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To cite this article: Ethan D. Boldt, Christina L. Boyd, Roberto F. Carlos & Matthew E. Baker (2021) The Effects of Judge Race and Sex on Pretrial Detention Decisions, Justice System Journal, 42:3-4, 341-358, DOI: [10.1080/0098261X.2021.1881665](https://doi.org/10.1080/0098261X.2021.1881665)

To link to this article: <https://doi.org/10.1080/0098261X.2021.1881665>



Published online: 11 Feb 2021.



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## The Effects of Judge Race and Sex on Pretrial Detention Decisions

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### ABSTRACT

The pretrial detention decision has critical implications for a defendant's employment opportunities, family ties, likelihood of conviction, and length of prison sentence. While prior researchers have assessed the disparities that exist in the bail decision based on defendant and case characteristics, little systematic empirical attention has been paid to the effects of the pretrial detention judge on decisions at this stage of criminal case proceedings. Here, we focus specifically on judge race and sex, exploring not only the unconditional effects of judge sex and race but also whether the effects of these judge characteristics at the bail decision are conditioned on the sex and race of the defendant. Using newly collected pretrial detention data from 22 federal district courts from 2003 to 2013, we empirically examine the effects of judge and defendant race and sex on whether defendants are released on their own recognizance before trial or, instead, are given a more punitive pretrial outcome. Our results indicate important judge and defendant-based differences in bail setting leniency provided to defendants including that Black judges are more likely to grant pretrial release without hefty conditions to white defendants than are white judges. We also find that female judges are more likely to detain or require monetary bail for male defendants and less likely to do so for female defendants relative to male judges.

### KEYWORDS

Pretrial detention; federal district courts; race; gender

[W]hether a defendant is granted pretrial release or is subjected to pretrial detention is, at best, arbitrary ... [Judges] wield considerable power and exercise virtually unbridled discretion in making bail determinations, which are too frequently corrupted by the random amount of the money bond imposed, the defendant's lack of financial resources, the implicit bias of the bail official, and the race of the defendant (921).

-American University Law Professor

Cynthia E. Jones (2013)

Professor Jones' words about pretrial detention and bail in American criminal courts strike a harsh tone, suggesting that the likelihood of a defendant getting the most positive, least restrictive outcome possible at the bail stage of a criminal case is driven not just by objective factors like the severity of the crime, the risk that the defendant will appear at trial, or even the defendant's ability to pay. Rather, Professor Jones suggests that who the judge is, the judge's subjective biases held toward certain defendants, and the defendant's characteristics may play important roles in influencing how defendants are treated by courts prior to their criminal trials.

A great deal of empirical and theoretical evidence indicates that judges affect case outcomes. This is particularly true in appellate courts (Collins and Martinek 2011; Hettinger, Lindquist, and Martinek 2006; Klein 2002; Scott 2006; Wahlbeck 1997), where judges have wide-ranging discretion, but also extend to much of trial court judging (Rowland and Carp 1996; Rowland and Todd 1991; Gibson 1978). While there is much we *do* know about the effects of judges on trial court cases, the bail decision is one area where we know surprisingly little about the degree to which the deciding judge matters. Nonetheless, early evidence indicates that this is a promising arena for further study, with studies finding wide variation in individual judges' rates of releasing defendants pretrial (Berry-Jester 2018) and differences in the racial bias of bail-granting behavior between full-time and part-time judges (Arnold, Dobbie, and Yang 2018).

As these early research findings hint, there are numerous reasons to expect that bail-related decisions will be driven, at least in part, by who the deciding judge is. We suspect that the natural place to further delve into these potential effects is through examining the race and sex of trial judges. Prior research indicates that Black and white judges, along with male and female judges, behave differently from one another when making some (but not all) legal decisions. Numerous trial court studies support the idea that the identity of a case's judge – including judge race and sex – matters for who wins (Boyd 2016), how quickly the case ends (Boyd 2013), and how severely defendants are punished in criminal cases (Harris 2018; Epstein, Landes, and Posner 2013; Schanzenbach 2005; Johnson 2014; Steffenmeiser and Herbert 1999; Gruhl, Spohn, and Welch 1981; Spohn 1990a).

The bail decision stakes could not be higher for defendants since it is closely linked to family and social ties, employment, and housing opportunities and affects conviction rates and prison sentence lengths. Bail reformers are already on the march in courts across the United States, seeking to put an end to cash bail and reduce the number of defendants detained while awaiting trial. If a judge's identity systematically affects whether a defendant is released, required to pay monetary bail, or detained, even holding constant the defendant and case characteristics, bail reformers will have more support to abandon the current system.

In what follows, we provide an in-depth examination into the effects of judge sex and race on federal pretrial detention decisions. We assess the potential differences that may exist between male and female and white and Black judges in how lenient they are in releasing defendants on their own recognizance (i.e., without detention in jail or monetary conditions) before trial. We explore not only the unconditional effects of judge sex and race but also whether the effects of these judge characteristics are conditioned on the sex and race of the defendant. We utilize newly collected pretrial detention data from 22 federal district courts from 2003 to 2013 to test for these unconditional and conditional effects. Doing so, we find that important differences emerge in bail setting leniency based on the identity of the deciding judge, including that Black judges are more likely to grant pretrial release without hefty conditions to white defendants than are white judges. Additionally, we find that female judges are more likely to detain or require monetary bail for male defendants and less likely to do so for female defendants relative to male judges.

## The Importance of the Pretrial Detention Decision

Following the federal criminal defendant's initial appearance in court, where he is informed of his rights and the charges brought against him, the defendant appears at his detention hearing. It is here a federal judge makes the decision whether to release the defendant on the defendant's own recognizance (ROR) or, instead, detain the defendant in jail or require a monetary bond or other conditions to secure pretrial release (18 U.S.C. § 3142(a)).

Pretrial detention hearings proceed with arguments from the prosecution and the defense regarding the appropriateness of release or detention, with the presiding federal judge making the decision following the hearing. Federal law governing pretrial detention specifies that defendants

must be released unless the judge determines that they are a flight risk or safety risk or meet other specified criteria. Indeed, the legislative history for the 1984 federal Bail Reform Act indicates that “[t]he decision to provide for pretrial detention is in no way a derogation of the importance of the defendant’s interest in remaining at liberty prior to trial... . It is anticipated that [pretrial release] will continue to be appropriate for the majority of Federal defendants” (Lay and Hunt 1985, citing S. REP. No. 225, 98th Cong., 1st Sess. 3). Despite this strong legislative preference for pretrial release, modern statistics tell a very different story. For example, in 2018, almost 75 percent of federal defendants were detained pretrial (Rowland 2018).

The potential negative implications of the pretrial detention hearing’s outcome for the defendant are vast. Defendants remaining in jail before trial, either because of a detention decision or because they are unable to afford the monetary bail, experience weakened family and social ties (Allan et al. 2005) and “countless personal hardships” (Jones 2013, 937). Defendants may lose custody of their children (Heaton, Mayson, and Stevenson 2017). Defendants denied release on their own recognizance before trial also frequently lose their jobs and housing (Allan et al. 2005). These same defendants struggle to mount effective criminal defenses in their cases while stuck in jail awaiting trial (Jones 2013; Goldkamp 1979). Because of “deplorable conditions and overcrowding in some local jails, pretrial detainees are exposed to diseases, physical violence, sexual assault, and face a very real risk of death” (Jones 2013, 937). Research indicates that racial minority and poor defendants bear the largest societal burdens associated with pretrial detention decisions (Turner and Johnson 2005; Sacks, Sainato, and Ackerman 2015). Pretrial detention decisions can have “profound downstream consequences for federal defendants” (Oleson et al. 2014, 14) that extend to probabilities of conviction, incarceration, and sentence length (Oleson et al. 2014; Cohen and Reaves 2007; Williams 2003). The negative realities of pretrial detention mean that “a detained person may plead guilty—even if innocent—simply to get out of jail” (Heaton, Mayson, and Stevenson 2017, 714).

## Race, Sex, and Judicial Behavior at Bail

While the federal bail decision has unquestionably important consequences, the natural next question is whether judge race and sex systematically affect bail-related decisions. Diverse, representative courts help to ensure that our laws are interpreted “by judges who can understand the circumstances of the communities which they serve” (George and Yoon 2016, 8). Researchers have long studied whether Black and white judges and male and female judges do indeed make different decisions in their assigned cases, whether those cases involve criminal defendants, sex or race discrimination plaintiffs, or voting rights disputes. Many have found that decision making differences have emerged based on judge race or sex in cases directly related to those characteristics (Boyd, Epstein, and Martin 2010; Farhang and Wawro 2004; Kastellec 2013; Boyd 2016; Harris and Sen 2019; Haire and Moyer 2019; Morin 2014; Haire and Moyer 2014; Collins and Moyer 2008), but the research findings have been much more mixed in other areas of law.

Decision-making discretion provides an opportunity for judges’ backgrounds, preferences, biases, and special skills to affect behavior. Discretion is not always present for trial judges, who are described as “administrators, applicers of law, and organizational bureaucrats” who spend their time “in rote activities like holding hearings and supervising jury trials” (Boyd 2016, 790). There have been concerted efforts to constrain judicial discretion at the federal pretrial detention decision stage. The Bail Reform Act indicates that the trial judge may only order a defendant’s detention if he finds that “no condition or combination of conditions will reasonably assure the appearance of the person as required and the safety of any other person and the community” (18 U.S.C. § 3142(c)(1)). While the Act’s language can curb trial judges’ tendencies to detain defendants before trial, the assessments of future appearance and community safety leave significant room for judges to reach distinct decisions on whether to detain or release a defendant.

While bail judges appear to have the discretion necessary for their decisions to vary based on their backgrounds, do we expect these differences to emerge for judge race and sex? Some argue that because federal judges are trained, educated, and socialized in the same way and face similar legal conditions once they join the bench, their behavior as judges is likely to be similar (Steffensmeier and Britt 2001; Martin, Reynolds, and Keith 2002). While strong recent evidence suggests that “female and minority judges are coming to the federal bench with increasingly commensurate profiles to their white male colleagues” (Sen 2017), two competing perspectives anticipate differences in judicial pretrial detention behavior based on judge sex and race.

### ***More Leniency from Black and Female Judges, More Punitiveness from White and Male Judges***

When it comes to judge race, multiple arguments predict that Black judges will be more lenient toward criminal defendants than white judges. One such perspective is based on Black judges’ group identity and group perceptions of the criminal justice system. As Ifill (2000) argues, “it is incontrovertible that race influences how Americans see the world” (417). African Americans are regularly and systematically recorded as having higher skepticism of criminal justice institutions and actors. This extends to higher mistrust in the police (Tyler 2005; Hurwitz and Peffley 2005; Lundman and Kaufman 2003) and lower confidence ratings for local courts and prisons (Sherman 2001; Brooks and Jeon-Slaughter 2001) among Black survey respondents compared to white survey respondents. These perceptions about the criminal justice system, along with lingering racism, racial segregation in communities, discrimination in access to economic and employment opportunities, and so much more that span economic classes, mean that Black judges bring a unique perspective to judging (Ifill 2000).

Balance theory anticipates that Black judges’ views about the criminal justice system will result in more empathetic, lenient outcomes for a broad set of criminal defendants, not just Black defendants. Under balance theory, the historical and contemporary racial discrimination against one’s group will create broader sympathy toward others facing discrimination or oppression, even when not based on race (Bratton and Haynie 1999; Heider 1958). As Kulik, Perry, and Pepper (2003) argue, since “people of color [are] at greater risk of harassment ... [t]his increased vulnerability” might make them “especially sensitive to the harassment of others” (71).

Black judges’ personal views about the criminal justice system and incarceration, along with those views held by members of their broader communities, may make them less likely to defer to prosecutors’ recommendations about bail and more likely to find credibility in the arguments made by the defense counsel, relative to their white judge colleagues. This, in turn, would result in Black judges being more lenient in their bail decisions by granting RORs to defendants – i.e., release on their own recognizance – at a higher rate than white judges.

There may also be reason to expect female judges to be more lenient toward defendants than male judges. The different voice theory holds that men and women communicate, think, and view the world differently from one another (Gilligan 1982). As applied to criminal law-related issues like those under consideration here, the theory would likely predict that “women’s emphasis on caring and their recognition of the importance of relationships would be expressed in a therapeutic rather than a punitive model” (Bogoch 1999, 68). The result of this is that female judges may show a higher level of compassion and understanding to all defendants and thus treat them with more leniency – at bail and throughout their interactions in the criminal justice system. By contrast, the different voice theory anticipates that the male “voice” is distinctly masculine and committed to enforcing rules (Gilligan 1982; Gilligan 1977). Male judges may thus be less compassionate and empathetic to individual criminal defendants and more inclined to impose the punitive options available to them.

During pretrial detention hearings, we would expect that under different voice theory, and holding all else equal, male judges would be less likely to grant defendants ROR and thus securing their release from jail without paying any money (Williams 2017) and more likely to detain them or require monetary conditions relative to their female judicial colleagues.

### ***More Punitiveness from Black and Female Judges, More Leniency from White and Male Judges***

Theory and empirical results indicate that it may instead be that Black and female judges are more punitive in their criminal justice-related outcomes than their white, male colleagues. In contrast to the above-described empathy that Black judges may feel to criminal defendants, by knowing crime statistics and the effects of criminal justice on the Black community, Black judges may adopt a sterner and more uncompromising stance toward defendants. Two anonymous quotes from Black judges help to illustrate why black judges may be, on average, tougher on criminal defendants than their white colleagues:

- “[A]s far as toughness, the black judges I know are as tough or tougher than white judges. They [Black judges] know in a personal way how crime affects the lives of people and will feel in a personal way the need to do something about it” (anonymous judge, quoted in Steffensmeier and Britt 2001, 762).
- “A black judge isn’t going to buy a [defendant’s] sob story or line about being sorry for what he done, that he just needs the chance to go straight” (anonymous judge, quoted in Steffensmeier and Britt 2001, 762).

Steffensmeier and Britt’s (2001) study of Pennsylvania state trial judges’ sentencing found that Black judges imposed harsher sentences on defendants than did their white colleagues. Some evidence of increased Black decision maker punitiveness has emerged in other criminal justice settings too, with Brown and Frank (2006) and Wilkins and Williams (2008) finding that Black police officers treat citizens more harshly than white officers in certain contexts.

Female judges may similarly behave more punitively toward defendants than their male colleagues. Women’s societal interactions are shaped “by prospective exposure to risky or vulnerable situations” and resulting increased victimization chances (Steffensmeier and Herbert 1999). With this comes greater concerns about neighborhood protection, risk of recidivism, and perceived risk of crime among women than men (Steffensmeier and Herbert 1999; LaGrange, Ferraro, and Supancic 1992). Women may also be more likely to fear crime and feel empathetic toward crime victims than men (LaGrange, Ferraro, and Supancic 1992; Arce, Farina and Sobral 1996; Schutte and Hosch 1997). As a result, there is higher female support for punitive measures toward criminal offenders, including longer prison sentences, denying early release from prison, and denying parole (Haghighi and Lopez 1998; Whitehead and Blankenship 2000; Dodd 2018).

At the same time, socialization into gender roles and concerns about victimization may make women decision makers more moralistic and willing to firmly uphold norms of the criminal justice system and punishment for crimes (Steffensmeier and Herbert 1999). Female trial judges appear to be more likely than male judges to defer to the prosecution (Fox and Van Sickle 2000). This indicates a broader trust in the conventional proceedings of criminal justice institutions among women that may not be as regularly present in men.

As numerical minorities on the federal bench, female and Black judges may also be driven to aim to “blend in and conform to existing norms and institutional cultures” (Palmer 2001) rather than behave distinctly from their male or white colleagues (Kanter 1977; Yoder 1991). As Steffensmeier and Britt (2001) argue in their study of Black judges’ sentencing behavior, “Black judges as tokens may feel they are always under scrutiny and must perform well. Thus, they may

be leery ... of 'going easy' on criminal defendants" (754). This may even lead to an overcorrection in behavior, where Black and female judges "toe the line" but white and male judges feel more freedom to diverge and offer leniency when specific case and defendant circumstances merit it.

Based on the theory and discussion in this subsection, and holding all else equal, female and Black judges should be less likely than their male and white colleagues to issue RORs to pretrial defendants.

### **Conditional Effects of Defendant Race and Sex on Bail Decisions**

The above discussion focuses on the characteristics of the judge as they relate to punitive pretrial detention hearing behavior, but it does not address whether any of these judge sex and race-based differences may interact with the race and sex of defendants. But there is good reason to expect that conditional relationships between the two exist. Prior work on pretrial detention indicates that male and minority defendants frequently receive less favorable outcomes than their female, white counterparts (Sacks, Sainato, and Ackerman 2015; Reitler, Sullivan, and Frank 2013; Jones 2013; Wooldredge 2012; Freiburger and Hilinski 2010; Schlesinger 2005; Demuth 2003; Ayers and Waldfogel 1994; Spohn 2008; Turner and Johnson 2005). Similarly important is prior theoretical and empirical research finding strong substantive representation (pro-group members) among female and Black judges as well as bias against one's own group members. We explore these two potential scenarios in the context of bail in more detail below.

#### ***Substantive Representation/In-Group Favoritism***

Under substantive representational theory, female and racial minority judges would be expected to make substantive decisions favoring those of the same sex and race, respectively (e.g., Farhang and Wawro 2004; Kastlelec 2013; Pitkin 1967; Welch, Combs, and Gruhl 1988). For female judges, this means taking advantage of "decision-making opportunities to liberate other women" (Cook 1981, 216). For Black judges, there is an expectation of strong racial consciousness and group identity (McClain et al. 2009) since "it is safe to assume that a disproportionate number of Blacks grow up with a heightened awareness" of racial discrimination (Edwards 2002, 328). As Mann (1993) has argued, "a minority jurist who had experienced discrimination and racism would empathize with the minority defendant standing before him/her and accordingly show leniency" (219).

Numerous empirical studies find evidence of substantive representation in female and minority decision making in the criminal justice system. Close and Mason (2006) and Gilliard-Matthews, Kowalsi, and Lundman (2008) find that Black and Latino drivers were treated significantly more favorably by minority police officers than white officers when stopped. Johnson (2006), Spohn (1990b), Welch, Combs, and Gruhl (1988), and others find that minority judges are more lenient than white judges toward minority defendants during sentencing.

In the bail decision making context, substantive representation theory predicts that female and Black judges will be more lenient than their male and white colleagues toward female and Black defendants, respectively. This would mean that female judges would be more likely to grant ROR to female defendants than male defendants. Further, Black judges would be more likely to grant ROR to Black defendants than white defendants.

#### ***In-Group Bias, Out-Group Protection***

Researchers have found that criminal justice decision makers, at times, make decisions that actively disfavor those in their class and instead benefit other groups. With regard to race, the

bulk of the relevant research focuses on how Black citizens and defendants are, at times, at a disadvantage when they face a Black decision maker instead of a white one. For example, Depew, Eren, and Mocan (2017) find that judge and offender race affects whether a juvenile offender is sentenced to custody or probation in Louisiana, with Black judges more likely to harshly sentence Black juveniles than white juveniles. Anbarci and Lee (2014) find Black police officers were less likely to give speeding discounts – i.e., recording a lower speed on the issued ticket than observed – while ticketing minority drivers than when ticketing white drivers.

With regard to gender, under chivalry theory, males stereotype women as weak and, as a result, will be more likely to “protect and defend vulnerable women, minimizing their pain and suffering” (Gill, Kagan, and Marouf 2019). As applied to criminal defendants, male judges will be more lenient toward female defendants than they will be toward male defendants. Johnson (2006) finds evidence pointing to this very thing: in the sentencing context, with all else equal, male judges are more likely to incarcerate male defendants than female defendants.

If these gender and race-based findings holding the bail context, we would expect to see male judges be more likely than female judges to grant RORs to female defendants than male defendants. Similarly, Black judges, compared to white judges, should grant fewer RORs to Black defendants than white defendants.

## Data and Methods

To empirically examine the effects of judge and defendant race and on federal bail decisions, we collect original data. Using federal trial court documents (docket sheets, case documents) and the U.S. Sentencing Commission’s Offender Datafiles, we develop a database of pretrial detention outcomes from 2003 to 2013 across 22 federal district courts.<sup>1</sup> Prior empirical studies of bail have been rare and generally focused on state and local data (e.g., Sacks and Ackerman 2012, 2014; Sacks, Sainato, and Ackerman 2015; Wooldredge, Frank, and Goulette 2017; Williams 2017; Hissong and Wheeler 2019, Gupta, Hansman, and Frenchman 2016). Our original data thus represent a novel source for evaluating important but understudied federal bail decisions.

Our dependent variable captures the outcome of the defendant’s federal district court detention hearing. Measured dichotomously, the variable is coded as 1 if the defendant receives leniency and is ROR’d (released on personal recognizance). The dependent variable is coded as 0 if the defendant receives a more punitive outcome, either being detained pretrial or assigned

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<sup>1</sup>The data collection began with the drawing of a stratified random sample of defendants from the Federal Judicial Center’s Criminal Integrated Database by district-sentence year from 2006 to 2013. After the sample was drawn, we collected the case’s docket sheet and other relevant case documents from PACER (“Public Access to Court Electronic Documents”). The case documents were used to collect the dependent variable (detention decision), the detention judge’s name, the defendant’s name and year of birth, and other relevant case and defendant information. We then matched the defendant with his corresponding observation in the publicly-available U.S. Sentencing Commission’s Offender Datafiles so that additional defendant-specific variables would be available to us. This matching was done with a series of case and defendant characteristics including district; sentence date; prison, probation, and supervised release details; fine, special assessment, and restitution details; individual statutes for conviction charges; and other defendant information. We had over a 92% successful match rate.

We exclude judges and defendants from the data who are neither Black nor white. Doing so simplifies the data and better allows us to test conditional theories of judge decision making. We leave it to future research to further flesh out the theoretical and empirical implications for judges and defendants of other races and ethnicities. In alternative modeling, we exclude all defendants who are non-U.S. citizens. Doing so does not affect the key results presented below.

The 22 districts covered in the data include: D. Arizona, Central D. California, District of Columbia, Middle D. Florida, Southern D. Florida, Northern D. Iowa, Northern D. Illinois, Southern D. Illinois, D. Kansas, Eastern D. Kentucky, Eastern D. Louisiana, D. Massachusetts, D. Maine, Eastern D. Michigan, Middle D. North Carolina, D. New Jersey, Southern D. New York, Eastern D. Pennsylvania, Middle D. Pennsylvania, D. South Dakota, Western D. Virginia, and D. Vermont. Because the data collection focuses on sentence date, the pretrial detention hearing dates within the data occur as early as 2003.

monetary conditions for release prior to trial.<sup>2</sup> Within our weighted data, defendants are ROR'd, on average, 21% of the time.

A series of dichotomous variables enable us to capture the race and sex of both judges and defendants in our data. *Female Judge* is coded as 1 for all cases where the pretrial detention hearing judge is a female and 0 when the judge is a male. *Black Judge* is scored as 1 for all such cases where the deciding judge's race is Black and 0 when the judge is white (as noted above, we discard observations where the judge is neither).<sup>3</sup> After recording the name of the detention hearing judge from the case's docket sheet, judge race and sex were coded using the Federal Judicial Center biographical database (Federal Judicial Center 2018) for district judges and a combination of the EEOC Litigation Project data (Kim, Schlanger, and Martin 2013) and web searches for magistrate judges.

The identity of the defendant was also recorded from the case's docket sheet. *Female Defendant* is coded as 1 when the defendant is a woman and 0 when he is a male. *Black Defendant* takes on the value of 1 when the defendant's race is Black and 0 when the defendant is white. In our weighted data, 15% of decisions are made by Black judges and 21% are made by female judges, with 45% of the defendants being Black and 16% being female. Defendant race and sex were compiled after the case was matched with its corresponding observation in the U.S. Sentencing Commission's Offender Datafiles.

Following Boyd, Collins, and Ringhand (2018) and Owens (2010) we combine these variables to test for the presence of conditionality between judge and defendant race and judge and defendant sex when it comes to pretrial detention decisions. Combining the variables results in four pairs each for sex and race. The race-related pairs are: (1) Black Judge-Black Defendant, (2) Black Judge-White Defendant, (3) White Judge-White Defendant, and (4) White Judge-Black Defendant. The sex-related pairs are: (1) Female Judge-Female Defendant, (2) Female Judge-Male Defendant, (3) Male Judge-Male Defendant, and (4) Male Judge-Female Defendant.

We control for judge, defendant, case, and legal factors that are likely to affect pretrial detention outcomes. First, we control for *Judge Type*. This variable is coded as 1 for Article III district judges and 0 for magistrate judges. Within our data, magistrate judges make nearly 86% of the data's pretrial detention decisions (with the remaining decisions made by district judges). Magistrate judges are Article I judges who serve for eight-year terms and are frequent bail deciders in federal district courts. In fiscal year 2016, federal magistrate judges held over 47,000 felony detention hearings in the federal district courts (Judicial Business 2016, Table M-3). While district courts lean heavily on magistrate judges to hold pretrial detention hearings – for example, they

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<sup>2</sup>This project simplifies the measurement of the trial judge detention decision into two groups – lenient (ROR) and more punitive (monetary bail and detention) for both empirical and theoretical reasons. In terms of the underlying theory and literature, we struggle to develop judge race and sex and defendant race and sex expectations that distinguish between the two punitive worlds of monetary bail and detention. Empirically, while the PACER case documents do not always enable us to observe whether a defendant made bond, our review of the available case documents on these matters reveals frequently lofty monetary bail amounts and conditions and a wide range of success among defendants in meeting their bail conditions and avoiding detention. To us, this suggests a level of punitiveness toward pretrial defendants that simply does not exist for those defendants released on personal recognizance. We look forward to future research that further untangles the theory and empirics of detention decisions and opens the door to studies examining judge differences across ROR, monetary bail, and detention separately.

<sup>3</sup>Scholars have argued that race is a social construct that remains fluid and that racial group membership is socially contested (Omi and Winant 1994; Hirschman, Alba and Farley 2000; Prewitt 2006). Sen and Wasow (2016) make a compelling argument that race is an aggregate of many components such as societal values, cultural traits, and institutional power relationships, to name a few. We recognize the validity of the argument and do not seek to essentialize Black judges to a single dichotomous variable that treats them as consisting strictly of immutable characteristics. However, data limitations prevent us and many studies like ours focused on judge and defendant race from capturing and including the variety of components of a more wholesale and nuanced accounting of race in this study's modeling. Nonetheless, a shared group consciousness based on common experiences connected to membership among those of the same racial identity, including within the judicial system (i.e., Dawson 1994; McClain et al. 2009; Bratton and Haynie 1999; Heider 1958; Kulik, Perry, and Pepper 2003) means there is still value in examining the role of race in judicial proceedings like those studied here. We look forward to future data collection and research efforts in the law and courts arena that enable a more wholesale accounting of judge race and sex.

held over 47,000 felony detention hearings in 2016 alone (Judicial Business 2016, Table M-3) – they vary significantly in how they utilize and assign these and other matters to magistrate judges (Boyd 2016; McCabe 2016).

Second, we control for *Judge Ideology*. To do this, we use the senatorial courtesy-based measures devised by Giles, Hettinger, and Peppers (2001) and Epstein et al. (2007) for district judges. The ideology scores range from  $-1$  (most liberal) to  $+1$  (most conservative). Similar ideology scores do not exist for federal magistrate judges, so we follow prior research and rely on proxy ideology scores for magistrate judges (Boyd and Sievert 2013). To measure *Judge Ideology* for magistrate judges, we assign the average district court ideology score (for active district judges only) from the year of the magistrate judge's appointment.<sup>4</sup> The weighted mean ideology score for all judges in the data is 0.02.

We include a variable for *Defendant Offense Severity*, which captures the base offense level for the defendant's most serious charged offense that ranges in the data from 4 (least severe) to 43 (most severe).<sup>5</sup> *Defendant Criminal History* measures the criminal history points assigned to a defendant under the U.S. Sentencing Guidelines based on prior sentences.<sup>6</sup> *Defendant Criminal History's* weighted mean level in the data is 3.85, with values running from 0 to 43. *Defendant Dependents* (weighted mean of 0.60) captures dichotomously whether a defendant has dependents, thus serving as a way to assess variation in the degree of defendants' ties to their local community and likelihood of fleeing or reoffending during release. *Immigration Crime* captures whether the defendant is convicted of an immigration crime (3% of weighted observations).

We also control for the presence of statutory factors or *Triggers* that, when present, encourage less lenient treatment of defendants in the pretrial detention phase (see Reitler, Sullivan, and Frank 2013 for a similar approach). These dichotomous variables include *Violence Trigger* (crime of violence), *Statutory Max Trigger* (crime carries a maximum sentence of life in prison or death), *Drug Trigger* (crimes include narcotics carrying a maximum penalty over 10 years), *Weapon/Minor Trigger* (defendant's conduct involved a firearm or a minor), and *Obstruction Trigger* (defendant obstructed justice).

Beyond the above discussed defendant characteristics of race and sex, we also account for defendant age and education. *Defendant Age* is a continuous measure that ranges from 18 to 82 in the data, with a mean value of 38. *College Educated*, dichotomously measured for whether the defendant has attended some college, serves to proxy socioeconomic status of defendants. We anticipate that younger and less educated defendants will be disadvantaged during the pretrial detention decision.

We also account for serial correlation through *Detention Year Fixed Effects*, which track the year the pretrial status was decided.

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<sup>4</sup>Because of the high percentage of magistrate judges in our data, some may be concerned with the proxy judge ideology score used for magistrate judges. We note that excluding the judge ideology measure from our statistical model reported below does not affect other key findings that we report.

<sup>5</sup>We utilize base offense level rather than the final offense level because it is the "starting point" for a Guidelines calculation (United States Sentencing Commission 2013) and is, at least in theory, closer to the pure factual circumstances of the crime in question. By contrast, a final offense level is the product of findings by the sentencing judge relating to crime-specific aggravating and mitigating characteristics that adjust the base offense level. Since "criminal sentencing scholarship has taken note that the factual circumstances under the Guidelines that lead to adjustments are often vague and allow for considerable discretion by the judge" (Schanzenbach and Tiller 2006, 28) we opt for the use of the base offense level to avoid using judicial discretion at sentencing to predict judicial discretion at bail. Ultimately, substituting final offense level for the base offense level does not alter our key findings.

<sup>6</sup>Many of our defendant-specific control variables, like *Defendant Criminal History* and the trigger variables, are measured based on data collected by the U.S. Sentencing Commission at the time of sentencing (i.e., after the pretrial detention decision). These sentencing-stage data allow us to capture a more detailed picture of a defendant than any alternative source, and we expect that much of the same underlying information about the defendant and the offense are available to the pretrial detention hearing judge (albeit in a less accessible manner). Where missingness occurs in the Sentencing Commission data, we exclude the observation.

**Table 1.** Logistic regression results of being ROR'd (released on personal recognizance) (=1) versus being detained pretrial or assigned monetary conditions for release (=0). Sampling weights included. Standard errors are robust and clustered on the district. \*\*  $p < 0.05$ ; \*  $p < 0.10$ .

	<i>Coefficients</i>	<i>Robust Standard Errors</i>
<i>Judge-Defendant Race</i>		
White Judge-White Defendant	1.68**	(0.82)
Black Judge-White Defendant	2.66**	(0.91)
Black Judge-Black Defendant	-0.11	(0.73)
White Judge-Black Defendant	[Baseline]	
<i>Judge-Defendant Sex</i>		
Male Judge-Male Defendant	0.84	(0.88)
Female Judge-Male Defendant	-0.98	(0.88)
Female Judge-Female Defendant	2.54*	(1.40)
Male Judge-Female Defendant	[Baseline]	
<i>Control Variables</i>		
Judge Type	0.57	(0.59)
Judge Ideology	-0.21	(0.89)
Defendant Education	-0.33	(0.29)
Defendant Age	-0.01	(0.01)
Defendant Dependents	0.99**	(0.40)
Defendant Offense Severity	-0.06**	(0.03)
Defendant Criminal History	-0.00	(0.03)
Violence Trigger	-0.39	(0.49)
Statutory Max Trigger	-1.76**	(0.49)
Drug Trigger	0.82	(0.57)
Weapon/Minor Trigger	0.24	(0.32)
Obstruction Trigger	-0.13	(0.46)
Immigration Crime	-0.70	(0.68)
Detention Year Fixed Effects	INCLUDED	
Constant	-4.31**	(2.02)
Observations	1,622	

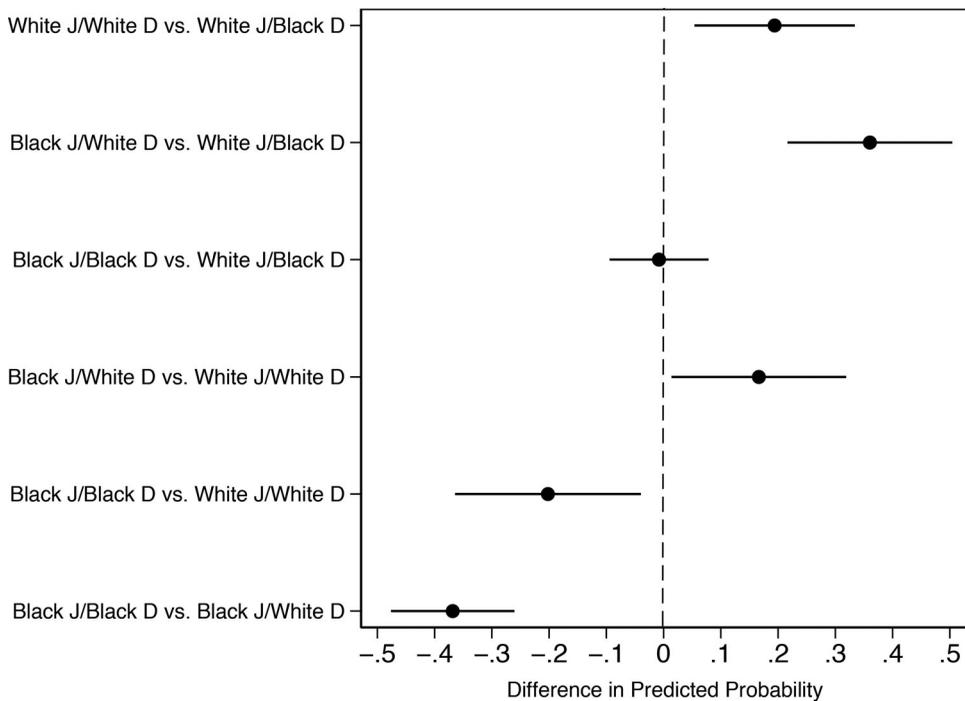
## Results

To empirically examine the effects of judge and defendant race and sex on the punitiveness of federal trial judges' pretrial detention decisions, we estimate a logistic regression model. The regression modeling includes sampling weights along with robust standard errors clustered on district (to account for a lack of independence across observations). The results of model are provided in [Table 1](#).

Since [Table 1](#)'s results for judge race-defendant race and judge sex-defendant sex provide only limited information on substantive effects across categories, particularly because each relationship is relative to the set baseline category, we turn to a visualization of the substantive results of interest. We begin first by plotting the substantive effects related to judge race and its potential interaction with defendant race. [Figure 1](#) plots the differences in the predicted probability that a defendant is ROR'd for the comparison between the different judge race and defendant race combinations in the data. For each pairwise comparison, the figure plots the mean difference and the confidence interval around the difference. Where the confidence interval intersects with 0, the plotted difference is not statistically significant.

[Figure 1](#) reveals interesting insights about the effects of judge race and defendant race when it comes to federal pretrial detention decisions. First, the results indicate that Black and white judges are both significantly more likely to grant RORs to white defendants than Black defendants. This difference across defendant races is particularly strong for Black judges, where they are over 0.36 more likely to issue a punitive pretrial detention decision (monetary bail or detention) to Black defendants than white defendants.

Perhaps even more notably, our findings indicate that Black judges are more lenient during this phase of judicial decision making than white judges, but only at times. The presence of this effect is conditioned on the race of the defendant, with Black judges being more lenient in



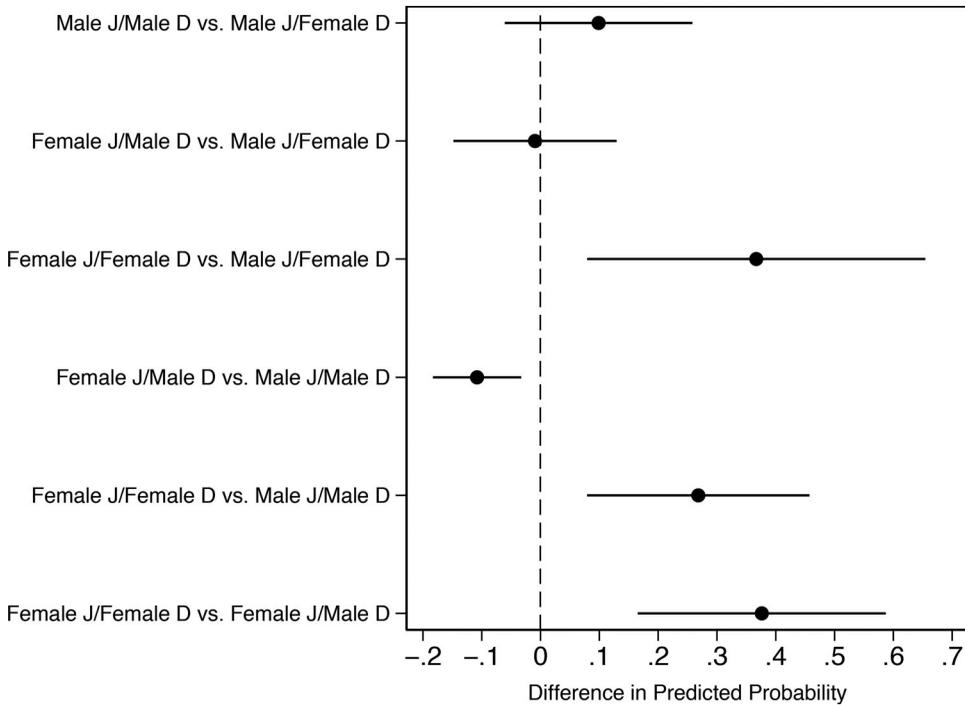
**Figure 1.** Differences in the predicted probability that a defendant is ROR'd based on the comparison of the different judge race and defendant race combinations in the data. The solid points indicate mean differences, while the horizontal lines represent 90% confidence intervals around the difference. J = Judge; D = Defendant.

granting pretrial release to white defendants than white judges. As [Figure 1](#) displays, Black judges who are more than 0.16 more likely than white judges to grant ROR to white defendants. By comparison, there is no statistical difference in how white and Black judges decide pretrial detention for Black defendants. The size of the disparity grows when we combine the effects of judge and defendant race: Black judges are over 0.36 more likely to grant ROR to white defendants than white judges are to Black defendants.

These results indicate judge race plays an important role in determining the outcome of pretrial detention hearings. But this effect is conditioned on defendant race. Our results thus provide some evidence to support the “in-group bias, out-group protection” conditional theory as Black judges behave differently from white judges in ways that specifically benefit white defendants. While more research is needed to fully understand the operating mechanisms with results like this, it may indicate an in-group punishment of social norms and defection that has been observed in other recent work (e.g., [Depew, Eren, and Mocan 2017](#); [Mendoza, Lane, and Amodio 2014](#)).

A similar nuanced judge story emerges for judge sex. Looking now to the substantive effects plotted in [Figure 2](#), the estimated predicted probabilities reveal that, as expected by different voice theory, female judges are, at times, more lenient in granting RORs than male judges. However, as was the case with judge race, this effect is again conditioned on the defendant. Female judges are 0.37 more likely than a male judge to grant an ROR to a female defendant. Female judges are over 0.10 less likely than male judges to grant an ROR to male defendants. By comparison, there is no statistical difference for male judges in their pretrial detention behavior toward male and female defendants. For female judges in particular, these results provide evidence for the substantive representation conditional theory: female judges behave favorably toward female defendants.

While we see evidence of defendant-conditional differences in judge behavior for both judge race and judge sex, the striking divergence in how judge race and sex intersect with defendants is



**Figure 2.** Differences in the predicted probability that a defendant is ROR'd based on the comparison of the different judge sex and defendant sex combinations in the data. The solid points indicate mean differences, while the horizontal lines represent 90% confidence intervals around the difference. J = Judge; D = Defendant.

intriguing. Black judges show much more leniency toward white defendants during the pretrial proceedings than they do toward Black defendants. By contrast, female judges act in ways to favor their group by granting a higher rate of RORs to female defendants than male ones. That Black and female judges do not behave identically to benefit or disfavor their group should not be a great surprise given the rather distinct theories and histories the groups have with criminal justice matters. Still, though, the differences are notable.

Turning briefly to the other variables in Table 1's regression model, we see, interestingly, that neither judge type (district judge or magistrate judge) nor judge ideology affects the likelihood that a defendant will be released on personal recognizance. The results do indicate that defendants with dependents are more likely to be ROR'd while defendants eventually convicted of more serious crimes are more likely to be treated punitively during the pretrial detention hearing.

## Discussion

The pretrial detention decision has critical implications for the defendant's livelihood, family, housing, employment, and eventual case outcome. While prior researchers have assessed the disparities that exist in the bail decision based on the defendant and case characteristics, little systematic empirical attention has been paid to the effects of the pretrial detention judge on decisions at this stage of criminal case proceedings. Here, we examined judge race and judge sex, along with the same for defendants, to see whether notable differences emerge in the degree of punitiveness in federal district court pretrial detention hearings.

Our findings provide evidence that the combination of judge and defendant's characteristics affect which defendants receive more punitive treatment at this pretrial stage – for us, white defendants appearing before a white judge instead of a Black judge, female defendants appearing

before a male judge instead of a female judge, and male defendants appearing before a female judge instead of a male judge. Specifically, our results indicate that judge identity matters in the federal bail decision, with Black judges being as much as 0.36 more likely to grant RORs to white defendants than white judges are to Black defendants. Additionally, we see that female judges are as much as 0.37 more likely to issue RORs to female defendants and 0.11 less likely to issue RORs to male defendants than are male judges. The size and direction of these results depend both on the judge's race and sex and that of the defendant, which indicate support for the conditional theories discussed above, albeit in different ways for judge race and judge sex. Viewed together, these findings provide important new insights into how the identity of the judge matters throughout the life of a federal criminal case, including in its very earliest stages.

As illuminating as our judge sex and race empirical results are, we believe they are just an early step in understanding how judges and judicial discretion affect the pretrial detention (and broader pretrial treatment) of defendants by our criminal justice system. Despite its advances, our study's reliance on federal data sources mean we are unable to statistically account for key defendant factors that may influence bail, like stronger measures of a defendant's community ties or other connections related to stakes-in-conformity hypotheses found in other studies (e.g., Spohn 2008). We also hope to see future research efforts expand federal district court data collection so that all 94 federal district courts' pretrial detention proceedings can be studied over a broader period of time. Similarly, we look forward to additional studies on state bail proceedings, where significant variability exists in the role of judges and other bail officials (along with the underlying law and procedures governing bail in the states).

Countless opportunities exist for future research on judges and the bail decision in criminal cases. We highlight four of these that we see as particularly fruitful and interesting:

- Are female and minority judges' bail decision making behaviors conditioned on defendant and case characteristics that extend beyond defendant race and gender? We suspect, for example, that female judges may be particularly punitive toward defendants with lengthy criminal histories and that Black judges' likelihood of being lenient toward defendants fades as charged crime severity grows.
- Does judge and defendant race and ethnicity matter beyond the simple dichotomy of Black and white races? The theory of potential differences in judging behavior between Latino judges and other judges at bail is more complicated and even less developed in prior research than what has been explored in this project (although recent research on Latino judicial behavior in other settings is instructive; see Morin 2014; Hofer and Casellas 2020). Similarly underdeveloped in prior studies is how Latino defendants are treated by the criminal justice system in the pretrial detention setting.
- Are defendants likely to view their similar pretrial detention decisions as more or less fair based on the race or sex of the judge handing down the decision? Evidence in other contexts of the criminal justice system, including interactions between citizens and the police (Theobald and Haider-Markel 2008), indicate such examinations of symbolic representation and perceptions of procedural justice are likely to be constructive inquires at the bail stage too.
- Do the other judges in the district (and racial and/or gender composition of district or district office) affect individual judges' behavior (and vice versa) in the pretrial detention stage of a case? Similar research has examined this for merits decisions in trial courts for judge gender (Collins, Manning, and Carp 2010) and race (Harris 2018). Harris (2018) finds that, in the sentencing context, "the presence of Black judges alters individual judges' behavior, making both Black and White judges less punitive in cases with Black defendants and increasing equality in sentencing outcomes for Black and White defendants" but only "when judges work in close proximity with their Black colleagues" (37).

This research joins a growing body of literature exposing the vast amounts of discretion in the federal criminal justice system (Albonetti 1987; Boyd et al. 2021; Howard et al. 2000; Whitford and Yates 2009). Here, that discretion comes in the form of judges with limited information who make impactful decisions that are unlikely to be reviewed. Pretrial release provides an opportunity for a defendant to experience leniency in the legal system. However, when this is contingent or influenced by the interaction of the characteristics of the judge and defendant, as we observe here, the legitimacy of the pretrial system should be called into question. Implementing a system with stronger limitations on discretion for loosely-defined "community safety" and stronger empirical measures (like crime severity, flight risk, and community ties gauged on some metric or algorithm) might minimize the bias stemming from individual judge and defendant characteristics but could also raise new concerns (as have been observed in the sentencing context with Guidelines).

## Funding

The authors thank the anonymous reviewers, the editor, and the special issue editors for their helpful feedback. Boldt and Boyd acknowledge funding from National Science Foundation grant SES-1729077. Any opinions, findings, and conclusions or recommendations expressed in this material are those of the authors and do not necessarily reflect the views of the National Science Foundation. We are grateful to Peppermint, Ryan Brock, Julia Spicer, Hunter Rahn, Jacob Kepes, Surendra Mahadeo, and Monique Alavi for their research assistance.

## References

- Albonetti, Celesta A. 1987. "Prosecutorial Discretion: The Effects of Uncertainty." *Law & Society Review* 21 (2): 291–313. doi: [10.2307/3053523](https://doi.org/10.2307/3053523).
- Allan, Alfred, Maria M. Allan, Margaret Giles, Deirdre Drake, and Irene Froyland. 2005. "An Observational Study of Bail Decision-Making." *Psychiatry, Psychology and Law* 12 (2):319–33. doi: [10.1375/pplt.12.2.319](https://doi.org/10.1375/pplt.12.2.319).
- Anbarci, Nejat, and Jungmin Lee. 2014. "Detecting Racial Bias in Speed Discounting: Evidence from Speeding Tickets in Boston." *International Review of Law and Economics* 38:11–24. doi: [10.1016/j.irle.2014.02.002](https://doi.org/10.1016/j.irle.2014.02.002).
- Arce, Ramon, Francisca Fariña, and Jorge Sobral. 1996. "From Jurors to Jury Decision Making. A Non-Model Approach." In *Psychology, Law and Criminal Justice. International Developments in Research and Practice*, edited by Graham Davies, Sally Lloyd-Bostock, Mary McMurrin, and Clare Wilson, 337–43. Berlin: Walter de Gruyter.
- Arnold, David, Will Dobbie, and Crystal S. Yang. 2018. "Racial Bias in Bail Decisions." *The Quarterly Journal of Economics* 133 (4):1885–932. doi: [10.1093/qje/qjy012](https://doi.org/10.1093/qje/qjy012).
- Ayres, Ian, and Joel Waldfogel. 1994. "A Market Test for Race Discrimination in Bail Setting." *Stanford Law Review* 46 (5):987–1048. doi: [10.2307/1229062](https://doi.org/10.2307/1229062).
- Berry-Jester, Anna Maria. 2018. "You've Been Arrested. Will You Get Bail? Can You Pay It? It May All Depend On Your Judge." *FiveThirtyEight*. <https://fivethirtyeight.com/features/youve-been-arrested-will-you-get-bail-can-you-pay-it-it-may-all-depend-on-your-judge/>.
- Bogoch, Bryna. 1999. "Judging in a 'Different Voice': Gender and the Sentencing of Violent Offences in Israel." *International Journal of the Sociology of Law* 27 (1):51–78. doi: [10.1006/ijsl.1999.0081](https://doi.org/10.1006/ijsl.1999.0081).
- Boyd, Christina L. 2013. "She'll Settle It?" *Journal of Law and Courts* 1 (2):193–219. doi: [10.1086/670723](https://doi.org/10.1086/670723).
- Boyd, Christina L. 2016. "Representation on the Courts? The Effects of Trial Judges' Sex and Race." *Political Research Quarterly* 69 (4):788–99. doi: [10.1177/1065912916663653](https://doi.org/10.1177/1065912916663653).
- Boyd, Christina L., Paul M. Collins, Jr, and Lori A. Ringhand. 2018. "The Role of Nominee Gender and Race at US Supreme Court Confirmation Hearings." *Law & Society Review* 52 (4):871–901. doi: [10.1111/lasr.12362](https://doi.org/10.1111/lasr.12362).
- Boyd, Christina L., Lee Epstein, and Andrew D. Martin. 2010. "Untangling the Causal Effects of Sex on Judging." *American Journal of Political Science* 54 (2):389–411. doi: [10.1111/j.1540-5907.2010.00437.x](https://doi.org/10.1111/j.1540-5907.2010.00437.x).
- Boyd, Christina L., Michael J. Nelson, Ian Ostrander, and Ethan D. Boldt. 2021. *The Politics of Federal Prosecution*. New York, NY: Oxford University Press.
- Boyd, Christina L., and Jacqueline M. Sievert. 2013. "Unaccountable Justice? The Decision Making of Magistrate Judges in the Federal District Courts." *Justice System Journal* 34 (3):249–73. doi: [10.1080/0098261X.2013.10768040](https://doi.org/10.1080/0098261X.2013.10768040).
- 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 (3):658–79. doi: [10.2307/2647822](https://doi.org/10.2307/2647822).

- Brooks, Richard R. W., and Haekyung Jeon-Slaughter. 2001. "Race, Income, and Perceptions of the U.S. Court System." *Behavioral Sciences & the Law* 19 (2):249–64. doi: 10.1002/bsl.442.
- 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 (1):96–126. doi: 10.1080/07418820600552527.
- Close, Billy R., and Patrick L. Mason. 2006. "After the Traffic Stops: Officer Characteristics and Enforcement Actions." *Topics in Economic Analysis & Policy* 6 (1):1–41. doi: 10.2202/1538-0653.1538.
- Cohen, Thomas H., and Brian A. Reaves. 2007. "Pretrial Release of Felony Defendants in State Courts." In *Bureau of Justice Statistics Special Report*. U.S. Department of Justice, Office of Justice Programs.
- Collins, Paul M.Jr, Kenneth L. Manning, and Robert A. Carp. 2010. "Gender, Critical Mass, and Judicial Decision Making." *Law & Policy* 32 (2):260–81. doi: 10.1111/j.1467-9930.2010.00317.x.
- Collins, Paul M., Jr., and Wendy L. Martinek. 2011. "The Small Group Context: Designated District Court Judges in the U.S. Courts of Appeals." *Journal of Empirical Legal Studies* 8 (1):177–205. doi: 10.1111/j.1740-1461.2010.01205.x.
- Collins, Todd, and Laura Moyer. 2008. "Gender, Race, and Intersectionality on the Federal Appellate Bench." *Political Research Quarterly* 61 (2):219–27. doi: 10.1177/1065912907306467.
- Cook, Beverly B. 1981. "Will Women Judges Make a Difference in Women's Legal Rights?" In *Women, Power, and Political Systems*, edited by Margherita Rendel, 216–39. London: Croom Helm.
- Dawson, Michael C. 1994. *Behind the Mule: Race and Class in African-American Politics*. Princeton, NJ: Princeton University Press.
- Demuth, Stephen. 2003. "Racial and Ethnic Differences in Pretrial Release Decisions and Outcomes: A Comparison of Hispanic, Black, and White Felony Arrestees." *Criminology* 41 (3):873–908. doi: 10.1111/j.1745-9125.2003.tb01007.x.
- Depew, Briggs, Ozkan Eren, and Naci Mocan. 2017. "Judges, Juveniles, and in-Group Bias." *The Journal of Law and Economics* 60 (2):209–39. doi: 10.1086/693822.
- Dodd, Shannon. 2018. "The Punitive Woman? Gender Differences in Public Attitudes toward Parole among an Australian Sample." *International Journal of Offender Therapy and Comparative Criminology* 62 (10):3006–22. doi: 10.1177/0306624X17739560.
- Edwards, Harry T. 2002. "Race and the Judiciary." *Yale Law & Policy Review* 20:325–30.
- Epstein, Lee, William M. Landes, and Richard A. Posner. 2013. *The Behavior of Federal Judges: A Theoretical and Empirical Study of Rational Choice*. Cambridge, MA: Harvard University Press.
- Epstein, Lee, Andrew D. Martin, Jeffrey A. Segal, and Chad Westerland. 2007. "The Judicial Common Space." *Journal of Law, Economics, and Organization* 23 (2):303–25. doi: 10.1093/jleo/ewm024.
- Farhang, Sean, and Gregory Wawro. 2004. "Institutional Dynamics on the U.S. Court of Appeals: Minority Representation under Panel Decision Making." *Journal of Law, Economics, and Organization* 20 (2):299–330. doi: 10.1093/jleo/ewh035.
- Federal Judicial Center. 2018. "Biographical Directory of Article III Federal Judges, 1789-Present." <https://www.fjc.gov/history/judges>.
- Fox, Richard, and Robert Van Sickel. 2000. "Gender Dynamics and Judicial Behavior in Criminal Trial Courts: An Exploratory Study." *Justice System Journal* 21 (3):261–80. doi: 10.1080/23277556.2000.10871289.
- Freiburger, Tina L., and Carly M. Hilinski. 2010. "The Impact of Race, Gender, and Age on the Pretrial Decision." *Criminal Justice Review* 35 (3):318–34. doi: 10.1177/0734016809360332.
- George, Tracey E., and Albert H. Yoon. 2016. "The Gavel Gap: Who Sits in Judgment on State Courts?" American Constitution Society for Law & Policy, Washington, DC. <http://gavelgap.org/pdf/gavel-gap-report.pdf>.
- Gibson, James L. 1978. "Judges' Role Orientations, Attitudes, and Decisions: An Interactive Model." *American Political Science Review* 72 (3):911–24. doi: 10.2307/1955111.
- Giles, Micheal W., Virginia A. Hettinger, and Todd Peppers. 2001. "Picking Federal Judges: A Note on Policy and Partisan Selection Agendas." *Political Research Quarterly* 54 (3):623–41. doi: 10.1177/106591290105400307.
- Gill, Rebecca D., Michael Kagan, and Fatma Marouf. 2019. "The Impact of Maleness on Judicial Decision Making: Masculinity, Chivalry, and Immigration Appeals." *Politics, Groups, and Identities* 7 (3):509–28. doi: 10.1080/21565503.2017.1386572.
- Gilliard-Matthews, Stacia, Brian R. Kowalski, and Richard J. Lundman. 2008. "Officer Race and Citizen-Reported Traffic Ticket Decisions by Police in 1999 and 2002." *Police Quarterly* 11 (2):202–19. doi: 10.1177/1098611107309657.
- Gilligan, Carol. 1977. "In a Different Voice: Women's Conceptions of Self and of Morality." *Harvard Educational Review* 47 (4):481–517. doi: 10.17763/haer.47.4.g6167429416hg510.
- Gilligan, Carol. 1982. *In a Different Voice: Psychological Theory and Women's Development*. Cambridge, MA: Harvard University Press.
- Goldkamp, John S. 1979. *Two Classes of Accused: A Study of Bail and Detention in American Justice*. Cambridge, MA: Ballinger.

- Gruhl, John, Cassia Spohn, and Susan Welch. 1981. "Women as Policymakers: The Case of Trial Judges." *American Journal of Political Science* 25 (2):308–22. doi: [10.2307/2110855](https://doi.org/10.2307/2110855).
- Gupta, Arpit, Christopher Hansman, and Ethan Frenchman. 2016. "The Heavy Costs of High Bail: Evidence from Judge Randomization." *The Journal of Legal Studies* 45 (2):471–505. doi: [10.1086/688907](https://doi.org/10.1086/688907).
- Haghighi, Bahram, and Alma Lopez. 1998. "Gender and Perception of Prisons and Prisoners." *Journal of Criminal Justice* 26 (6):453–64. doi: [10.1016/S0047-2352\(98\)00023-3](https://doi.org/10.1016/S0047-2352(98)00023-3).
- Haire, Susan B., and Laura P. Moyer. 2014. *Does Diversity Matter? Judicial Policy Making in the U.S. Courts of Appeals*. Charlottesville: University of Virginia Press.
- Haire, Susan, and Laura P. Moyer. 2019. "Gender, Law, and Judging." Oxford: Oxford Research Encyclopedia of Politics.
- Harris, Allison P., and Maya Sen. 2019. "Bias and Judging." *Annual Review of Political Science* 22 (1):241–59. doi: [10.1146/annurev-polisci-051617-090650](https://doi.org/10.1146/annurev-polisci-051617-090650).
- Harris, Allison P. 2018. "Can Racial Diversity among Judges Affect Sentencing Outcomes?" Working Paper, Penn State University. [https://www.allisonpharris.com/uploads/1/0/7/3/107342067/harris\\_diversitysenticing.pdf](https://www.allisonpharris.com/uploads/1/0/7/3/107342067/harris_diversitysenticing.pdf).
- Heaton, Paul, Sandra Mayson, and Megan Stevenson. 2017. "The Downstream Consequences of Misdemeanor Pretrial Detention." *Stanford Law Review* 69 (3):711–94.
- Heider, Fritz. 1958. *The Psychology of Interpersonal Relations*. New York: Wiley.
- Hettinger, Virginia A., Stefanie A. Lindquist, and Wendy L. Martinek. 2006. *Judging on a Collegial Court*. Charlottesville: University of Virginia Press.
- Hirschman, Charles, Richard Alba, and Reynolds Farley. 2000. "The Meaning and Measurement of Race in the U.S. Census: Glimpses into the Future." *Demography* 37 (3):381–93. doi: [10.2307/2648049](https://doi.org/10.2307/2648049).
- Hissong, Rod V., and Gerald Wheeler. 2019. "The Role of Private Legal Representation and the Implicit Effect of Defendants' Demographic Characteristics in Setting Bail and Obtaining Pretrial Release." *Criminal Justice Policy Review* 30 (5):708–23. doi: [10.1177/0887403417714560](https://doi.org/10.1177/0887403417714560).
- Hofer, Scott, and Jason Casellas. 2020. "Latino Judges on the Federal District Court: ¿Cómo Deciden?" *American Politics Research* 48 (3): 343–354.
- Howard, Robert M., Richard E. Chard, Joel T. Kaji, and Jeffrey Davis. 2000. "Pre-Trial Bargaining and Litigation: The Search for Fairness and Efficiency." *Law & Society Review* 34 (2):431–56. doi: [10.2307/3115089](https://doi.org/10.2307/3115089).
- Hurwitz, Jon, and Mark Peffley. 2005. "Explaining the Great Racial Divide: Perceptions of Fairness in the U.S. Criminal Justice System." *The Journal of Politics* 67 (3):762–83. doi: [10.1111/j.1468-2508.2005.00338.x](https://doi.org/10.1111/j.1468-2508.2005.00338.x).
- Iffill, Sherrilyn A. 2000. "Racial Diversity on the Bench: Beyond Role Models and Public Confidence." *Washington & Lee Law Review* 57 (405):405–496.
- Johnson, Brian D. 2006. "The Multilevel Context of Criminal Sentencing: Integrating Judge- and County-Level Influences." *Criminology* 44 (2):259–98. doi: [10.1111/j.1745-9125.2006.00049.x](https://doi.org/10.1111/j.1745-9125.2006.00049.x).
- Johnson, Brian D. 2014. "Judges on Trial: A Reexamination of Judicial Race and Gender Effects across Modes of Conviction." *Criminal Justice Policy Review* 25 (2):159–84. doi: [10.1177/0887403412463933](https://doi.org/10.1177/0887403412463933).
- Jones, Cynthia E. 2013. "Give us Free: Addressing Racial Disparities in Bail Determinations." *New York University Journal of Legislative and Public Policy* 16 (3):919–64.
- Judicial Business. 2016. "Table M-3: Felony Preliminary Proceedings Conducted by U.S. Magistrate Judges Under 28 U.S.C. § 636(a)." <http://www.uscourts.gov/statistics-reports/judicial-business-2016-tables>
- Kanter, Rosabeth Moss. 1977. *Men and Women of the Corporation*. New York: Basic Books.
- Kastellec, Jonathan P. 2013. "Racial Diversity and Judicial Influence on Appellate Courts." *American Journal of Political Science* 57 (1):167–83. doi: [10.1111/j.1540-5907.2012.00618.x](https://doi.org/10.1111/j.1540-5907.2012.00618.x).
- Kim, Pauline T., Margo Schlanger, and Andrew D. Martin. 2013. "The Equal Employment Opportunity Commission Litigation Project." <http://eeoclitigation.wustl.edu>.
- Klein, David E. 2002. *Making Law in the United States Courts of Appeals*. New York: Cambridge University Press.
- Kulik, Carol T., Elissa L. Perry, and Molly B. Pepper. 2003. "Here Comes the Judge: The Influence of Judge Personal Characteristics on Federal Sexual Harassment Case Outcomes." *Law and Human Behavior* 27 (1): 69–86. doi: [10.1023/a:1021678912133](https://doi.org/10.1023/a:1021678912133).
- LaGrange, Randy L., Kenneth F. Ferraro, and Michael Supancic. 1992. "Perceived Risk and Fear of Crime: Role of Social and Physical Incivilities." *Journal of Research in Crime and Delinquency* 29 (3):311–34. doi: [10.1177/0022427892029003004](https://doi.org/10.1177/0022427892029003004).
- Lay, Donald P., and Jill De La Hunt. 1985. "The Bail Reform Act of 1984: A Discussion." *William Mitchell Law Review* 11 (4):929–68.
- Lundman, Richard J., and Robert L. Kaufman. 2003. "Driving While Black: Effects of Race, Ethnicity, and Gender on Citizen Self-Reports of Traffic Stops and Police Actions." *Criminology* 41 (1):195–220. doi: [10.1111/j.1745-9125.2003.tb00986.x](https://doi.org/10.1111/j.1745-9125.2003.tb00986.x).
- Mann, Coramae. 1993. *Unequal Justice: A Question of Color*. Bloomington: Indiana University Press.

- Martin, Patricia Yancey, John R. Reynolds, and Shelley Keith. 2002. "Gender Bias and Feminist Consciousness among Judges and Attorneys: A Standpoint Theory Analysis." *Signs: Journal of Women in Culture and Society* 27 (3):665-701. doi: [10.1086/337941](https://doi.org/10.1086/337941).
- McCabe, Peter G. 2016. "A Guide to the Federal Magistrate Judge System." *A White Paper Prepared at the Request of the Federal Bar Association*. <https://www.fedbar.org/wp-content/uploads/2019/10/FBA-White-Paper-2016-pdf-2.pdf>
- 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 (1):471-85. doi: [10.1146/annurev.polisci.10.072805.102452](https://doi.org/10.1146/annurev.polisci.10.072805.102452).
- Mendoza, Saaid A., Sean P. Lane, and David M. Amodio. 2014. "For Members Only: Ingroup Punishment of Fairness Norm Violations in the Ultimatum Game." *Social Psychological and Personality Science* 5 (6):662-70. doi: [10.1177/1948550614527115](https://doi.org/10.1177/1948550614527115).
- Morin, Jason L. 2014. "The Voting Behavior of Minority Judges in the U.S. Courts of Appeals: Does the Race of the Claimant Matter?" *American Politics Research* 42 (1):34-64. doi: [10.1177/1532673X13486925](https://doi.org/10.1177/1532673X13486925).
- Oleson, J.C., Marie VanNostrand, Christopher T. Lowenkamp, and Timothy P. Cadigan. 2014. "Pretrial Detention Choices and Federal Sentencing." *Federal Probation* 78 (1):12-8.
- Omi, Michael, and Howard Winant. 1994. *Racial Formation in the United States*. 2nd ed. New York: Routledge.
- Owens, Ryan J. 2010. "The Separation of Powers, Judicial Independence, and Strategic Agenda Setting." *American Journal of Political Science* 54 (2):412-27. doi: [10.1111/j.1540-5907.2010.00438.x](https://doi.org/10.1111/j.1540-5907.2010.00438.x).
- Palmer, Barbara. 2001. "Women in the American Judiciary: Their Influence and Impact." *Women & Politics* 23 (3): 91-101. doi: [10.1300/J014v23n03\\_04](https://doi.org/10.1300/J014v23n03_04).
- Pitkin, Hanna. 1967. *The Concept of Representation*. Berkeley: University of California Press.
- Prewitt, Kenneth. 2006. "Immigrants and the Changing Categories of Race." In *Transforming Politics, Transforming America*, edited by Taeku Lee, S. Karthick Ramakrishnan, and Ricardo Ramirez, 19-31. Charlottesville: University of Virginia Press.
- Reitler, Angela K., Christopher J. Sullivan, and James Frank. 2013. "The Effects of Legal and Extralegal Factors on Detention Decisions in US District Courts." *Justice Quarterly* 30 (2):340-68. doi: [10.1080/07418825.2012.668925](https://doi.org/10.1080/07418825.2012.668925).
- Rowland, M. G. 2018. "The Rising Federal Pretrial Detention Rate, in Context." *Federal Probation* 82:13-22.
- Rowland, Charles K., and Robert A. Carp. 1996. *Politics and Judgment in Federal District Courts*. Lawrence: University Press of Kansas.
- Rowland, C. K., and Bridget Jeffrey Todd. 1991. "Where You Stand Depends on Who Sits: Platform Promises and Judicial Gatekeeping in the Federal District Courts." *The Journal of Politics* 53 (1):175-85. doi: [10.2307/2131726](https://doi.org/10.2307/2131726).
- Sacks, Meghan, and Alissa R. Ackerman. 2012. "Pretrial Detention and Guilty Pleas: If They Cannot Afford Bail They Must Be Guilty." *Criminal Justice Studies* 25 (3):265-78. doi: [10.1080/1478601X.2012.705536](https://doi.org/10.1080/1478601X.2012.705536).
- Sacks, Meghan, and Alissa R. Ackerman. 2014. "Bail and Sentencing: Does Pretrial Detention Lead to Harsher Punishment?" *Criminal Justice Policy Review* 25 (1):59-77.
- Sacks, Meghan, Vincenzo A. Sainato, and Alissa R. Ackerman. 2015. "Sentenced to Pretrial Detention: A Study of Bail Decisions and Outcomes." *American Journal of Criminal Justice* 40 (3):661-81. doi: [10.1007/s12103-014-9268-0](https://doi.org/10.1007/s12103-014-9268-0).
- Schanzenbach, Max M. 2005. "Racial and Sex Disparities in Prison Sentences: The Effect of District-Level Judicial Demographics." *The Journal of Legal Studies* 34 (1):57-92. doi: [10.1086/425597](https://doi.org/10.1086/425597).
- Schanzenbach, Max M., and Emmerson H. Tiller. 2006. "Strategic Judging under the US Sentencing Guidelines: Positive Political Theory and Evidence." *Journal of Law, Economics, and Organization* 23 (1):24-56. doi: [10.1093/jleo/ewm002](https://doi.org/10.1093/jleo/ewm002).
- Schlesinger, Traci. 2005. "Racial and Ethnic Disparity in Pretrial Criminal Processing." *Justice Quarterly* 22 (2): 170-92. doi: [10.1080/07418820500088929](https://doi.org/10.1080/07418820500088929).
- Schutte, James W., and Harmon M. Hosch. 1997. "Gender Differences in Sexual Assault Verdicts: A Meta-Analysis." *Journal of Social Behavior and Personality* 12 (3):761.
- Scott, Kevin M. 2006. "Understanding Judicial Hierarchy: Reversals and the Behavior of Intermediate Appellate Judges." *Law & Society Review* 40 (1):163-92. doi: [10.1111/j.1540-5893.2006.00249.x](https://doi.org/10.1111/j.1540-5893.2006.00249.x).
- Sen, Maya. 2017. "Diversity, Qualifications, and Ideology: How Female and Minority Judges Have Changed, or Not Changed, over Time." *Wisconsin Law Review* 2017:367-99.
- Sen, Maya, and Omar Wasow. 2016. "Race as a Bundle of Sticks: Designs That Estimate Effects of Seemingly Immutable Characteristics." *Annual Review of Political Science* 19 (1):499-522. doi: [10.1146/annurev-polisci-032015-010015](https://doi.org/10.1146/annurev-polisci-032015-010015).
- Sherman, Lawrence W. 2001. "Trust and Confidence in Criminal Justice." *National Institute of Justice Journal* 248: 22-31.
- Spohn, Cassia. 1990a. "Decision Making in Sexual Assault Cases: Do Black and Female Judges Make a Difference?" *Women & Criminal Justice* 2 (1):83-105. doi: [10.1300/J012v02n01\\_06](https://doi.org/10.1300/J012v02n01_06).

- Spohn, Cassia. 1990b. "The Sentencing Decisions of Black and White Judges: Expected and Unexpected Similarities." *Law & Society Review* 24 (5):1197. doi: 10.2307/3053666.
- Spohn, Cassia. 2008. "Race, Sex, and Pretrial Detention in Federal Court: Indirect Effects and Cumulative Disadvantage." *University of Kansas Law Review* 57 (4):879–902.
- Steffenmeier, Darrell, and Chris Herbert. 1999. "Women and Men Policymakers: Does the Judge's Gender Affect the Sentencing of Criminal Defendants?" *Social Forces* 77 (3):1163–96.
- Steffensmeier, Darrell, and Chester L. Britt. 2001. "Judges' Race and Judicial Decision Making: Do Black Judges Sentence Differently?" *Social Science Quarterly* 82 (4):749–64. doi: 10.1111/0038-4941.00057.
- Theobald, Nick A., and Donald P. Haider-Markel. 2008. "Race, Bureaucracy, and Symbolic Representation: Interactions between Citizens and Police." *Journal of Public Administration Research and Theory* 19 (2):409–26. doi: 10.1093/jopart/mun006.
- Turner, K. B., and James B. Johnson. 2006. "The Effects of Gender on the Judicial Decision of Bail Amount Set." *Federal Probation* 70 (1):56–62.
- Tyler, Tom R. 2005. "Policing in Black and White: Ethnic Group Differences in Trust and Confidence in the Police." *Police Quarterly* 8 (3):322–42. doi: 10.1177/1098611104271105.
- United States Sentencing Commission. 2013. "Variable Codebook for Individual Offenders." [https://www.ussc.gov/sites/default/files/pdf/research-and-publications/datafiles/Variable\\_Codebook\\_for\\_Individual\\_Offenders.pdf](https://www.ussc.gov/sites/default/files/pdf/research-and-publications/datafiles/Variable_Codebook_for_Individual_Offenders.pdf).
- Wahlbeck, Paul J. 1997. "The Life of the Law: Judicial Politics and Legal Change." *The Journal of Politics* 59 (3): 778–802. doi: 10.2307/2998637.
- Welch, Susan, Michael Combs, and John Gruhl. 1988. "Do Black Judges Make a Difference?" *American Journal of Political Science* 32 (1):126–36. doi: 10.2307/2111313.
- Whitehead, John T., and Michael B. Blankenship. 2000. "The Gender Gap in Capital Punishment Attitudes: An Analysis of Support and Opposition." *American Journal of Criminal Justice* 25 (1):1–13. doi: 10.1007/BF02886807.
- Whitford, Andrew B., and Jeff Yates. 2009. *Presidential Rhetoric and the Public Agenda: Constructing the War on Drugs*. Baltimore, Maryland: Johns Hopkins University Press.
- Wilkins, Vicky M., and Brian N. Williams. 2008. "Black or Blue: Racial Profiling and Representative Bureaucracy." *Public Administration Review* 68 (4):654–64. doi: 10.1111/j.1540-6210.2008.00905.x.
- Williams, Marian R. 2003. "The Effect of Pretrial Detention on Imprisonment Decisions." *Criminal Justice Review* 28 (2):299–316. doi: 10.1177/073401680302800206.
- Williams, Marian R. 2017. "The Effect of Attorney Type on Bail Decisions." *Criminal Justice Policy Review* 28 (1): 3–17. doi: 10.1177/0887403414562603.
- Wooldredge, John. 2012. "Distinguishing Race Effects on Pre-Trial Release and Sentencing Decisions." *Justice Quarterly* 29 (1):41–75. doi: 10.1080/07418825.2011.559480.
- Wooldredge, John, James Frank, and Natalie Goulette. 2017. "Ecological Contributors to Disparities in Bond Amounts and Pretrial Detention." *Crime & Delinquency* 63 (13):1682–711. doi: 10.1177/0011128716659636.
- Yoder, Janice D. 1991. "Rethinking Tokenism: Looking beyond Numbers." *Gender & Society* 5 (2):178–92. doi: 10.1177/089124391005002003.