented here provide clear and definitive evidence that many black judges, like other black officials in previous studies, do indeed have a racial group identity and exhibit racial group consciousness. Like black Americans in general, many black judges identify as belonging to the racial group, have personally experienced racial discrimination, perceive racial discrimination as a major issue facing the black community, are connected or close to other black Americans, and feel compelled to consider the well-being of the group when making political decisions on the bench. Moreover, it also appears that their racial group

identity and consciousness derives from their shared racialized experiences as people of color within America's racialized society (Bonilla-Silva 1997).

The findings in this chapter are consistent with other scholars whose projects suggest that many 20<sup>th</sup> century black judges have a racial group identity and consciousness (Smith 1981; Washington 1994). Like their predecessors, the black judges in this study maintain a connection with the black community, even though they do not live in predominately black areas, are better educated, and belong to a higher economic class. Additionally, they report experiencing racial discrimination and being aware of the racial discrimination affecting the black masses. Finally, a significant number of the black judges interviewed here also believe that black judges have the potential to alter the criminal justice system in ways that will create a more sensitive, respectful, and principled justice system.

One of the primary theories undergirding the link between descriptive representation and substantive representation are the theories of group identity and consciousness and their effects on political attitudes, preferences, and behaviors. By presenting the perspectives, perceptions, experiences, and lives of some of the nation's present-day black jurists, this chapter demonstrates that many black judges possess a group identity and consciousness. Whether or not that group identity and consciousness results in some distinctive behavior or substantive representation is debatable, and represents the primary focus in the next chapter.

## Chapter 4. Black Judges and Black Representation in the U.S. Judicial System

*'Have you ever been on a tour of the jail?' 'Well, no.' 'Have you ever been a representative of anybody that's been in jail?' 'No.' 'So, you don't even know what jail is. You think a jail is where they give you ice cream and cookies and pat you on the head. It's not.'*

- **Judge Brown (Personal Interview, April 4, 2014)**

*Cause I look at others and their background is so, I'll call it squeaky clean and mainline. They don't see the texture and the layers. It is black or white. They don't see things are gray... You bring the experiences of being told, either directly or indirectly, you can't come in or you can't go there. Or, you're at the end of a table and there's a conversation, and you aren't part of it. You understand those. They can't overpower totally what you are there to do, but you look at it as you go through the number of making your decisions.*

- **Judge Thompson (Personal Interview, October 24, 2014)**

*There's a thin line between police officers and criminals. Sometimes they are one and the same.*

- **Judge Wilson (Personal Interview, April 4, 2013)**

*I remember when I was a prosecutor. I had a case and... the defense attorney was black and the judge was black... [H]is client was older and his client had the opportunity to participate in the First Offenders' Program, but he rolled the dice and wanted to have a trial. The judge found his client guilty. Then the defense attorney goes 'Well your honor, I would like for my client to participate in the First Offenders' Program.' Of course, he is not eligible now. So, the judge looks at me, and I'm like 'I don't have any objection if he don't have an objection.' The judge then said 'Now this is a black thing that happened right here.' Because we all had to be in agreement, you know?*

- **Judge Moore (Personal Interview, December 20, 2013)**

On June 26, 2011, James Craig Anderson, a 48-year-old African American man, was murdered in the parking lot at the Metro Inn Motel in Jackson, Mississippi. This incident began with a group of white youths' explicit desire to "go fuck with some niggers," and was the last incident in a series of assaults against numerous

African Americans in Mississippi (Griffin and Bronstein 2011). According to law enforcement, and confirmed by the motel's security camera, the group of teens, but especially Deryl Dedmon, John Rice, and Dylan Butler, were responsible for Anderson's murder (Griffin and Bronstein 2011). They faced both state and federal prosecutions, as they were charged with first-degree murder by Mississippi and with committing a hate crime and conspiring to commit other hate crimes by the federal government.

During their sentencing hearing on the federal charges in the Southern District of Mississippi federal court, Judge Carlton W. Reeves addressed Dedmon, Rice, and Butler before issuing their sentence. The judge's comments, which have since been described as "breathtaking, in both the moral force of his arguments and the palpable sadness" with which he delivered them, eloquently described Mississippi's violent racial past with descriptions of slavery, lynching and hate crimes (NPR Staff 2015). Judge Reeves spoke about racial hatred triggering the 2011 murder of Anderson, who had done nothing to warrant an attack. Judge Reeves also challenged white male privilege and norms about white criminal culpability that have historically prevented white males from being seen as perpetrators of heinous acts of violence against people of color. Additionally, Judge Reeves delivered a history lesson from the bench, helping everyone remember some of the countless African Americans who have lost their lives during the 20<sup>th</sup> and 21<sup>st</sup> centuries as a result of acts of racial violence. Finally, Judge Reeves acknowledged the persistent and prevalent racial bias that has existed within the criminal justice system and how

that system is changing, albeit slowly. Although “[t]he legal and criminal justice system operated with ruthless efficiency in upholding what these defendants would call White Power,” Judge Reeves said in his speech that the “new” system, where judges like Judge Reeves preside, will prove justice can be blind and achieved (*NPR Staff* 2015).

In October 2015, Judge Olu A. Stevens, a circuit court judge in Jefferson County, Kentucky, halted a drug trial by dismissing the entire jury panel at the request of defense attorneys because all of the jurors were white. In an earlier case, Judge Stevens also dismissed the jury panel when the 13-member jury chosen had no black jurors and the defense attorneys had filed a motion claiming that, for justice to be served, their black defendant deserved a pool of jurors more representative of the Louisville, Kentucky community. Judge Stevens has been clear about his reason for sustaining the motions filed by the defense attorneys to dismiss the juries. To one jury he said, “I cannot in good conscience go forward with this jury...There is not a single African American on this jury, and [the defendant] is an African-American man” (Riley 2015a).

It is clear that for Judge Stevens, the two jury panels were not adequately representative of the community at large. This fact necessitated drastic measures be taken by him to ensure black defendants were being given a true jury of their peers. In response to individuals who called him a racist for his actions Judge Stevens wrote, "Granting a defense motion to dismiss a jury panel of 40 whites and 1 black does not make me a racist. And calling people on racist language doesn't make me a

racist either...Going to the Kentucky Supreme Court to protect the right to impanel all-white juries is not where we need to be in 2015. Do not sit silently. Stand up. Speak up” (Riley 2015b).<sup>1</sup>

Judge Reeves’ speech and Judge Stevens’ willingness to condemn and his refusal to acknowledge the legitimacy of all-white juries deciding the fate of African American defendants are both fascinating and of significant scholarly interest, as they raise questions about the potential for black judges’ descriptive presence on the bench to yield representational results. Both Judge Reeves and Judge Stevens, purposefully and overtly called attention to disparate treatment and unequal detrimental outcomes because of race, and acted in ways from the bench to remedy the wrongs. Their actions in this regard have not gone unnoticed. The implicit conclusion in various newspaper articles written about these two cases is that both judges behaved in ways that differed from what we see and expect from white judges. For example, the Assistant Commonwealth’s Attorney Dorislee Gilbert said Judge Stevens acted “based on nothing more than unsupported fear or impression that the jury might not be fair because of its racial makeup” (Riley 2015a). Given the precedent Judge Stevens established with his actions, Gilbert feels other judges who may not under normal circumstances question the legitimacy of an all-white jury, “may feel societal, political, and other pressures” to dismiss juries that lack sufficient

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<sup>1</sup> Whether or not Judge Stevens actually has the legal authority to dismiss an entire jury panel because it has no people of color is one question that has emerged in the wake of the two dismissals. At the time of this writing, this question was before the Kentucky State Supreme Court, with the Court not yet having weighed in.

racial diversity (Riley 2015a). Ultimately, these two 21<sup>st</sup> century black judges exhibited distinctive behaviors in response to what they perceived as racism or racial inequalities.

The belief that Black judges would behave differently than white judges has led many activists and scholars to advocate for the increased diversification of state and federal judiciaries. Assumptions and beliefs about their life experiences as black people contribute to expectations and understandings that black judges are likely to bring distinctive perspectives and ideas to the court and legal system (see Smith 1983; Washington 1994).<sup>2</sup> In other words, because of their race, which has likely affected and influenced their lived experiences, African Americans are assumed to bring different points of views to the judicial system than do non-black judges.<sup>3</sup> In bringing these alternative perspectives to the judiciary, black judges are perceived as being in a unique position to represent African Americans and the interests of African Americans in the courts and in the legal system writ large.

The primary question I explore in this chapter is can black judges be viewed as representing black interests in the judiciary? Based on the behaviors of Judge

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<sup>2</sup> With regards to race in particular, Sunstein fails to fully realize that living in the United States' racialized social system generally affords privileges to White people and confers disadvantages to racial minorities (Omi and Winant 2014; Bonilla-Silva 2001, 2009; Feagin 1991, 2014). Therefore, under certain circumstances, homogeneity among individuals belonging to the same racial group should to be expected. The documented homogeneity among Black Americans in terms of attitudes towards public policies such as affirmative action, same-sex marriage, abortion, and gun control, and support for the Democratic Party provides some support for this claim (McClain and Stewart 2014; Haynie and Watts 2010).

<sup>3</sup> Even a well-meaning and progressive White American differs from the average Black person because s/he is still afforded privilege on the basis of her/his race, something that historically and continually evades Blacks (McIntosh 2003).

Reeves and Judge Stevens it appears that some black judges do behave in a manner that qualifies them as representatives in this sense. Moreover, there are a number of empirical studies that have identified racial differences in the behavior of U.S. judges and conclude that race shapes Black judges' behavior in certain proceedings. For example, Welch, Combs, and Gruhl (1988) and Mustard (1998) found that Black judges tend to be more lenient toward Black defendants, while White judges tend to impose harsher sentences on Black defendants. But there is more to the story.

In this chapter, I add to this existing body of literature on judicial decision-making, and the literature on the behavior of black political officials more broadly, by taking a qualitative approach to addressing: to what extent do Black judges represent black interests in the courts and legal system? We know that, in general, other black political officials including black legislators and bureaucrats behave in distinctive ways that have been identified as representing the interests of African Americans (e.g., Hinderer 1993; Seldon 1997; Bratton and Haynie 1999; Haynie 2001; Tate 2003; Meier and Nicholson-Crotty 2006; Orey et al. 2007; Bratton, Haynie, and Reinhold 2006; Brown and Banks 2014; Brown and Sinclair-Chapman 2014; Brown 2014). Is this also the case with black judges? Do black jurists behave in ways that make them akin to black legislators as representatives of African American group interests?

As mentioned in Chapter 1, scholars have largely avoided using the term “representative” to refer to judges (Ifill 1997). Traditionally, the concept of ‘representation’ was only applied to elected officials, because in democracies,

elected officials, but mainly legislators, have an obligation and are expected to represent the interests of their constituents and constituencies (e.g., Albouy 2013; Grose 2011; Jones 1961; Powell 1982; Swain 1995; Tate 2001). The courts, however, are generally not viewed as representative institutions in which group interests are advanced via the purposeful behavior of judges. The conventional understanding by scholars and laypeople alike is that judges and courts are intended to be unbiased and impartial agents and institutions that operate in accordance with established law and precedent, without regard for the race, ethnicity, or gender of litigants (Wynn 2002; Wynn and Mazur 2003). Moreover, unlike other political officials, judges take an oath or affirmation to be impartial and to not allow anything other than the case facts, the law, and legal principles and precedents to guide their decision-making (e.g., 28 U. S. C. § 453). Because of this, judges, for the most part, seek to preserve the authority and consistency of the judiciary by respecting precedents and the law, and therefore, are thought not to be as likely as other political actors to represent a group's interests (Wynn 2002; Wynn and Mazur 2003). But scholars are beginning to challenge the notion that judges are not representatives (Ifill 1997). For instance, Sherrilyn Ifill, the current Director of the National Association for the Advancement of Colored People Legal Defense Fund, has gone so far as to argue that the language of rights and representation should be used when discussing the importance of diversity on the bench, because if they so choose, judges can, respond to group interests and concerns (1997: 97).

Conventional understandings and beliefs notwithstanding, the examples above regarding Judge Reeves and Judge Stevens and an extensive body of social science research on race and representation suggest that black judges may provide some degree of substantive representation to black people. Based on extant research, if a black judge, to some significant degree shares, understands, and identifies with the experiences and perspectives of most black Americans, it is reasonable to expect him or her to be especially sensitive and proactively responsive to rules, procedures, and behaviors they feel negatively affect or violate the rights and liberties of African American litigants. As such, black judges can be viewed as providing representation to black Americans from the bench. I address this question using data from interviews I conducted with black judges. Based on the findings from my interviews, I argue that black judges can be characterized as representing black interests and black people.

### ***Substantive Racial Representation in American Political Institutions***

Substantive representation concerns whether a political official acts in a manner that is in the interest of the group their representing (Pitkin 1967). Although having black Americans in political office does not guarantee substantive representation of black Americans and their interests (e.g. Pinderhughes 1987; Swain 1995), an extensive body of research has shown that substantive representation of black Americans and their interests is most likely to occur when there are black representatives in decision-making institutions (e.g., Mansbridge

1999; Haynie 2001; Tate 2003; Brown 2014).

Most scholarship reveals that black members of Congress and black state legislators represent the interests of African Americans in their respective legislative bodies (e.g., Haynie 2001; Tate 2003; Grose 2011; Minta and Sinclair-Chapman 2013; Mansbridge 1999; Canon 1999; Whitby 1997; Brown 2014). For example, Haynie (2001) and Brown (2014) both find that black state legislators are primary advocates for black interests, by introducing, debating, and backing legislation deemed important for African American communities and black people. Similarly, by examining the roll-call voting, bill sponsorship and symbolic acts in which African American legislators engage in, Tate (2003) finds that race does shape how black members of Congress represent their constituents. Similarly, Minta (2011) and Minta and Sinclair-Chapman (2013), using data on congressional hearings find that despite the decline of national attention to Black-issues such as civil rights, having more black congressmen and congresswomen in the U.S. House of Representatives and to a lesser extent in the U.S. Senate is responsible for keeping these types of interests on the congressional agenda.

Studies of organizations demonstrate that policy outcomes for African Americans improve with black Americans in the bureaucracy (i.e., black descriptive representation).<sup>4</sup> This has been demonstrated in studies of Equal Employment Opportunity Commission offices (Hindera 1993), schools (Meier, Wrinkle, and

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<sup>4</sup> Scholars of the bureaucracy have long argued that nonelected public officials have more in common with the public than do elected officials. This connection, scholars argued, would make bureaucrats more responsive to the public's needs (Samuel and Rosenbloom 1981; Long 1952).

Polinard 1999), the Farmers Home Administration (Selden 1997), and state education and healthcare systems (Zhu and Walker 2013). For example, using data gathered at 23 Equal Employment Opportunity Commission (EEOC) district offices, Hinderer (1993) finds that having racial minorities represented (what he calls passive representation) translates to substantive representation (what he calls active representation). Meier, Wrinkle, and Polinard (1999) also study the representational nature of Black bureaucrats, and they find, using a pooled time-series analysis of 350 school districts over six years, that Black students perform better when there are Black teachers. Finally, analyzing data from 50 states between 1990 and 2006, Zhu and Walker (2013), in their recent study on teenage pregnancies, find that both minority healthcare professionals and teachers contribute to reduce minority teen birth rates.

### ***Black Judges, 'Representation', and the Judicial System***

According to some scholars, using the concept of representation in the judicial context, even to refer to racial diversity, but especially to refer to judicial behavior, elicits hostility from both judges and the legal profession as a whole. For instance, Ifill (1998) says, "to describe judges as representatives is to invite hostility from both the bench and the bar." In this statement Ifill makes the point that, at least to the bench and the bar, it is largely unconscionable and problematic to think of and describe U.S. judges as representatives and their behavior as representation, or

to conceive of the courts as representative institutions.<sup>5</sup> Despite resistance, this concept has been incorporated into studies of judges. While studying descriptive representation in judicial institutions is relatively straightforward, studying substantive representation in the judiciary is less straightforward for the reasons discussed above. Nevertheless, scholars have, and continue to, study whether or not black judges provide substantive representation from the bench.

Scholars have largely conceptualized substantive representation on the courts by focusing on judicial votes and the extent to which black judges vote differently from white judges. Scholars typically operationalize substantive representation in the judicial context in one of two ways: black judges vote liberally in civil cases and vote in favor of, or are more lenient towards, black defendants in criminal cases. Several authors show that black judges exhibit distinctive judicial decision-making behavior, with their decisions being favorable to either African American defendants or the African American community in general (e.g., Scherer 2004; Steffensmeier and Britt 2001; Welch, Combs, and Gruhl 1988). For example,

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<sup>5</sup> I speculate that there are several reasons why the language of representation in the judicial context is controversial including 'representation' has traditionally only been applied to elected officials, especially legislators, it is a concept that typically describes advancing group interests via purposeful behavior, judges and courts are perceived to, and take an oath to, operate in accordance with, and defer to, established law and precedent, and to be case facts and not group interests, judges are often viewed as a monolithic group due to having gone through similar processes to become judges and having similar political, economic, and social backgrounds, judges endeavor to preserve the authority and consistency of the legal system by respecting precedent and uniformity in applying legal principles, and conventional wisdom in the legal profession says representation is what lawyers do and adjudication is what judges do (Hamilton et al. 2008; U.S. Constitution; American Bar Association's Model Code of Judicial Conduct Canon 3B 1972 quoted in Wynn 2003: 772; 28 U.S. Code § 453; Stumpf 1998; Goldman, Slotnick, and Schiavoni 2013; Erlanger and Klegon 1978; Lortie 1959; Bodenheimer 1947; Wynn 2002; Wynn and Mazur 2003; Carp and Wheeler 1972; Carp, Stidham, and Manning 2017; Ewing 2000; Levy 1969).

black judges are slightly less likely than white judges to send offenders, black or white, to prison (Steffensmeier and Britt 2001; Welch, Combs, and Gruhl 1988), and there is small variation in sentences handed down for Black and White defendants (Engle 1971). Finally, Gotschall (1986) finds that in the U.S. Courts of Appeals, Black judges voted for the accused and prisoners more than White judges, and Smith (1983) finds that Black judges are more sympathetic to defendants than White jurists.

Black judges are also shown to behave differently in non-criminal cases. African American judges are more likely to dissent in U.S. Court of Appeals cases (Hettinger, Lindquist, and Martinek 2004), and are more likely to raise questions on police misconduct in search and seizure cases (Scherer 2004). Chew and Kelley (2009) find that in racial harassment cases, black Democratic judges rule differently than white Democratic judges. On average, plaintiffs before black judges are 3.3 times more likely to win than when they are before White judges (Chew and Kelley 2009:1156). Scholars also demonstrate that race of judges in the U.S. Courts of Appeals has been found to positively influence employment discrimination claims (Crowe 1999) and sex discrimination claims (Gotschall 1983), with black judges being more likely than their counterparts to cast a liberal vote in these types of cases. In addition, at the U.S. district-court level, across a wide range of subject areas, Segal (2000) and Walker and Barrow (1985) find that a judge's race has a limited effect on decision-making. Finally, Bonneau and Rice (2009) looking at all criminal cases decided by U.S. state supreme court judges from 1995 to 1998, find

evidence of differences between White and non-White judges, but only in states lacking an intermediate appellate court.

Building on the research on the effects of race and judicial decision-making, Collins and Moyer (2008) look at the effects of the intersections of race and gender in judicial decision-making on U.S. Courts of Appeals. They find that black female judges are more likely to support criminal defendants' when compared to their colleagues on the bench, even after controlling for important factors such as judicial and educational background. This particular study, which examined the unique behavior of Black female judges, is rare in that it is one of the first studies to thoughtfully and empirically assess how race and gender intersect to effect the decision-making behavior of U.S. judges.

Although some scholars, find that race affects decision-making in criminal cases and non-criminal cases, a number of scholars also find that black judges do not exhibit distinctive behavior. In other words, some studies argue and find empirical evidence that black judges do not provide representation in the judiciary (e.g., Uhlman 1978; Spohn 1991; Walker and Barrow 1995; Sisk, Heise, and Moriss 1998; Segal 2000). Spohn (1991) and Uhlman (1978) compared the sentencing decisions of black and white state judges and found that judges are similar in that they both groups of judges sentence black offenders more severely than white offenders. The race of judges in the U.S. Courts of Appeals has been found to have little effect on race discrimination cases (Gotschall 1983) and unfair-labor cases (Merritt and Brudney 2001). In studying the effect of race on U.S. district court judges, Sisk,

Heise, and Morriss (1998) find that race did not affect decisions about whether the U.S. Sentencing Guidelines were unconstitutional when they were initially adopted in 1988. Finally, Ashenfelter et al. (1995) did not find any differences with respect to a judge's race in federal district court civil rights case.

When considered collectively the large body of scholarship on substantive race representation in the judiciary is inconclusive as to whether black judges represent black interests in the judiciary. While some studies show that black judges decide differently than white judges and provide representation in the judiciary, other studies find no evidence of differences in behavior attributable to race. This no race effects conclusion appears to be driven by what particular issues are being focused on and the level of court that is making the decision.<sup>6</sup>

I seek to add a bit of clarity to the existing research. My approach to examining whether we can view black judges as representatives of African Americans differs from the extant research on the topic in a number of key ways. First, the majority of the studies aimed at understanding the behavior of black judges in comparison to the behavior of white judges examine judges' votes in cases or, the sentences they hand down. In other words, the previous literature focuses disproportionately on final case votes. Here, I rely on judges' own words and explanations to assess the degree to which black judges can be viewed as representing black Americans in ways similar to black legislators. In so doing, I offer

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<sup>6</sup> Moreover, in a recent study, scholars have argued that race and gender should not be analyzed separately, but for their interactive effect (Collins and Moyer 2008).

an additional means for how representation can be measured and operationalized in the context of judges and the courts.

Interview data allows us to capture broader and more nuanced manifestations of representation as compared to the outcomes that are typically used to address this topic. By allowing judges to discuss the entirety of their behavior on the bench, as well as what they perceive are the benefits of having black judges in the judiciary, we are able to see that beyond final case votes, black judges are representing black interests in various ways. For example, black judges represent African Americans through their interactions with individuals involved in the criminal justice system such as witnesses, police officers, and prosecutors, their treatment and understanding of black litigants and their cases, and by creating more diverse courthouses.

In addition, most of the previous studies take a quantitative approach to analyzing their data. This approach allows scholars to quantify the behavior of judges and to make broad generalizations and predictions based on a sample. Here I use a qualitative method approach that reveals patterns in the thoughts and behaviors of black judges, who, as a group, have for the most part been understudied or overlooked by court scholars.

Two primary reasons have been given to support the argument that black judges' decision-making will reflect that they are concerned about and responsive to African Americans' interests and African American litigants. First, scholars largely argue that black judges, like other African Americans, likely have personally

encountered and experienced inequality and racial discrimination, (e.g., Beiner 1999; Farhang and Wawro 2004, 301; Steffensmeier and Britt 2001, 752). Second, some researchers assert that black judges generally support disadvantaged and oppressed populations because they are likely to be liberal and see themselves as liberal (e.g., Welch, Combs, and Gruhl 1988, 127; Segal 2000, 140). While I concur with scholars who say experiencing racial discrimination and being liberal help explain why black judges might have distinctive decision-making behavior in favor of African Americans, I argue that scholars have yet to fully understand and appreciate how black judges' identities might influence their behavior. Literature in the legislative context suggest that black legislators advance black Americans' interests in Congress and state legislatures because they possess a high level of group identity and group consciousness (e.g., Broockman 2013; Whitby 1997). I reason that black judges' behavior on the bench may be best understood as a function of their racial group membership (i.e., the extent to which they identify as belonging to the racial group), racial group identity (i.e., the extent to which they feel connected with other African Americans and the black community), and racial group consciousness (i.e., being politicized by beliefs about black Americans' social standing, as well as a view that they, in their role as judges, can help realize black Americans' interests even from the bench).

## ***Advocative Representation: Theorizing Representation in the Judiciary***

As previously mentioned, the traditional approach to studying race and judicial behavior only captures representation by black judges in a very limited scope. By expanding what we mean by representation, we may find that African American judges represent African Americans in a number of unanticipated ways from the bench. As mentioned in chapter 1, the reality is that judges' behavior is not limited to the final decision in a case. Given that judicial behavior includes a range of activities beyond a judge's vote in a specific case, I contend that we should expand our conceptualization and understanding of representation to include these other activities in our analyses. In this chapter, I broaden how we conceptualize and understand representation in the judiciary with the purpose of enhancing and increasing our understanding of the ways in which black judges may represent African Americans in the judiciary, by asking judges to self-assess and identify different aspects of their position, and to discuss their judicial behavior with a focus on their judicial decision-making. More importantly, I broaden the conceptualization and operationalization of substantive representation in the judiciary by advancing the theory of *Advocative Representation*.

"Advocative" is derived from the base word advocate. To advocate is to speak or write in favor of, and an advocate is a person who speaks or writes in

support or defense of a person or cause.<sup>7</sup> An advocate can advocate on behalf of a group, and can share the experiences and perspectives of that group. They can also behave in ways that demonstrate they are in support of a particular group or concerns. Similar to other theories of political representation (e.g., Pitkin 1972), Advocative Representation has four key components: (1) Some voluntary party that is representing, (2) Some party that is being represented, (3) Something that is being represented, and (4) A space where the representation takes place. But Advocative Representation allows us to expand the boundary for who can be represented, who can be a representative, the nature of the representation, and where/how representation can occur.

Advocative Representation theory is a theory about representation in the judiciary and how descriptive representation benefits minorities substantively. The theory posits that despite the constitutional and formal dictates about their roles, the legal and judicial socialization process of their profession, and conventional expectations regarding courts and judicial behavior, judges often behave in the interests of particular groups when they desire and feel compelled to, and when there is an opportunity to. Advocative representation can be best understood as a function of a judge's salient group identities and group consciousness, and can result from both intentional actions and unintended consequences related to a judge's

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<sup>7</sup> Advocate should not be confused or conflated with the concept of a *legal advocate*, who is a person who pleads the cause of another in a court of law.

presence in a court. This study focuses on black judges and the advocative representation provided to black people.

As far as scholarship on representation is concerned, most work has focused on representation in the legislative context. Scholars have focused on whether or not the nation's "representative institutions" (i.e., the U.S. Congress and State Legislatures) represent the American electorate. In studies of minority substantive representation, most scholarship have specifically focused on African American, and white female, congressmen and congresswomen and their roll-call votes on legislation.<sup>8</sup> That is, the bread-and-butter of the study of race, gender and representation is in the legislative context, and involves studies of elected officials (i.e., legislatures) and typically the bills minority legislators introduce and the votes they cast.

*Advocative Representation* allows for us to think more broadly about the possibility of individuals representing groups of people (and their interests). Instead of viewing elected officials as the primary representatives in American politics, *Advocative Representation* proposes that both elected and unelected can represent a particular group of people. This means that a representative's "official" role in her/his position does not necessarily have to be one of representation since all representatives will not be elected. Moreover, with *Advocative Representation*,

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<sup>8</sup> Although some research suggests that entire institutions may collectively represent a group of people "as a whole" (Weissberg 1978). Weissberg (1978) identifies this type of representation as "Collective" Representation, which is different from "Dyadic" Representation, which is individual representatives representing the interests of their constituents.

entire political institutions that are not traditionally viewed as, or meant to be, representative bodies can, by virtue of what officials do within them, become representative bodies. Finally, when thinking about how representation can occur, instead of focusing on the specific vote on a bill or a court case, *Advocative Representation* pushes us to focus on what is received by having the representative present. In other words, the representation is provided from the representative being willing to be an advocate, and speak and behave in ways that reflect the support of a group and that group's interests in a political institution.

There are four general components to Advocative representation. First, this representation centers on the fact that groups and their interests can be represented within policy-making institutions that are not necessarily or have not traditionally been perceived as representative bodies. Second, non-elected officials can act as representatives even when their primary role in the political institution is not to be representatives and when they have not been selected by a particular group of people to act as a representative. Third, advocative representation occurs when a representative is compelled to represent the interests of a particular group, and sees a justification and an opportunity to do so. This representation does not have to occur when a group makes a request of the advocative representative. Instead, it is driven by the representative seeing a reason and having the ability to act on a group's behalf. In other words, it is the idea that representatives will voluntarily bring specific experiences and perspectives to an arena that was previously void of them and these officials will, on their own accord, act in ways to

represent groups (and group interests). The final component of advocative representation is that representatives represent groups by acting in a manner that is desirable to the group they are representing and in a way that furthers their group's interests. With the provision of *Advocative Representation*, groups receive representation from institutions that were not necessarily meant to be representative institutions and have not traditionally been perceived as representative bodies. Essentially, an *Advocative* representative becomes one of the voices of a particular group's perspectives and experiences within a non-representative institution and perhaps the wider society, and this is particularly important for groups that have historically been underrepresented in positions of power and oppressed.

What does *Advocative Representation* look like in the judicial context? It depends on the level of the judge and the type of court, among other things. In general, by sharing and understanding the experience, history, and perspectives of disadvantaged populations, challenging language, persons, policies, and laws that they feel negatively affect, or violate the rights and liberties of, disadvantaged groups, respecting minority litigants, and ensuring the rights of minorities are protected and the needs of minorities are being met, minority judges can provide *Advocative Representation* to minorities in the U.S. For example, a black trial court judge can provide *Advocative Representation* by throwing out a case that involved police misconduct or by not requiring poor African Americans to pay substantial fines. A black appellate judge, for example, can provide *Advocative Representation* to

black citizens by effectuating the Constitution when the police behave in an unlawful manner. Ultimately, whether or not a judge provides *Advocative Representation* depends on whether or not a particular action is done in the interests of a particular group, and how *Advocative Representation* looks in the judicial context depends on numerous factors including the level of the judge and the type of court.

### **Black Judges and Advocative Representation**

There are several reasons why black judges are likely to represent African American interests and African Americans in the judiciary. First, black judges are well-placed inside the justice system to see discrimination and unequal treatment. They are justice system “insiders.” Therefore, they likely possess a distinctive knowledge and understanding of the issues occurring in the justice system. This theory postulates that because of their positions, black judges are particularly aware of pervasive and persistent racial bias and discrimination in the criminal justice system, and the unequal treatment of different groups such as racial minorities. This knowledge is likely to influence how black judges interact with and treat black litigants and other persons of color while on the bench. Their knowledge is likely to provoke them to intercede, when there is an opportunity to, in order to limit racism and discrimination.

Second, by living in America’s racialized social system, black judges may have experienced discrimination themselves, which might lead to them having high levels

of racial group identity and group consciousness. This theory posits that they, like many black Americans, have personal racialized experiences. One reason being a victim of racial discrimination is important is because it has been shown to effect the level of racial group identity and consciousness African Americans possess (e.g., Dawson 1994). It is their experiences with racial discrimination that this theory suggests leads black judges to have high levels of racial group identity and group consciousness, which ultimately is likely to influence their behavior on the bench.

Finally, because their position bestows upon them a great deal of authority and discretion, black judges have the ability, opportunity, and the means to take corrective action. Judges are bequeathed with a certain level of authority and discretion. Therefore, black judges, by virtue of them being judges, have the opportunity to, and are vested with the ability and the means necessary to, take corrective action on issues they perceive are problems in the justice system. This theory submits that black judges can, and often do, when they want to and when they have an opportunity to, represent the interests of African Americans.

The fundamental idea in this chapter is that black judges are a source of black advocacy and representation in the judiciary. Black judges, like most African Americans, have a racial group identity and consciousness, are conscious of persistent racial discrimination, and have experienced racial discrimination (see Chapters 2 and 3). Additionally, they take their experiences in life, especially those related to race, to the bench with them (See Chapter 3). Moreover, because of their positions, they understand racism in the criminal justice system and other issues

facing African Americans, and they have an opportunity to address these issues from the bench. Their experiences, identity and consciousness inform the activities black judges choose to engage in. It is their experiential knowledge about the racial issues in the criminal justice system, high levels of group identity and consciousness, and the authority and discretion they possess as judges that make it possible, and likely, for black judges to provide *Advocative Representation* while on the bench. In short, it is the perception that black judges see themselves as belonging to the racial group, a psychological connection to other African Americans and the community, being politicized about black Americans' social standing, and being mobilized to believe that their personal actions on the bench, along with collective action, can help realize black Americans' interests from the bench, as well as being discriminated against and experiencing inequality, that is likely to lead black judges' to make decisions with the group's interests in mind.

### ***Data and Methods***

I use interview data to examine and understand the behavior of black judges. Interviews are advantageous when used to obtain detailed information about the backgrounds, perceptions, perspectives, and actions of individuals difficult to access through other methods such as surveys (Opdenakker 2006; Aberbach and Rockman 2002; Bogner, Litter, and Menz 2009). Essentially, who better to explain judicial decision-making and behavior, and identify factors that affect judicial decision-making and behavior, than the individuals who are actually involved in rendering or

making judicial decisions? Interviews provide an opportunity to examine and understand whether or not Black judges represent African Americans in the judiciary from black judges' perspectives. In interviews, judges have the opportunity to self-reflect, self-assess, self-identify, and self-report their behaviors and the factors that they feel matter most to their decision-making. Also, with the interviews, it is possible to understand not only what decisions Black judges are making, but how and why they are making those decisions. While there are numerous advantages to using interviews, there are also a number of disadvantages. The primary disadvantage is sample size (Opdenakker 2006; Lilleker 2003; Richards 1996). The size of the sample is limited given the costs required to travel in order to conduct face-to-face interviews and because there is only one interviewer. This limited sample size limits my ability to generalize beyond the sample (Tansey 2007). Other disadvantages include the time it takes to find willing and available participants, conduct face-to-face interviews, build a rapport with interviewees, and transcribe interviews (Opdenakker 2006; Richards 2006). These limitations notwithstanding, hearing directly from the judges themselves allows for a nuanced understanding of the behavior of black judges. While vote choice in specific cases could have been examined, this chapter seeks to understand the nuances of judicial decision-making and these nuances could not be captured in secondary data or in survey data, which is often impersonal and not detailed.

In this chapter, I analyze questions from the same semi-structured, face-to-face interviews described in chapter 1. These interviews permitted black judges to

comment on, among other things, their judicial behavior, identify the factors they feel affect their behavior and the role race plays in their judicial decision-making. Interviews with thirty judges from six states make up the data for this chapter. See Table 8 for interviewee characteristics. Please note that the names utilized in this chapter are pseudonyms and no identifying references are made.

**Table 8: Interviewee Information**

<b>#</b>	<b>Pseudonym</b>	<b>Region</b>	<b>Gender</b>	<b>Race/Ethnicity</b>
31.	Smith	Midwest	Male	Black
32.	Brown	Midwest	Male	Black
33.	Johnson	Midwest	Female	Black
34.	Jones	Midwest	Male	Colored
35.	Williams	Midwest	Male	African American
36.	Davis	Midwest	Female	Black or A.A.
37.	Miller	Midwest	Female	Black
38.	Wilson	South	Male	Black
39.	Wood	South	Female	Black or A.A.
40.	Taylor	South	Male	Black
41.	Clark	Midwest	Male	Black or A.A.
42.	White	Midwest	Female	Black
43.	Moore	Midwest	Female	Black
44.	Thompson	West	Male	Black
45.	Allen	West	Female	Black
46.	Martin	South	Male	African American
47.	Hall	South	Female	Black or A.A.
48.	Adams	South	Female	Black or A.A.
49.	Thomas	South	Male	Black
50.	Wright	South	Male	Black or A.A.
51.	Baker	South	Female	Black
52.	Hill	South	Female	Black
53.	Anderson	South	Male	Black
54.	Lewis	South	Male	Black
55.	Harris	South	Female	Black
56.	Wood	South	Male	African American
57.	King	South	Female	Black
58.	Jackson	South	Female	Black
59.	Lee	South	Female	African American
60.	Green	South	Female	Black

The specific responses presented in this chapter are the judges' responses to the following questions that were asked verbatim to each interviewee: Can the presence of black judges do anything for the justice system? Can the presence of black judges do anything for the black community? What do you see as the role of judges in the overall justice system? What factors do you think affect your judicial decision-making? Do you feel that the race and gender of a judge matters for the types of decisions that are made? If not addressed, do you feel your race and gender affect your behavior on the bench? If so, how? To what extent should a judge (you) consider political, economic, and social consequences of decisions? Are you in charge of hiring law clerks, interns, and/or court staff? What percentage of your law clerks, interns, and/or court staff have been black? Do you place any particular emphasis on black candidates? <sup>9</sup> For the entire list of questions that were asked in the interviews, please see Appendix B.

I conducted the analyses in two stages: an *intra*-interview analysis and *inter*-interview analysis. For the *intra*-interview analysis, I listened to and then read through each interview transcript in its entirety. This allowed me to develop a comprehensive understanding of the interviews that would eventually be incorporated into the project. It is also in this stage that I was able to focus on some of the pertinent information that would be derived from each interview. For my *inter*-interview analysis, I compared transcripts to see if any similarities or themes

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<sup>9</sup> Every interview was recorded for accuracy purposes.

became evident.<sup>10</sup>

From the data, it is clear that having black judges on the bench matters for justice and to African Americans. This historically underrepresented group of judges behave in ways that benefit the black community. The interviews reveal the extent to which having diversity in the judiciary can and does matter. Ten general themes emerged out of the testimonies and narratives of the respondents (See Table 9).

These themes are:

1. Black judges understand the complexity inherent in the lives of Americans, but especially Americans belonging to marginalized communities.
2. They serve as a check to police power in the judicial system by questioning their tactics.
3. Black jurists report holding police officers accountable for misconduct.
4. They make a conscious choice to challenge the individuals involved in the judicial process, such as witnesses, prosecutors and law enforcement officers, who label and describe black Americans in a manner that can be harmful to how they are viewed and can have negative ramifications for how they are treated.
5. Black judges strive to make everyone around them better, and the system better, by sharing their experiences and perspectives as members of a historically disadvantaged and marginalized group, and teaching others what it means to be black in America.
6. Black judges' approach to dealing with black litigants is one that is markedly conscious of, and responsive to, their perceived needs.

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<sup>10</sup> The interviews were combined to reflect one document. One concern might be that combining interviews will erase the individuality of the judges interviewed, which would be apparent in a cross- or inter-interview analysis. My response to this criticism is that the interviews are being used to share the experiences and perspectives of Black judges. Although these experiences and perspectives are informed by judges' individual characteristics, the primary characteristic I focus on is race. That race may "trump" gender, at least in terms of the questions I ask my participants, is supported by the data. When given the option to reflect on their gender and how being a male or female affected their behavior and perspectives, the respondents emphasized their race. To this affect, one black female judge from Louisiana said when asked about her gender: "It wouldn't have mattered if I was a boy or girl. I was always going to be Black." Ultimately, the reason for utilizing interviews is to see the extent to which the behaviors and perspectives of black judges are similar, and can help us understand how being black on the bench makes a difference.

7. They exercise discretion in their decision-making and when possible, make a conscious effort to be merciful with black defendants.
8. They show respect to all individuals who find themselves in the courthouse, even individuals who have been found guilty of committing a crime.
9. Black judges relate to and understand African Americans who come into their courtrooms, and report being able to reach more informed conclusions.
10. They are concerned about the lack of diversity in the judiciary and, through their selective hiring practices, strive to increase the descriptive representation of African Americans in the courthouse.

### ***Advancing Black Interests in the Judiciary***

When asked about their judicial behavior and whether or not race and gender matter to their decision-making, six of the thirty black judges either explicitly said that race did not matter or they did not identify any particular behaviors that would suggest they consciously and purposefully represent black interests on the bench. For example, one judge, Judge King, a black female judge from the South, was quite adamant that she is impartial and that her race is not a significant factor for her behavior: “We take an oath to be impartial and surely I am” (Personal Interview, February 16, 2013). Four of the six judges focused their attention on how they did not behave any different than their white counterparts, and that the importance of diversity lies only in the perception of increased fairness and justice for black Americans. They were clear that they feel both white judges and black judges provide the same level of fairness and justice in the judiciary, and that there is a misperception that black judges are somehow distinct or different than their white counterparts. For instance, one judge said he “knew” race doesn’t play a role in decision-making, and the only factors that matters are the law, the

facts, and the eventual decision (Judge Jones, Personal interview, April 3, 2014). Ultimately, six judges out of the thirty judges interviewed made it clear that they do not, in any way, represent black interests or black Americans on the bench, and that race is not significant to behavior or decision-making in the judiciary.

Unlike these six judges, twenty-four out of the thirty judges interviewed indicated either explicitly or implicitly that race matters in judging, and black judges represent black interests. That is, 80% of the judges interviewed in this study said their race plays an important role in how they behave on the bench and/or they explicitly noted judicial behaviors which exposed ways that indicate they provide *Advocative Representation*.<sup>11</sup> These judges were candid in describing their behavior and in explaining how their behavior was influenced by their race.. These judges are clear that they see the world and cases not simply as judges, but as “black” judges. For them, you cannot separate out being an African American from being a judge. Being black is fundamental to their life, their perspective, and how they view the world. Consequently, being Black is also fundamental to how they judge.

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<sup>11</sup> Understanding that both race and gender influence an individual’s life and experiences (e.g., Crenshaw 1991) and elite decision-making (e.g., Bratton, Haynie, and Reingold 2007; Brown 2014), I asked my respondents whether or not their race and gender affected their judicial behavior. Although they were given the opportunity to describe the effects of race and gender, my respondents, overwhelmingly, focused on race. For this reason, my analysis centers on race and the judicial behavior of the judges interviewed.

### **They don't see things are gray...**

Twenty-four of the thirty black judges described race as generally influencing their behavior on the bench. They made blanket statements and spoke in the abstract about how being black was important to who they were as judges. Some of these judges acknowledged that there is a certain level of discretion that goes along with judging and that race is one factor that is pertinent in those moments where judges have a choice on how to proceed in a particular case. Other judges discussed race being an important factor in determining the relevant facts and aspects of a case. What is clear from these judges is that, when all things are considered, race is central to who they are and what they do on the bench. And yet other judges simply said that they, as African Americans with the experiences they have had in their lives, are different from their white counterparts simply because of who they are. For example, in one of the epigraphs that opened this chapter, Judge Thompson described being able to see things that are “gray” and not just black and white due to his experiences as a Black man in America (Personal Interview, October 24, 2014). In his statement, he insinuates that White judges’ backgrounds are too conventional or, as he puts it, too “squeaky clean,” and this hinders them from recognizing the level of complexity that exists in the world around them, but especially the complexity intrinsic in the lives and experiences of the individuals who are most likely to be present in court as litigants, African Americans (Personal Interview, October 24, 2014). Judge Allen also spoke casually about her race influencing her behavior, among other things: “Yeah, race, the law, bias, gender bias and racial bias,

my personal experiences, my mood, how I feel, was it a happy day or not as good day, that's about all. I don't know that it's just the race" (Personal Interview, April 2, 2015).

Similarly, Judge Adams said, "Even though we are all working with the same sentencing guidelines, there is a wide range of things you can do even within those guidelines, and I do think that our background, our experiences, our race, our gender, all of that, plays into how we handle those things in the court room" (Personal Interview, October 24, 2014). Along the same lines, Judge Taylor, a black male judge from the South, talks about race mattering, "Race? Yes, and other things. People's background. ... For many years, blacks and whites in many places have been separate and have had different experiences. You bring those experiences to the court when you come" (Personal Interview, November 8, 2013). According to Taylor, you do not leave your experiences, regardless of whether you are Black or White, at the door to the courthouse. When a judge enters the courthouse, she brings with her all of the experiences of her life and essentially what makes her, her.

Judge Johnson also shared how she felt race matters generally to her judicial decision-making: "Well, all of us are affected to some degree about the facts and the circumstances that make-up who we are, that is the way in which we see the world. Now having said that, you know the only thing that's supposed to be involved in the decision-making process is the facts of a particular case and the law that applies to those facts. Now, when you come to determining what the facts are, it is who you are and that is true with respect to any fact finder. I mean, in jury cases, you tell people

they are entitled to rely upon their own daily experiences in determining what the facts are and judges are no different. I take into consideration my whole set of lifelong experiences in terms of how I look at the world” (Personal Interview, April 4, 2014). Finally, Judge Hill also implies that her race matters, “race and gender plays a part in who you are and what you do, but I also think it plays a part in how you interpret things. So, that’s our job, to interpret things” (Personal Interview, February 16, 2013).

These judges’ statements reveal that race and the experiences they have had growing up and living as black Americans in the U.S. plays a part in how they interpret, determine what the facts are in a case, how discretion is handled, and the extent to which they are able to understand complex issues. But many of the judges in the study went beyond explaining their race as mattering and their behavior in broad terms, and instead, identified and described specific behaviors that I submit are evidence that Black judges can be viewed as *Advocative* representatives in the judiciary. I turn to these specific ways in the following paragraphs.

### **Some ‘facts’ just don’t make sense...**

Out of the thirty black judges interviewed in the study, eleven judges expressed scrutinizing and having reservations about the testimony and work of law enforcement officers. During the interviews, several judges revealed some of their own personal experiences with law enforcement officers and were open about how those experiences have forced them to question the work of the police. Other

judges discussed how, because they are aware of the mistreatment and racial profiling of African Americans by law enforcement officers, they are very particularly attentive when listening to the testimony officers give in their courtrooms. Most of the judges implied, or in some cases explicitly stated, that they are aware that police officers do not always behave in ethical, honest, and objective ways. Ultimately, many of the black judges interviewed in this study acknowledged that they are critical of police officers' testimonies. While Black judges are not anti-police, it is clear that they understand power and the potential abuse of power, and this certainly affects how they interact with and handle law enforcement officers who find themselves in their courtrooms.

For example, Judge Thompson implies that Black judges, unlike white judges, are not under the impression that the police are always honest or "right": "As a minority, I am not anti-police, but I am not either pro-police. I look at the situation and don't just start with a default position that they are right on everything" (Personal Interview, October 24, 2014). Judge Smith, a black male judge from the Midwest, describes how he is mindful that officers can behave in discriminatory ways towards African Americans because of his experiences growing up. The knowledge of disparate treatment of black and white Americans makes him critical of what the police report as 'facts':

I recognize that a lot of the decisions that were made by police officers were based on race and where I lived. And I saw it. I observed it. I never saw the police take any action against kids when I lived in ---- [a particular neighborhood that was predominately]. When I moved to the African American section of the city, in the segregated part of the

city, I saw the police act unnecessarily, for essentially the same acts! . . . I probably reverse more on this court, the -- court, than any other judge in criminal cases. There's a reason, and the reason goes back to the way we started. I grew up in an integrated and segregated community. No other judge on this court has had my experiences. No other judge interprets the constitution the way I interpret it. Therefore, since I am different from the White people who sit on the reviewing court, it should not be surprising given my experiences that I arrive at a different result. I told you, in ----, the police responded one way. In the segregated community I lived in, the police responded a different way, which lets me know that officers do make decisions that are based on things other than objective factors. Now, I am mindful that officers don't always tell the truth. With some of my colleagues on the lower courts, you would think a police officer never misrepresents the facts, but you see some "facts" just don't make sense. If they don't make sense, then I just don't buy into them. I know they don't make sense (Personal Interview, April 4, 2014).

Judge White also shared a personal experience she had with law enforcement. The incident she was involved in is one that can easily be classified as a "driving while black" (DWB) event, because she suggests that police officers targeted her, a former-prosecutor/current-judge, and her brother for driving in an expensive car they assumed was stolen. During her interview, she states that it is precisely because of her experience that night with law officers that she is now mindful of the corrupt behavior of American police officers. More importantly, however, she indicates that her experience makes her now question the work of the police:<sup>12</sup>

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<sup>12</sup> In this chapter, this story highlights how a personal experience with law enforcement led this black judge to question the work of white officers, but this particular story was also used in the previous chapter on group identity and consciousness as an example of the type of racial discrimination endured by black judges.

I can remember when I was a prosecutor and I was in the car with my younger brother who had been in an accident probably the year before, and his case finally settled. And what young people do, he went out and bought him a little Cadillac and everything. And he probably was, let me see, he was out of the military so maybe he was 26-years-old. And I was in the car with him and he got pulled over. And soon as the police pulled up they said "Jackpot. Where are the drugs?" They didn't ask him. So, I was trying to like hide my face because I knew those two officers and they knew I was a prosecutor, and I wanted to see what they were doing. So, he was like "What are you talking about?" They were like "I know this is not your car. Did you steal it? You know, where did you get this car black boy." And this was in the 90s. So, he had, yes, because I was a prosecutor so it was at least 94. They called him "Black boy" and just everything. I was just sitting in the car with my head down and they were like "Is this your little bitch? Your whore?" I am not lying! And that, you know, experience. I couldn't wait for them to see my face. They were like "Step out the car." And he was like "What?" You know, "Why are you stopping me? If it's a speeding ticket, I have my license and I have insurance." "Step out the car. We are going to search your car." He said, "I'm not giving you permission to search my car." They said, "Well if we find something, we are going to write on the report that you gave us permission." And so they were like "Step out the car! You too, ma'am." When I stepped out, I said "Hey officer." When they looked up, they said "Oh, Prosecutor --- [her first name]!" and they were like "Oh, we're sorry, we're sorry, let him go!" (laughs) Never came back to my room because you know officers will come when there's charges and everything, you have to sign off on it. They never came back to my room to have charges signed. They just stayed away from me. And so, that experience made me question a lot. Of course, all of their work, but other stuff that officers do (Personal Interview, December 19, 2013).

Judge Allen, a black female judge from the western part of the U.S., shared how because she is acutely aware of the experiences black men have with the police, she is always attentive when listening to the testimony of law enforcement officers and pays particular attention to their treatment of black defendants. "Also, you know, having a black husband and having black men in my family who have dealt

with so much. That is probably one of the bigger things, the biggest things. When I'm listening to those trials, and I hear "pretext, pretext, pretext" or when I'm doing those bond hearings, you know, that's a bias I also have to keep under control. It's recognizing that while it's not always contextual, a lot of it is" (Personal Interview, April 2, 2015).

In her response to my question about whether or not her race effects her judicial behavior, a black female judge from the Midwest, Judge Moore, stated that she, like many of her black colleagues, feel being black helps her understand power and the potential abuse of power by the police. "I think that it [her race] gives a better understanding in terms of police relations. You will have some people who feel that the police don't lie. I know for a fact that they do. I know that! Not only was my mother arrested by the police, but my brother who won the -- -- [a very prestigious athletic award] was arrested by the police. He was handcuffed to a chair, a German shepherd pawed him and they were like 'where are the drugs.' He filed a civil suit and the judge said that could not have happened, but I know that happened! My brother wouldn't lie. I know it because I know he called me when it happened when he was in jail, and he was profiled and they thought he was a drug dealer, but he wasn't" (Personal Interview, December 20, 2013).

Finally, one black male judge from the South, Judge Martin, replied to my question by discussing his understanding that there is racial bias in who law enforcement officers bring before him. He said when he looks out into his courtroom every morning, "I often wonder how they got to be there though in terms

of policing. You can see what the judges do, you can track that – our decisions, etcetera. You can't see and track what police officers are doing. So, when I step into a court room, a criminal courtroom, or dealing with traffic court, and I see 60 to 70 percent African American, I think dang, 60 to 70 percent of the people around here driving are not African American. Or, even in misdemeanor court with marijuana. It makes you wonder" (Personal Interview, October 24, 2014).

These examples help illustrate that black judges in courts across the country understand the discretion exercised by the police. They also are painfully aware of the disparate treatment and the racial bias in policing. Some judges had personal experiences with racial profiling. Other judges discussed seeing the racial bias in the courtroom on a daily basis when it comes to who the litigants are in the cases being adjudicated. The judges also report being particularly attentive to and curious about police following or ignoring procedures. Ultimately, it is evident that many black judges have reservations about the treatment of African Americans by the police and the notion of "objective" police work.

### **Being able to be a voice...**

In the previous theme, black judges acknowledged having an awareness of, and in some cases, having personally experienced or witnessed, racial discrimination in policing. But what does having this awareness mean for how black judges interact with and respond to police officer testimony and (mis)behavior? Another theme that emerged from the interviews is that black judges do not

disregard or ignore unlawful and illegitimate searches and arrests by police. Ten black judges, out of the thirty black judges interviewed, discussed requiring police officers to respect the laws they enforce by not allowing them to get away with violating the rights and liberties of African Americans. These judges talked about dismissing cases entirely, reporting the offenders who are responsible for questionable police work, and even ruling in favor of defendants. Ultimately, it is evident that when black judges are made aware of police misconduct, it affects how they address and handle things in court.

Because he understands that police misconduct is possible, Judge Thompson, for example, said he always starts his cases with, “What are the facts? Was it a legal stop or not a legal stop?” (Personal Interview, October 24, 2014). For him, and some of the other judges, it matters whether or not the police follow procedure in searching and arresting individuals.

Judge Hall revealed in her interview, that she addressed issues from the bench by calling out questionable behavior by the police. She said black judges, “can make sure they are addressing issues” (Personal Interview, October 24, 2014). She says black judges “have the opportunity to transfer power. I am not even talking about giving more to black folks than white folks. I am just saying, being fair but also recognize bias and when you see it, call it out. Like, call the chief of police like ‘you know, I am seeing this officer. I am seeing some issues.’ And just being able to be a voice. And being unwilling to just accept the status quo. Being unwilling to, when

you got a number of cases in front of you that have these issues, being willing to step outside the box to speak up” (Personal Interview, October 24, 2014).

Judge Smith also shared how he curtails the misconduct of officers from the bench. His statement reveals that although he desires to bring to justice individuals who break the law, he also thinks it is important for police officers to behave in ethical ways and follow established procedure and laws for legitimate searches and/or arrests:

You can only arrest upon a finding of probable cause, if I don't see any cause to arrest, then I am going to effectuate the constitution and say that is a bad arrest. I don't care what they find. I don't care how bad the person is. Because that's not my job. See it is important for me to keep bad people off the streets, but it's also important for me to insist that the police officers who are enforcing the law respect it as much as the individual who might be violating it. I'm not going to overlook the police officers violating it just to keep this person in prison because the person who's in prison will lose respect for the law (Personal Interview, April 4, 2014).

Judge White spoke about a specific case she presided over and made it clear how she handles police misconduct. Because of the improper search, which did reveal an illegal drug, she had no choice but to dismiss the case entirely:

I had one case where a White officer went through this guy's car, I remember, and the guy had backed up down the street and backed into his yard. Police officers stopped him, didn't even give him a ticket for backing up because he said he backed up too long, but said that he noticed in his experience, in this African American neighborhood, that people that back up in their yards are drug dealers because it is an easy way for them to pull out and run from the police. So, he searched the guy's car and the guy did have marijuana in his car, but it wasn't a whole lot. It was for personal use, a joint. And so, the guy asked for it to be dismissed. I dismissed it because I mean wow, what a theory. People who back up in their yards are drug dealers? (Personal Interview, December 19, 2013).

In her interview, Judge Martin described having a “big problem” with finding out “an officer is not being honest” (Personal Interview, October 24, 2014). He said “in the position I’m in as a judge, law enforcement, they get a lot of credibility and respect for the information they’re bringing before me. If it comes out that they are not just and fair in the way that they police, I have a big problem with that!” (Personal Interview, October 24, 2014). When asked what would happen if he did find out that an officer was being dishonest or behaving in an unethical manner, he responded by saying “[t]hat might effect how I address things in the court” and insinuated that he, like many of his black judicial colleagues, would dismiss the case (Personal Interview, October 24, 2014).

Judge Moore described a particular case that she presided over where she ended up dismissing the case. In addition, she said that she even apologized to the young defendant for the actions of the arresting officer because that officer had been completely out of line. “I remember one case where a young black guy was charged with jay walking. He said ‘Your honor, the officer made me take off my shoes and open my mouth.’ I said, ‘Officer, really?! You can’t do that!’ I was just like, ‘Not guilty. You can’t do that!’ (Imitates banging a gavel) The means don’t justify the ends” (Personal Interview, December 20, 2013). Later in her interview, Judge Moore shared what it is she thinks about in moments like this one where she is listening to and trying to address police misconduct in a case involving a young black male. “I’ve had instances where it was like ‘Ok, I think they were crossing the line!’ I’m like ‘I

have a son at home and I have to explain to him, you know, why we have this flag behind us.' It's there for a reason! We have a Constitution and we have to follow the Constitution. You cannot violate people's rights in the interest of trying to find a bad guy. There's a process with which to do that'" (Personal Interview, December 20, 2013).

Finally, Judge Clark, a black male judge from the Midwest, said having him on the bench matters to the justice system because he feels obligated to speak up and out when issues arise. He reports being able to, "Keep it [the justice system] honest. Because you know there's things that people won't say in a room if I'm in that room that they'd say if I wasn't there. Ok. And my job really is not to necessarily be the universal negro, but it is when I see things that are inconsistent with what I know to be true to speak on it you know, and so I feel an obligation to do that" (Personal Interview, December 19, 2013).

From the interviews it is clear that how black judges think about law enforcement and their work is important in cases where law enforcement officers' testimonies is a central part of a case. These judges professed to objecting to the disparate treatment of black Americans by the police and they also reported questioning the work of law enforcement officers. While Black judges are not anti-police, it is clear that they understand power and the potential abuse of power, and this certainly affects how they interact with and handle law enforcement officers who find themselves in their courtrooms.

### **Really? A gang member? Why do you believe that?...**

According to the judges interviewed, one important aspect of judicial decision-making concerns listening to and accepting witness testimony in cases. Two of the thirty black judges reported being critical of the descriptions and labels used in reference to Black litigants, especially Black defendants. They demonstrate that generic descriptions of black perpetrators and labels like “gang member” and “thug” do not go unaddressed.

Judge Johnson, a black female judge, talked about witnesses to crimes identifying black juvenile defendants as the perpetrators. She said sometimes witnesses come in and they are very clear about who it is they witnessed commit a crime. She said other times, however, witnesses will stand in her courtroom and provide a very generic description of a black individual. She says it is those generic descriptions that she challenges because it makes her feel that the individual is just providing a description of a stereotypical black individual:

If you tell me that the description was, African American male, 6 foot, medium complexion, white t-shirt, gym shoes, blue jeans, and that was your description, I think you didn't get a good look at that person. You did not get a good look at that person! So, when you say to me that's who it is, and there is nothing else, there is no other physical evidence that ties that person to that crime, then it is very difficult for me to accept beyond a reasonable doubt that you had an opportunity to get a good look at him. Now, when you tell me, it was an African American male, 6 foot, he had bushy eyebrows, he had sideburns, he had a mustache, he had a goatee, and he had a scar that ran across his cheek, and I look over at the defendant and the defendant got all of that, I'm feeling pretty confident (Personal Interview, April 4, 2014).

In addition to questioning the descriptions of Black defendants, in some instances, the black judges interviewed described questioning the labels used to refer to and categorize Black defendants. Judge Allen described a conversation that she had with a prosecutor where she challenged his use of the term “gang member” to describe the defendant.

‘We believe him to be a gang member.’ ‘Really? A gang member? Why do you believe that?’ I kind of follow up with that question. ‘What is it about him that makes you believe that?’ ‘Well, we have...’ ‘Well, can you explain? Can you show me something? Is there a contract he signed? What did he do? Is it because he lives in a particular community?’ ‘Well his cousin...’ ‘Oh! He has a family member who is currently incarcerated. Ok, but again back to the question....’ So, those kind of things, my upbringing calls me to question those labels’ (Personal Interview, April 2, 2015).

Judge Allen also shared a story that entailed her challenging the label “flight risk” used by a prosecutor to describe a black defendant. She said that the prosecutor in the case wanted her, the judge, to deny bail and remand a black defendant until his trial because the prosecutor considered him a “flight risk.” “I think my upbringing as an African American person definitely probably factors into certain things. For example, if you tell me so and so is a flight risk because he ran from the police. In my neighborhood, when you see the police, you get nervous and you run. Does that mean you are a flight risk necessarily? Because you ain’t got no where to go! Where you going? You ain’t got no passport...you got no...you understand what I’m saying? So my interpretation is informed by my experience” (Personal Interview, April 2, 2015).

The interview data reveal that black judges are critical of the descriptions and labels used to refer to Black litigants. Some black judges challenge generic descriptions of black individuals by witnesses. Other judges challenge the use of labels like “flight risk” and “gang member,” when used to categorize black defendants. Ultimately, these black judges illustrate yet another reason that it is important to have black judges present in the judiciary – they work to prevent the arrest of innocent black Americans and they try to ensure Black judges are not classified in a way that can adversely affect how they are viewed and treated.

### **Getting Cultural Competency...**

The judges described how discussions with their colleagues and attorneys when they are on the bench, sitting in meetings, walking in the hallway, or even over lunch, are often enlightening to individuals who do not know or understand the lived experiences of people of color. Seven of the thirty black judges described how having Black judges on the bench mattered to justice via the individuals they encountered. To these black judges, their presence, the discussions that occur, and the information that they provide, is virtually equivalent to giving a diversity training or cultural competency session. Many of the black judges interviewed see these conversations as valuable to these other individuals, but also important to justice in the long run because it helps White judges and attorneys understand the individuals and the experiences of the individuals who they have to encounter while working in the judicial system. These judges’ belief about the value of their diversity

is consistent with, and demonstrated by, research in judicial politics that shows diversity in terms of race and gender on collegial courts such as State Supreme Courts result in judges being more likely to rule in favor of racial minorities and women (e.g., Peresie 2005; Songer and Crews-Meyer 2000; Kestellec 2013). The premise behind this work is that minority voices on the bench matter to their colleagues who have an opportunity to understand cases and litigants from a unique perspective.

Judge Adams, for example, shared her perspective about what the presence of Black judges can do for the criminal justice system through interactions with her colleagues. “We bring our experiences to the work that we do. Hopefully when we talk to our white colleagues, we express some of our beliefs to them and they hear us. Maybe it impacts them. I mean we don’t sit in each others court rooms, so we don’t know. But when we talk to each other sometimes we hear what they say they have done. If we hear lawyers talk to us about other judges, we may hear what other judges are doing. So, in that way, you can have an impact sometimes in the way things are handled in courtrooms” (Personal Interview, October 24, 2014).

Judge Martin also discussed the importance of having Black judges on the bench. To him, having Black judges on the bench “[e]nhances fairness because we hold each other accountable too. Internally. You know in our meetings, the judges here meet once a month and discuss issues. And you get to hear and understand different perspectives. We have judges that are Republican, Democrat, Black White, Male, and Female. Everybody comes from different walks of life. It adds a lot of

different perspectives that you can learn from. That's good because in court it is the same thing. You get all kind of people in front of you" (Personal Interview, October 24, 2014).

Similarly, Judge Anderson said that "[j]udges do tend to talk to each other" (Personal Interview, February 16, 2013). It is in these conversations that he feels black judges can help white judges learn what it has meant to be Black in America. "You learn from each other. You get educated together at judicial conferences. Having that diversity in that room allows us to have that perspective and to learn... It's almost about getting cultural competency, learning about different backgrounds. Having someone there who has had diverse experiences, allows the courts above the trial judges to understand what it is that the community is feeling on the base level" (Personal Interview, February 16, 2013).

Finally, Judge Lewis discussed how the presence of Black judges can help facilitate the development of a racial consciousness in white judges. He said, "Well, I think there are great judges out there that are fair and impartial. But, there are some judges who may not be so fair and impartial. Having black judges out there will make them more aware of somewhat leveling the playing field versus just ruling as will. They may become more conscious of minorities and African Americans" (Personal Interview, February 16, 2013).

Beyond just helping their white colleagues, Black judges also reported having conversations with white attorneys in court to help them understand the implications of their decisions for African Americans defendants. The interviews

revealed how, through questions to attorneys, judges encourage attorneys, but especially prosecutors, to see defendants as human beings with connections to society, a community and family. The judges also show their method of fostering empathy for Black Americans and the black experience.

A particularly informative example of a black judge conversing with a white prosecutor about race and the experience of incarceration is with Judge Brown, a black male judge in the Midwest, who illustrates how Black jurists encourage prosecutors to think about the implications of the work they do and to think about the lives of the individuals they prosecute and frequently send to prison:

People remain in jail because they cannot post the bond money. The fact that you can't post the bond money should not translate to you staying in jail. The argument is someone's not vested enough to put their money into keeping up with you, so therefore, you won't keep up with it. But, that's not what the statute says. If you have \$10,000 in discretionary money, which is not a lot, but if you had that, probably 80% of people in jail now would not be in jail. So, is that what it takes? It shouldn't. When the bond courts set the bond in a case, and comes to me with a bond, because probable causes have been found or something happens somewhere else before I get it, so a bond court judge might act quickly, because they have dozens of cases, and only certain information, so they might set a bond. ... The practice has been historically the bond was set. Even if the guy is still in custody. So, you hear prosecutors argue, which I have never accepted, 'Judge, you don't need to review the bond. Nothing has changed since the preliminary hearing.' 'The defendant has been in jail now for two months. You say nothing changed between the bond court hearing and today.' This is to the prosecutor. 'No.' 'Did you have a transcript?' 'No.' 'Did you talk to the prosecutor from the bond court?' 'No.' 'So, that's a problem right now. As an officer of the court, you told me nothing changed, but you weren't there. So, here's another issue.' I said, 'He's been in custody for two months, do you think that that's a change? In other words, the bond was set, nobody in his family could raise money to get him out of the hellhole known as a jail, do you think that that is a change of condition that he is still in jail?' 'Oh, I never thought about it like that.'

'Well, one way that I can get you to look at it is to put you in jail for two months and then you can see whether or not there's a change in condition and then I can go through this whole drill again. Should we do that?' 'Oh, no judge.' 'That's what I'm talking about! You have got to look at what you say in front of me because I'll take you literally.' You know, if you come over there, you have a one-legged bond hearing, and your family couldn't raise it, and then you got put in a jail, and then you have to shower in a face bowl or whatever it is that they do, get processed the way they do their processing, and eat what they eat, and be shuttled under ground in a tunnel similar to getting on a slave ship, you know coming over. When you come back and tell me that White prosecutor, that's what I'm saying in my mind, I could get your argument. So, I don't get that argument anymore (Personal Interview, April 4, 2014).

Besides being jurists, black judges also appear to behave as teachers. Their interviews reveal that on the bench and off the bench, they are frequently involved in conversations with White judges and attorneys. These conversations often provide an opportunity for black judges to describe the experiences of African Americans. They described these encounters as friendly and as respectful, and as a teachable moment for the individuals involved. Black judges in this study are illustrating yet again why it matters that they are present on bench.

### **This is not your final stopping point...**

Instead of simply presiding over a trial and making decisions in cases, a number of judges professed to behaving in ways that inspire, motivate, and build up Black litigants. Eleven of the thirty black judges reported taking into account the perceived needs of Black litigants and trying to address those needs from the bench. They also described feeling obligated to helping repair Black defendants and the

Black community as a whole. Their behaviors include authorizing signage and pictures/posters of important black Americans to talking to black defendants about inappropriate attire in the courthouse, and requiring that an individual get registered to vote and obtain a library card to waiving court costs.

Judge Brown, for example, described how, with pictures and photographs in his courtroom, he inspires and motivates the countless Black defendants who come before him:

We are trying to divert as much as we can. We have poor people offenses and poor people conduct, which is criminalized, of course, but now also criminalized on the big time level because it's a felony. And, we are getting younger and younger people now. That's a problem too. As a Black jurist, my job is to repair as much as I can. When I say repair, not only repair the defendant but try to repair the community and make sure that defendant is aware of his or her obligation to the community. Everything that I try to do is about respect. That's why you see the signage out there. And it's just to set the tone. I probably shouldn't have all of that stuff up. (laughs) That's why I've got Sojourner Truth, Ida B. Wells, Thurgood Marshall, Benjamin Hooks, a Black astronaut. The reason I do that is because I know when you come in here charged, the prosecutors are all White, the deputies, the public defenders, the private attorneys and the judge. In my case, hopefully, they know I'm Black. (laughs) That's one of the reasons why I put that up there, so there is no mistake on that end. ...I want them to know that there are people of color who have achieved things, and even though you are in a bad situation now, this is not your final stopping point. Even if you are convicted and I have to send you to the penitentiary, this is not your final stopping point. There are those that have challenges even more than yours and they have succeeded. They've gotten around those challenges. So, I'm trying to take a bad situation and do something with that on the positive side (Personal Interview, April 4, 2014).

Judge Brown also describes how he tries to meet the needs of defendants by assigning relevant and life-improving stipulations for probation sentences. "All my

probation involves getting a GED, getting a high school diploma, getting a college degree, getting a library card, getting a voter's card, getting a trade, reading these books I have about narcotics abuse, writing an essay... These are the things I do" (Personal Interview, April 4, 2014).

Multiple black judges described being mindful when they impose restitution on Black litigants or levy fines. For example, Judge Johnson shared a story where she considered how restitution would effect a litigant's black children. In the interview, the judge described taking into consideration the cost of living and how taking too much of the mother's money would result in disadvantages to the children (Personal Interview, April 4, 2014). When she finally shared her decision not to impose an excessive restitution, she said she explained that the plaintiff was "not the only innocent victim" (Personal Interview, April 4, 2014). She considered the defendant's children innocent victims in the whole ordeal and did not want to penalize them for their mother's offenses (Personal Interview, April 4, 2014).

Similarly, Judge Hall talked about growing up with limited financial means and how that affects the amount of fines she imposes on litigants. "[C]oming from a middle class family, I think that that helped me appreciate people who have to struggle it. I get it. I get the struggle. I worked two to three jobs when I was in college. So, I am not as quick to levy fines on people. We had one of the newer white judges who comes from a very affluent family levying like \$800 worth of court costs and fines on people, because it's not a big number to him. The black judges were like

'Dude, don't you realize that's never got to get paid' (laughs). So, those experiences have an impact" (Personal Interview, October 24, 2014).

Judge Martin also talked about considering the economic and social consequences of his decisions. "I also don't want to create a situation where I am setting the person up to violate the law again. So yeah, I may waive some fees or shorten probation. I don't know. Is that because of social reasons? I guess so. Not only do I enforce the law, I want to give people the chance not to have to come back through those doors. That's a tight rope to walk but that's what I do" (Personal Interview, October 24, 2014).

Judge Thomas also discussed how his assessment of the economic impact of a resolution in criminal cases is a key factor when he makes his ruling. "As a judge, depriving someone of their livelihood is not a part of the punishment being imposed and in fact it may make the situation worse. So criminal punishment, as far as I'm concerned, should be the punishment imposed by the court part time. That's why we have things like work release, which are designed to limit the effects of the punishment to the crime, but the judge has to be committed and the punishment cannot have long term effects on the person's ability to earn a living" (Personal Interview, October 24, 2014).

Finally, Judge Harris described how being black allows her to have important conversations about wearing court-appropriate attire to court.

I think my race and gender is very beneficial. My counterpart on the court is a white woman. Here are basically black kids, black boys and girls and their black parents. I can explain things differently to them

than she can. I can tell them things that she cannot say or dare say simply because. They will come in, for instance, and they will have a scarf on their head. I'm not going to stop their case because I'll finish what I need to do. But, I'll say 'don't you ever come back in here with that rag on your head.' Notice I didn't say scarf, I want them to get the message. 'Don't come back here with that rag on your head. Ok? And don't come back here with those cat cutters on. Put some pants on.' Then I'll ask the parents, 'Why did you let her come out like that? Why are you letting her come out with earrings like she's a street walker?' That other woman [her white female colleague] wouldn't dare say those things and it's for their benefit. They are not upset. They even call me afterwards. They appreciate it (Personal Interview, February 16, 2013).

Black judges in this study reported wanting to encourage, positively influence, and help Black litigants. Additionally, many of them shared specific actions they take while on the bench in order to help them achieve their goals. For example, some black judges described talking to black litigants about professionalism and some judges talked about ordering defendants to obtain library cards, register to vote, and obtaining an education. Together, albeit using different methods, black judges described behaviors designed to both improve the lives of the black defendants.

### **It doesn't mean everybody gets a get out of jail card free but everybody doesn't go to jail...**

Black judges communicated that they tend to show mercy to African American defendants. Five of the thirty judges interviewed described showing mercy to Black defendants because as black Americans, they feel they understand some of the factors that have led other black Americans to the court including

discrimination, lack of education and under-employment. The decisions of these judges are informed by understanding the racial environment that many black defendants come from.

For example, Judge Brown discussed race-based barriers to educational and employment opportunities for black Americans and how understanding these barriers made him more understanding and merciful when it came to a black defendant violating his probation because he could not find employment:

The best-case scenario is education opportunities and entering into the trades. The trade unions have historically not been easy for African Americans to get into and it is important for you to get in and be certified by the union. So, if you have the skills to compete to be in a trade union, or they keep you out of the trade union, or you don't have the education, I don't buy that you have to go commit the crime because there are too many poor people that historically were Black that did not do that. But when you don't have the home training to say that even when you don't have something you don't go steal it, it becomes self-help after that. ... All of us have blame. Law enforcement has blame. In certain communities, people are not being arrested they are being adjusted. They are being corrected, they are being admonished, taken home to family when there is a family to take them home to, other options are given. In our community now, we don't see that. The easiest thing to do is process a young or not so young person and not to do anything else, process them and get that person off the street for a while, and then you can count that and check off that you did that. I think in the back of some law enforcement officers' minds that if we lock them all up, even though they're going to come back, at least on our watch we got these off. It becomes their simpleminded analysis of how to deal with immediate issues that they see as easiest as possible. We have no community adjudication centers. There is no place for people to work when I put them on probation. You know, I see no value in locking them up, I'm not going to lock them up because they don't have a job (Personal Interview, April 4, 2014).

Another judge, Judge Jackson, also described how being Black helps her relate to litigants' circumstances and helps her show mercy. In the case she described finding a black female defendant guilty for a misdemeanor offense, petty theft. The defendant asked if the judge was going to give her jail time, that she be permitted to serve her jail time on the weekends because she was concerned about her children being cared for. The judge shared during the interview that she, too, was concerned about the woman's children and therefore, allowed the woman to complete her jail time on the weekends when family could care for her children. After explaining this case, the judge said, "most of the mothers who come here are black single mothers and that's primarily what you saw in my community growing up, I think that that has helped me to have more compassion just for the entire situation" (Personal Interview, February 16, 2013).

Judge Jackson also shared a particular case she had involving another black female defendant. In the case, the defendant was on probation and responsible for paying fines. The individual did not pay her fines and ended up in court again. When the judge asked the defendant why she had not paid her fines, the defendant replied, "I cannot pay my fine because I had to pay my light bill" (Personal Interview, February 16, 2013). The judge said that she apologized for not being considerate and insinuating during her questioning that the defendant was simply ignoring a court order. She said she also did not penalize the defendant more because she did not pay her fines and did not have her arrested, although she says she imagines her white colleagues would have not been as merciful with this black defendant.

Finally, Judge Thompson described the compassion he has for minority litigants. “You want minorities coming to the bench who care. Who remember what they’re part of. They may not have had bad things happen to them personally, but they saw family and friends, and they are aware of that. It doesn’t mean everybody gets a get out of jail card free but everybody doesn’t go to jail” (Personal Interview, October 24, 2014).

In sum, black judges acknowledged that they show mercy to black defendants. Often times, this mercy comes from them understanding black defendants’ life experiences and the circumstances they find themselves in. They describe how they show compassion and empathize with black defendants by not sending some to jail who violate court orders and by being thoughtful and considerate when they have to hand down their sentences.

### **I’m not afraid to ride public transportation...**

Four of the thirty black judges communicated that they tend to treat all litigants with respect, even those who have been found guilty of committing a crime. For example, they talked about using titles when they referred to litigants such as “miss” and “mister.” Some of them also mentioned that they offer elderly litigants the option to sit rather than stand for prolonged periods. Two judges, one from the Midwest and one from the South, shared two specific examples that illustrate the respect black judges give to the litigants who come before them.

In a major city in the Midwest, where many individuals utilize the train to get around the city, Judge Smith talked about his white colleagues being afraid to ride public transportation, because they, unlike him, rarely showed respect to litigants and were afraid of running into any offended or disgruntled litigants. “I’m not afraid to ride public transportation. I’ve always treated people with respect” (Personal Interview, April 4, 2014).

Similarly, Judge Wilson, black male judge from the South, talked about not receiving threats while he was a judge because he, like some of his counterparts, was always respectful. “When I was on the bench, I never had a threat made to me even though I put hundreds of people in jail and I sentenced one man to death” (Personal Interview, April 4, 2013).

Judge Wood, a male from the South, mentioned during his interview that respect is an essential part of a judge’s job: “I have seen judges make statements like ‘I hope that you spend the rest of your life in jail and that you never see the light.’ I don’t think a judge needs to do that. I think that you don’t need to do that in order to do your job. I have never said anything to anybody that I would not want said to me. Now when I say that, I’ll challenge anybody to go back and check any record of any proceeding that I was involved in in the 20 years I was on the bench, to find something where I said something derogatory to somebody. If I said it to them, I would not mind someone saying it to me. That to me is how simple the job is” (Personal Interview, February 16, 2013).

Finally, Judge Baker discussed respecting individuals who appear in the courthouse and requiring her court staff to respect individuals who appear either in her courtroom or in her chambers: “I have respect for people who appear on my docket. I have both criminal and civil cases and I treat everyone with the utmost respect, even individuals who have been arrested and charged with a crime and have not been found guilty. They are entitled to due process and they should receive the same respect as anyone else who comes before this court” (Personal Interview, March 15, 2013).

Black judges reported showing respect to black litigants in the courtroom. They reported that even when individuals have been found guilty, they still show respect. To some judges this is a central part of judging – showing respect for others. To others, showing respect to defendants is consistent with their desire to treat others like they want to be treated.

### **I can relate to folk who come before me...**

A significant number of the black judges interviewed communicated that they tend to relate to and understand black litigants. Some judges said that they understand black litigants with regards to the actual language they use when they speak. Other judges said they understand black litigants with regards to the stories and experiences they share. Either way, twenty-four of the thirty black judges reported or implied being able to relate to and understand the individuals that come before them.

Judge Adams, for example, said her experiences in life as a black woman help her on complete her job on the bench. “Well, as a Black female, I’ve certainly been subjected to racial discrimination and gender discrimination. I’ve had a wide range of experiences and they have been helpful sitting on the bench because I can relate to folk who come before me. ... When I used to be a district court judge and I would hear shoplifting cases, and if you hear people come in and talk about things that happened to them in the store, you can kind of see their side of it instead of always assuming the store is right. You can empathize and sympathize with the black defendants and in some cases even find them not guilty” (Personal Interview, October 24, 2014).

Judge Martin also illustrated black judges are uniquely capable of understanding black defendants. Judge Martin discussed witnessing White judges’ struggle to understand black defendants and how their inability to relate to black defendants often resulted in judgments against them. He shared the following two stories:

I worked as an attorney for Child Support Enforcement. I had two cases with the judge where I was seeking to enforce child support obligations. Two people in the court at that time had not done what they were supposed to do – one was black and one was white. These are the two that I remember. Two cases equally egregious in terms of the person not having provided support for their child and could have because they had the ability to. And so I was asking for incarceration in both cases. And the gist was that the black man went to jail and the white man didn’t. And it was a white male judge and I’m the black attorney for Child Support Enforcement asking for enforcement. And so, at that point, at least before that particular judge, I was not going to let the judge be the decider anymore because the judge wasn’t fair.

The judge wasn't right in my mind. And, uh, that did heavily influence me (Personal Interview, October 24, 2014).

Later in his interview, Judge Martin talked about being able to relate to black litigants in ways that he perceived his white colleagues could not. "Another instance, same [white male] judge, where there I was again seeking enforcement of the obligation and the person hadn't done what he was supposed to do, but before the judge, he talked to the judge. He talked in a manner that I understand, even identifying the offense. He talked to me in a regular African American manner and the judge took offense to it and couldn't understand it. I think as a result, the outcome of the case was not what it should have been just because we had a judge who could not relate, who could not understand the kind of person that he was dealing with" (Personal Interview, October 24, 2014).

In her interview, Judge Lee also talked about black judges being able to uniquely understand the black experience.

I truly believe the most qualified should get positions. I think, however, as a backdrop, qualifications include book learning, life experiences. We want judiciary systems to truly appreciate the persons in front of them and to that extent race and gender are important because I don't think, and I don't mean no disrespect, but I don't think white males understand what either black or white females, or black males, experience. And so I think that you do have to, as a backdrop, to have a truly representative and appreciative and diverse system, you do have to have some element that takes into consideration not only did I make an A or a B, but also my experiences and what do I bring to the table that needs to be considered (Personal Interview, February 16, 2013).

Finally, Judge Wilson shared that he witnessed White judges reach improper decisions because they simply could not understand the experiences of the individuals before them. “By appearing in courts, I saw sometimes minorities weren’t getting a fair shake. Sometimes discretionary calls, discretionary decisions, and if the judge doesn’t understand the life conditions that bring people into that courtroom, in my opinion, they aren’t really able to ascertain a proper judgment. They don’t know what you’ve been through. They don’t know why you’ve done what you did. Not knowing where you’ve been, they can’t adequately address your decision-making process” (Personal Interview, April 4, 2013). Because he understands the circumstances and life experiences of some of the people who came before his court, Judge Martin feels he was able to reach a proper decision in the cases he presided over.

Black judges in this study were clear that one of the primary benefits to having them in the judiciary is that they can relate to and understand black litigants – literally and figuratively. They were adamant that it has been their experience that their white counterparts struggle to understand what it means to be black in America. This inability to understand the lives and experiences of Black Americans at times have resulted in judgments against black litigants. Therefore, for black judges, they see their ability to understand black defendants as important for their decision-making and their ability to reach proper and conscious decisions.

### **It's a long way of saying I have a preference...**

The final theme that emerged in the interviews is that a number of black judges admitted to having a preference for hiring and working with Black employees, interns, law clerks, and lawyers. That is, when they have an opportunity to hire who it is they work with regards to court staff, law clerks and interns, or even mentees, they tend to choose individuals who are African American. This is consistent with the findings in a study by Christian Grose (2011), who revealed black legislators are more likely to hire black staff members, and by connecting black staff with black voters, they are providing a unique constituency service in their respective districts.

Of the thirty judges interviewed, twenty described having a preference for Black court staff and law clerks/interns. In most cases, the judges interviewed said more than 75% of their court staff have been black. The court staff they were referring to includes bailiffs, court reporters, administrative assistants, and sometimes clerks of courts. The judges described having a diverse staff as important for the people who visit the courthouse. They felt it was inappropriate and problematic for court users to see a racially homogenous court. Instead, they try to achieve the level of diversity that exists among the people who frequent the court (i.e. litigants). To this point, Judge Wright said "I was committed to having a diverse staff so that my staff looked like who we were serving," and Judge Anderson said, "I always try to select people from different backgrounds to make sure the courthouse

is reflective of people in the community” (Personal Interview, February 16, 2013; Personal Interview, February 16, 2013).

In addition to the court staff, most of the black judges interviewed said black law clerks and interns represent more than half of the individuals they’ve worked with over the years. Many of the judges spoke about wanting to create opportunities for other Black law students who may have trouble being selected as interns or law clerks for White judges. One black female judge from the South, Judge Hall, said that she places emphasis on Black law clerks, and one year there weren’t many law clerk applications and she ended up selecting two white males. She said, “It was very odd for me to hire them. I felt guilty, I felt bad. It was a double take. It wasn’t easy to hire them. It wasn’t a simple decision to make” (Personal Interview, October 24, 2014).

Another black female judge from the South, Judge Adams, said, “We work with the – [name of the law school] and I’ve had students there. I tell them ‘You can follow me around. I’m not going to give you a task but you are happy to follow me around” (Personal Interview, October 24, 2014). She said that she does not go around saying “only you can come and see me, and you can’t come and see me,” but for the most part, she has “almost always used minorities for that purpose and I invite them to come, we talk, we chit chat” (Personal Interview, October 24, 2014). Although she couldn’t remember how many interns she has worked with over the years, she did say all of her interns over the years have been Black.

Judge Martin also described the interns he hired one year and his preference for having black interns. “I’ll put it this way. I had an African American female and a

white female who I hired because they sent me their information and I hired the white female first and then the black female I hired because we had some projects that needed more than one. So, it really didn't matter to me the racial makeup but I felt better having an African American intern. Ideally, I want to create opportunities for other African American law students to be able to intern with a judge because historically, there may not be an avenue that African Americans students have. In this particular instance, it didn't work that way. It's a long way of saying I have a preference but I don't always go by the preference. It was my first time having interns. That preference didn't overshadow other factors. Had it been equal, then the preference would have overshadowed. The African American student was a 2L, the white student was a rising 3L. I had them do different projects, less technical, more technical. So, they were not equal. Had they been equal, preference would have governed" (Personal Interview, October 24, 2014).

When asked about his law clerks, Judge Taylor said, "Yes. I have to be careful now (laughs). Well, black law clerks were a rarity and almost nonexistent when I became a judge in this particular state. So, I said well, we got to change that. So, I started out hiring black clerks. Now, later on, when I had more than one, I would get one African American and I would look for the next best person I could find. I don't apologize for that. One other thing I did was talk to people, Deans of law school, and ask them to tell me about their best students. Of course we got pictures when we got everything. Now everybody didn't agree with that saying 'you have to be neutral.' But sometimes you have to be positive in changing tradition. If it's not a good

tradition, you have to change it. That's what I worked on" (Personal Interview, November 8, 2013).

Finally, Judge Baker shared her frustration with her white colleagues. She said six percent of the law clerks that work within her courthouse are black (Personal Interview, March 15, 2013). She finds this fact extremely problematic given the significance of having a clerkship. Most judges have clerk at some point in their pre-bench career. If Black law students do not have the opportunity to clerk, or are not chosen as law clerks, they will find it difficult to ever become a judge. This is precisely her worst fear. She said, "I want to give the black law clerk a chance and opportunity. Caucasians need to have diversity within their staff too...If they would hire a black clerk at least one time while they are there, but they won't" (Personal Interview, March 15, 2013).

Diversity on the bench means diversity in the courthouse. Black judges acknowledged having a preference for, and taking into account race, when they decided who it is they are going to work with while on the bench and who it is that will be in the courtroom and courthouse with them. They had no reservations or qualms about hiring black law clerks and interns, and black court staff. Although for some judges they felt it was simply their own personal preferences, for other judges they noted that it was because they felt if not them, then who (i.e., some judges criticized their counterparts for not having diverse court staff and law clerks/interns.

**Table 9: Summary of the Themes Identified in the Interviews**

Theme	Number of Mentions	Black Judges Who Self-Report the Behavior of
<i>They don't see things are gray...</i>	Twenty-four	All judicial interviewees except Judges King, Jones, Green, Williams, Wood, and Wright.
<i>Some 'facts' just don't make sense...</i>	Eleven	Thompson, Smith, White, Allen, Moore, Martin, Wilson, Hall, Brown, Davis, and Miller
<i>Being able to be a voice...</i>	Ten	Thompson, Smith, White, Allen, Moore, Martin, Wilson, Hall, Brown, and Clark
<i>Really? A gang member? Why do you believe that?...</i>	Two	Johnson and Allen
<i>Getting cultural competency...</i>	Seven	Adams, Martin, Anderson, Lewis, Thompson, Hall, and Brown
<i>This is not your final stopping point...</i>	Eleven	Brown, Johnson, Hall, Martin, Thomas, Harris, Moore, Jackson, Smith, Davis, Miller
<i>It doesn't mean everybody gets a get out of jail card free but everybody doesn't go to jail...</i>	Five	Brown, Jackson, Anderson, Thomas, and Thompson
<i>I'm not afraid to ride public transportation...</i>	Four	Smith, Wilson, Wood, and Baker
<i>I can relate to folk who come before me...</i>	Twenty-Four	All judicial interviewees except Judges King, Jones, Green, Williams, Wood, and Wright.
<i>It's a long way of saying I have a preference...</i>	Twenty	Clark, Johnson, Hall, Adams, Martin, Thomas, Moore, Baker, Allen, Hill, Anderson, Harris, Wood, Lee, Green, Lewis, Wilson, Smith, Taylor, and Brown

### ***If not them, then who?***

In addition to the themes discussed in the prior section, there are several other behaviors of black judges that deserve some attention and mention. First, a black judge declared his race as an important factor affecting his interpretation of the U.S. Constitution. Judge Smith, an appellate judge, explicitly notes that he does not see and interpret the Constitution like his White colleagues or the Founding Fathers. Instead, his interpretation is different from the interpretation of white males because he is not a white male:

You asked me does my race, does my gender, affect my decisions. I am a product of my experiences and that affects how I interpret the Constitution. See you can read the Constitution and you can interpret it in a number of different ways. I disagree with my colleagues who say ‘Well, we have to interpret it like the founding fathers did.’ I cannot give any credibility to a constitution that treated me as 3/5s a person, that did not give women or Blacks the right to vote. The only people who had the power were White men. Well, I’m not going to look at the Constitution through that lens. I think we have a living constitution that changes as times change. They [White judges and the Founding Fathers] interpret it differently because we are different. You see, we think differently. Our views are different (Personal Interview, April 4, 2014).

Later in his interview, Judge Smith shares one circumstance when he feels his interpretation of the Constitution differs significantly from his colleagues’ interpretation. He effectively says that, unlike his colleagues, he “effectuates” the Constitution when police officers act outside the bounds of lawful arrest and search procedures in order to protect the rights and liberties of individuals. “Some of my colleagues on this court can take the position that we do not need to effectuate the Constitution because in fact, the defendant is guilty. That is not the way I come to a

case...Well see, I am a strict constructionist and if the Constitution provides that you can only arrest upon a finding of probable cause, if I don't see any cause to arrest, then I am going to effectuate the Constitution and say that is a bad arrest. I don't care what they find" (Personal Interview, April 4, 2014).

Second, Judge Taylor discussed being aware of, and attentive and responsive to the tendency of lawyers to strike qualified jurors based on race. "In this particular state, both criminal and civil, each side had preemptory challenges. They were exercised very freely. In most cases, they used all of their preemptory challenges. Many criminal cases, especially when there was a black defendant, the prosecutor used of all his challenges to get black people off the jury. But we began to change that a little. But the problem is does people have a reason for removing all the blacks on the jury. Lawyers are pretty smart folks now. I think in many cases it was whether a person realized the tendency of people to do certain things" (Personal Interview, November 8, 2013).

Finally, Judge Brown describes how he challenges other black colleagues he encounters. He says that "we need to be having AAs in the judiciary that make a difference." So, the questions that he asks other black judges when they run for office have everything to do with the experiences they have and their connection to the black community. He said the conversation with prospective black judges goes like this:

What do you perceive yourself doing differently than the people we already have? Because if you add nothing to the equation other than bringing an income to your own individual household and carrying the title for yourself,

we don't really need you. That would be a personal achievement. That would be something for your family to be proud of. That would be nothing for our community to necessarily be proud of...I strongly believe that when you are an African American lawyer, police officer, or political office holder, that you owe it to your community to make a difference to the large, to something beyond you and your family. For example, if you come to this job and your only goal is to do just like those who have never suffered as African Americans have suffered, and have never felt the pain of being discriminated against. Although you felt it, you are not going to now look with more informed eyes and ears than those who are not in our community, you know. You are not an addition. You are not a substantive addition to solving the problem (Personal Interview, April 4, 2014).

Judge Brown even shared his interaction with, and candid thoughts on, an actual black jurist who recently retired from the bench:

He never surfaced on any issues that address particular issues our community has: whether it was the recruitment and promotion of African Americans in office, whether it was the reporting of renegade police officers that run roughshod over our young black males, whether it's, uh, making sure the individuals in the office of African Americans don't get maltreated. And, I heard things that I was not pleased with respect to that... My analysis was look, you are the exact type of black that they want in the judiciary as an associate judge. So, the good news is, you're going to make it. The bad news is, you're going to make it...He just retired and on the way out my question was how do you think you did? I said, remember we had a discussion before I was a judge. Did you make a difference? He said BlahBlahBlah. I said, ok, well here's the problem. Unfortunately, you made a difference, but your difference was a difference that was more problematic than I would have anticipated. You have tried to be rougher on our people and more calloused with our people than I had anticipated. So, there is nothing...You are now leaving the situation worse, with a contribution that is more damning than it was when you entered it. So you have nothing to show. I don't mean to belittle your career, but you have nothing to show good.... Now you have elevated yourself amongst your peers, which are your white peers, and you have confirmed those of us that were skeptical of your appointment, and you have basically been a nullity with respect to moving the ball in a positive direction. So I don't want to say your whole time has been a waste of time, but it's been more than a waste of time that has been detrimental to the community (Personal Interview, April 4, 2014).

## ***Discussion and Conclusion***

This chapter adds to the rich body of literature on judicial decision-making and the political behavior of Black officials by addressing whether or not, and how, black judges can be viewed as representing black interests in the judiciary. I theorized that black judges provide *Advocative Representation* from the bench. That is, I expected that when they want to and when they can, black judges would advocate for African Americans, share the experiences and perspectives of the racial group, and behave in ways that demonstrate they are in support of African Americans' concerns and interests. Evidence from interviews with thirty black judges reveals black judges indeed provide *Advocative Representation* in the judiciary.

Based on the themes that emerged from the interviews, it is evident that there is a definite and substantial benefit to having black judges in the judiciary. Beyond serving as role models, black judges behave in a myriad of ways that reveal their representational capacity. By sharing and understanding the experience, history, and perspectives of Black Americans, challenging language, persons, policies, and laws that they feel negatively affect, or violate the rights and liberties of, African Americans, respecting African American litigants, and ensuring the rights of African Americans are protected and the needs of black Americans are being met, Black judges can be viewed as representing Black Americans from the bench. In other words, they, in various ways, provide black Americans with *Advocative Representation*.

The judges in this revealed a number of key ways they represent black Americans and interests in their respective courts. Because of their backgrounds, they understand and respect diversity and the complexity inherent in the lives of Americans, but especially Americans belonging to marginalized communities. They also serve as a check to police power in the judicial system by questioning their tactics and holding them accountable for their actions. They make a conscious choice to challenge the individuals involved in the judicial process, such as witnesses, prosecutors and law enforcement officers, who label and describe black Americans in a manner that can be harmful to how they are viewed and can have negative ramifications for how they are treated. They make everyone around them better, and the system better, by sharing their experiences and perspectives as members of a historically disadvantaged and marginalized group, and teaching others what it means to be black in America. Additionally, they reported being able to relate to and understand African Americans who came into their courtrooms. Because they could understand the circumstances in black communities and the experiences of black Americans, they were also able to reach more informed conclusions and make more attentive decisions. When they are capable of exercising discretion in their decision-making, they tended to be merciful with black defendants. Additionally, their approach to dealing with black litigants is one that is markedly conscious of, and responsive to, their perceived needs, and reflective of the sheer level of respect and regard they have for the individuals who find themselves in the courthouse. Finally, in their position of power, they practice the

National Association of Colored Women (NACW)'s well-known motto "lifting as we climb." By hiring black court staff and law clerks, they are able to enhance and advance the personal and professional lives of the black individuals by affording them the opportunity to work in a prominent and prestigious position. More importantly though, their preference for black employees helps them provide better service to the individuals they know frequent the courtroom and courthouse.

There is one main conclusion in this chapter – race matters in the judiciary. The personal experiences and perspectives of black judges in this study inform their judicial decision-making. Who black judges are matters to what they do. Judges did not hold back from sharing the personal, painful experiences that they had with racial discrimination or the secondary connections they had with discrimination. The judges were also not silent or discreet about their behavior and the influence of their experiences as people of color on that behavior. Furthermore, and perhaps most interesting, is the fact that black judges consciously and unconsciously behaved in ways that represented black interests and black Americans. That is, irrespective of their intention, many black judges behave as representatives. Some judges were explicit about behaving in ways with black Americans and black interests in their mind, other judges, however, simply described their behavior. Nevertheless, it is the specific behavior, not the intention behind the behavior, that signifies many black judges are on the bench representing black interests.

Race also matters in the judiciary because black political officials in the judicial context, that is black judges, behave in ways that indicate they advocate for

and substantively represent black interests and black Americans. They, like their black counterparts in other branches of government and other political offices, are confirming with their behavior that the push for more descriptive representation and the fight for increased diversity in the judiciary was not futile and in vain. They are living up to both the expectations of those who championed increased diversity in the judiciary and the needs of black Americans to be respected, heard, understood, and treated fairly within the judicial system.

The black judges consistently illustrated the need for increased diversity, especially by African Americans, in the U.S. judiciary. Because of their behavior and judicial decision-making, their presence means something generally for the justice system, but specifically for justice for African Americans. Their presence in courtrooms across the country mean that the judicial playing field is being leveled. The experience of black Americans is being understood by those central to the justice system – judges, prosecutors, and police officers, black Americans are receiving mercy, not leniency, when they are in courts of law. Black judges are proving the judicial system is not one in which all black Americans are victims of racial bias. Instead, they are, in their own way, fighting against perpetuating racial bias and trying to make sure that fairness and justice are available to African Americans.

Although these two points will be discussed in more detail in Chapter 6, it is important to take a moment and note that because black judges, whether consciously or unconsciously, behave in ways that signify they often represent black

interests and black Americans, non-black judges can, too, represent black interests and black Americans. That is, black judges and white judges can behave in ways that represent black interests and black Americans. Whether or not they both do is beyond the specific purpose of this study, which was to understand whether or not black judges alone can be viewed as representatives. Ultimately, whether or not a judge represents a group of people rests on the behavior of the judge.<sup>13</sup>

Additionally, it is important to note that although black judges behave in very specific ways that indicate they are representatives in the judiciary of black Americans and black interests, many of them feel restrained and constrained. In the interviews, although they delved into their own personal behaviors, and sometimes the behaviors of their white counterparts, they longed to discuss the behaviors of the other individuals involved in the adjudication process. Specifically, they wanted to make it clear that although they sit at the heart of the judiciary, they feel there are many other individuals involved in the judicial system with discretion that is much greater than their own. They talked specifically about law enforcement officers and prosecutors.

For black judges, racial bias starts outside the courthouse; the bias does not begin when a black defendant is found guilty or receives a sentence. These judges

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<sup>13</sup> This is precisely the point that scholars make when they talk about the norm of whiteness in the judiciary and the representation of white interests in the courts. Because white judges have historically been overrepresented in the judiciary, both at the state and federal levels of government, white supremacy has been both protected and enlarged, and the maltreatment of black Americans, and racial discrimination and bias has gone unaddressed. White judges have historically, and some may even argue continuously, represented white interests and white Americans. They have, given their behavior and the decisions they have made in state trial courts all the way up to the United States Supreme Court, consciously or unconsciously, provided representation.

argue that it is precisely the discretion available to police officers and prosecutors that starts racial bias in judging. According to Judge Hall, “discretion goes all the way down to the officer (and first encounters, witness, victim, defendant) and goes all the way to sentencing” (Personal Interview, October 24, 2014). Police officers determine who defendants are. They decide who to stop, who to search, and who to arrest. Officers decide who deserves a second chance, who deserves to be corrected, and who deserves to be prosecuted. Prosecutors decide which cases they will pursue, who deserves a plea deal, which cases they will take to trial, the sentence that is recommended to the judge, and the evidence that is presented or concealed.

When black judges receive a case sometimes they feel their hands are tied. Although they have discretion, they feel they do not have enough discretion. When a person finally makes it before a judge, the primary question they feel they are faced with is, is the person guilty. This leads two of the thirty black judges to say that with regards to final case vote, their decisions look like white judges’ decisions. For instance, Judge martin said, “at least decision wise, I think given the same set of facts and a case with black people and a case with white people, I think my decision would be the same if the facts were the same.” (Personal Interview, October 24, 2014). They say they do not get to see the individuals that prosecutors and police officers let go or correct outside of the judiciary. Judge Moore illustrates this point in her interview: “The decision is sometimes made before a person even makes it to see a judge. There’s a lot of discretion out here on the street. So police officers and prosecutors have the greatest amount of discretion because they decide what comes

to us. Their level of discretion that they have is far greater. We don't have the same discretion. You know if the facts fit, and that's the case, then they're guilty. We have discretion on the sentencing end but once the person comes, and a person who they let go did the exact same thing, well they didn't bring them to us" (Personal Interview, December 20, 2013).

While it is important to understand the behavior of black judges and whether or not they represent African Americans and black interests from the bench, it is also important to understand how black judges are perceived to behave. This is the focus of the next chapter. In Chapter 5, I present the American public's impressions of black judges' behavior and their (in)ability to decide cases in a fair manner.

## Chapter 5. Race and the American Public's Impression of Black Judges<sup>1</sup>

*Thus by the subtle tone of their objection, they demonstrate either that they [the white plaintiffs and attorneys ] want black judges to be robots who are totally isolated from their racial heritage and unconcerned about it, or, more probably, that the impartiality of a black judge can be assured only if he disavows, or does not discuss, the legitimacy of blacks' aspirations to full first class citizenship in their own native land...I am aware that Judge Higginbotham is not Senator Higginbotham, or Mayor Higginbotham, or Governor Higginbotham, but I also know that Judge Higginbotham should not have to disparage blacks in order to placate whites who otherwise would be fearful of his impartiality*

- **Judge A. Leon Higginbotham, 1974<sup>2</sup>**

Former Judge of the United State District Court for the Eastern District of Pennsylvania

*The conclusion is inescapable that the likely grounds upon which plaintiffs' motion is based is the fact that I am black, that Mayor Young is black, that this action was brought by White policemen seeking to challenge the affirmative action program in the Detroit Police Department, and that, therefore, it is reasonable to infer that I am somehow incapable of presiding over this case in a fair and impartial manner...The essence of plaintiffs' not-so-subtle argument in support of my disqualification from this case, if carried to its logical conclusion, would require my disqualification from all cases involving the City of Detroit as well as all cases involving affirmative action programs.*

- **Judge Damon J. Keith, 1978**

Former Judge of the United State District Court for the Eastern District of Michigan

In 2009 the Racial Justice Act passed in the North Carolina General Assembly.

This act allowed individuals awaiting execution in North Carolina to appeal that their sentence be commuted to life imprisonment, if they could prove that racism

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<sup>1</sup> The chapter uses the term "impressions," which is defined by Kathleen McGraw as "an individual's mental representation – the cognitive structure stored in memory – consisting of knowledge and beliefs about another person" (2011, 187).

<sup>2</sup> <http://law.justia.com/cases/federal/district-courts/FSupp/388/155/2313189/>

was a significant factor in their original trial.<sup>3</sup> In 2012, Marcus Robinson became the first death row inmate to appeal a death sentence under this unprecedented legislation. Robinson and his attorneys argued that race was a significant factor in him receiving the death penalty. They cited a Michigan State University study that found qualified black jurors had been systemically excluded from serving on Robinson's jury and on many other juries in North Carolina (Robertson 2012).<sup>4</sup> At the end of the trial, Judge Gregory Weeks, a veteran black Superior Court judge in Cumberland County, concluded that racial bias had played a significant role in Robinson receiving a death sentence. Judge Weeks ordered Robinson's sentence changed to life in prison without the possibility of parole (Dalesio 2012; CNN Wire Staff 2012).<sup>5</sup>

Robinson's case received significant media attention because his was the first appeal filed under the Racial Justice Act, and also because the Cumberland County prosecutors filed a motion to have Judge Weeks disqualified from hearing the appeal after they learned he had been assigned to preside over the case (Mildwurf 2011).<sup>6</sup> The prosecutors contended that because Judge Weeks had previously presided over several Cumberland County capital murder cases, they might call him as a witness for the prosecution.

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<sup>3</sup> A copy of this bill is available here: <http://www.ncleg.net/Sessions/2009/Bills/Senate/PDF/S461v6.pdf>.

<sup>4</sup> This newspaper article is available here: [http://www.nytimes.com/2012/04/21/us/north-carolina-law-used-to-set-aside-a-death-sentence.html?\\_r=0](http://www.nytimes.com/2012/04/21/us/north-carolina-law-used-to-set-aside-a-death-sentence.html?_r=0)

<sup>5</sup>[http://www.huffingtonpost.com/2012/04/20/marcus-robinson-death-row-greg-weeks-racial-justice-act\\_n\\_1440242.html](http://www.huffingtonpost.com/2012/04/20/marcus-robinson-death-row-greg-weeks-racial-justice-act_n_1440242.html); <http://www.cnn.com/2012/04/21/justice/north-carolina-death-revoked/>

<sup>6</sup> <http://www.wral.com/news/local/story/10363117/>

Serving as a witness in other cases qualified as a conflict of interest if he continued to preside over Robinson's appeal. Legal observers noted that the prosecution never specified that they would in fact call Weeks as a witness, they simply argued they *might* call him. The prosecutors also did not identify the specific testimony they sought from him that could not have been obtained elsewhere. Consequently, a number of legal experts questioned the legal basis for the disqualification request.

Many experts argued the request to remove Judge Weeks was racially-motivated. For example, Duke Law Professor Jim Coleman, said "[i]t looks like they're trying to get rid of an African-American judge and have the case heard by someone who likely would not be African-American..." (WFMY 2011).<sup>7</sup> Additionally, Professor Coleman said, the prosecution is "accused of manipulating the jury on the basis of race. It's ironic that they would do something that looks like they're trying to ... manipulate the judge who would hear the case. It's tone deaf. It's unbelievable to me." Ken Rose, an attorney for the Center for Death Penalty Litigation told reporters: "[I]t appears the state is saying that, for the first case under the landmark Racial Justice Act, an experienced African-American judge is not fit to serve as the judge who makes the decision" (WRAL 2011).

Like Judge Weeks, there are other black judges who have been asked to recuse themselves from cases that involve black litigants and/or are concerned with

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<sup>7</sup><http://archive.digtriad.com/news/article/198468/1/Prosecutors-Want-black-Judge-Removed-From-Racial-Bias-Hearing>; <https://law.duke.edu/video/death-row-racism-racial-justice-act-nc-supreme-court/>; Professor Coleman is also the director of the Center for Criminal Justice and Professional Responsibility and the Co-Director of the Wrongful Convictions Clinic.

racial discrimination.<sup>8</sup> For example, in *Commonwealth of Pennsylvania v. Local Union 5442, International Union of Operating Engineers* (1974) Judge A. Leon Higginbotham, who legal historians have described as “one of the more prominent figures in American History,” was asked to recuse himself from adjudicating the claims of black union workers who alleged that their union discriminated against them (Simmonds 2011).<sup>9</sup> Judge Higginbotham and many scholars (e.g., Wasby 1991; Ifill 1997; Ogletree Jr. 1999; McClellan 2005) speculate that the union based their recusal request on the fact that Judge Higginbotham was black, and that in his speech titled “Double Standards for black Judges: Being Black and the Appearance of Impartiality” made at the annual meeting of the Association for the Study of Afro-American Life and History in Philadelphia, he used the word “we.”

Another prominent example of what some scholars (e.g., Ifill 1997) consider a racially-motivated recusal request is the motion filed in *Baker v. City of Detroit* (1978). In this case seven White police officers filed a lawsuit against the City of

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<sup>8</sup> Other examples include: For example, in *Baker v. City of Detroit* (1978) the recusal request was based on the idea that Judge Keith would give preferential treatment to the city’s black mayor and that the Judge Keith would be biased in the case because it was about racial discrimination. In *Commonwealth of Pennsylvania v. Local Union 5442, International Union of Operating Engineers* (1974), Judge Higginbotham was asked to recuse himself because defendants felt that because he was black, he identified with the black plaintiffs, and therefore, would give preferential treatment to them in the case. In *LeRoy v. City of Houston* (1984) and *Vietnamese Fishermen’s Ass’n v. Knights of the Ku Klux Klan* (1981), Judge McDonald was asked to recuse herself because the White litigants feared that she would provide preferential treatment to the minority litigants and felt that she could not be impartial in the cases dealing with racial discrimination. In *United States v. State of Alabama* (1984), Judge Clemon was asked to recuse herself from the case because the issue in the case dealt with racial segregation. In *Dillard’s Inc. v. Michael J. Scott* (2005), Judge Green was asked to recuse herself from the case that dealt with racial profiling. In *North Carolina v. Marcus Robinson* (2012), Judge Weeks was asked to recuse himself for fear that he would provide preferential treatment to the black litigant and that he could not be impartial in the case that deal with racial discrimination in jury selection.

<sup>9</sup> <http://lasentinel.net/a-leon-higginbotham.html>

Detroit and the city's black mayor, Coleman A. Young, alleging that the Detroit Police Department's promotion policies resulted in white police sergeants being passed over for promotion to the rank of lieutenant because of their race. At the beginning of the trial, the plaintiffs filed a motion to disqualify Judge Damon J. Keith, a black federal courts of appeals judge, from presiding over the trial, stating that because Judge Keith knew Mayor Young, he could not be impartial.

Are they perceived as incapable of making unbiased decisions in certain types of cases? The black judges' narratives that are presented in the epigraphs to this chapter insinuate they believe this. That is, the narratives suggest that black judges feel they are viewed as partial to black litigants, especially black criminal defendants, and partial to the black community and black-issues. Moreover, recusal motions often allude to the perception that black judges are unable to behave in a fair and unbiased manner in cases that involve matters of race.<sup>10</sup> Is this a widely held view? Is the perception that black judges are not fair in cases in which race is a factor held by the general public or is this perception limited to a small segment of justice system insiders such as white attorneys and litigants?

In 1999 in a tribute to Judge Higginbotham, prominent legal scholar and civil rights activist Derrick Bell addressed this question. He said the "subconscious...view that only White judges could decide racial issues fairly" is a "widely held view" (28). Bell, thus, submits that black judges are perceived as more biased than white judges

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<sup>10</sup> Implicit in these recusal cases is the idea that while black judges are incapable of deciding fairly in cases involving race, white judges do not suffer from any biases of the opposite sort. That is, that white judges are able to decide cases in a fair manner, even cases that involve matters of race.

when it comes to deciding racial issues by the general public. Bell, however, did not provide any evidence to support this claim. This is understandable given that there is little systematic research on how black judges are perceived by the public.

There is a large amount of scholarship focused on perceptions of courts and court decisions, and the trust and confidence the public has in the justice system (e.g., Mondak 1990; Bartels and Johnston 2013; Gibson 1989, 2008, 2012; Hough, Jackson, Bradford, Myhill and Quinton 2010; Gibson and Caldeira 2012; Nownes and Glennon 2015; Cann and Yates 2015). There is also literature in judicial politics that examines how black judges are evaluated by lawyers (e.g., Gill 2014; Sen 2014a, 2014b). Additionally, there is research in the field of Race, Ethnicity and Politics on perceptions of black public officials including black political candidates, legislators, and mayors (e.g., Sigelman et al. 1995; Williams 1990; Haynie 2002; Howell 2007). But these bodies of literature do not address how black judges are viewed by the mass public, and whether black judges are viewed different than their white counterparts. Therefore, there is little existing research that addresses the primary question guiding this chapter: Are black judges widely perceived as unable to decide cases fairly, especially cases dealing with race, and as partial to black litigants?

### ***Research on Impressions of Black Public Officials***

How black judges are perceived is a recent topic explored in political science. Some work indicates black judges are perceived and evaluated more negatively than their White counterparts (e.g., Matland and Shephard 2004; Lott Jr. 2001; Haire

2001; Sen 2014a, 2014b; Gill 2014). Much of this work, however, focuses on lawyers' impressions of black judges and not the American public's impressions, which is the focus of this chapter. Due to the lack of research in this particular area of study, I largely rely on the existing literature on the American public's impressions of black candidates for office and black public officials in the legislative and executive branches of state and national government to develop the expectations for the present research.

How black public officials, especially black state and national legislators, are perceived by the public and their colleagues became an area of scholarly interest in the late 20<sup>th</sup> century. To better understand why it was that despite significant increases in descriptive representation, African Americans remained relatively underrepresented in local, state, and national deliberative institutions, scholars looked to whether there were differences in how these officials were perceived relative to their white peers. While these studies show numerous factors influence how politicians are perceived including politicians' personality and issue stances (e.g., Caprara, Barbaranelli, and Zimbardo 2002; Feldman and Conover 1983; Conover and Feldman 1989), the media (e.g., Gershon 2012, 2013; Graber 2009; Kahn 1996; Reeves 1997; Terkildsen and Damore 1999), partisan stereotypes and political ideology (e.g., Rahn 1993; Conover and Feldman 1989), the literature identified race as one of the most prominent factors influencing perceptions of black and white public officials.

## **The Perceptions of Black Political Candidates and Political Officials**

Most of the existing research on perceptions of black political candidates and public officials indicates that generally, they are perceived much more negatively than White politicians because of their race (e.g., Williams 1990; Citrin, Green and Sears 1990, Terkildsen 1993; Sigelman et al. 1995; McDermott 1998; Piston 2010). This is primarily seen in the negative stereotypes many individuals have about black politicians and black Americans in general that are used to form impressions of black candidates for office (Fisk and Neuberg 1990; Terkildsen 1993; Callaghan and Terkildsen 2002). Black candidates for political office are often seen as less qualified for political positions than their white counterparts (Williams 1990). They are also seen as less competent and incapable of effectively handling important policy issues (Sigelman et al. 1995). Additionally, black candidates are viewed as possessing unpopular values, such as being unpatriotic and lenient on crime (Williams 1990; Sigelman et al. 1995; McDermott 1998). Sears, Citrin, and Kosterman (1987) and Schneider and Bos (2011) find that, unlike white politicians, black politicians are perceived to be compassionate toward disadvantaged groups in society such as racial minorities, interested in only black citizens, and likely to give more aid to their groups, and more supportive of policies that provide assistance to blacks. Finally, a recurring finding in this literature is that black candidates for political office are perceived as being excessively liberal, and this is even true for black politicians who are conservative or Republican (Williams 1990; McDermott 1998;

Kanthak and Morton 2008; Jacobsmeier 2014, 2015; Lerman and Sadin 2014).<sup>11</sup> Unfortunately, these negative or unfavorable perceptions and stereotypes often result in black politicians receiving less electoral support than their white counterparts, which ultimately hinders their ability to obtain and retain political positions (Williams 1990; Citrin, Green, and Sears 1990; Terkildsen 1993; Moskowitz and Stroh 1994; Reeves 1997; Berinsky 1999; Gay 2001; Herron and Sekhon 2005; Piston 2010; Washington 2006).

Once in office, black politicians continue to be perceived negatively. These negative perceptions are made evident in the unfavorable evaluations that many black legislators, mayors, and other black public officials receive (e.g. Haynie 2001, 2002; Howell 2007; Ansolabehere and Fraga 2013). Haynie (2001; 2002), using data from the North Carolina General Assembly, finds black state legislators in North Carolina are perceived as being less effective at their jobs than white state legislators by lobbyists, journalists, and White state legislatures. Haynie's results held even after he controlled for important factors that are known to influence perceptions of legislators such as seniority, holding a prestigious leadership position, and professional background. Studying perceptions of national congressmen and congresswomen, Branton, Cassese, and Jones (2012) find that

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<sup>11</sup> It should be noted that although blacks, on average, are more likely to be registered as Democrats and to hold liberal views on economic policies (Gurin, Hatchett, and Jackson 1989; Haynie and Watts 2010), blacks are socially conservative on social policies (e.g. same-sex marriage and abortion; McClain and Stewart 2014). In other words, blacks are not ideologically homogeneous, despite perceptions that they are (Dawson 1994; McClain and Stewart 2014; Gay 2004; Gilliam 1996; Bobo and Gilliam 1990).

black members of congress are often evaluated more harshly than white and Latino members of Congress.

Studies of black mayors and President Obama, the country's first black president, reveal they, too, are evaluated more negatively compared to white politicians in the executive branches of government. For instance, Howell (2007) in her study of black mayors found that regardless of actual mayoral performance, black mayors receive more negative approval ratings than white mayors. Howell's study is consistent with an earlier study by Howell and Perry (2004) who also found that race influences the approval of black mayors more than it influences the approval of white mayors. Additionally, a number of studies that examine the evaluations of black presidential candidates and the U.S.' first black president (Hehman, Gaertner, and Dovidio 2011; Tesler 2013; Redlawsk, Tolbert, and Franko 2010; Hutchings 2009). This research finds that black presidential candidates such as Jesse Jackson and Barack Obama were often evaluated more negatively than prior white U.S. presidents and white presidential candidates. They were seen by many evaluators as less "American" in terms of important values and characteristics such as not being Christian (Hehman, Gaertner, and Dovidio 2011; Kosloff, Greenberg, Schmader, Dechesne, and Weise 2010).<sup>12</sup>

As noted, black political candidates and politicians including legislators and mayors are evaluated more negatively than their white counterparts. But, does race have a similar effect on the impressions of black judges? Researchers have begun to

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<sup>12</sup> Also see Gallup poll's weekly job approval rating by demographic group (<http://www.gallup.com/poll/121199/obama-weekly-job-approval-demographic-groups.aspx>)

examine perceptions and evaluations of black state and federal judges, although, compared to studies on perceptions of other black elites, this research is in its nascent stages. Some studies examine the judicial qualification ratings by the American Bar Association's (ABA) Standing Committee on the Federal Judiciary.<sup>13</sup> The ABA provides the White House with the Committee's evaluation of the professional competence, integrity and judicial temperament of each prospective judicial nominee to the federal courts. A number of scholars find the organization and the organization's evaluations are biased against racial and ethnic minorities and White women.<sup>14</sup> Lott Jr. (2001) notes that black Republicans in particular, but black appeals court nominees more generally regardless of political partisanship, get lower ABA ratings compared to white federal judges. Similarly, Haire (2001) finds that black and white female appeals court nominees are more likely to get lower ratings from the ABA, and this is even after controlling for important factors such as education and professional background. Recently, Sen (2014a), examining the ABA rating of 1,770 US district judges nominated between 1960 and early 2012, finds that minority and female nominees receive lower qualification ratings from the ABA than white judicial nominees and male judicial nominees. Sen's finding holds even when "using matching or other controls to compare candidates who are similar across key professional, educational, and political characteristics" (2014a,

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<sup>13</sup> Although the categories have changed over time, the current ratings assigned to federal judicial nominees are "well qualified," "qualified," and "not qualified" (ABA 2009).

<sup>14</sup> Additionally, scholars have consistently found the ABA to be fairly biased against conservatives, rating conservative judges more harshly than liberal judges (Lindgren 2001; Lott 2001; Smelcer, Steigerwalt, and Vining 2012).

59). Sen (2014b) reaches similar conclusions in her later study when she finds that despite increasingly resembling white judicial candidates in terms of educational and professional background, minority judicial candidates are more likely to receive lower ratings from the ABA than their White counterparts. Sen finds that “[f]or blacks and Latinos, this [ratings] gap has persisted over time in the modern era of nominations, and there is no sign of attenuation” (2014b, 53).

Studies of evaluations of black state judges reveal they are evaluated more negatively in comparison to white state judges. This affect is found in the judicial performance evaluations (JPEs) that have become an important part of the state judicial selection process.<sup>15</sup> Similar to the bias against black federal judges in ABA ratings, the scores from JPEs indicate the presence of bias against racial minorities and white women (Gill 2014; Gill, Lazos, and Waters 2011; Gill and Retzl 2013). Using attorney JPEs from Clark County, Nevada, Gill, Lazos, and Waters (2011) reveal that contrary to claims that JPEs are fair, even after accounting for important factors such as legal education and judicial experience, racial minority judges and female judges are given scores that are significantly lower than their White and male counterparts. They concluded that implicit and subconscious gender and racial biases are likely to have effected the responses given by the lawyers on the surveys.

Similarly, in her recent study using JPE attorney surveys from Clark County, Nevada, Gill (2014) shows that traditionally underrepresented groups, racial minorities and White females, are systematically disadvantaged compared to their

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<sup>15</sup> These JPEs are meant to measure the performance of sitting state judges so the electorate can be informed at the polls during elections.

White counterparts. She reports that “There is not a single category of questions that escapes this problem; the effects of judge sex and race are significant, large, and consistent across all of the dimensions of judicial performance evaluated by the Judging the Judges survey” (Gill 2014: 319).

Unfortunately, the vast majority of research on perceptions of black state judges and black federal judges has focused on attorneys’ evaluations (Gill 2014; Gill, Lazos, and Waters 2011; Gill and Retzl 2013; Lott Jr. 2001; Haire 2001; Sen 2014a, 2014b). While this literature is clear that black judges are consistently and significantly rated lower than their white counterparts, it is not clear how the American public perceives black judges.

What appears to be the first and only study that examines the public’s perceptions of black judges is Richard E. Matland and Adrian Shepherd’s (2004) paper, “The Effect of Candidate Race on Voters’ Evaluations of Judicial Candidates: Experimental Evidence.”<sup>16</sup> Their research centered on “Latino, black, and Anglo voters and how each of these groups react to Latino, black and Anglo candidates” (Matland and Shepherd 2004, 1). The specific questions guiding their study were: “Does giving individuated information on a candidate to a voter diminish the effect of the candidate’s race on the voter’s evaluations? Can the effect of candidate’s race possibly be eliminated if extensive policy relevant information is provided? Does policy relevant information modify the effects of race?” (Matland and Shepherd 2004, 1). To address these questions, Matland and Shepherd fielded an experiment

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<sup>16</sup> Please note that I appreciatively welcome the identification of other work if I am in error.

where they provided respondents with “varying amounts of information about a set of [judicial] candidates running in seven separate elections, to see how “candidate race interacts with the amounts of individuated information to affect estimations of candidate traits and voter support” (Matland and Shepherd 2004, 1). Relying on their experimental data, they conclude that racially polarized voting occurs in low-information elections, however, when relevant policy information is provided, race no longer has a dramatic effect on voting behavior. Put simply, information influences voting behavior more than the race of the candidates on the ballot. Ultimately, while they focus on perceptions and evaluations of black judges, along with other judges, Matland and Shepherd (2004) do not address the question central to this study. Their primary interest is in understanding how the race of a political candidate and the amount of information provided during elections can influence the voting behaviors of different groups in the electorate.

The extant literature is virtually silent with regards to the focus of this chapter, which is how does the American public perceive black judges? Most of the previous research on impressions of black judges examines the perceptions of lawyers or litigants (e.g., Lott Jr. 2001; Haire 2001; Sen2014a, 2014b; Gill 2014; Gill, Lazos, and Waters 2011; Gill and Retzl 2013). This study makes a distinct contribution to the literature because it examines the American public’s impressions of black judges and White judges with regards to their decision-making behavior.

## **Whites' Perceptions of Black Political Candidates and Political Officials**

The present study also examines how the race of the evaluator affects the evaluator's perceptions of black and white judges. Previous research has shown that the race of the person completing the evaluation – the evaluator/respondent in survey research – matters in how black politicians and political candidates are perceived.<sup>17</sup> Previous studies demonstrate that whites tend to view white politicians much more positively than they view black politicians and consequently, are, much less willing to vote for black candidates when they seek office (e.g., Williams 1990, Citrin, Green, and Sears 1990; Branton, Cassese, and Jones 2012; Krupnikov and Piston 2015; Shah 2015). According to Shah (2015), the underrepresentation of blacks in political offices is not because black candidates do not seek office, but rather because they seek office and often lose without the support of white voters in non-majority minority areas.

In one of the leading articles on perceptions of black politicians, Linda Williams (1990) finds that, generally, white Americans hold negative perceptions of black politicians. Beyond perceiving black politicians as less capable of achieving national goals such as increasing the country's economy and reducing the federal budget deficit, white respondents saw white candidates as being more likely to have personal attributes valued in leaders such as intelligence, compassion, knowledge, hard-working, exciting, clear on issues, fair, good judgment during crises,

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<sup>17</sup> This makes sense given the research which establishes that, as a result of different life experiences, backgrounds, interests, and socializations in America, white and black Americans often have different perceptions and opinions (Kinder and Sanders 1996).

trustworthy, and experienced. White respondents, however, considered black politicians to be more religious and liberal than white politicians and reported that a black politician would only be more successful than a white politician in helping the poor and need.

A number of other political scientists have conducted studies assessing whites' perceptions of black politicians and find results similar to those in Williams' study. For example, Citrin, Green, and Sears (1990), demonstrate that whites' negative views about black politicians led to the defeat of three black candidates' in biracial elections including Tom Bradley's 1982 California gubernatorial election against George Deukmejian (92). They cite negative stereotypes about black candidates as one of the main reasons black candidates' struggle to get elected to office: black candidates are stereotyped as having " a moderate record and comforting image," and as liberals who are "favorable to 'big' government, 'soft' on crime, and so forth," which lead them to suffer a loss of White votes (Citrin, Green and Sears 1990:92).<sup>18</sup>

With regards to actual white perceptions, in a study examining evaluations of black, Latino, and white members of Congress, Branton, Cassese, and Jones (2012) find that white respondents evaluate white members of congress higher than black members of congress. This group of scholars also find that this particular affect is especially pronounced among respondents who identified as Independent and

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<sup>18</sup> It is important to note that Citrin, Green and Sears (1990) question the validity of their results based on the potential affect of social desirability. "If covert racism was pervasive, distorting our measurement of racial attitudes or voting intention, we may have underestimated the impact of race in the Bradley-Deukmejian election" (Citrin, Green, and Sears 1990:92).

Republican. “[A]mong white independents, evaluations of a black MC [Member of Congress] is about 7 points lower than a white MC, while among Republicans the average evaluation of a black MC is about 13 points lower than for a white MC (480).<sup>19</sup>

Despite being the first black American president, in examining evaluations of President Barack Obama, scholars find he is evaluated much more negatively than his white predecessors by white Americans (Hehman, Gaertner, and Dovidio 2011; Carter and Dowe 2015). For example, researchers find that unlike former U.S. presidents, Obama is often associated with being un-American, with some whites even questioning his patriotism and the validity of his American citizenship, and misperceiving his religion and characterizing his legislation as socialist (Pew Center for Research 2010; Hughey 2012; Pasek, Stark, Krosnick, and Tompson 2015; Kosloff, Greenberg, Schmader, Dechesne, and Weise 2010; Gingrich 2011). Other scholars find that whites’ have often questioned Obama’s leadership skills. Analyses reveals that negative perceptions of blacks’ leadership skills (McIlwain 2007, 2011) and topics related to race (Caliendo and McIlwain 2006) feature prominently in newspaper articles written on black politicians such as President Obama. This is significant given the fact that McIlwain (2011) found that for black presidential candidates, but not White presidential candidates, leadership is a significant predictor in statistical models predicting the vote percentage. These studies are

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<sup>19</sup> Branton, Cassese, and Jones (2012) also find that Latino members of Congress are evaluated more positively than black members of Congress, but not White members of Congress, by White respondents.

consistent with both a survey conducted the month prior to the 2008 election that revealed “one-third of the white electorate were troubled by the prospect of Obama becoming the first black president” and the large amount of literature that reveal White Americans were reluctant to vote for Obama during both the 2008 and 2012 presidential elections (e.g. Redlawsk, Tolbert, and Franko 2010: 11; McIlwain 2007, 2011; Edge 2010).

### **Blacks’ Perceptions of Black Political Candidates and Political Officials**

In addition to studying whites’ perceptions of black politicians, scholars also examine blacks’ perceptions of black political candidates. Whilst research reveals many white Americans perceive and evaluate black political candidates and politicians negatively, the research demonstrates many black Americans perceive and evaluate black political candidates and politicians positively. Studies of perceptions of black candidates for office, for example, find that black Americans view black politicians as intelligent, compassionate, knowledgeable, hard-working, exciting, clear on issues, fair, trustworthy, and having good judgment in crisis (Williams 1990). Additionally, black respondents in Williams’ study perceived black candidates to be more effective and important to achieving goals in policy areas that are disproportionately important to blacks such as poverty, teenage pregnancy, and drug abuse (1990).<sup>20</sup>

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<sup>20</sup> Williams (1990) also show that both blacks and whites hold positive stereotypes about political candidates of their own race, however, blacks and whites differ in declaring a particular politician

Evaluations of black officials reveal that black Americans also view and rate their black representatives positively and favorably (e.g., Bobo and Gilliam 1990; Howell and Perry 2004; Tate 2003; Banducci, Donovan, and Karp 2004; Howell 2004; Harris, Sinclair-Chapman, and McKenzie 2006). In studies of mayors, Howell (2004) and Howell and Perry (2004) show black respondents are more positive in their evaluation of mayoral performance when they have black mayors rather than White mayors. Similarly, studies on blacks' perceptions of President Obama demonstrate that black Americans generally evaluate him positively compared to prior presidents and presidential candidates (Hehman, Gaertner, and Dovidio 2011).

That blacks perceive and evaluate black politicians positively is consistent with the studies that reveal black Americans are the primary supporters of black candidates for office (Philpot and Walton 2007). For example, Philpot and Walton (2007) reveal African Americans, but especially black women, are the strongest supporters of black female candidates.

### ***Theory and Expectations***

Relying on the extant literature which provides ample evidence that race is an important factor in the how black public officials are perceived and evaluated, I

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will be more likely to achieve important political goals. While White Americans gave White candidates rather than black candidates the edge in goal achievement, black Americans were not more likely to give black candidates the edge in goal achievement than White candidates.

expect race will matter in how the public perceives and evaluates judges. That is, consistent with existing findings we should expect black judges to be perceived and evaluated more negatively than white judges in general. We, however, should expect that black Americans and white Americans will view black judges differently. Black Americans are likely to view black judges more positively than white judges, and white Americans are likely to view black judges more negatively than white judges. The specific hypotheses for this chapter are in Table 10.

**Table 10: Chapter Expectations**

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H1a: <i>Race of the Judge in All Cases</i>	Black judges will be perceived as more likely than white judges to decide cases unfairly.
H1b: <i>Race of the Judge in Race-related Cases</i>	Black judges will be perceived as more likely than white judges to decide cases in which race is a factor unfairly.
H1c: <i>Race of the Judge in Cases with Black Litigants</i>	Black judges will be perceived as more likely than white judges to provide preferential treatment to black litigants.
H2a: <i>Whites' Impressions of Black Judges</i>	Black judges will be perceived as more likely than white judges to decide cases generally and cases involving race unfairly, and to give preferential treatment to black litigants, by white Americans.
H2b: <i>Blacks' Impressions of Black Judges</i>	Black judges will be perceived as less likely than white judges to decide cases generally and cases involving race unfairly, and to give preferential treatment to black litigants, by black Americans.

To test my hypotheses, I conducted an experiment that assess the effects of race on perceptions of black and White judges.

### ***Data and Design***

Experiments embedded within surveys are a well-established method for examining how factors such as race affect perceptions and evaluations of candidates and public officials (e.g., McDermott 2002; Druckman et al. 2006; Druckman et al. 2011; Morton and Williams 2010; Druckman et al. 2006; Huddy and Terkildsen 1993; Terkildsen 1993; Campbell and Cowley 2014; Redlawsk, Tolbert, and Franko 2010; Moskowitz and Stroh 1994; Piston 2010). Experimental methods allow researchers to isolate confounding effects that would be practically impossible if a standard survey had been used (Mutz 2011). In other words, the strength in using experimental methods is that researchers are able to understand the causal affect of certain factors, such as race, on perceptions and evaluations. The random assignment of experimental subjects to treatment and control conditions, coupled with the direct manipulation of a fictitious judge's race, makes it is possible to isolate whether the race of a judge, as opposed to other explanatory variables, affect how that judge is perceived and evaluated.<sup>21</sup>

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<sup>21</sup> As with most surveys that deal with race, there is a fear that respondents will answer questions in a manner that they feel is favorable to others (e.g. the socially desirable response). That is to say, respondents will often give the socially desirable answer (Heerwig and McCabe 2009; Streb et al. 2008). This can, thus, influence the results I obtain in my survey experiment. With this in mind, any results showing that black judges are viewed more negatively than White judges by Whites would be

For this study, a randomized experiment was administered online through the YouGov/Polimetrix platform as part of the 2014 Cooperative Congressional Election Study (CCES) conducted in the fall.<sup>22</sup> The CCES is a collaborative data-collection endeavor. Half of the questionnaire received by the respondents in the study consisted of Common Content such as general political attitudes, various demographic factors, assessment of roll call voting choices, and political information, and the other half of the questionnaire consisted of Team Content designed by me and other scholars in the Research Opportunities for Surveys and Experiments (ROSE) at Duke University.<sup>23</sup>

## Participants

CCES uses a national stratified sample of registered and unregistered adults.<sup>24</sup> The survey sample is constructed using a matched random sample technique. Survey respondents are matched with adults in the population based on

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an underestimate given that respondents typically under-report undesirable opinions or perceptions and give socially desirable answers.

<sup>22</sup> Please see the following website for more information about CCES: <http://projects.iq.harvard.edu/cces/book/study-design>.

<sup>23</sup> The opportunity to conduct the experiment was made possible through support from the Duke Initiative on Survey Methodology (DISM) and the Program for Advanced Research in the Social Sciences (PARISS), both housed at the Social Science Research Institute (SSRI) at Duke University.

<sup>24</sup> Christopher D. DeSante (2013) describes the CCES sampling method in detail: "The sampling method begins by taking a random sample of the adult population based on the American Community Survey (ACS). Next, each case in the ACS sample is statistically matched to members from the online sample on a number of variables of interest, including gender, age, race, region, religion, education, news interest, marital status, partisanship, ideology, income, and registration status. This method produces a sample that looks similar to a probability sample on the matched characteristics but may still differ in unknown ways on unobserved characteristics" (348). Also, see Vavreck and Rivers' (2008) article describing the use of CCES.

important characteristics such as age, income, education, race, gender, longitude and latitude, etc. The national sample used in this project is part of a larger (50,000+) person national sample stratified by state, type of district, and voter registration.

Prior research on perceptions of black politicians and political candidates (e.g., Williams 1990; Citrin, Green and Sears 1990, Terkildsen 1993; Sigelman et al. 1995; McDermott 1998; Piston 2010; Howell 2007) focuses on understanding the dynamics of perceptions among black and/or white Americans toward black and white politicians. Accordingly, the present analysis restricts its focus to  $N = 874$ , the non-Hispanic black and non-Hispanic White respondents in the survey. Characteristics of the sample used in this study are presented in Table 11.

Black Americans made up 15 percent of the sample and white Americans made up the remaining 85 percent of the sample. Females made up 54 percent of the sample. 34 percent of the sample identified as Democrat, 27 percent identified as Republican, 27 percent identified as Independent, 4 percent identified as other, and 7 preferred not to say. 24 percent of the respondents had incomes less than \$29,000. 28 percent of the respondents had incomes between \$30,000 and \$59,999. 38 percent of the respondents had incomes above \$60,000. 10 percent of the sample preferred not to divulge their family's household income. The average age for a respondent was 52. The sample is, thus, quite representative of the American public given the demographic characteristics.<sup>25</sup>

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<sup>25</sup> <https://www.census.gov/programs-surveys/acs/>

**Table 11: Demographic Characteristics of Sample**

	Total Sample	Black Sample	White Sample
<b>Race</b>			
% Black	15.45	100	0
% White	84.55	0	100
<b>Gender</b>			
% Female	54.46	69.63	51.69
% Male	45.54	30.37	48.31
<b>Partisanship</b>			
% Democrat	34.21	61.48	29.23
% Republican	26.77	4.44	30.85
% Independent	27.23	20.74	28.42
% Other	4.00	2.22	4.33
% Prefer not to say	7.78	11.11	7.17
<b>Income</b>			
% <\$29,999	24.14	28.15	23.41
% \$30,000-\$59,999	27.57	25.19	28.01
% >\$60,000	37.87	38.52	37.75
% Prefer not to say	10.41	8.15	10.83
Average Age	52	48	53
N	874	135	739

## Experimental Design

Participants were randomly assigned into one of the five experimental conditions. The percentage of the sample assigned to each of the experimental conditions is presented in Table 12. In each condition, subjects were presented with a judicial biography to read that was formatted to resemble a biographical profile of a judge from the Judgepedia website.<sup>26</sup> Judgepedia is a database of information on state and federal courts and judges. The judge's profile used in this study reported the judge's: (1) Education and early career experiences, (2) prior judicial career details, (3) Confirmation to the Third Circuit, and (4) Performance on the Third Circuit. A copy of the experimental stimuli (e.g. the Judgepedia page for Judge Williams) is available in Appendix C. After reading the judge's biography, each subject was asked to answer a battery of questions that were designed to ascertain the subjects' impressions of the judge's ability to decide cases fairly.

The study was a between-subjects design with four treatment conditions and a control. A copy of the experimental conditions is available in Appendix D. The subjects received one of four treatments: black male judge, White male judge, black female judge, or White female judge. A fifth group, the control group was given no photograph of a judge, therefore not depicting a particular race or gender. All other information in the articles such as the judge's name, the judge's personal and professional background, the court that the judge presides on, and the political

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<sup>26</sup> Since this experiment was conducted, judgepedia.org has become ballotpedia.org (<http://www.ballotpedia.org>).

ideology of the judge remained the same. This experimental design makes it possible to see how the race of judges affect how the American public perceives them.

**Table 12: Percentage of Sample Assigned to Each Experimental Conditions**

Experimental Condition	Percent
<i>Black male judge</i>	21.85
<i>Black female judge</i>	18.54
<i>White male judge</i>	19.34
<i>White female judge</i>	21.17
<i>Control</i>	19.11

## Measures

*Dependent Variables* (Dependent variable wording is presented in Table 13 and histograms for these variables are presented in Appendix E.):

The analysis focuses on the extent to which black judges are perceived as distinctive compared to White judges with regards to deciding in a fair manner. There are three dependent variables in this analysis that test whether or not black judges are viewed as less fair than White judges:<sup>27</sup>

***Fairness.*** The first dependent variable, *fairness*, is the subject’s perception of whether the judge is likely to decide a case manner. The variable is measured with the following question: “How likely do you think it is that Judge Williams will render

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<sup>27</sup> The latter two dependent variables “black preferential treatment” and “Race-related case issues” capture the two types of cases in which White litigants and their attorneys typically challenged the ability of black judges to be impartial (e.g., *Baker v. City of Detroit* 1978; *Commonwealth of Pennsylvania v. Local Union 5442, International Union of Operating Engineers* 1974, *Vietnamese Fishermen’s Ass’n v. Knights of the Ku Klux Klan* 1981, *LeRoy v. City of Houston* 1984, *United States v. State of Alabama* 1984, *Dillard’s Inc. v. Michael J. Scott* 2005, and *North Carolina v. Marcus Robinson* 2012).

an unfair decision?” Respondents answered this question using a 5-point scale that ranged from extremely likely to not likely at all. Responses to this question were scaled so that larger numerical responses reflected Judge Williams being perceived as more likely to render an unfair decision.

***Black Preferential Treatment.*** The first dependent variable, *black preferential treatment*, is the subject’s perception of whether the judge is likely to provide preferential treatment to blacks. Black preferential treatment is measured with the following question: “How likely do you think it is that Judge Williams will give preferential treatment to blacks?” Respondents answered this question using a 5-point scale that ranged from extremely likely to not likely at all. Responses to this question were scaled so that larger numerical responses reflected Judge Williams being perceived as more likely to provide preferential treatment to blacks.

***Fairness in Race-related Cases.*** The third dependent variable, *fairness in race-related cases*, is the subject’s perception of whether the judge is likely to behave in a fair or unfair manner in a case dealing with race. *Fairness in race-related cases* is measured using this question: “For each of the following types of cases, how likely or unlikely do you think it is that Judge Williams will make an unfair decision: Racial Discrimination and Affirmative Action?” Respondents also answered this question using a 5-point scale that ranged from extremely likely to not likely at all. Responses to this question were scaled so that larger numerical responses reflected Judge Williams being perceived as more likely to make an unfair decision in a racial discrimination and/or affirmative action case.

**Table 13: Dependent Variable Wording and Measurement Information from Survey**

<b>Variable</b>	<b>Question Wording</b>	<b>Measurement Information</b>
<i>Fairness</i>	“How likely do you think it is that Judge Williams will render an unfair decision?”	5-point scale that ranged from extremely likely to not likely at all.  Scale recoded from 0 ( <i>not likely at all</i> ) to 1 ( <i>extremely likely</i> )
<i>Black Preferential Treatment</i>	“How likely do you think it is that Judge Williams will give preferential treatment to blacks?”	5-point scale that ranged from extremely likely to not likely at all.  Scale recoded from 0 ( <i>not likely at all</i> ) to 1 ( <i>extremely likely</i> )
<i>Fairness in a Race-related Case</i>	“For each of the following types of cases, how likely do you think it is that Judge Williams will make an unfair decision: Racial Discrimination and Affirmative Action?” <sup>a</sup>	5-point scale that ranged from extremely likely to not likely at all.  Scale recoded from 0 ( <i>not likely at all</i> ) to 1 ( <i>extremely likely</i> )

<sup>a</sup> This matrix asked respondents how likely they thought it was that Judge Williams would make an unfair decision in various types of cases. The other types of cases were innocuous cases (e.g., Traffic and Airline Regulation) and gender-related cases (e.g., Sexual Discrimination and Sexual Harassment).

Note: Numbers in parentheses represent the percentage of respondents giving the particular response.

*Independent Variables* (Independent variable wording is presented in Table 14):

There are two key independent variables in this analysis that allow us to measure whether or not the race of the judge and the race of the evaluator influence impressions of judges.

***Race of the Judge.*** The first independent variable is the experimental condition (i.e., the judge) the respondent received. There were five experimental conditions including the control: black male or black female judge, White male or White female judge, and a control – a judge without a photo depicting her/his race or gender. Five dummy variables were created to reflect the unique race/sex groups. But to understand whether black judges and White judges are perceived differently, the black male and female judge treatments were grouped together as “black judges” and White male and female judge treatments were grouped together as “white judges.”

***Race of the Evaluator.*** The second independent variable is the evaluator’s race. Respondents were asked “what racial or ethnic group best describes you?” Respondents were able to select White, black, Hispanic, Asian, Native American, Mixed, Other, or Middle Eastern. Again, due to the research focusing on black and White perceptions, and that there were not enough respondents in the other racial or ethnic group categories, I removed all respondents from the analyses who did not self-identity as non-Hispanic White and non-Hispanic black.

**Table 14: Key Independent Variable Wording and Measurement Information from Survey**

<b>Variable</b>	<b>Question Wording</b>	<b>Measurement Information</b>
Race of the judge	N/A Experimental condition determined this variable	black judges=1; White judges=0
Gender of the judge	N/A Experimental condition determined this variable	Control=1; black female judge=; black male judge=; White female judge=; White male judge=
Race of the Evaluator	What racial or ethnic group best describes you?	black=1; White=0

Note: Numbers in parentheses represent the percentage of respondents giving the particular response.

### *Control Variables*

A number of control variables were included in the analysis, such as measures for political party identification, respondents' income, respondents' region, respondents' ages, respondents' gender, and respondents' education level. These variables have been deemed important by prior research on perceptions of officials (e.g., Williams 1990; Howell 2006; Piston 2010). All variables were coded to range from 0 to 1 prior to analysis.

### **Results**

In line with prior research on perceptions in the judicial context that use experimental methods (e.g., Scherer and Curry 2010; Gibson and Caldeira 2012), ordinary least squares regressions (OLS) were utilized to test the hypotheses that were developed for this study. The regression results are presented in the following subsections.

#### **The Effect of a Judge's Race on Perceptions of Impartiality**

Hypothesis 1a states black judges will be perceived as more likely than white judges to decide cases unfairly. Hypothesis 1b stated black judges will be perceived as more likely than white judges to decide cases in which race is a factor unfairly. Finally, hypothesis 1c stated black judges will be perceived as more likely than white judges to provide preferential treatment to black litigants. Table 15, Table 16,

and Table 17 presents results from an OLS model testing whether a judge's race significantly influences how they are perceived by the American public.

Looking at the effect of race on perceptions of deciding cases fairly, the results show some support for theoretical expectations (Tables 15, 16 and 17). Comparing the results for black Judge Williams and white Judge Williams for the black preferential treatment dependent variable, respondents were more likely to believe the black judge would be more likely to provide preferential treatment to black litigants than would the white judge. However, there were no significant differences between respondents' perceptions of the likelihood that the black and the white judge would be fair in general and in cases involving racial matters such as racial discrimination and affirmative action. Additionally, comparing the results for control judge Williams and white Judge Williams, respondents did not view these two judges differently. They were seen as likely to render similar decisions. Finally, consistent with findings from prior research, party identification, age, and gender are factors important to understanding the American public's impressions of judges' decision-making. Women, individuals who are older, Republicans, and Independents perceived the white Judge Williams as more likely to render fair decisions than men, younger individuals, and Democrats.

**Table 15: OLS Model of the Effect of a Judge’s Race on Perception of Impartiality (Hypotheses 1a, 1b, and 1c) – General Impartiality**

Variable	General Impartiality		
	Coeff.	SE	P
White Judge Williams (Baseline Category)	-	-	-
Black Judge Williams	0.002	0.014	0.877
Control Judge Williams	-0.003	0.017	0.852
Republican	0.032**	0.015	0.036
Independent	0.034**	0.015	0.020
Age	0.190**	0.037	0.000
Female	0.029**	0.013	0.023
Education	0.025	0.025	0.331
Intercept	0.589**	0.031	0.000

\* $p < .10$ , \*\* $p < 0.05$

*General Impartiality* - Note: OLS estimates; N = 830; F = 05.35,  $p < .001$ ; Adj.  $R^2 = 0.04$ .

**Table 16: OLS Model of the Effect of a Judge’s Race on Perception of Impartiality (Hypotheses 1a, 1b, and 1c) – Black Preferential Treatment**

Variable	Black Preferential Treatment		
	Coeff.	SE	P
White Judge Williams (Baseline Category)	-	-	-
Black Judge Williams	-0.075**	0.016	0.000
Control Judge Williams	-0.033*	0.018	0.073
Republican	-0.020	0.017	0.234
Independent	-0.017	0.018	0.366
Age	0.184**	0.045	0.000
Female	0.055**	0.015	0.000
Education	0.070**	0.029	0.017
Intercept	0.622**	0.037	0.000

\* $p < .10$ , \*\* $p < 0.05$

*Black Preferential Treatment* – Note: OLS estimates; N = 830; F = 8.02,  $p < .001$ ; Adj.  $R^2 = 0.06$ .

**Table 17: OLS Model of the Effect of a Judge’s Race on Perception of Impartiality (Hypotheses 1a, 1b, and 1c) – Race-related Cases**

Variable	Race-related Cases		
	Coeff.	SE	P
White Judge Williams (Baseline Category)	-	-	-
Black Judge Williams	0.001	0.016	0.971
Control Judge Williams	-0.025	0.020	0.203
Republican	0.038**	0.018	0.030
Independent	0.031*	0.018	0.083
Age	0.131**	0.046	0.004
Female	0.043**	0.015	0.005
Education	-0.015	0.029	0.607
Intercept	0.609**	0.036	0.000

\* $p < .10$ , \*\* $p < 0.05$

*Race-related Cases - Note:* OLS estimates;  $N = 830$ ;  $F = 3.13$ ,  $p < .003$ ;  $Adj. R^2 = 0.03$ .

## White and Black Perceptions

To what extent do black Americans and white Americans perceive black and white judges to decide cases in general, cases with black litigants, and race-related cases, fairly? I expected that black judges will be perceived as more likely than white judges to decide cases generally and cases involving race unfairly, and to give preferential treatment to black litigants, by white Americans (Hypothesis 2a), and that black judges will be perceived as less likely than white judges to decide cases generally and cases involving race unfairly, and to give preferential treatment to black litigants, by black Americans (Hypothesis 2b). Tables 18, 19, 20, 21, 22, and 23 present the OLS models testing these expectations.

There is some support for hypothesis 2a (Tables 18, 19, and 20). White respondents did perceive black Judge Williams as more likely than white Judge Williams to give preferential treatment to black litigants. Black Judge Williams, however, was not perceived as more likely than white Judge Williams to decide cases in general, or cases involving racial issues, unfairly by white respondents. Additionally, white respondents perceived the control Judge Williams as more likely than the white Judge Williams to provide preferential treatment to black litigants, and they perceived control Judge Williams as more likely than white Judge Williams to decide cases involving a racial issue unfairly. White respondents, however, did not perceive control Judge Williams as significantly different from white Judge Williams in race-related cases and cases in general.

There is also support for hypothesis 2b (Tables 21, 22, and 23). Black respondents did perceive black Judge Williams as less likely than white judge Williams to decide cases in general, and race-related cases, unfairly. Black respondents, however, viewed black Judge Williams as no more likely to give preferential treatment to black litigants than white Judge Williams. Additionally, black respondents perceived the control Judge Williams as more likely than white Judge Williams to decide cases fairly. They, however, did not perceive control Judge Williams as any more or less likely than white Judge Williams to give preferential treatment to black litigants or to decide cases involving racial issues fairly.

Lastly, consistent with findings from prior research, age and gender are factors important to understanding the black Americans and white Americans' impressions of judges' decision-making. For instance, for black Americans and white Americans, women and older individuals perceived the white Judge Williams as more likely to render fair decisions than men and younger individuals. Additionally, black Republicans perceived the white Judge Williams as more likely to render fair decisions than black Democrats.

**Table 18: OLS Model of the Effect of a Judge’s Race on White Americans’ Perception of Judicial Fairness (Hypothesis 2a) – General Impartiality**

Variable	General Impartiality		
	Coeff.	SE	P
White Judge Williams (Baseline Category)	-	-	-
Black Judge Williams	-0.018	0.014	0.217
Control Judge Williams	-0.200	0.018	0.245
Republican	0.026*	0.016	0.101
Independent	0.024	0.016	0.130
Age	0.142**	0.040	0.000
Female	0.029**	0.014	0.034
Education	0.001	0.027	0.971
Intercept	0652**	0.033	0.000

\*p<.10; \*\*p<0.05

*General Impartiality – Note – White Respondents:* OLS estimates; N = 695; F = 3.11, p < .003; Adj. R<sup>2</sup> = 0.03.

**Table 19: OLS Model of the Effect of a Judge’s Race on White Americans’ Perception of Judicial Fairness (Hypothesis 2a) – Black Preferential Treatment**

Variable	Black Preferential Treatment		
	Coeff.	SE	P
White Judge Williams (Baseline Category)	-	-	-
Black Judge Williams	-0.082**	0.018	0.000
Control Judge Williams	-0.046**	0.020	0.023
Republican	-0.022	0.018	0.230
Independent	-0.025	0.020	0.217
Age	0.147**	0.048	0.002
Female	0.052**	0.016	0.002
Education	0.070**	0.032	0.030
Intercept	0.652**	0.041	0.000

\*p<.10; \*\*p<0.05

*Black Preferential Treatment – Note – White Respondents:* OLS estimates; N = 695; F = 6.72, p < .000; Adj. R<sup>2</sup> = 0.06.

**Table 20: OLS Model of the Effect of a Judge’s Race on White Americans’ Perception of Judicial Fairness (Hypothesis 2a) – Race-related Cases**

Variable	Race-related Cases		
	Coeff.	SE	P
White Judge Williams (Baseline Category)	-	-	-
Black Judge Williams	-0.017	0.018	0.334
Control Judge Williams	-0.038*	0.022	0.079
Republican	0.036*	0.019	0.058
Independent	0.025	0.020	0.215
Age	0.123**	0.049	0.013
Female	0.047**	0.016	0.005
Education	-0.020	0.032	0.537
Intercept	0.629**	0.040	0.000

\*p<.10; \*\*p<0.05

*Race-related Cases – Note – White Respondents:* OLS estimates; N = 695; F = 2.86, p < .006; Adj. R<sup>2</sup> = 0.03.

**Table 21: OLS Model of the Effect of a Judge’s Race on Black Americans’ Perception of Judicial Fairness (Hypothesis 2b) – General Impartiality**

Variable	General Impartiality		
	Coeff.	SE	P
White Judge Williams (Baseline Category)	-	-	-
Black Judge Williams	0.114**	0.037	0.002
Control Judge Williams	0.108**	0.046	0.021
Republican	-0.107**	0.054	0.049
Independent	0.030	0.037	0.423
Age	0.268**	0.116	0.018
Female	0.022	0.035	0.518
Education	0.184**	0.081	0.025
Intercept	0.361**	0.066	0.000

\* $p < .10$ ; \*\* $p < 0.05$

*General Impartiality – Note – Black Respondents:* OLS estimates;  $N = 135$ ;  $F = 5.66$ ,  $p < .000$ ;  $Adj. R^2 = 0.20$ .

**Table 22: OLS Model of the Effect of a Judge’s Race on Black Americans’ Perception of Judicial Fairness (Hypothesis 2b) – Black Preferential Treatment**

Variable	Black Preferential Treatment		
	Coeff.	SE	P
White Judge Williams (Baseline Category)	-	-	-
Black Judge Williams	-0.055	0.043	0.203
Control Judge Williams	0.028	0.042	0.498
Republican	-0.028	0.047	0.555
Independent	0.036	0.052	0.488
Age	0.397**	0.138	0.005
Female	0.075*	0.043	0.083
Education	-0.001	0.090	0.995
Intercept	0.520**	0.077	0.000

\* $p < .10$ ; \*\* $p < 0.05$

*Black Preferential Treatment – Note – Black Respondents: OLS estimates; N = 135; F = 2.62,  $p < .001$ ; Adj.  $R^2 = 0.12$ .*

**Table 23: OLS Model of the Effect of a Judge’s Race on Black Americans’ Perception of Judicial Fairness (Hypothesis 2b) – Race-related Cases**

Variable	Race-related Cases		
	Coeff.	SE	P
White Judge Williams (Baseline Category)	-	-	-
Black Judge Williams	0.100**	0.041	0.017
Control Judge Williams	-0.089	0.063	0.160
Republican	0.064	0.048	0.186
Independent	0.036	0.047	0.447
Age	0.079	0.125	0.529
Female	0.020	0.040	0.611
Education	0.056	0.085	0.514
Intercept	0.536**	0.081	0.000

\* $p < .10$ ; \*\* $p < 0.05$

*Race-related Cases – Note – Black Respondents:* OLS estimates;  $N = 135$ ;  $F = 1.44$ ,  $p < .195$ ;  $Adj. R^2 = 0.07$ .

## ***Discussion***

In sum, my analysis indicates that race indeed effects how black judges (and their white colleagues) are perceived by the American public. The results also indicate that context matters. While respondents did not perceive black Judge Williams as more likely than white Judge Williams to decide cases in general, and cases involving race, unfairly, they did perceive black Judge Williams as more likely than white Judge Williams to provide preferential treatment to black litigants (Tables 15-17). Additionally, black Judge Williams was perceived as more likely than white Judge Williams to give preferential treatment to black litigants, by white respondents, although white respondents did not perceive black Judge Williams as more likely than white judges to decide cases generally and cases involving race unfairly. Instead, Black Judge Williams was perceived as less likely than white Judge Williams to decide cases generally and cases involving race unfairly, by black Americans. Black Americans, however, did not view black Judge Williams as less likely than white Judge Williams to give preferential treatment to black litigants. Finally, consistent with findings from prior scholarship, party identification, age, and gender were shown to be important to understanding the American public's impressions of judges' decision-making. That is, female respondents, older respondents, and respondents who identified as Republicans or Independents perceived the white Judge Williams as more likely to render fair decisions than the study's male respondents, younger respondents, and respondents who were Democrats.

That black Judge Williams was seen as being more likely than white judge Williams to provide preferential treatment to black litigants by white Americans (Tables 18-20) is consistent with the norm of racial-stereotyping black politicians. Scholars note that Americans frequently ascribe race-based behaviors to black politicians (e.g., Williams 1990). The extant literature on black political candidates and black politicians, for example, show black politicians are frequently viewed as compassionate toward, and helpful to, the black community and black Americans (e.g., Williams 1990; Sears, Citrin, and Kosterman 1987; Schneider and Bos 2011). Along the same lines, black Judge Williams was seen as being more partial than white Judge Williams to black individuals by white respondents. Additionally, this finding is consistent with research by Scherer and Curry (2010), who greater descriptive representation for African Americans in the judiciary increased legitimacy for the institution among African Americans.

The analysis did reveal that black respondents perceived black Judge Williams as being more fair than white Judge Williams in cases in general, and in cases involving race (Table 21-23). In other words, black respondents perceived white Judge Williams as more likely to render an unfair decision than black Judge Williams in court cases generally and in race-related cases. These findings are consistent with prior research in Race, Ethnicity and Politics that reveals black Americans evaluate and perceive black politicians and candidates for public office much more positively than they evaluate and perceive white political candidates and public officials (Williams 1990; Bobo and Gilliam 1990; Howell and Perry 2004;

Tate 2003; Banducci, Donovan, and Karp 2004; Howell 2004; Harris, Sinclair-Chapman, and McKenzie 2006; Hehman, Gaertner, and Dovidio 2011).

At the outset of this chapter, I provided several examples of prominent black judges who were asked to recuse themselves from presiding over cases that involved black litigants and concerned racial discrimination. The recusal requests, and the responses given by Judge Higginbotham and Judge Keith's to their own recusal requests featured in the epigraphs to this chapter, suggest that black judges are perceived differently than white judges. However, not much was known about how the general American public perceives black judges. I addressed this question using an experiment embedded in a nationally-representative sample.

Extrapolating from my experiment, I conceive that black judges and white judges are perceived differently by the American public. Because black Judge Williams was perceived by white respondents as more likely than white Judge Williams to give preferential treatment to black litigants, I suspect that black judges are perceived by white Americans as more likely than white judges to give preferential treatment to black litigants. Additionally, since black Judge Williams was perceived by black respondents as more likely than white Judge Williams to decide cases in general, and cases involving race, fairly, I imagine that black Americans perceive black judges as more likely than white judges to decide cases fairly, even cases dealing with race. Ultimately, this study implies that race influences the impressions the American public has about black judges.

Given these results, the importance of this study cannot be overstated. First, that black judges are perceived as more likely than white judges to provide

preferential treatment to black litigants by white respondents is an important point to understand. Because the main issue with preferential treatment is that the treatment is often at the expense of another group of people, white Americans may come to believe that they will be treated unfairly by black judges, especially if they are in a dispute with a black litigant.

Second, because black judges are perceived as more likely than white judges to decide fairly in cases in general, and in cases involving race, by black Americans, blacks Americans' trust in the legal system might increase with the increased descriptive representation of African Americans in the judiciary. For African Americans, the presence of black judges appears to signal the opportunity for fairness from the bench.

Third, given that judges' racial group membership can influence the impressions and perceptions the public has about them and their decision-making behavior, Americans in general may come to think that getting justice in the court system is dependent on who it is sitting on the bench. In other words, in the minds of the American public, getting justice may be less about laws and case facts, and more about the judge.

Finally, beyond black judges though, what does it mean that a group of judges is seen as incapable of being fair when a member of their identity group comes before them? This particular point is a contemporary issue given the recent legal cases where individuals have questioned whether or not Jewish judges, for example,

should be recused from certain cases that deal with anti-Semitism.<sup>28</sup> Another noteworthy case is U.S. District Judge Vaughn Walker who declared California's Proposition 8, which effectively restricted gay and lesbian marriages in California after the California State Supreme Court ruled same-sex marriages were legal, unconstitutional. Proposition 8 supporters wanted Judge Walker's decision thrown out on the grounds that Judge Vaughn identifies as gay and therefore should have recused himself from presiding over the case. One can easily imagine as the court continues to diversify along numerous lines (e.g., gender, race, ethnicity, religion, and sexuality), that this question and this issue will continue to be before the court and before the public. Will Latino judges be asked to recuse themselves from cases dealing with immigration? Will additional judges who identify as gay receive motions to disqualify themselves from cases concerning same-sex marriage like Judge Vaughn?

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<sup>28</sup> <http://www.tabletmag.com/jewish-news-and-politics/186718/jewish-judges-recusal>

## **Chapter 6. Conclusion: Race and Representation on the American Bench**

The number of African Americans in the judiciary has increased considerably in the last fifty years, and the courts are arguably more racially diverse today than at any other point in history (see Table 1). Many proponents of this increased descriptive representation of African Americans in the courts have desired and anticipated that having black judges on the bench will lead to symbolic representation (i.e., improve the appearance of judicial impartiality) and substantive representation (i.e., render decisions that take into account the interests and concerns of African Americans).

This dissertation has been primarily concerned and guided by the question: do black judges represent black interests and black Americans from the bench? In order to address this central question, the project focused on a subset of inter-related secondary questions. What are the life experiences of Black judges? Do Black judges exhibit a racial group identity and a racial group consciousness? Are Black judges perceived as being incapable of deciding court cases in a fair manner and based upon the rule of law? These questions have largely been understudied in research on courts and the judiciary.

While trying to answer whether or not black judges substantively represent black interests, it was clear that the prevailing theories of representation did not fully capture what black judges do, and can do, on the bench. I advanced a theory of *Advocative Representation* that explains and helps us understand why and how black judges can substantively represent black interests in the courthouse.

*Advocative Representation* broadens the current conceptualization and understanding of “representation” by calling attention to and including institutions and actors commonly thought to operate outside of, or at most, at the margins of politics. The theory yielded the proposition, and data in this dissertation supported the theory, that black judges, regardless of whether they are elected or appointed, provide descriptive, symbolic, and substantive representation to black Americans. Similar to what previous studies have found for other black officials, I found black judges’ lived experiences have contributed to them possessing a sense of racial group identity and racial group consciousness, and that black judges’ identifications influence their attitudes and behaviors as judges in ways that greatly benefit black interests.

### ***Major Findings***

#### **Black Judges and the U.S. Military, HBCUs, Black Legal Representation and Civil Rights Activity**

My analysis revealed that there are similarities in the backgrounds and experiences of black judges. I found that many black judges have worked for black advocacy groups and civil and human rights law firms such as the NAACP Legal Defense and Educational Fund to improve black Americans’ civil rights and “achieve racial justice, equality, and an inclusive society”.<sup>1</sup> Additionally, many back judges

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<sup>1</sup> According to the NAACP LDF’s website, from the organization’s founding to the present, the organization’s mission has been to “achieve racial justice, equality, and an inclusive society” (naacpldf.org).

provided legal representation for low-income black individuals, and attended one of the nation's prestigious Historically Black Colleges and Universities (HBCUs) for their undergraduate or law school educations. Given these background characteristics, and other characteristics identified in Chapter 2, it is clear that there are important social, educational and professional characteristics, and thus experiences, in the backgrounds of black judges. I argued that these experiences, in particular, would lead black judges to have experienced or witnessed racial discrimination, understand the pervasive and persistent unequal treatment of black Americans in the U.S.' racialized social system, and have a strong black identity and consciousness.

### **Black Judges, Racial Group Identity and Racial Group Consciousness**

Chapter 3 explored the extent to which Black judges have developed a racial group identity and consciousness. In their interviews, black judges revealed that the factors that have helped many African Americans develop and preserve a racial group identity and consciousness are present in their own lives. This chapter, which gave voice to the experiences and identities of Black judges, demonstrated that black judges self-identify as belonging to the 'black' racial group, feel connected to other African Americans and to the black community, perceive racial discrimination as one of the primary issues affecting the black community, and report being mobilized to work to create a more just, responsive, respectful, and receptive system of justice. I ultimately found that black judges' backgrounds and experiences,

especially those dealing with racial discrimination, often inform their identities and their decisions, and that many black judges possess a strong sense of racial group identity and consciousness.

### **Black Judges and Advocative Representation**

The primary purpose of this dissertation was to understand whether or not black judges can be viewed as representing black interests in the judiciary. Put simply, the answer is yes. In this chapter, using interviews with black judges, I shared the extent to which black judges perceive themselves to represent the Black community. Additionally, this chapter presented the myriad ways that black judges behave on the bench and the rationale black judges employ to defend that behavior. Because of their backgrounds, they understand and respect diversity and the complexity inherent in the lives of Americans, but especially Americans belonging to marginalized communities. They also serve as a check to police power in the judicial system by questioning the tactics of law enforcement officers and holding them accountable for their actions when they appear before them in court. They make a conscious choice to challenge the individuals involved in the judicial process, such as witnesses, prosecutors and law enforcement officers, who label and describe black Americans in a manner that can be harmful to how they are viewed and can have negative ramifications for how they are treated. They make everyone around them better, and the system better, by sharing their experiences and perspectives as members of a historically disadvantaged and marginalized group, and teaching

others what it means to be black in America. Additionally, they reported being able to relate to and understand African Americans who came into their courtrooms. Because they could understand the circumstances in black communities and the experiences of black Americans, they were also able to reach more informed conclusions and make more attentive decisions. When they are capable of exercising discretion in their decision-making, they tended to be merciful with black defendants. Additionally, their approach to dealing with black litigants is one that is markedly conscious of, and responsive to, their perceived needs, and reflective of the sheer level of respect and regard they have for the individuals who find themselves in the courthouse. Finally, by hiring black court staff and law clerks, they enhance and advance the personal and professional lives of black individuals and they provide better service to the individuals they know frequent the courtroom and courthouse. In short, many black judges, represent African Americans' interests, they respond to their concerns, and when they make decisions, they often take into account what they perceive will help improve the lives of black Americans and the entire black community.

### **Impressions of Black Judges**

Finally, chapter 5 revealed how black judges are perceived in comparison to white judges. The chapter demonstrated that black judges are perceived much more positively than white judges, by black Americans. Black judges are often seen as being more fair in their decision-making than white judges, by African Americans.

White Americans', however, perceive black judges as much more likely than white judges to behave in an unfair manner by providing preferential treatment to black Americans. This chapter thus revealed that black judges, and their decision-making, are perceived differently than white judges by individuals in the mass public.

### ***Implications***

As mentioned in Chapter 1, political representation is one of the key attributes of democracy, and the three central types of representation studied in American politics are descriptive, symbolic and substantive representation. Table 1 in this dissertation demonstrates that while still underrepresented in terms of the proportion of the U.S. population they constitute, African Americans make up a significant percentage of state and federal judges. And while this descriptive representation of African Americans in the judiciary is important, whether or not, and how, this group is symbolically and substantively represented is important to understand for our representative democracy, especially since this group has historically been oppressed and discriminated against in the American polity, and democratic theory states that substantive interests should be represented in political institutions. Because when black judges are on the bench, the courts become more inclusive institutions, and more responsive and receptive to the interests of African Americans, African Americans' interests are being substantively represented. Additionally, because black judges are perceived as being fair in their decision-making and are seen very positively by African Americans, black judges

also provide a type of symbolic representation. Therefore, black judges provide advocative representation because of the descriptive, symbolic, and substantive representation that occurs when they take the bench.

Scholars who study legislatures and bureaucratic organizations have consistently demonstrated that diversity in political institutions matters for the decisions made and the policies that emanate out of those institutions. Racial diversity, especially, often results in the representation of racial group interests in policy-making institutions. Based on the evidence provided in this study, diversity in the judiciary also means group interests can be, and frequently are, represented in courts and the judicial process. Many black judges behave in ways that are largely correspond to the interests of African Americans and in response to issues that concern African Americans. For example, African Americans are often concerned with procedural justice, racial profiling, and the abuse of police power. Because many black judges scrutinize police officers' testimonies and hold police officers accountable when they violate police protocols and the rights and liberties of African Americans, black judges can be said to represent black interests. Ultimately, the behavior of many black judges indicate African Americans' interests are (further) advanced and represented in the judiciary with the presence of black judges. This advocative representation that black judges provide is significant given that African Americans' liberty and justice through the American legal system continues to be subject to those who exercise judicial power. Given the role black judges play in the judiciary and the representation they provide for African Americans, increasing the diversity on the bench is one key to increasing the

representation of African American interests in this institution.

Similar to how black legislators change legislatures across our country, it is clear that black judges change the judicial system. That is, racial diversity in the justice system matters. Who wears the judicial robe matters to the decisions made. It is evident that, at least when it comes to adding African American judges to the judiciary, that many of them are behaving in ways that create a more just, considerate, and responsive justice system. Through self-assessments and self-reflections, the black judges in this study illustrated some of the value of diversity on the bench.

Another implication of this work is that race in the judicial system matters, because race influences how judges are perceived by the American public. The data presented in this study make it clear that white Americans question the decision-making of black judges, at least when it comes to them being fair in cases with black litigants. My analyses also reveal black judges are perceived favorably by black Americans. That is, black judges are seen as being more likely than their white counterparts to decide a various types of cases fairly. These findings imply that while black judges are in a position to rescue at least some of the legitimacy of the courts among black Americans, their presence on the bench may negatively affect the legitimacy of the courts among white Americans. As black judges are increasingly elected and appointed to both the state and federal judiciaries, they may be able to bring hope to black Americans about the prospects of a fairer justice system (Clawson and Waltenburg 2008; Scherer and Curry 2010; Gibson and Caldeira 1992). But black judges increased presence may also mean less support,

and lower levels of legitimacy, for the courts, at least among white Americans. This could raise new challenges for American democracy in the future (Scherer and Curry 2010).

While this study has yielded some findings that advance our knowledge and thinking in some important ways, its findings also uncovered questions that deserve attention in future research. First, this study examined the American public's impressions of black judges' ability to be fair in their decision-making, but it was beyond the scope of this study to examine the perceptions the American public has about the qualifications and character traits of black judges. This is important to know because scholars find that perceptions of political officials' character traits affect the level of support for and electability of candidates for political office.

Second, while this project relies heavily on black judges' self-reported behavior to determine if they provide *Advocative Representation*, it does not make significant use of other methodological approaches to examine black judges' behavior. Future research might take other more objective methodological approaches to understand how black judges act as representatives on the bench. For example, future studies might consider legal opinions written by black judges as a potential locus of judicial behavior. Why a judge decides a case is potentially as important as what s/he decides. Black judges' opinions contain the rationale and legal principles they employ in their rulings. Scholars can examine content analyze how black judges decide cases and defend their decisions to better understand the extent to which having Black judges in the judiciary can, and does, mean something substantively for the black community and the judiciary as a whole.

Finally, this project focused its attention on the identities, behaviors, and perceptions of black judges. Given the level of diversity present in both the state and federal judiciaries, it is important to understand the identities, behaviors, and perceptions of the other judges that occupy the nation's benches. Future research should examine the identities, perceptions, and behaviors of white judges and other racial minority judges to understand whether they, too, identify with their racial group and represent some racial group interests. Moreover, expanding the analysis beyond race, scholars might also examine the identities and behaviors of female judges and judges who identify as sexual minorities.

This dissertation represents an interdisciplinary endeavor given that it drew from scholarship in political science and African American studies. The research presented here offers new insights into the experiences, backgrounds, behaviors, and perceptions of black judges that were previously overlooked, understudied, and illegible. This project offers a more comprehensive understanding of the importance of racial diversity in the courts. Additionally, this project addresses the questions scholars and advocates alike have been asking regarding whether or not race matters in the judiciary and whether we can use the term "representation" when referring to judges and the courts. It does and we can.

# Appendix A: Example of a Judge's Biography from the Federal Justice Center



## History of the Federal Judiciary

Judges of the United States Courts
- Biographical Directory of Federal Judges
- Bankruptcy Judgeships
- Magistrate Judgeships
- Impeachments of Judges
- Unsuccessful Nominations and Recess Appointments
- Judicial Salaries
- Milestones of Judicial Service
- Diversity on the Bench
- A Guide to Preservation of Judges' Papers (PDF)
Courts, Caseloads, and Jurisdiction
Teaching and Civic Outreach Resources
Historic Federal Courthouses
The Judicial Branch: Administration, Staff, and Legislation
Federal Court Historical Programs

### Biographical Directory of Federal Judges

#### Marshall, Thurgood

Born July 2, 1908, in Baltimore, MD  
Died January 24, 1993, in Washington, DC

#### Federal Judicial Service:

Judge, U.S. Court of Appeals for the Second Circuit  
Received a recess appointment from John F. Kennedy on October 5, 1961, to a new seat authorized by 75 Stat. 80; nominated to the same position by John F. Kennedy on January 15, 1962. Confirmed by the Senate on September 11, 1962, and received commission on September 14, 1962. Service terminated on August 23, 1965, due to resignation.

#### Associate Justice, Supreme Court of the United States

Nominated by Lyndon B. Johnson on June 13, 1967, to a seat vacated by Tom C. Clark. Confirmed by the Senate on August 30, 1967, and received commission on August 30, 1967. Assumed senior status on October 1, 1991. Service terminated on January 24, 1993, due to death.

#### Allotment as Circuit Justice:

Seventh Circuit, October 9, 1967-January 6, 1972  
Second Circuit, September 24, 1971-September 30, 1991

#### Education:

Lincoln University, Pennsylvania, A.B., 1930  
Howard University School of Law, LL.B., 1933

#### Professional Career:

Private practice, Baltimore, Maryland, 1933-1937  
NAACP, Baltimore (Maryland) Regional Office, 1934-1940; counsel, 1934-1936; special assistant counsel, 1936-1938; special counsel, 1938-1940  
Director/counsel, NAACP Legal Defense and Educational Fund, 1940-1961  
Solicitor general of the United States, 1965-1967

Nominated to U.S. Court of Appeals for the Second Circuit, September 23, 1961; no Senate vote

#### [Research Collections](#)

#### [Oral History](#)

## **Appendix B: Interview Questionnaire**

### Background information

- 1 Please tell me a little bit about yourself
- 2 In regards to racial and ethnic classification: how would you classify yourself?
- 3 How do you think your race and gender affects and has affected you: experiences in life, perspective about life and issues in society, and behavior on the court (generally)?
- 4 Do you have a connection to the black community? If yes, please explain.
- 5 Do you think there are certain issues that disproportionately affect communities of color? If yes, what are they?
- 6 What elements in your training, background and experience have prepared you to deal with those issues?

### Judicial Performance

- 1 Is your judicial performance evaluated? If so, how?
- 2 Do you think your race and gender affects how you have been evaluated?

### General Questions (Judicial)

- 1 Describe the ideal judge
- 2 What characteristics and qualities do you believe are important for a judge to possess?
- 3 What do you see are the primary responsibilities of a judge?

### Judicial Selection

- 1 Do you believe the composition of the bench adequately and fairly reflect society at large? Why or why not? If not, should we change this? If yes, what can we do to change this?
- 2 How important do you feel it is for the courts to be diverse in terms of racial and gender composition?
- 3 Do you think your race and gender played a role in your (election or appointment) If so, how? If not, why do you think this?

### Race and Perceptions of Judges/Courts

- 1 How do you feel black judges (and you) are perceived by White litigants, Black litigants, White lawyers, and Black lawyers? On what do you rely for this perception?
- 2 Do you feel that the presence of black judges affects the perceptions the public (blacks / whites) has about the courts and the criminal justice system?

### Race and Representation

- 1 What are your views on whether the court, as a whole, deals effectively with racial bias?
- 2 Can the presence of black judges do anything for the justice system? What about for the black community?

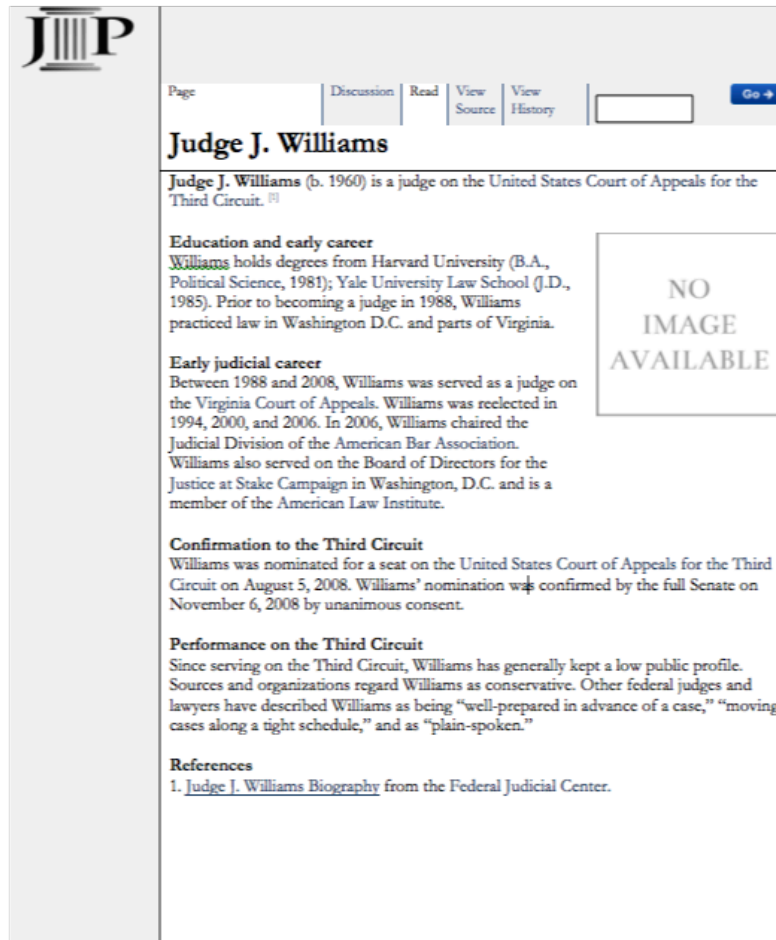
### Judicial Roles and Behavior

- 1 Are you responsible for hiring law clerks and court staff? If yes, do you place any particular emphasis on black candidates? What percentage of your law clerks/court staff have been black?
- 2 How much of an issue is preemptory jury strikes based on race in your court? In what ways do you handle those types of scenarios?

### Judicial Decision-Making

- 1 What do you see as the role of judges in the overall justice system?
- 2 What factors do you think affect your judicial decision-making?
- 3 Do you feel that the race and gender of a judge matters for the types of decisions that are made?
- 4 If not addressed, do you feel your race and gender affect your behavior on the bench?
- 5 To what extent should a judge (you) consider political, economic, and social consequences of decisions?

## Appendix C: Experimental Stimuli



**JJP**

Page | Discussion | Read | View Source | View History |  [Go](#)

### Judge J. Williams

**Judge J. Williams** (b. 1960) is a judge on the United States Court of Appeals for the Third Circuit. <sup>[1]</sup>

#### Education and early career

Williams holds degrees from Harvard University (B.A., Political Science, 1981); Yale University Law School (J.D., 1985). Prior to becoming a judge in 1988, Williams practiced law in Washington D.C. and parts of Virginia.

#### Early judicial career

Between 1988 and 2008, Williams was served as a judge on the Virginia Court of Appeals. Williams was reelected in 1994, 2000, and 2006. In 2006, Williams chaired the Judicial Division of the American Bar Association. Williams also served on the Board of Directors for the Justice at Stake Campaign in Washington, D.C. and is a member of the American Law Institute.

#### Confirmation to the Third Circuit

Williams was nominated for a seat on the United States Court of Appeals for the Third Circuit on August 5, 2008. Williams' nomination was confirmed by the full Senate on November 6, 2008 by unanimous consent.

#### Performance on the Third Circuit

Since serving on the Third Circuit, Williams has generally kept a low public profile. Sources and organizations regard Williams as conservative. Other federal judges and lawyers have described Williams as being "well-prepared in advance of a case," "moving cases along a tight schedule," and as "plain-spoken."

#### References

1. [Judge J. Williams Biography](#) from the Federal Judicial Center.

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# Appendix D: Experimental Conditions

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Williams holds degrees from Harvard University (B.A., Political Science, 1981; Yale University Law School [J.D., cum laude], 1985). Prior to becoming a judge in 1986, Williams practiced law in Washington, D.C., and parts of Virginia.

**Early judicial career**  
Between 1986 and 2006, Williams was served as a judge on the Virginia Circuit of Appeals. Williams was confirmed in 1986, 2004, and 2006. Williams chaired the Judicial Division of the American Bar Association. Williams also served on the Board of Directors for the Justice or State Campaign in Washington, D.C., and is a member of the American Law Institute.

**Confirmation to the Third Circuit**  
Williams was nominated for a seat on the United States Court of Appeals for the Third Circuit on August 1, 2009. Williams' nomination was confirmed by the full Senate on November 4, 2009 by a unanimous vote.

**Performance on the Third Circuit**  
Data missing on the Third Circuit. Williams has generally been a low public profile. Sources and organizations regard Williams as conservative. Other federal judges and lawyers have described Williams as being "well prepared in substance of cases," "moving cases along a right schedule," and as "open-spoken."

**References**  
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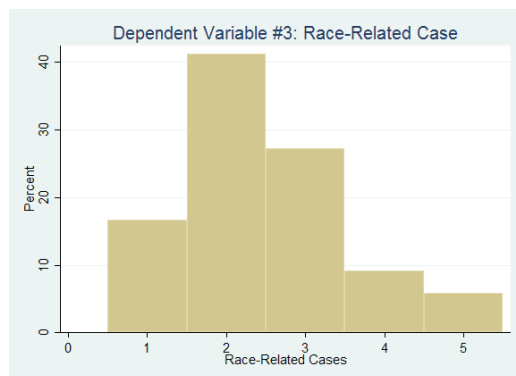
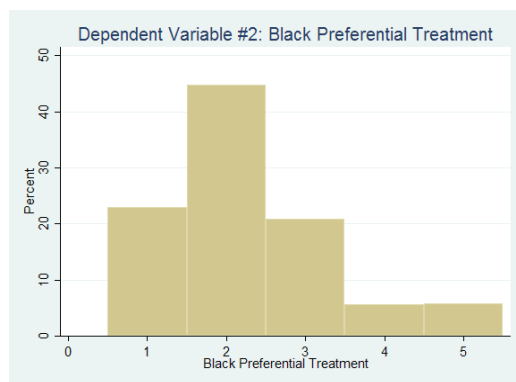
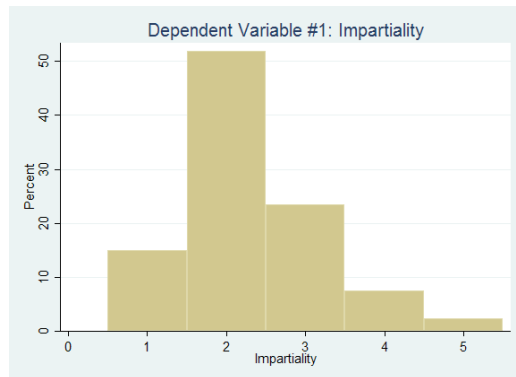
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## Appendix E: Histograms of the Dependent Variables



## Bibliography

- Aberbach, Joel D. and Bert A. Rockman. 2002. "Conducting and Coding Elite Interviews." *Political Science & Politics* 35(4): 673-676.
- Abrams, David, Marianne Bertrand, and Sendhil Mullainathan. 2012. "Do Judges Vary in Their Treatment of Race?" *Journal of Legal Studies* 41(2): 347-383.
- Adida, Claire L., Karen E. Ferree, Daniel N. Posner, and Amanda Robinson. 2014. "Who's Asking? Interviewer Coethnicity Effects in African Survey Data." *Unpublished Manuscript*.
- Albouy, David. 2013. "Partisan Representation in Congress and the Geographic Distribution of Federal Funds." *Review of Economics and Statistics* 95(1): 127-141.
- Alexander, Michelle. 2012. *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*. New York: The New Press.
- Allen, Richard L., Michael C. Dawson, and Ronald E. Brown. 1989. "A Schema-Based Approach to Modeling an African-American Racial Belief System." *American Political Science Review* 83(2): 421-441.
- Ansolabehere, Stephen D. and Bernard L. Fraga. 2013. "Just a Matter of Party? The Impact of Race on House Incumbent Evaluations." *Unpublished Manuscript*.
- Ashenfelter, Orley, Theodore Eisenberg, and Stewart T. Schwab. 1995. "Politics and the Judiciary: The Influence of Judicial Background on Case Outcomes." *Journal of Legal Studies* 24(1): 257-281.
- Asmussen, Nicole. 2011. "Female and Minority Judicial Nominees: President's Delight and Senators' Dismay?" *Legislative Studies Quarterly* 36(4): 591-619.
- Astin, Alexander W. 1975. *Preventing Students from Dropping Out*. San Francisco: Jossey-Bass.
- Austin, Ann E. 2002. "Preparing the Next Generation of Faculty: Graduate School as Socialization to the Academic Career." *The Journal of Higher Education* 73(1): 94-122.
- Baldwin, Joseph A., James A. Duncan, and Yvonne R. Bell. 1987. "Assessment of African Self-Consciousness Among Black Students from Two College Environments." *Journal of Black Psychology* 13(2): 27-41.

- Banducci, Susan A., Todd Donovan, and Jeffrey A. Karp. 2004. "Minority Representation, Empowerment, and Participation." *The Journal of Politics* 66(2): 534-556.
- Barr, Andy. 2009. "Rush: Sotomayor a 'reverse racist.'" *POLITICO*, May 26.
- Bartels, Bandon L. and Christopher D. Johnston. 2013. "On the Ideological Foundations of Supreme Court Legitimacy in the American Public." *American Journal of Political Science* 57(1): 184-199.
- Beim, Hirsch D., Alexander V. Hirsch, and Jonathan P. Kastle. 2014. "Whistleblowing and Compliance in the Judicial Hierarchy." *American Journal of Political Science* 58(4): 904-918.
- Beiner, Theresa M. 1999. "What Will Diversity on the Bench Mean for Justice." *Michigan Journal of Gender and* 6: 113-153.
- , 2002. "The Elusive (But Worthwhile) Quest for a Diverse Bench in the New Millennium." *UC Davis Law Review* 36(1): 597-617.
- , 2007. "Diversity on the Bench and the Quest for Justice for All." *Ohio N.U.L. Rev.* 33: 481-495.
- Bell, Derrick. 1999. "Getting Beyond a Property in Race." *Washington University Journal of Law & Policy* 1(1): 27-36.
- Berinsky, Adam J. 1999. "The Two Faces of Public Opinion." *American Journal of Political Science* 43(4): 1209-1230.
- Berman, Mitchell N. "Justification and Excuse, Law and Morality." *Duke Law Journal* 53(1): 1-77.
- Bobo, Lawrence. 2015. "Theory and Racialized Modernity." *Du Bois Review: Social Science Research on Race* 12(2): 461-467.
- Bobo, Lawrence and Franklin D. Gilliam. "Race, Sociopolitical Participation, and Black Empowerment." *American Political Science Review* 84(2): 377-393.
- Bodenheimer, Edgar. 1947. "The Inherent Conservatism of the Legal Profession." *Indiana Law Journal* 23(1): 221-236.
- Bogner, Alexander, Beate Littig, and Wolfgang Menz, eds. 2009. *Interviewing Experts*. Basingstroke: Palgrave Macmillan.

- Bonilla-Silva, Eduardo. 1997. "Rethinking Racism: Toward a Structural Interpretation." *American Sociological Review* 62(3):465-480.
- , 2001. *White Supremacy and Racism in the Post-Civil Rights Era*. Boulder, CO: Lynne Rienner Publishers.
- , 2003. "'New Racism,' Color-Blind Racism, and the Future of Whiteness in America." In *White Out: The Continuing Significance of Racism*, Ashley W. Doane and Eduardo Bonilla-Silva, editors. New York: Routledge: 271-284.
- , 2009. "Are the Americas 'sick with racism' or is it a problem at the poles? A reply to Christina A. Sue." *Ethnic and Racial Studies* 32(6): 1071-1082.
- Bonneau, Chris W. and Heather M. Rice. 2009. "Impartial Judges? Race, Institutional Context, and US State Supreme Courts." *State Politics & Policy Quarterly* 9(4): 381-403.
- Boyd, Christina L. 2015. "Representation on the Courts? The Effects of Trial Judges' Sex and Race." *Unpublished Manuscript*.
- Branton, Regina P., Erin C. Cassese, and Bradford S. Jones. 2012. "Race, Ethnicity, and US House Incumbent Evaluations." *Legislative Studies Quarterly* 37(4): 465-489.
- Bratton, Kathleen A. and Kerry L. Haynie. 1999. "Agenda Setting and Legislative Success in State Legislatures: The Effects of Gender and Race." *The Journal of Politics*, 61(103): 658-679.
- Bratton, Kathleen A., Kerry L. Haynie, and Beth Reingold. 2007. "Agenda Setting and African American Women in State Legislatures." *Journal of Women, Politics & Policy* 28(3-4): 71-96.
- Brim Jr., Orville G. and Stanton Wheeler. 1966. *Socialization After Childhood; Two Essays*. New York: Wiley.
- Brody, David C. 2008. "Use of Judicial Performance Evaluation to Enhance Judicial Accountability, Judicial Independence, and Public Trust." *Dev. UL. Rev.* 86(1): 115-156.
- Broman, Clifford L., Harold W. Neighbors, and James S. Jackson. 1988. "Racial Group Identification Among Black Adults." *Social Forces* 67(1): 146-158.
- Broockman, David E. 2013. "Black Politicians Are More Intrinsically Motivated to Advance Blacks' Interests: A Field Experiment Manipulating Political Incentives." *American Journal of Political Science* 57(3): 521-536.

- Brown, Nadia E. 2014. *Sisters in the Statehouse: Black Women and Legislative Decision Making*. Oxford: Oxford University Press.
- Brown, Nadia E. and Kira Hudson Banks. 2014. "Black Women's Agenda Setting in the Maryland State Legislature." *Journal of African American Studies* 18(2): 164-180.
- Brown, Nadia E. and Valeria Sinclair-Chapman. 2014. "Racial Identity, Symbolic Legislation and the Benefit of Black Representatives in the Statehouse." *National Conference of Black Political Scientists Annual Meeting*.
- Brown, Robert A. and James Frank. 2006. "Race and Officer Decision Making: Examining Differences in Arrest Outcomes Between Black and White Officers." *Justice Quarterly* 23: 96-126.
- Brown, William O. "The Nature of Race Consciousness." *Social Forces* 10(1): 90-97.
- Bucher, Rue and Joan G. Stelling. 1977. *Becoming Professional*. Oxford, England: Sage.
- Caliendo, Stephen M. and Charlton D. McIlwain. 2006. "Minority Candidates, Media Framing, and Racial Cues in the 2004 Election." *The Harvard International Journal of Press/Politics* 11(4): 45-69.
- Callaghan, Karen and Nayda Terkildsen. 2002. "Understanding the Role of Race in Candidate Evaluation." *Political Decision Making, Deliberation, and Participation* 6L 51-95.
- Campbell, Rosie and Philip Cowley. 2014. "What Voters Want: Reactions to Candidate Characteristics in a Survey Experiment." *Political Studies* 62(4): 745-765.
- Cann, Damon M. and Jeff Yates. 2015. *These Estimable Courts: Understanding Public Perceptions of State Judicial Institutions and Legal Policy-Making*. Oxford: Oxford University Press.
- Canon, David T. 1999. *Race, Redistricting, and Representation: The Unintended Consequences of Black Majority Districts*. Chicago: University of Chicago Press.
- Caprara, Gian V., Claudio Barbaranelli, and Philip G. Zimbardo. 2002. "When Parsimony Subdues Distinctiveness: Simplified Public Perceptions of Politicians' Personality." *Political Psychology* 23(1): 77-95.
- Carp, Robert A., Ronald Stidham, and Kenneth L. Manning. 2017. *Judicial Process in America*. 10<sup>th</sup> Edition. Thousand Oaks, CA: CQ Press.

- Carp, Robert and Russell Wheeler. 1972. "Sink or Swim: The Socialization of a Federal District Judge." *Journal of Public Law* 21(1): 359-394.
- Carter, Niambi M. and Pearl F. Dowe. 2015. "The Racial Exceptionalism of Barack Obama." *Journal of African American Studies* 19(2): 105-119.
- Casellas, Jason P. 2010. *Latino Representation in State Houses and Congress*. Cambridge, MA: Cambridge University Press.
- Casper, Jonathan D. 1976. "The Supreme Court and National Policy Making." *The American Political Science Review* 70(1): 50-63.
- Chew, Pat K. and Robert E. Kelley. 2008. "Myth of the Color-blind Judge: An Empirical Analysis of Racial Harassment Cases." *Washington UL Rev.* 86(5): 1117-1166.
- Chong, Dennis and Reuel Rogers. 2005. "Racial Solidarity and Political Participation." *Political Behavior* 27(4): 347-374.
- Citrin, Jack, Donald P. Green, and David O. Sears. 1990. "White Reactions to Black Candidates: When Does Race Matter?" *Public Opinion Quarterly* 54(1): 74-96.
- Clawson, Rosalee A. and Eric Waltenburg. 2009. *Legacy and Legitimacy: Black Americans and the Supreme Court*. Philadelphia: Temple University Press
- CNN Writer Staff. 2012. "N.C. Man No Longer Face Death After Judge Invokes 'Racial Justice Act.'" *CNN*.
- Cohen, Joshua. 1997. "Deliberation and Democratic Legitimacy" in Matravers and Pike eds., *Debates in Contemporary Political Philosophy: An Anthology*, 342-360.
- Cole, David. 1999. *No Equal Justice: Race and Class in the American Criminal Justice System*. New York: The New Press.
- Collins, Todd and Laura Moyer. 2007. "Gender, Race, and Intersectionality on the Federal Appellate Bench." *Political Research Quarterly* 61(2): 219-227.
- Conover, Pamela J. 1988. "The Role of Social Groups in Political Thinking." *British Journal of Political Science* 18(1): 51-76.
- Conover, Pamela J. and Stanley Feldman. 1989. "Candidate Perception in an Ambiguous World: Campaign, Cues, and Inference Processes." *American Journal of Political Science* 33(4): 912-940.

- Constantine, Madonna G. and Sherry K. Watt. 2002. "Cultural Congruity, Womanist Identity Attitudes, and Life Satisfaction Among African American College Women Attending Historically Black and Predominantly White Institutions." *Journal of College Student Development* 43(2): 184-194.
- Coombs, Robert H. 1978. "Mastering Medicine: Professional Socialization in Medical School." New York: Free Press.
- Cose, Ellis. 1993. *The Race of a Privileged Class*. New York: Harper Collins Press.
- Crenshaw, Kimberle. 1991. "Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color." *Stanford Law Review* 43(6): 1241-1299.
- Crowe, Nancy. 1999. "The Effects of Judges' Sex and Race on Judicial Decision Making on the U.S. Courts of Appeals, 1981-1996." *Ph.D. Dissertation*, University of Chicago.
- Dalesio, Emery P. 2012. "Judge: Race Played Role in NC Death Penalty Case." *CNSNEWS*.
- Darity Jr., William A. and Patrick L. Mason. 2004. "Evidence on Discrimination in Employment: Codes of Color, Codes of Gender." In *African American Urban Experience: Perspectives from the Colonial Period to the Present*, Joe W. Trotter, Earl Lewis, and Tera W. Hunter, Editors. New York: Palgrave Macmillan, 156-186.
- Davis, Abraham L. 1985. "The Role of Black Colleges and Black Law Schools in the Training of Black Lawyers and Judges." *The Journal of Negro History* 70 (1/2): 24-34.
- Dawson, Michael C. 1994. *Behind the Mule: Race and Class in African-American Politics*. Princeton: Princeton University Press.
- Delgado, Richard and Jean Stefancic. 2012. *Critical Race Theory: An Introduction*. New York: New York University Press.
- Demuth, Stephen and Darrell Steffensmeier. 2004. "Ethnicity Effects on Sentence Outcomes in Large Urban Courts: Comparisons Among White, Black, and Hispanic Defendants." *Social Science Quarterly* 84(5): 994-1011.
- Denscombe, Martyn. 2003 *The Good Research Guide: For Small Scale Social Projects*. Philadelphia: Open University.

- DeSante, Christopher D. 2013. "Working Twice as Hard to Get Half as Far: Race, Work Ethic, and America's Deserving Poor." *American Journal of Political Science* 57(2): 342-356.
- Dexter, Lewis A. 2012. *Elite and Specializing Interviewing*. Cochester, UK: European Consortium for Political Research (RCPR) Press.
- De Vaus, David. 2013. *Surveys in Social Research*. New York: Routledge.
- Doerner, Jill K. and Stephen Demuth. 2010. "The Independent and Joint Effects of Race/Ethnicity, Gender, and Age on Sentencing Outcomes in US Federal Courts." *Justice Quarterly* 27(1): 1-27.
- Donovan, Todd, Daniel Smith, and Christopher Mooney. 2012. *State and Local Politics: Institutions and Reforms*. 3rd ed. Belmont, CA: Cengage Learning.
- Dovi, Suzanne. 2002. "Preferable Descriptive Representatives: Will Just Any Women, Black, or Latino Do?" *American Political Science Review* 96(4): 729-744.
- Druckman, James N., Donald P. Green, James H. Kuklinski, and Arthur Lupia. 2006. "The Growth and Development of Experimental Research in Political Science." *American Political Science Review* 100(4): 627-635.
- Druckman, James N., Donald P. Greene, James H. Kuklinski, and Arthur Lupia. 2011. *Cambridge Handbook of Experimental Political Science*. Cambridge: Cambridge University Press.
- Edge, Thomas. 2010. "Southern Strategy 2.0 Conservatives, White Voters, and the Election of Barack Obama." *Journal of Black Studies* 40(3): 426-444.
- Edwards, Gilbert F. 1959. *The Negro Professional Class*. Glencoe, Ill.: Free Press.
- Edwards, Harry T. 1971. "A New Role for the Black Law Graduate: A Reality or an Illusion?" *Michigan Law Review* 69(8): 1407-1442.
- Engstrom, Richard L. 1989. "When Blacks Run for Judge: Racial Divisions in the Candidate Preferences of Louisiana Voters." *Judicature* 73 (2): 87-90.
- , 1994. "The Voting Rights Act: Disenfranchisement, Dilution, and Alternative Election Systems." *PS: Political Science & Politics* 27(4): 685-688.
- Engstrom, Richard L. and Victoria M. Caridas. 1991. "Voting for Judges: Race and Roll-off in Judicial Elections." In William Crotty ed., *Political Participation and American Democracy*: 171-192. New York: Greenwood Press.

- Erlanger, Howard S. and Douglas A. Klegon. 1978. "Socialization Effects of Professional School: The Law School Experience and Student Orientations to Public Interest Concerns." *Law and Society Review* 13(1): 11-35.
- Ewing, K.D. 2000. "Theory of Democratic Adjudication: Towards a Representative, Accountable and Independent Judiciary." *Alberta Law Review* 38(1): 708-733.
- Farhang, Sean and Gregory Wawro. 2004. "Institutional Dynamics on the US Court of Appeals: Minority Representation Under Panel Decision Making." *Journal Law, Economics, and Organization* 20(2): 299-330.
- Farrell, Amy, Geoff Ward, and Danielle Rousseau. 2009. "Race Effects of Representation Among Federal Court Workers: Does Black Workforce Representation Reduce Sentencing Disparities?" *The Annals of the American Academy of Political and Social Science* 623(1): 121-133.
- Feagin, Joe R. 1991. "The Continuing Significance of Race: Antiblack Discrimination in Public Places." *American Sociological Review* 56(1): 101-116.
- , 2014. *Racist America: Roots, Current Realities, and Future Reparations*. New York: Routledge.
- Feldman, Stanley and Pamela J. Conover. 1983. "Candidates, Issues and Voters: The Role of Interference in Political Perception." *The Journal of Politics* 45(4): 810-839.
- Ferguson, Elizabeth A. 1938. "Race Consciousness Among American Negroes." *Journal of Negro Education* 7(1): 32-40.
- Ferrell, Robert H. 2011. *Unjustly Dishonored: An African American Division in World War I (Vol 1.)*. Columbia, MO: University of Missouri Press.
- Fischman, Joshua B. 2014. "Measuring Inconsistency, Indeterminacy, and Error in Adjudication." *American Law and Economics Review* 16(1): 40-85.
- Fisk, Susan T. and Steven L. Neuberg. 1990. "A Continuum of Impression Formation, From Category-Based to Individuating Processes." *Advances in Experimental Social Psychology* 23©: 1-74.
- Fleming, Jacqueline. 2001. "The Impact of a Historically Black College on African American Students: The Case of LeMoyne-Owen College." *Urban Education* 36(5): 597-610.

- Gay, Claudine. 2001. "The Effect of Black Congressional Representation on Political Participation." *American Political Science Association* 95(3): 589-602.
- , 2002. "Spirals of Trust? The Effect of Descriptive Representation on the Relationship Between Citizens and their Government." *American Journal of Political Science* 46(4): 717-732.
- , 2004. "Putting Race in Context: Identifying the Environmental Determinants of Black Racial Attitudes." *American Political Science Review* 98(4): 547-562.
- Gay, Claudine and Katherine Tate. 1998. "Doubly Bound: The Impact of Gender and Race on the Politics of Black Women." *Political Psychology* 19(1): 169-184.
- Gershon, Sarah. 2012. "When Race, Gender, and the Media Intersect: Campaign News Coverage of Minority Congresswomen." *Journal of Women, Politics & Policy* 33(2): 105-125.
- , 2013. "Media Coverage of Minority Congresswomen and Voter Evaluations: Evidence from an Online Experimental Study." *Political Research Quarterly* 66(3): 702-714.
- Gibson, James L. 1989. "Understandings of Justice: Institutional Legitimacy, Procedural Justice, and Political Tolerance." *Law and Society Review* 23(3): 469-496.
- , 2008. "Challenges to the Impartiality of State Supreme Courts: Legitimacy Theory and 'New-style' Judicial Campaigns." *American Political Science Review* 102(1): 59-75.
- , 2012. *Electing Judges: The Surprising Effects of Campaigning on Judicial Legitimacy*. Chicago: University of Chicago Press.
- Gibson, James L. and Gregory A. Caldeira. 1992. "Blacks and the United States Supreme Court: Models of Diffuse Support." *The Journal of Politics* 54(4): 1120-1145.
- , 2012. "Campaign Support, Conflicts of Interest, and Judicial Impartiality: Can Recusals Rescue the Legitimacy of Courts?" *The Journal of Politics* 74(1): 18-34.
- Gilbert, Stefanie C., Dominicus So, Tina M. Russell, and Thomas R. Wessel. 2006. "Racial Identity and Psychological Symptoms Among African Americans Attending a Historically Black University." *Journal of College Counseling* 9(2): 111-122.

- Gill, Rebecca D. 2014. "Implicit Bias in Judicial Performance Evaluations: We Must Do Better Than This." *Justice System Journal* 35(3): 271-294.
- Gill, Rebecca D., Sylvia R. Lazos, and Malloy M. Waters. 2011. "Are Judicial Performance Evaluations Fair to Women and Minorities? A Cautionary Tale from Clark County, Nevada." *Law & Society Review* 45(3): 731-759.
- Gill, Rebecca D. and Kenneth J. Retzl. 2014. "JPE Commission: Toward a More Transparent and Informative Evaluation." *Judicature* 98(1): 26-34.
- Gingrich, Newt. 2011. *To Save America: Stopping Obama's Secular-Socialist Machine*. Washington, DC: Regnery Publishing.
- Goldman, Marion S. 1972. *A Portrait of the Black Attorney in Chicago*. Chicago: American Bar Foundation.
- Goldman, Sheldon. 1972. "Johnson and Nixon Appointees to the Lower Federal Courts: Some Socio-Political Perspectives." *The Journal of Politics* 34(3): 934-942.
- , 1978. "A Profile of Carter's Judicial Nominees." *Judicature* 62(5): 246-254.
- , 1979. "Should There Be Affirmative Action for the Judiciary?" *Judicature* 62: 488-494.
- , 1981. "Carter's Judicial Appointments: A Lasting Legacy." *Judicature* 64(8): 344-355.
- Goldman, Sheldon and Matthew D. Saronsen. 1994. "Clinton's Nontraditional Judges: Creating a More Representative Bench." *Judicature* 78(2): 68-73.
- Goldman, Sheldon, Sara Schiavoni, and Elliot Slotnick. 2009. "W. Bush's Judicial Legacy: Mission Accomplished." *Judicature* 92(6): 258-288.
- Goldman, Sheldon, Elliot Slotnick, Gerard Gryski, and Gary Zuk. 2001. "Clinton's Judges: Summing up the Legacy." *Judicature* 84(5): 228-255.
- Goldman, Sheldon, Elliot Slotnick, and Sara Schiavoni. 2013. "Obama's First Term Judiciary: Picking Judges in the Minefield of Obstructionism." *Judicature* 97(1): 7-47.
- Gottschall, Jon. 1983. "Carter's Judicial Appointments: The Influence of Affirmative Action and Merit Selection on Voting on the US Courts of Appeals." *Judicature* 67(4): 165-174.

- Graber, Doris A. 2009. *Mass Media and American Politics*. Washington, DC: CQ Press.
- Graham, Barbara L. 2004. "Toward an Understanding of Judicial Diversity in American Courts." *Michigan J. Race & L.* 10(1): 153-194.
- Green, Donald, Bradley Palmquist, and Eric Schickler. 2004. *Partisan Hearts and Minds: Political Parties and the Social Identities of Voters*. New Haven: Yale University Press.
- Griffin, Drew and Scott Bronstein. 2011. "Video Shows White Teens Driving Over, Killing Black Man." *CNN*.
- Grose, Christian R. 2005. "Disentangling Constituency and Legislator Effects in Legislative Representation: Black Legislators or Black Districts?" *Social Science Quarterly* 86(2): 427-443.
- , 2011. *Congress in Black and White: Race and Representation in Washington and at Home*. Cambridge: Cambridge University Press.
- Gurin, Patricia and Edgar Epps. 1975. *Black Consciousness, Identity, and Achievement: A Study of Students in Historically Black Colleges*. New York: John Wiley and Sons.
- Gurin, Patricia, Shirley Hatchett, and James Jackson. 1989. *Hope and Independence: Black's Response to Electoral and Party Politics*. New York: Russell Sage Foundation.
- Gurin, Patricia, Arthur H. Miller, and Gerald Gurin. 1980. "Stratum Identification and Consciousness." *Social Psychology Quarterly* 43(1): 30-47.
- Haire, Susan B. 2001. "Rating the Ratings of the American Bar Association Standing Committee on Federal Judiciary." *The Justice System Journal* 22(1): 1-17.
- Hamilton, Alexander, James Madison, John Jay, and Lawrence Goldman. 2008. *The Federalist Papers*. Oxford: Oxford University Press.
- Harris, Cheryl I. 1993. "Whiteness as Property." *Harvard Law Review* 106(8): 1707-1791.
- Harris, David. 1995. "Exploring the Determinants of Adult Black Identity: Context and Process." *Social Forces* 74(1): 227-241.

- Harris, Fredrick, Valeria Sinclair-Chapman, and Brian McKenzie. 2006. *Countervailing Forces in African-American Political Activism: 1973-1994*. New York: Cambridge University Press.
- Harris-Lacewell, Melissa and Jane Junn. 2007. "Old Friends and New Alliances: How the 2004 Illinois Senate Race Complicates the Study of Race and Religion." *Journal of Black Studies* 38(1): 30-50.
- Harrison, Alferdteen (ed.). 2012. *Black Exodus: The Great Migration from the American South*. Jackson, MS: University Press of Mississippi.
- Haynie, Kerry L. 2001. *African American Legislators in the American States*. New York: Columbia University Press.
- , 2002. "The Color of Their Skin or the Content of Their Behavior? Race and Perceptions of African American Legislators." *Legislative Studies* 27(2): 295-314.
- Haynie, Kerry L. and Candis S. Watts. 2010. "Blacks and the Democratic Party: A Resilient Coalition." In *New Directions in American Political Parties*, ed. Jeffrey M. Stonecash. New York: Routledge: 93-109.
- Heerwig, Jennifer A. and Brian J. McCabe. 2009. "Education and Social Desirability Bias: The Case of a Black Presidential Candidate." *Social Science Quarterly* 90(3): 674-686.
- Helman, Eric, Samuel L. Gaertner, and John F. Dovidio. 2011. "Evacuations of Presidential Performance: Race, Prejudice, and Perceptions of Americanism." *Journal of Experimental Social Psychology* 47(2): 430-435.
- Herron, Michael C. and Jasjeet S. Sekhon. 2005. "Black Candidates and Black Voters: Assessing the Impact of Candidate Race on Uncounted Vote Rates." *Journal of Politics* 67(1): 154-177.
- Hettinger, Virginia A., Stefanie A. Lindquist, and Wendy L. Martinek. 2004. "Comparing Attitudinal and Strategic Accounts of Dissenting Behavior on the US Courts of Appeals." *American Journal of Political Science* 48(1): 123-137.
- Hibbing, John R. and Elizabeth Theiss-Morse. 2001a. "Process Preferences and American Politics: What People Want Government to Be." *American Political Science Review* 95(1): 145-154.
- , 2001b. *What is it about Government that Americans Dislike?* Cambridge, MA: Cambridge University Press.

- Higgins, George E., Scott E. Wolfe, Margaret Mahoney, and Nelseta M. Walters. 2009. "Race, Ethnicity, and Experience: Modeling the Public's Perceptions of Justice, Satisfaction, and Attitude Toward the Courts." *Journal of Ethnicity in Criminal Justice* 7(4): 293-310.
- Hindera, John J. 1993. "Representative Bureaucracy: Further Evidence of Active Representation in the EEOC District Officers." *Journal of Public Administration Research and Theory* 3(4): 415-429.
- Hochschild, Jennifer L. 1995. *Race, Class, and the Soul of the Nation: Facing Up to the American Dream*. Princeton: Princeton University Press.
- Holmes, Lisa M. 2007. "Presidential Strategy in the Judicial Appointment Process 'Going Public' in Support of Nominees to the US Courts of Appeals." *American Politics Research* 35(5): 567-594.
- Hough, Mike, Jonathan Jackson, Ben Bradford, Andy Myhill, and Paul Quinton. 2010. "Procedural Justice, Trust, and Institutional Legitimacy." *Policing* 4(3): 203-210.
- Howell, Susan. 2007. *Race, Performance, and Approval of Mayors*. UK: Macmillan.
- Howell, Susan E. and Huey L. Perry. 2004. "Black Mayors/White Mayors: Explaining Their Approval." *Public Opinion Quarterly* 68(1): 32-56.
- Huddy, Leonie and Nayda Terkildsen. 1993. "Gender Stereotypes and the Perception of Male and Female Candidates." *American Journal of Political Science* 37(1): 119-147.
- Hughey, Matthew W. 2012. "Show Me Your Papers! Obama's Birth and the Whiteness of Belonging." *Qualitative Sociology* 35(2): 163-181.
- Hurwitz, Mark S. and Drew N. Lanier. 2003. "Explaining Judicial Diversity: The Differential Ability of Women and Minorities to Attain Seats on State Supreme and Appellate Courts." *State Politics & Policy Quarterly* 3(4): 329-352.
- , 2008. "Diversity in State and Federal Appellate Courts: Change and Continuity Across 20 Years." *Justice System Journal* 29(1): 47-70.
- Hutchings, Vincent L. 2009. "Change or More of the Same? Evaluating Racial Attitudes in the Obama Era." *Public Opinion Quarterly* 73(5): 917-942.
- Ifill, Sherrilyn A. 1997. "Judging the Judges: Racial Diversity, Impartiality and

- Representation on State Trial Courts." *BCL Rev.* 39(1): 95-149.
- , 2000. "Racial Diversity on the Bench: Beyond Role Models and Public Confidence." *Washington and Lee Law Review* 57(2): 405-496.
- Jacobsmeier, Matthew L. 2014. "Racial Stereotypes and Perceptions of Representatives' Ideologies in US House Elections." *Legislative Studies Quarterly* 39(2): 261-291.
- , 2015. "From Black and White to Left and Right: Race, Perceptions of Candidates' Ideologies, and Voting Behavior in US House Elections." *Political Behavior* 37(3): 595-621.
- Jamal, Amaney. 2005. "The Political Participation and Engagement of Muslim Americans: Mosque Involvement and Group Consciousness." *American Politics Research* 33(4): 521-544.
- Jardina, Ashley. 2014. *Demise of Dominance: Group Threat and the New Relevance of White Identity for American Politics*. Doctoral Dissertation. University of Michigan.
- Johnson, Kevin R. and Luis E. Fuentes-Rohwer. 2005. "A Principled Approach to the Quest for Racial Diversity on the Judiciary." *Michigan Journal of Race & Law* 10(1): 1-52.
- Jones, Camara P. 2002. "Confronting Institutionalized Racism." *Phylon* 50(1/2): 7-22.
- Jones, Charles O. 1961. "Representation in Congress: The Case of the House Agriculture Committee." *American Political Science Review* 55(2): 358-367.
- Kahn, Kim F. 1996. *The Political Consequences of Being a Woman: How Stereotypes Influence the Conduct and Consequences of Political Campaigns*. New York: Columbia University Press.
- Kanthak, Kristin and Rebecca B. Morton. 2008. "Minding Payoffs and Cues: Measuring Voter Accuracy in Evaluating Elected Officials." *Unpublished Manuscript*.
- Kastellec, Jonathan P. 2013. "Racial Diversity and Judicial Influence on Appellate Courts." *American Journal of Political Science* 57(1): 167-183.
- , 2015. "Race, Context and Judging on the Courts of Appeals: Race-Based Panel Effects in Death Penalty Cases." *Available at SSRN*: 1-31.
- Khan, Huma and Jake Tapper. 2009. "Newt Gingrich on Twitter: Sonia Sotomayor

- 'Racist', Should Withdraw." *ABC News*, May 27.
- Killian, Mitchell. 2008. "Presidential Decision Making and Minority Nominations to the US Courts of Appeals." *Presidential Studies Quarterly* 38(2): 268-283.
- Kinder, Donald R. and Lynn M. Sanders. 1996. *Divided by Color: Racial Politics and Democratic Ideals*. Chicago: University of Chicago.
- Kosloff, Spee, Jeff Greenberg, Toni Schmader, Mark Dechesne, and David Weise. 2010. "Smearing the Opposition: Implicit and Explicit Stigmatization of the 2008 US Presidential Candidates and the Current US President." *Journal of Experimental Psychology* 139(3): 383-398.
- Krupnikov, Yanna and Spencer Piston. 2015. "Racial Prejudice, Partisanship, and White Turnout in Elections with Black Candidates." *Political Behavior* 37(2): 397-418.
- Leech, Beth L. 2002. "Interview Methods in Political Science." *Political Science & Politics* 35(4): 663-664.
- Leighley, Jan E. and Arnold Vedlitz. 1999. "Race, Ethnicity, and Political Participation: Competing Models and Contrasting Explanations." *The Journal of Politics* 61(4): 1092-1114.
- Lentz-Smith, Adriane D. 2009. *Freedom Struggles: African Americans and World War I*. Cambridge, MA: Harvard University Press.
- Lerman, Amy E. and Meredith L. Sadin. 2014. "Stereotyping or Project? How White and Black Voters Estimate Black Candidates' Ideology." *Political Psychology* 37(2): 147-163.
- Lilleker, Darren G. 2003. "Interviewing the Political Elite: Navigating a Potential Minefield." *Politics* 23(3): 207-214.
- Lindgren, James. 2001. "Yes, The ABA Rankings on Judicial Nominees Are Biased." *Wall Street Journal*.
- Liu, Baodong, Sharon D. Wright Austin, and Byron D. Orey. 2009. "Church Attendance, Social Capital, and Black Voting Participation." *Social Science Quarterly* 90(3): 576-592.
- Long, Norton E. 1952. "Bureaucracy and Constitutionalism." *American Political Science Review* 46(3): 808-818.
- Lortie, Dan C. 1959. "Laymen to Lawmen: Law School, Careers, and Professional

- Socialization." *Harvard Education Review* 29(4): 352-369.
- Lott Jr., John R. 2001. "American Bar Association, Judicial Ratings, and Political Bias." *The Journal of Law and Policy* 17(1): 41-61.
- Mann, Coramae. 1993. *Unequal Justice: A Question of Color*. Bloomington, IN: Indiana University Press.
- Manning, Kenneth L., Bruce A. Carroll, and Robert A. Carp. 2004. "Does Age Matter? Judicial Decision Making in Age Discrimination Cases." *Social Science Quarterly* 85(1): 1-18.
- Mansbridge, Jane. 1999. "Should Blacks Represent Blacks and Women Represent Women? A Contingent 'Yes'." *The Journal of Politics* 61(3): 628-657.
- , 2000. "What Does a Representative Do? Descriptive Representation in Communicative Settings of Distrust, Uncrystallized Interests, and Historically Denigrated Status." *Citizenship in Diverse Societies* 26: 99-124.
- , 2003. "Rethinking Representation." *American Political Science Review* 97(4): 515-528.
- , 2011. "Clarifying the Concept of Representation." *American Political Science Review* 105(3): 621-630.
- Marschall, Melissa J. 2001. "Does the Shoe Fit? Testing Models of Participation for African-American and Latino Involvement in Local Politics." *Urban Affairs Review* 37(2): 227-248.
- Masuoka, Natalie. 2006. "Together They Become One: Examining the Predictors of Panethnic Group Consciousness Among Asian Americans and Latinos." *Social Science Quarterly* 87(5): 993-1011.
- Matland, Richard E. and Adrian Shepherd. 2004. "The Effect of Candidate Race on Voters' Evaluations of Judicial Candidates: Experimental Evidence." *American Political Science Association Annual Meeting*.
- Matthews, Donald and James Prothro. 1966. *Negroes and the New Southern Politics*. Chapel Hill: University of North Carolina.
- Mauer, Marc. 2011. "Addressing Racial Disparities in Incarceration." *The Prison Journal* 91: 87-101.
- McAdam, Doug. 1999. *Political Process and the Development of Black Insurgency*,

1930-1970. 2<sup>nd</sup> Edition. Chicago: University of Chicago Press.

McClain, Paula D., Jessica D. Johnson Carew, Eugene Walton Jr., and Candis S. Watts. 2009. "Group Membership, Group Identity, and Group Consciousness: Measures of Racial Identity in American Politics?" *Annual Review of Political Science* 12(: 471-485.

McClain, Paula D. and Joseph Stewart Jr. 2014. *Can We All Get Along? Racial and Ethnic Minorities in American Politics*. Boulder, CO: Westview Press.

McClellan, Frank. 2005. "Judicial Impartiality & Recusal: Reflections on the Vexing Issue of Racial Bias." *Temple Law Review* 78: 351-378.

McDermott, Monica L. 1994. "Race/Class Interactions in the Formation of Political Ideology." *The Sociological Quarterly* 35(2): 347-366.

-----, 1998. "Race and Gender in Low-Information Elections." *Political Research Quarterly* 51(4): 895-918.

McDermott, Monica and Frank L. Samson. 2005. "White Race and Ethnic Identity in the United States." *Annual Review of Sociology* 31(1) :245-261.

McGraw, Kathleen M. 2011. "Candidate Impressions and Evaluations." In *Cambridge Handbook of Experimental Political Science*, James N. Druckman, Donald P. Greene, James H. Kuklinski, and Arthur Lupia, Editors. Cambridge: Cambridge University Press.

McIlwain, Charlton D. 2007. "Race, Pigskin, and Politics: A Semiotic Analysis of Racial Images in Political Advertising." *Semiotica* 167: 169-191.

-----, 2011. "Racialized Media Coverage of Minority Candidates in the 2008 Democratic Presidential Primary." *American Behavioral Scientist* 55(4): 371-389.

McIntosh, Peggy. 2003. "White and Male Privilege." In *Women's Voices, Feminist Visions: Classic and Contemporary Reading*. 2<sup>nd</sup> Edition. Susan M. Shaw and Janet Lee, Editors. Boston, McGraw Hill: 78-86.

Meier, Kenneth J. and Jill Nicholson-Crotty. 2006. "Gender, Representative Bureaucracy, and Law Enforcement: The Case of Sexual Assault." *Public Administration Review* 66(6): 850-860.

Meier, Kenneth J., Robert D. Wrinkle, and Jerry L. Polinard. 1999. "Representative

- Bureaucracy and Distributional Equity: Addressing the Hard Question." *The Journal of Politics* 61(4): 1025-1039.
- Merrill, Thomas W. 1992. "Judicial Deference to Executive Precedent." *The Yale Law Journal* 101(5): 969-1041.
- Merritt, Deborah J. and James J. Brudney. 2001. "Stalking Secret law: What predicts Publication in the United States Courts of Appeals." *Vanderbilt Law Review* 54(1): 71-121.
- Mildworf, Bruce. 2011. "Prosecutors Seek to Remove Black Judge from Racial Justice Act Case." *WRAL.COM*.
- Miller, Arthur H., Patricia Gurin, Gerald Gurin, and Oksana Malanchuk. 1981. "Group Consciousness and Political Participation." *American Journal of Political Science* 25(3): 494-511.
- Minta, Michael D. 2011. *Oversight: Representing the Interests of Black and Latinos in Congress*. Princeton: Princeton University Press.
- Minta, Michael D. and Valeria Sinclair-Chapman. 2013. "Diversity in Political Institutions and Congressional Responsiveness to Minority Interests." *Political Research Quarterly* 66(1): 127-140.
- Mondak, Jeffrey J. 1990. "Perceived Legitimacy of Supreme Court Decisions: Three Functions of Source Credibility." *Political Behavior* 12(4): 363-384.
- Mooney, Alexander. 2009. "Limbaugh slams Sotomayor: 'Reverse racist.'" *CNN*.
- Morton, Rebecca B. and Kenneth C. Williams. 2010. *Experimental Political Science and the Study of Causality: From Nature to the Lab*. New York: Cambridge University Press.
- Moskowitz, David and Patrick Stroh. 1994. "Psychological Sources of Electoral Racism." *Political Psychology* 15(2): 307-329.
- Mustard, David. 1998. "Racial, Ethnic, and Gender Disparities in Sentencing: Evidence from the U.S. Federal Courts." Presented at the Annual Meeting of the American Political Science Association. Boston, MA.
- Mutz, Diana C. 2011. *Population-Based Survey Experiments*. Princeton: Princeton University Press.
- Nicholson-Crotty, Jill, Jason A. Grissom, and Sean Nicholson-Crotty. 2011.

“Bureaucratic Representation, Distributional Equity, and Democratic Values in the Administration of Public Programs.” *The Journal of Politics* 73(2): 582-596.

Nownes, Anthony J. and Colin Glennon. 2015. “An Experimental Investigation of How Judicial Elections Affect Public Faith in the Judicial System.” *Law & Social Inquiry* 41(1): 37-60.

NPR Staff. 2015. “A Black Mississippi Judge’s Breathtaking Speech to 3 White Murderers.” *National Public Radio*.

Ogletree Jr., Charles J. 1999. “Judge A. Leon Higginbotham, Jr.’s Civil Rights Legacy.” *Harvard Civil Rights-Civil Liberties Law Review* 34(1): 1-6.

Olsen, Marvin E. 1970. “Social and Political Participation of Blacks.” *American Sociological Review* 35(4): 682-697.

Onwuachi-Willig, Angela. 2005. “Just Another Brother on the SCT? What Justice Clarence Thomas Teaches US About the Influence of Racial Identity.” *Iowa Law Review* 90: 1-98.

Orey, Byron D., Wendy Smooth, Kimberly S. Adams, and Kish Harris-Clark. 2007. “Race and Gender Matter: Refining Models of Legislative Policy Making in State Legislatures.” *Journal of Women, Politics & Policy*, 28(3-4): 97-119.

Opdenakker, Raymond. 2006. “Advantages and Disadvantages of Four Interview Techniques in Qualitative Research.” *Forum Qualitative Social Research* 7(4).

Outcalt, Charles L. and Thomas Edmund Skewes-Cox. 2002. “Involvement, Interaction, and Satisfaction: The Human Environment at HBCUs.” *The Review of Higher Education* 25(3): 331-347.

Pager, Devah. 2008. *Marker: Race, Crime, and Finding Work in an Era of Mass Incarceration*. Chicago: University of Chicago Press.

Pager, Devah and Hana Shepherd. 2008. “The Sociology of Discrimination: Racial Discrimination in Employment, Housing, Credit, and Consumer Markets.” *Annual Review of Sociology* 34: 181-209.

Pasek, Josh, Tobias H. Stark, Jon A. Krosnick, and Trevor Tompson. 2015. “What Motivates a Conspiracy Theory? Birther Beliefs, Partisanship, Liberal-Conservative Ideology, and Anti-Black Attitudes.” *Electoral Studies* 40: 482-489.

- Philpot, Tasha S. and Hanes Walton. 2007. "One of Our Own: Black Female Candidates and the Voters Who Support Them." *American Journal of Political Science* 51(1): 49-62.
- Pinderhughes, Dianne M. 1987. *Race and Ethnicity in Chicago Politics: A Reexamination of Pluralist Theory*. Urbana: University of Illinois Press.
- Pitkala, Kaisu H. and T Mantyranta. 2003. "Professional Socialization Revised: Medical Students' Own Conceptions Related to Adoption of the Future Physician's Role—a Qualitative Study." *Medical Teacher* 25(2): 155-160.
- Pitkin, Hanna F. 1967. *The Concept of Representation*. Berkeley: University of California Press.
- Piston, Spencer. 2010. "How Explicit Racial Prejudice Hurt Obama in the 2008 Election." *Political Behavior* 32(4): 431-451.
- Powell, G. Bingham. 1982. *Contemporary Democracies*. Cambridge, MA: Harvard University Press.
- Rahn, Wendy M. 1993. "The Role of Partisan Stereotypes in Information Processing about Political Candidates." *American Journal of Political Science* 37(2): 472-496.
- Redlawsk, David P., Caroline J. Tolbert, and William Franko. 2010. "Voters, Emotions, and Race in 2008: Obama as the First Black President." *Political Research Quarterly* 63(4): 875-889.
- Reeves, Keith. 1997. *Voting Hopes or Fears? White Voters, Black Candidates & Racial Politics in America*. New York: Oxford University Press.
- Rehfeld, Andrew. 2009. "Representation Rethought: On Trustees, Delegates, and Gyroscopes in the Study of Political Representation and Democracy." *American Political Science Review* 103(2): 214-230.
- Reingold, Beth. 2008. "Women as Office Holders: Linking Descriptive and Substantive Representation." *Political Women and American Democracy*, 9: 128-147.
- Richards, David. 1996. "Elite Interviewing: Approaches and Pitfalls." *Politics* 16(3): 199-204.
- Riley, Jason. 2015a. "Kentucky Chief Justice Recuses Judge Over Posts Saying Top Prosecutor Wants 'All-White' Juries." *WBRD.com*.

- , 2015b. "Louisville Judge Questioned for Dismissing Juries Based on Lack of Minorities." *WBRD.com*.
- Robinson, Campbell. 2012. "Biased Law Used to Move a Man Off Death Row." *New York Times*.
- Roth, William. "Judicial Diversity After Shelby County V. Holder." *Michigan Law Review First Impressions* 112: 151-160.
- Rodriquez, Rachel. "Who's The Real Racist?" 2011. *HUFFPOST Politics*, May 25.
- Sachs, Judyth. 2003. *The Activist Teaching Profession*. Philadelphia: Open University Press.
- Samuel, Krislov and David H. Rosenbloom. 1974. *Representative Bureaucracy and the American Political System*. New York: Praeger.
- Sanchez, Gabriel R. 2006. "The Role of Group Consciousness in Political Participation Among Latinos in the United States." *American Politics Research* 34(4): 427-450.
- Sanchez, Gabriel R. and Edward D. Vargas. 2016. "Taking a Closer Look at Group Identity: The Link Between Theory and Measurement of Group Consciousness and Linked Fate." *Political Research Quarterly* 69(1): 160-174.
- Scherer, Nancy. 2004. "Blacks on the Bench." *Political Science Quarterly* 119(4): 655-675.
- Scherer, Nancy and Brett Curry. 2010. "Does Descriptive Race Representation Enhance Institutional Legitimacy? The Case of the US Courts." *The Journal of Politics* 72(1): 90-104.
- Schildkraut, Deborah J. 2013a. "The Complicated Constituency: A Study of Immigrant Opinions About Political Representation." *Politics, Groups, and Identities* 1(1): 26-47.
- , 2013b. "Which Birds of a Feather Flock Together? Assessing Attitudes About Descriptive Representation Among Latinos and Asian Americans." *American Politics Research* 41(4): 699-729.
- Schneider, Monica C. and Angela L. Bos. 2011. "An Exploration of the Content of Stereotypes of Black Politicians." *Political Psychology* 32(2): 205-233.

- Sears, David O., Jack Citrin, and Richard Kosterman. 1987. "Jesse Jackson and the Southern White Electorate in 1984." In *Blacks in Southern Politics*, Laurence W. Moreland, Tod A. Baker, and Robert P. Steed, editors. New York: Praeger Publishers: 209-225.
- Sears, David O., Jim Sidanius, and Lawrence Bobo. 2000. *Racialized Politics: The Debate about Racism in America*. Chicago: University of Chicago Press.
- Segal, Jennifer A. 1997. "The Decision Making of Clinton's Nontraditional Judicial Appointees." *Judicature* 80(6): 279-279.
- , 2000. "Representative Decision Making on the Federal Bench: Clinton's District Court Appointees." *Political Research Quarterly* 53(1): 137-150.
- Seidman, Irving. 2013. *Interviewing as Qualitative Research: A Guide for Researchers in Education and the Social Sciences*. New York: *Teaching College Press*.
- Seldon, Sally C. 1997. "Representative Bureaucracy Examining the Linkage Between Passive and Active Representation in the Farmers Home Administration." *American Review of Public Administration* 27(1): 22-42.
- Sen, Maya. 2014a. "How Judicial Qualification Ratings May Disadvantage Minority and Female Candidates." *Journal of Law and Courts* 2(1): 33-65.
- , 2014b. "Minority Judicial Candidates Have Changed: The ABA Ratings Gap Has Not." *Judicature* 98(1): 46-56.
- Shah, Paru. 2015. "Stepping Up: Black Political Ambition and Success." *Politics, Groups, and Identities* 3(2): 278-294.
- Shingles, Richard D. 1981. "Black Consciousness and Political Participation: The Missing Link." *American Political Science Review* 75(1): 76-91.
- Shuman, Jerome. 1970. "A Black Lawyers Study." *Howard LJ* 16: 225-313.
- Sigelman, Carol K., Lee Sigelman, Barbara J. Walkosz, and Michael Nitz. 1995. "Black Candidates, White Voters: Understanding Racial Bias in Political Perceptions." *American Journal of Political Science* 39(1): 243-265.
- Sigelman, Lee, Steven A. Tuch, and Jack K. Martin. 2005. "What's in a Name? Preference for 'Black' Versus 'African-American' Among Americans of African Descent." *Public Opinion Quarterly* 69(3): 429-438.

- Simien, Evelyn M. 2005. "Race, Gender, and Linked Fate." *Journal of Black Studies* 35(5): 529-550.
- Simmonds, Yussuf J. 2011. "A. Leon Higginbotham." *Los Angeles Sentinel*.
- Sisk, Gregory C., Michael Heise, and Andrew P. Morriss. 1998. "Charting the Influences on the Judicial Mind: An Empirical Study of Judicial Reasoning." *New York University Law Review* 73(5): 1377-1500.
- Slotnick, Elliot E. 1984. "Judicial Selection Systems and Nomination Outcomes Does the Process Make a Difference?" *American Politics Quarterly* 12(2): 225-240.
- Slotnick, Elliot, Sara Schiavoni, and Sheldon Goldman. 2015. "Writing the Book of Judges: Part 1: Obama's Judicial Appointments Record after Six Years." *Journal of Law and Courts* 3(2): 330-367.
- , 2016. "Writing the Book of Judges: Part 2: Confirmation Politics in the 113<sup>th</sup> Congress." *Journal of Law and Courts* 4(1): 187-242.
- Smelcer, Susan N., Amy Steigerwalt, and Richard L. Vining. 2012. "Bias and the bar: Evaluating the ABA Ratings of Federal Judicial Nominees." *Political Research Quarterly* 65(4): 827-840.
- Smith, Candis W. 2014. *Black Mosaic: The Politics of Black Pan-Ethnic Diversity*. New York: New York University Press.
- , 2014. "Shifting from Structural to Individual Attributions of Black Disadvantage: Age, Period, and Cohort Effects on Black Explanations of Racial Disparities." *Journal of Black Studies* 45(5): 432-452.
- Smith, Michael D. 1983. *Race Versus Robe: The Dilemma of Black Judges*. New York: National University Publications.
- Smith, Tom W. 1992. "Changing Racial Labels: From 'Colored' to 'Negro' to 'Black' to 'African American'." *Public Opinion Quarterly* 56(4): 496-514.
- Solberg, Rorie L. and Kathleen A. Bratton. 2005. "Diversifying the Federal Bench: Presidential Patterns." *Justice System Journal* 26(2): 119-134.
- Solomon, Daniel F. 2011. "Summary of Administrative Law Judge Responsibilities." *Journal of National* 31: 475-522.
- Solowiej, Lisa A., Wendy L. Martinek, and Thomas L. Brunell. 2005. "Partisan Politics

- The Impact of Party in the Confirmation of Minority and Female Federal Court Nominees." *Party Politics* 11(5): 557-577.
- Spill, Rorie L. and Kathleen A. Bratton. 2000. "Clinton and Diversification of the Federal Judiciary." *Judicature* 84(5): 256-261.
- Spohn, Cassia. 1991. "Decision Making in Sexual Assault Cases: Do Black and Female Judges Make a Difference?" *Women & Criminal Justice* 2(1): 83-105.
- Steffensmeier, Darrell and Chester L. Britt. 2001. "Judges' Race and Judicial Decision-Making: Do Black Judges Sentence Differently?" *Social Science Quarterly* 82(4): 749-764.
- Stith, Kate. 2009. "The Arc of the Pendulum: Judges, Prosecutors, and the Exercise of Discretion." *The Yale Law Journal* 117: 1420-1497.
- Stokes, Atiya K. 2003. "Latino Group Consciousness and Political Participation." *American Politics Research* 31(4): 361-378.
- Streb, Matthew J., Barbara Burrell, Brian Frederick, and Michal A. Genovese. 2008. "Social Desirability Effects and Support for a Female American President." *Public Opinion Quarterly* 72(1): 76-89.
- Stumpf, Harry P. 1998. *American Judicial Politics*. New York: Upper Saddle River, NJ: Prentice Hall.
- Sun, Ivan Y, and Yuning Wu. 2006. "Citizens' Perceptions of the Courts: The Impact of Race, Gender, and Recent Experience." *Journal of Criminal Justice*, 34(5): 457-467.
- Swain, Carol M. 1995. *Black Faces, Black Interests: The Representation of African Americans in Congress*. Cambridge, MA: Harvard University Press.
- Tansey, Oisín. 2007. "Process Tracing and Elite Interviewing: A Case for Non-Probability Sampling." *PS: Political Science & Politics* 40(4): 765-772.
- Tate, Katherine. 1994. *From Protest to Politics: The New Black Voters in American Elections*. Cambridge, MA: Harvard University Press.
- 2001. "The Political Representation of Blacks in Congress: Does Race Matter?" *Legislative Studies Quarterly* 26(4): 623-638.
- 2003. *Black Faces in the Mirror: African Americans and Their Representatives in the U.S. Congress*. Princeton: Princeton University Press.

- , 2010. *What's Going On? Political Incorporation and the Transformation of Black Public Opinion*. Washington, DC: Georgetown University Press.
- Terkildsen, Nayda. 1993. "When White Voters Evaluate Black Candidates: The Processing Implications of Candidate Skin Color, Prejudice, and Self-Monitoring." *American Journal of Political Science* 37(4): 1032-1053.
- Terkildsen, Nayda and David F. Damore. 1999. "The Dynamics of Racialized Media Coverage in Congressional Elections." *The Journal of Politics* 61(3): 680-699.
- Tesler, Michael. 2013. "The Return of Old-Fashioned Racism to White Americans' Partisan Preferences in the Early Obama Era." *The Journal of Politics* 75(1): 110-123.
- Theiss-Morse, Elizabeth and John R. Hibbing. 2005. "Citizenship and Civic Engagement." *Annual Review of Political Science* 8(1): 224-249.
- Theobald, Nick A. and Donald P. Haider-Markel. 2009. "Race, Bureaucracy, and Symbolic Representation: Interactions Between Citizens and Police." *Journal of Public Administration Research and Theory* 19(2): 409-426.
- Thomas, David R. 2006. "A General Inductive Approach for Analyzing Qualitative Evaluation Data." *American Journal of Evaluation* 27(2): 237-246.
- Thomas, Sue and Susan Welch. 1991. "The Impact of Gender on Activities and Priorities of State Legislators." *The Western Political Quarterly*, 44(2): 445-456.
- Tiede, Lydia, Robert Carp, and Kenneth L. Manning. 2010. "Judicial Attributes and Sentencing-Deviation Cases: Do Sex, Race, and Politics Matter?" *Justice System Journal* 31(3): 249-272.
- Tocqueville, Alexis D. 1945. *Democracy in America*. New York: Vintage.
- Tollett, Kenneth S. 1972. "Black Lawyers, Their Education, and the Black Community." *Howard LJ* 17(2): 326-357.
- Turner, Bridget and Sharon Fries-Britt. 2002. "Uneven Stories: Successful Black Collegians at a Black and a White Campus." *The Review of Higher Education* 25(3): 315-330.
- Tyler, Tom R. 1990. *Why People Obey the Law: Procedural Justice, Legitimacy, and Compliance*. New Haven, CT: Yale University Press.

- Uhlman, Thomas M. 1978. "Black Elite Decision Making: The Case of Trial Judges." *American Journal of Political Science* 22(4): 884-895.
- , 1989. *Racial Justice: Black Judges and Defendants in an Urban Trial Court.* Lanham, MD: Lexington Books.
- Van Camp, Debbie, Jamie Barden, Lloyd R. Sloan, and Renee P. Clarke. 2009. "Choosing an HBCU: An Opportunity to Pursue Racial Self-Development." *The Journal of Negro Education* 78(4): 457-468.
- Vavreck, Lynn and Douglas Rivers. 2008. "The 2006 Cooperative Congressional Election Study." *Journal of Elections, Public Opinion, and Parties* 18(4): 355-366.
- Verba, Sidney and Norman H. Nie. 1972. *Participation in America: Social Equality and Political Democracy.* New York: Harper and Row Press.
- Walker, Thomas G. and Deborah J. Barrow. 1985. "The Diversification of the Federal Bench: Policy and Process Ramifications." *The Journal of Politics* 47(2): 596-617.
- Ward, Geoff, Amy Farrell, and Danielle Rousseau. 2009. "Does Racial Balance in Workforce Representation Yield Equal Justice: Race Relations of Sentencing in Federal Court Organizations." *Law & Society Review* 43(4): 757-806.
- Wasby, Stephen L. 1991. "Recusal of Federal Judges: A Discussion of Recent Cases." *Justice System Journal* 15(1): 525-549.
- Washington, Ebonya. 2006. "How Black Candidates Affect Voter Turnout." *Journal of Economics Research Quarterly* 121(1): 973-998.
- Washington, Linn. 1994. *Black Judges on Justice: Perspectives from the Bench.* New York: The New Press.
- Watt, Sherry K. 2006. "Racial Identity Attitudes, Womanist Identity Attitudes, and Self-Esteem in African American College Women Attending Historically Black Single-Sex and Coeducational Institutions." *Journal of College Student Development* 47(4): 319-334.
- Watts-Jones, Dee. 2002. "Healing Internalized Racism: The Role of a Within-Group Sanctuary Among People of African Descent." *Family Process* 41(4): 591-601.

- Weidman, John C., Darla J. Twale, and Elizabeth L. Stein. 2001. "Socialization of Graduate and Professional Students in Higher Education: A perilous Passage?" *ASHE-ERIC Higher Education Report* 28(3). San Francisco: Jossey-Bass.
- Weissberg, Robert. 1978. "Collective VS. Dyadic Representation in Congress." *American Political Science Review* 72(2): 535-547.
- Welch, Susan, Michael Combs, and John Gruhl. 1988. "Do Black Judges Make a Difference?" *American Journal of Political Science* 32(1): 126-136.
- WFMY. 2011. "Prosecutors Want Black Judge Removed from Racial Bias Hearing." *WFMY NEWS*.
- Whitby, Kenny J. 1997. *The Color of Representation: Congressional Behavior and Black Interests*. Ann Arbor, MI: University of Michigan Press.
- , 2002. "Bill Sponsorship and Intra-racial Voting Among African American Representatives." *American Politics Research* 30(1): 93-109.
- Williams, Linda F. 1990. "White/Black Perceptions of Electability of Black Political Candidates." In *Black Electoral Politics: National Political Science Review Volume 2*. New Brunswick: Transaction Publishers: 45-64.
- Wills, Gary. 2001. *Explaining America: The Federalist*. United Kingdom: Penguin Books.
- Winant, Howard and Michael Omi. 1994. *Racial Formation in the United States: From the 1960s to the 1990s*. 2<sup>nd</sup> Edition. New York: Routledge.
- Wong, Cara and Grace E. Cho. 2005. "Two-Headed Coins or Kandinskys: White Racial Identification." *Political Psychology* 26(5): 699-720.
- Wong, Janelle S., Pei-Te Lien, and M. Margaret Conway. 2005. "Group-Based Resources and Political Participation Among Asian Americans." *American Politics Research* 33(4): 545-576.
- Woodson, Carter G. 1934. *The Negro Professional Man and the Community*. Washington, DC: Association for the Study of Negro Life and History.
- WRAL. 2011. "Ruling Allows Black Judge to Hear Racial Justice Act Case." *WRAL.COM*.
- Wright, Bruce M. 1973. "Black Brood on Black Judges." *Judicature* 57(1): 22-26.

- Wynn, James A. 2002. "Judging the Judges." *Marquette Law Rev.* 86 (4): 753.
- Wynn, James A. and Eli P. Mazur. 2003. "Judicial Diversity: Where Independence and Accountability Meet." *Alb. L. Rev.* 67 (3): 775.
- Zhou, Yi and Archie Tse. 2009. "How Republican Senators Voted on Sotomayor." *The New York Times*, August 6.
- Zhu, Ling and Meredith B.L. Walker. 2013. "'Too Much Too Young': Race, Descriptive Representation, and Heterogeneous Policy Responses in the Case of Teenage Childbearing." *Politics, Groups, and Identities* 1(4): 528-546.

## **Biography**

Taneisha N. Means was born to Bridgette and Ralph Means in Canton, Ohio on November 16, 1986. She attended John Carroll University for her undergraduate degree where she majored in Political Science and Africana Studies, minored in Philosophy, and completed a concentration in Sex and Gender Studies. Additionally, while an undergraduate, she was a Ralph Bunche Summer Institute Scholar (2008). In 2009, Taneisha graduated with her B.A. degree (honors).

Taneisha attended Duke University for her graduate degrees. Her fields were Political Behavior and Identities, and Race, Ethnicity, and Politics. She received her Master's degree in Political Science in 2012 and her Ph.D. in Political Science in 2016. While a graduate student, she completed certificates in the Certificate in College Teaching Program and the Teaching Politics Certificate Program.

In 2016, Taneisha published an article with one of her advisors and her colleagues. Additionally, while in graduate school, she was a Carter G. Woodson Pre-Doctoral Dissertation Fellow (2014-2016), a Preparing Future Faculty Fellow (2014), and a Race, Ethnicity and Gender in Social Sciences Graduate Fellow (2009-2016). While completing her dissertation, Taneisha received the Ted Robinson Memorial Award (2014), the Race and Gender Award (2013), the Richard R. Wilson Award (2012), the SPSA Prestage-Cook Award (2012), and Honorable Mention from the National Science Foundation (2011).