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Public Perceptions of the Fairness of Black and White Judges in Racialized and Non-Racialized Cases

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Abstract

Black legal theorists often believe White Americans see Black judges as incapable of deciding racial issues fairly. Using a survey experiment, we examine this by studying perceptions of Black and White judges' fairness through racial threat and group consciousness. Results show race consistently influences Black Americans' evaluations of judges, with Black respondents viewing Black judges as fairer on racial issues. For White respondents, race only affects their views of judges in the context of racial resentment, otherwise playing no significant role. These results highlight the complex interplay of race in judicial evaluations.

Keywords: Perceptions of judges; Racial threat; Group consciousness; racial resentment; Use of survey experiments in judicial politics

Judges are generally evaluated using standards of perceived fairness and impartiality. These standards constitute an important component of what it means to be a good judge. Recent scholarship suggests that judges with marginalized identities are perceived and evaluated more negatively compared to White judges by the general American public (Bracic et al. 2023; Ono and Zilis 2023). This scholarship is consistent with long-standing concerns raised by Black legal theorists about the consequences of interlocking systems of oppression, particularly the infusion of racialized politics in law (e.g., Crenshaw 1988; Ifill 1997; Bell 1999).¹ For instance, while addressing a group of Black historians in 1999 about the racialized experiences

¹By “racialized,” we mean the intentional or subconscious categorization or use of race as a factor in decision-making to produce certain desired outcomes. More generically, we mean cases or situations in which the racial identity of the judge is salient.

of Black judges, Derrick Bell claimed that there exists a “*subconscious but widely held view that only White judges could decide racial cases fairly*” (Bell 1999, 28 (emphasis, added)).² This claim remains relevant in light of persistent and vexing questions in the mass media about the integrity and impartiality of American judges in general, and Black judges in particular (Oladipo 2023). Are Black judges *viewed* by the public as antithetical to the canons of fairness and impartiality in contemporary judicial decision-making, especially in cases involving race? Moreover, do Black and White Americans view Black judges similarly?

The research herein reported is motivated by two goals. First, scholars have not directly answered the questions we raise about the perceived fairness of Black judges. We do so here. Second, to safeguard the legitimacy of the judicial system, it is necessary to test Bell’s explosive proposition, which has also been expressed or implied by other prominent Black legal theorists (Crenshaw 1988, 1380; Ifill 1997). Indeed, Sherrilyn Ifill (1997) noted that “...barriers still exist to the full acceptance of African American judges. [They] are still expected to pass a ‘race test’ to prove their impartiality” (118). The suspicion that Black judges are perceived as less fair than White judges stems from Jim Crow-era laws and politics, and a history of manifest racial exclusion of Black Americans from the legal profession, which facilitated the development of racial group consciousness and motivated collective action like the Black Civil Rights Movement (Miller et al. 1981). Despite progress in Black representation in American political institutions (Clark, Putnam, and Fieldhouse 2013), the underrepresentation and mistreatment of Black judges persists (Means 2022; Boyd, Collins, and Ringhand 2023). Our research examines how citizens perceive Black versus White judges’ potential fairness in racialized and non-racialized cases.

Two primary theoretical perspectives guide us – V.O. Key’s racial threat theory (Key 1949) and Miller et al.’s theory of group consciousness (Miller et al. 1981; see also McClain et al. 2009). We also draw on research on racial resentment (Kinder and Sanders 1996) and political representation (Pitkin 1972). Scholars link these theories to political attitudes, the political choices citizens make, and their perceptions about public policy and government officials (Verba and Nie 1972; Miller et al. 1981; Wright and Unah 2017). We argue that White and Black citizens view Black judges distinctively in the form of a racial gradient, with Black judges being viewed more negatively than White judges by White Americans, but not by Black Americans. We test our hypotheses using data from a survey experiment embedded within a diverse national sample of United States adults.

While jurists are generally held in high public esteem, and the public might not always reference race when thinking about judges, the reality is that addressing questions of perceived fairness of Black judges remains critical to democratic representation, perceived legitimacy, and functioning of our judicial system, which increasingly aims to reach higher levels of diversity and inclusive excellence on the bench. Americans perceive judges as the premier guardians and protectors of democracy, rights, and liberties. According to Justice Stephen Breyer, judges, especially those on the nation’s highest court, are responsible for “patrolling the boundaries of American society.”³ Federal judges are bestowed substantial power under the Constitution. They are charged with ensuring that both institutions and political

²Interpretive note: Bell was referring to the treatment of Black judges in a white-dominated legal system.

³<https://www.nbcnews.com/id/wbna12609490>.

actors operate within the framework of the Constitution to protect neutral principles such as individual rights and our democracy. Thus, how people think about and perceive judges significantly affects their willingness to support American legal institutions. The legitimacy of democratic institutions is at stake when citizens evaluate how government officials do their jobs (Gibson and Caldeira 2012). Trust in government increases, and people are willing to obey the law and build faith in the system when their actual or perceived encounters with the government are believed to be fair (Tyler 2006b; Petterson et al. 2024).

State court judges also wield significant power, not only due to their effect on direct parties in litigation, but also because state courts handle 95% of all cases filed in the United States.⁴ Collectively, their decisions affect every facet of American life. Most state court judges are elected via competitive partisan or nonpartisan elections (Bonneau and Hall 2016). It is reasonable to imagine that perceptions about Black and White judges could significantly influence their electability and levels of judicial diversity, which may affect citizens' willingness to bestow legitimacy upon the system and support increased diversification (Scherer and Curry 2010). After all, as former Ohio Supreme Court Justice Yvette McGee Brown stated, "The public's perception of justice suffers...when the only people of color in a courthouse are in handcuffs" (quoted in Robbins and Bannon 2019, 2).

Existing literature on perceptions of judges

Black jurists remain underrepresented in many state and federal courts, which can be attributed, in part, to how Black judicial nominees and judges are perceived and evaluated in judicial selection processes. Since the 1970s, the total number of Black judges in state and federal courts has increased substantially, although, as a proportion of all judges, the numbers remain relatively low (Haire and Moyer 2015; George and Yoon 2016; Thurston 2019). Political scientists find that in professional settings, evaluators of state and federal judges rate Black judicial nominees and judges much more negatively than White judicial nominees and judges (Haire 2001; Gill, Lazos, and Waters 2011; Sen 2014). Part of the explanation is that they are viewed as nontraditional judges and outsiders.

Political scientists have empirically studied public perceptions of Black and other judges from marginalized backgrounds. Relying on experimental data, Matland and Shepherd (2004) concluded that because the effect of racially polarized voting is often magnified in low-information judicial elections, Black judges are worse off and are often viewed more negatively than their White counterparts. However, during high-information judicial elections, race no longer dramatically affected voting behavior, suggesting that the information environment influences voting outcomes more than the race of the judicial candidates. More recently, Bracic et al. (2023) and Ono and Zilis (2023) found that judges' identities can influence how they are perceived. Ono and Zilis's (2023) study revealed that the public perceives female and Hispanic judges more negatively than male and White judges. However, they found no statistically significant difference in how Black judges were viewed compared to their White counterparts. Bracic et al. (2023) showed that the public uses race, gender, and sexuality as ideological cues, and that judges perceived to be more ideologically proximate are also

⁴See the National Center for State Court's presentation here: <https://news.gallup.com/poll/180176/Blacks-approval-president-obama-remains-high.aspx>.

perceived to be fairer, more impartial, and more inspiring of trust in courts broadly. Since prior research has not focused on understanding how Black judges are perceived by Black and White Americans in terms of their decision-making in cases where race is salient, we lack knowledge about the extent to which Black judges are viewed by Black and White Americans as (in)capable of being fair in cases involving race.

Racial threat and the pathway for White Americans' perceptions of Black judges

Significant historical research shows Whites' views about, and even support for, Black candidates and race-related public policies are affected by racial threat (Key 1949; Blalock 1967). Racial threat theory can therefore enhance our understanding of potential perceptions of Black judges. The theory is based on competitive interdependence and it emphasizes the primacy of power differentials among groups (Key 1949; Blalock 1967). Huckfeldt and Sprague best capture its logic: "White racial hostility is a common feature of American political life, and it frequently varies as a direct function of blacks' presence in the population" (1993, 284). The theory argues that societies are organized into group-based hierarchies with uneven distribution of limited resources favoring dominant groups at the expense of subordinates. In a racially heterogeneous society like the United States, the dominant group sees Black judges as part of the subordinate class. Thus, from the perspective of the majority population, the framework predicts that Black judges would not be fair when racial issues take priority, and that this threatens the social standing of the majority population. Because this theory focuses on group-based hierarchies, we employ it here to predict the perceptions of Whites as the dominant group in American society.

Race relations in the United States have a long and complicated history of conflict and change. Under the racial threat perspective, Black Americans are viewed as an existential threat to the social and economic structures constructed to bestow "the good life" upon members of the majority population (Giles and Evans 1986). As part of the social structure, the American bench is traditionally viewed as an institution where White people wield virtually untrammled power, which they employ to exercise social control over Black people and other racial minorities. To many White Americans, then, having Black people ascend to the lofty position of judge is contrary to the view of courts as stations of power that ought to be controlled by White people (i.e., White judges), for the benefit of White people. By implication, Black judges should be viewed negatively, possibly evoking anger and resentment.

Part of this anger and resentment from White Americans could stem from their perception that Black judges are a threat to the status quo due to their deciding cases that favor minority interests. White Americans' presumption about Black judges' bench representation does have support in the literature. Accounts of the motivational basis of political representation suggest that political leaders tend to support or advance policies beneficial to members of their racial group (Mansbridge 1999; McClain et al. 2009). Similarly, studies of state and federal legislators show that Black lawmakers responded consistently to the needs of Black people, sometimes even without having an electoral incentive to do so (Broockman 2013; Brown 2014; Reingold, Haynie, and Widner 2020).

Recent analysis suggests significant racial diversity-judging effects, showing that Black judges in American courts improve judicial outcomes for Black litigants

(Boyd 2016; Harris 2023). For instance, Boyd (2016, 795) found that “in race discrimination cases, Black trial court judges are about 39% more likely to decide in favor of the race discrimination plaintiff than White judges.” In a study of criminal cases, Harris (2023) found that the presence of Black judges in US trial courts ameliorates racial disparities in felony sentencing among Black and White judges. These findings partly explain Sen’s (2015) reported finding that “cases decided by Black lower-court judges are up to 10 percentage points more likely to be overturned than are opinions written by similar White judges” (189). Sen’s explanation for this finding is that many factors might be responsible, including “implicit biases of higher courts” (189). Thus, empirical research supports perceptions that Black judges are inherently positively disposed toward Black litigants and the claims of marginalized people.

In sum, the research on Whites’ perceptions of Black judges reveals that generally, Black judges are evaluated more negatively than White judges (Sen 2014). Even a recent Pew Research Center survey found that White Americans were less likely than Black Americans to support Senate confirmation of Supreme Court nominee Ketanji Brown Jackson.⁵ Moreover, the theory of racial threat suggests White Americans might feel threatened by an increase in diversity among political officials, and hold beliefs about Black judges’ identities and allegiance to their racial group that would impact their decision-making. This understanding, along with Bell’s statement, which we suspect is more racially salient for White Americans given its subtext, leads to the following hypothesis:

H₁: Bell’s Conjecture on White Respondents: Generally speaking, White respondents perceive Black judges as being more likely than White judges to be unfair in their decision-making, especially in racialized cases.

We anticipate that White Americans are not monolithic in their feelings of threat by the presence of Black judges. Instead, racial animus and anger toward Black judges might be held by White Americans with higher levels of racial resentment. Abstract moralistic resentment of Black Americans is an important factor increasingly understood to influence White public opinion. Kinder and Sears (1981) define racial moralistic resentment or symbolic racism as “resistance to change in the racial status quo based on moral feelings that Black people violate such traditional American values as individualism and self-reliance, the work ethic, obedience, and discipline” (416). Despite the continuing liberalization of White racial attitudes in the United States, recent research points to the continued salience of racial resentment for both older and younger White Americans (Kam and Burge 2018; DeSante and Smith 2020). We expect that White Americans who are more racially resentful would be more likely to tag Black judges as incapable of deciding cases that involve race fairly.⁶

H₂: Hypothesis for Racial Resentment: White Americans who possess higher levels of racial resentment perceive Black judges as more likely to be unfair than White judges.

⁵See the Pew Research Center’s survey results here: <https://www.pewresearch.org/short-reads/2022/03/17/more-support-than-oppose-jacksons-supreme-court-nomination-with-many-not-sure/>.

⁶The theoretical and empirical scholarship on racial resentment has focused primarily on White resentment. Consequently, we lack the basis to hypothesize about the role of racial resentment for Black respondents.

Racial group consciousness and the pathway for Black Americans' perceptions of judges

As renowned Black federal Judge A. Leon Higginbotham observed, “the corridors of history in this country have been lined with countless instances of racial injustice” (Higginbotham 1974, 10). Black people experience those injustices personally and vicariously. Consider, for example, the vicarious trauma experienced by Black people in 2020 as they witnessed the police brutality that resulted in the deaths of Breonna Taylor (Kentucky) and George Floyd (Minnesota). These experiences, racial socialization, and Black political history often lead to the development of a racial group identity and consciousness that drives Black Americans' support for public policies, positive perceptions of Black political leaders, and voting behavior (Dawson 1994; Tate 1994; 2004; McClain et al. 2009; Badas and Stauffer 2018).

Research suggests that Black people have strong group attachment and consciousness (Verba and Nie 1972; Miller et al. 1981), although not all Black Americans possess similar levels (Bunyasi and Smith 2019). McClain et al. (2009) define group consciousness 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” (476). Scholars see Black people's strong group consciousness as the key to understanding their rather homogenous political behavior, identities, and attitudes (Bobo and Gilliam 1990; Dawson 1994; Tate 1994; Gay 2001; White and Laird 2020). Race scholars such as Bobo (2004) and Tajfel and Turner (1986) have documented that African Americans are more sensitive and attentive to race-salient issues and discrimination than any other racial group. Black Americans' shared experiences and understandings of racial discrimination partly explain why they view Black political leaders more positively as compared to non-Black leaders because they view them as the best vehicle to represent and advance their group interests.

A panoply of negative experiences with police, judges, and other officials in the justice system offers an additional lens through which to understand how Black Americans might perceive Black judges (Browne-Marshall 2013; Wright and Unah 2017). At the hands of White legal actors, including police, prosecutors, and judges, Black Americans have mostly only known unequal justice (Songer and Unah 2006; Alexander 2010; Van Cleve 2016). They have been subjected to unrelenting brutality at the hands of law enforcement by being targeted for racial profiling in social and economic spaces (Baumgartner, Epp, and Shoub 2018), and subjected to disproportionate arrest (Kennedy, Unah, and Wahlers, 2018) and punishment (Eberhardt et al. 2006). In their analyses of race and the criminal justice system, Browne-Marshall (2013) and Alexander (2010) show how White jurists in federal and state courts were often complicit in the discrimination against Black Americans, and how their actions and inactions upheld and further entrenched a racial hierarchy that placed Black people at the bottom and White people at the top.

We also suspect that Black Americans will feel Black judges will be more fair than White judges because of the shared racial identity, which likely engenders feelings of cohesion and unity in the persisting struggle against racism and inequality. The theory of racial group consciousness suggests Black Americans might believe Black judges possess a sense of racial group consciousness that many Black people in the general population possess (Dawson 1994), and that Black judges' group consciousness will enhance their ability to render fair decisions in cases involving race. This

linkage helps explain why Black Americans expressed significantly higher levels of support for the confirmation of Ketanji Brown Jackson to the Supreme Court.⁷

H₃: Hypothesis for Black Americans and Black Judges: Black Americans perceive Black judges favorably and less likely than White judges to decide cases unfairly.

However, based on research by Bunyasi and Smith (2019) and others (Jefferson 2023), we recognize that racial group consciousness is uneven among Black people. Accordingly, we also directly test the impact of group consciousness on Black Americans' perceptions of Black judges' fairness. We suspect that Black Americans with a strong collectivist orientation will perceive Black judges more positively than Black Americans with weak group consciousness.

H₄: Hypothesis for Black Consciousness: Black Americans who possess higher levels of Black consciousness perceive Black judges as less likely to be unfair in their decision-making than White judges.

Experimental design

Experiments embedded within surveys are a well-established method in political science for examining how race affects perceptions and evaluations of government officials and policies (Terkildsen 1993; Hoekstra 2000; Scherer and Curry 2010). For this study, a randomized experiment was administered online through the YouGov/Polimetrix platform as part of the 2014 Cooperative Congressional Election Study (CCES).^{8,9} We restrict our sample to self-identified non-Hispanic Black Americans (N = 111) and non-Hispanic White Americans (N = 562). Based on the highly randomized sampling techniques of CCES, the data are highly representative of the American public, making our findings generalizable.

Participants were randomly assigned to one of four experimental conditions: Black male judge, White male judge, Black female judge, and White female judge.¹⁰ In each condition, subjects were presented with a judicial biography to read that was formulated to resemble a biographical profile of a judge from the Judgepedia website.¹¹ Judgepedia is a database of information on state and federal courts. The judge profile used in this study reported the judge's credentials, including education and early career experiences, pre-bench career, and the judge's current judicial position. Additionally, the biographies contained a photograph depicting the race and gender of the judge being evaluated.¹²

⁷See the Pew Research Center's survey results here: <https://www.pewresearch.org/short-reads/2022/03/17/more-support-than-oppose-jacksons-supreme-court-nomination-with-many-not-sure/>.

⁸CCES uses a nationally stratified sample of registered and unregistered adults. See Vavreck and Rivers (2008) for a discussion of the use and sampling method of CCES.

⁹The randomized nature of this study helps us test the proposition that race of the judge conditions public perceptions of Black and White judges' fairness.

¹⁰The percentages of the sample assigned to each of the experimental conditions are: 26.89% in the Black male judge experimental condition, 23.48% in the Black female judge, 23.77% in the White male judge, and 25.85% in the White female judge.

¹¹Since this experiment was conducted, judgepedia.org has become ballotpedia.org.

¹²At the end of the survey, respondents were asked to recount the judge's race and gender. Accurate responses confirmed that respondents understood the Black male judge as a Black male judge, the Black female judge as a Black female judge, the White male judge as a White male judge, and the White female judge as a White female judge.



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Judge J. Williams

Judge J. Williams (b. 1960) is a judge on the United States Court of Appeals for the Third Circuit.¹³

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 2000, Williams served as a judge on the Virginia Court of Appeals. Williams was reelected in 1994 and 2000. 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.





Figure 1. Experimental Stimuli.¹³

Besides the image, all information in the articles, such as the judge's name, personal and professional background, the court that the judge presides on, and the identified political ideology of the judge remained the same.¹⁴ See a copy of the experimental stimuli in Figure 1. After reading the judge's biography, each participant was asked to answer a battery of questions designed to ascertain the subject's impressions of the ability of a hypothetical judge (Judge Williams) to decide cases fairly.

¹³In our experiment, we included one control condition (a judge without a picture and no identifiable gender/sex or race). Despite no messaging or image that would suggest the judge's race and gender/sex, the majority of respondents perceived the control condition to be a White male. We did not include the control condition in the analysis.

¹⁴As a result of recent research on skin color and public perceptions of African Americans, adjustment of the skin color (to lighter or darker shades) could influence how the judges, especially the Black judges, are perceived (Hochschild and Weaver 2007). Future studies should consider whether darker and lighter skinned Black judges are viewed differently.

Measurement

Dependent variables: Two dependent variables were employed in this analysis. *Unfairness in non-racialized cases* is measured with the following question: “When you think of Judge Williams, to what degree do you think the judge is likely or unlikely to render an unfair decision?” Respondents answered using a 5-point scale coded as: 1, not at all likely that the judge will render an unfair decision; 2, not too likely; 3, somewhat likely; 4, very likely; and 5, extremely likely.

Unfairness in racialized cases is the subject’s perception of whether the judge is likely to render an unfair decision in a case dealing with race. This variable captures the cases in which Black judges’ ability to be fair has typically been questioned, for instance, in racial discrimination and affirmative action cases.¹⁵ Unfairness in racialized cases is measured using the following question: “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?”¹⁶ Respondents also answered using a 5-point scale ranging from not likely to make an unfair decision (=1) to extremely likely (=5). Responses to the question were scaled so that larger numerical responses reflected Judge Williams being perceived as more likely to render an unfair decision in a racial discrimination or affirmative action case. The measurements and descriptive statistics of all the variables are reported in Table 1.

It is important to note that perceptions of (un)fairness are evaluative judgments that individuals make when assessing people, institutions, and situations (Tyler 2006a). We do not define what (un)fairness means, nor do we project onto our respondents what it means to them. Ultimately, perceptions of unfairness, regardless of individualized justifications, influence political judgments that individuals make, such as whether to obey the law or a judge’s order (Tyler 2006b), support a state judge running for reelection (Hall and Bonneau 2008), or view the courts as legitimate protectors of our civil liberties and rights (Scherer 2023).

Independent variables: We use two key independent variables. The first is the experimental condition (i.e., race of the judge) that the respondent received. To understand whether Black judges and White judges were perceived differently, the Black male and female judge treatments were combined into one binary variable called “Black judges,” and White male and female judge treatments were combined into one binary variable called “White judges.”¹⁷ We conducted two-sample tests of group means to validate the random assignment of the Black and White-judge-treatment conditions. None of these tests were statistically significant regarding

¹⁵See *Baker v. City of Detroit*, 483 F. Supp. 930 - Dist. Court, E.D. Michigan 1979; *Commonwealth of Pennsylvania v. Local Union 542, International Union of Operating Engineers*, 388 F. Supp. 155 (E.D. Pa. 1974); *Vietnamese Fishermen’s Ass’n v. Knights of the Ku Klux Klan*, 543 F. Supp. 198 (1982); *LeRoy v. City of Houston*, 592 F.Supp. 415 (1984); *United States v. Alabama*, 828 F.2d 1532 (11th Cir. 1987); *Dillard’s Inc. v. Michael J. Scott*, 908 So. 2d 93 - Miss: Supreme Court 2005; and *North Carolina v. Marcus Robinson*, 2017 (<https://www.aclu.org/cases/north-carolina-v-robinson>). Last visited 7/15/2024.

¹⁶In the survey, this matrix asked respondents how likely they thought it was that Judge Williams would make an unfair decision in various types of cases: non-racialized case, racialized case, and a non-partisan hypothetical case concerning airline and traffic regulation. We present the analysis for the racialized and non-racialized cases in the paper. We display the analysis for the hypothetical case in Appendix B (available online).

¹⁷In the online appendix to our paper, we display the analysis disaggregated by race and gender of the judge treatments to show that combining treatment groups by judges’ race irrespective of judges’ gender did not mask any significant differences between how the male and female judge treatments were perceived. See Appendix C (available online).

Table 1. Descriptive Statistics

Variable	Measurement	N	Min.	Max.	Mean	Standard deviation
Unfair	Non-racialized prompt for perceived unfairness of Judge Williams	697	1	5	2.28	.882
Unfair race	Racialized prompt for perceived unfairness of Judge Williams	697	1	5	2.49	1.05
Racial resentment	This index consists of two statements about African Americans, answered on scales: Strongly agree = 1; Somewhat agree = 2, Neither agree nor disagree = 3; Somewhat disagree = 4; Strongly disagree = 5. The first statement is: "Irish, Italians, Jewish, and many other minorities overcame prejudice and worked their way up. Blacks should do the same without any special favors." The second statement is, "Generations of slavery and discrimination have created conditions that make it difficult for Blacks to work their way out of the lower class."	603	2	10	5.13	2.56
Black consciousness	Obama Approval Strongly disapprove = 1, Somewhat disapprove = 2, Somewhat approve = 3, Strongly approve = 4	682	1	4	2.20	1.14
Gender	Male = 1; Female = 0	697	0	1	1.52	.500
Education	Respondent's level of educational attainment: 1: < high school; 2: high school graduate; 3: some college; 4: two-year college graduate; 5: college graduate; 6: post graduate degree	697	1	6	3.72	1.43
Liberal	1 = liberal; 0 = otherwise	697	0	1	.294	.456
Conservative	1 = conservative; 0 = otherwise	697	0	1	.356	.479
Family income	Respondent's reported family income using scales from 1 <10k to 32 (>\$250k)	697	1	16	6.28	3.27
Age	Respondent's chronological age	697	18	95	50.78	15.94
Age ²	Respondent's chronological age squared	697	324	9025	5.13	2.56

treatment groups by race, gender, political ideology, partisan affiliation, and family income, which confirms that the treatments were truly randomized.

The second independent variable is respondent race. Respondents were asked, “what racial or ethnic group best describes you?” Respondents could self-identify as White, Black, Hispanic, Asian, Native American, Mixed, Middle Eastern, or other. Only respondents who self-identified as non-Hispanic White or non-Hispanic Black were included in the analysis because sufficient cases for analysis were found only in these two categories.

Our theoretical discussion on White public opinion indicates racial resentment is another crucial independent variable for our analysis. Racial resentment is measured as a composite of two commonly used items. First, “Do you agree or disagree with the following statement: Generations of slavery and discrimination have created conditions that make it difficult for Blacks to work their way out of the lower class.” Second, “Do you agree or disagree with the following statement: The Irish, Italians, Jews, and many other minorities overcame prejudice and worked their way up. Blacks should do the same without any special favors.” Both items use a 5-point scale that ranges from strongly agree (= 1) to strongly disagree (= 5). We rearranged the ordering of the second scale to make it consistent with the first scale. The final composite scale ranges from 2 to 10, with 10 indicating the most racially resentful.

According to McClain et al. (2009, 478), political scientists “have employed a grab-bag of measures of racial consciousness.” We rely on Black Americans’ approval of Barack Obama as our measure for group consciousness because, as the first Black president, Obama is viewed as the most prominent contemporary embodiment of Black political leadership in the United States. He consistently received high approval ratings from Black Americans throughout his two terms.¹⁸ As suggested by Dowe, Franklin, and Carter (2020, 268), a correlation exists between group consciousness and approval of Obama by Black Americans, with Black Americans who rate Obama high tending to be more supportive of liberal policies and possessing a strong group consciousness. We measure group consciousness using Obama’s presidential approval rating (an ordinal scale ranked from 1 = strongly disapprove to 4 = strongly approve), under the assumption that those who strongly approve of Obama possess greater levels of group consciousness.

The control variables for our analysis are the respondent’s age, age squared, family income, educational level, political ideology, and partisanship. T-tests can directly address H_1 and H_3 . We conducted two-sample tests of group means by comparing the average responses for each dependent variable, considering the respondent’s race and the judge’s. We also estimated bivariate regression models to confirm the T-test analysis and multivariate regression models with control variables as robustness checks for the bivariate analysis. Finally, we conducted multivariate analysis to test the effect of racial resentment (H_2) and group consciousness (H_4) on perceptions of judges’ (un)fairness.

Results

Black and White Americans’ perceptions of Black and White judges in non-racialized cases

We calculate the mean level of unfairness ascribed to Black and White judges by respondents to evaluate whether judges are perceived differently based on their racial

¹⁸<https://news.gallup.com/poll/180176/Blacks-approval-president-obama-remains-high.aspx>.

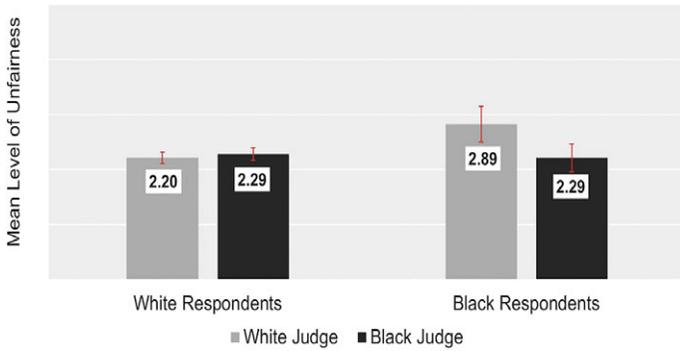


Figure 2. Mean Level of Unfairness in Non-Racialized Cases by Race of Judge and Race of Respondent.

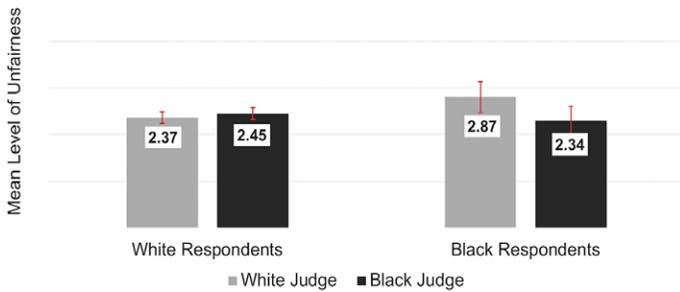


Figure 3. Mean Level of Unfairness in Racialized Cases by Race of Judge and Race of Respondent.

identity. Figures 2 and 3 show the results broken down by the respondent's race to determine any significant differences in the likelihood of perceived unfairness between Black and White judges. A high mean level of unfairness (i.e., above average) would indicate respondents perceive the judge as having a greater-than-average likelihood of deciding cases unfairly. A low mean level of unfairness (i.e., below average) would indicate respondents perceive the judge as having a lower-than-average chance of deciding cases unfairly.

The first hypothesis pertains to Bell's conjecture that White respondents view Black judges as being more likely to decide cases unfairly compared to White judges. For White respondents, Figure 2 shows that there is no statistically significant difference in the mean level of perceived unfairness ascribed to a Black judge versus a White judge in a non-racialized case. For White respondents who received the Black judge treatment, the average level of the judge's likelihood of unfairness is 2.29. In contrast, the average is 2.20 for White respondents who received the White judge treatment. The difference is not statistically significant using a two-sample T-test. Thus, White Americans do not view Black judges significantly differently from how they view White judges in cases where racial elements are unspecified.

For Black respondents, the story is different. Our third hypothesis pertains to how they perceive Black judges in non-racialized cases. We find a significant difference in the mean level of unfairness ascribed to a Black judge compared to a White judge. For Black respondents who received a Black judge treatment, the perceived likelihood of deciding a non-racialized case unfairly is 2.29. In contrast, the average is 2.89 for

Black respondents who received a White judge treatment. Given the mean levels ascribed to the White judge and Black judge treatments, it is clear that Black Americans view Black judges more favorably (i.e., less likely to render an unfair decision) compared to how they view White judges. The difference is statistically significant using a two-sample T-test, ($t(109) = 3.0372, p < .001$). Thus, in a typical case with no racial overtones, there is no significant difference in how White Americans view the unfairness of Black and White judges. However, under similar factual circumstances, Black Americans ascribe to Black judges a *lower* likelihood of deciding cases unfairly as compared to White judges.

Black and White Americans' perceptions of Black and White judges in racialized cases

What happens when the case being considered has salient racial fact patterns? By addressing this question, we directly test Bell's (1999) conjecture that Black judges are perceived as unfair in racialized cases. Figure 3 displays these results broken down by the respondent's and judge's race. We hypothesized that White respondents are more likely to think Black judges will be unfair (H_1) and that Black respondents are less likely to think Black judges will be unfair (H_3).

The results indicate there is no statistically significant difference in White Americans' perceptions between the Black judge and the White judge treatment groups. The mean level of unfairness that White respondents ascribe to the Black judge treatment in a racialized conflict (2.45) did not significantly differ from the mean of 2.37 for the White judge treatment group.¹⁹ Thus, even in cases with a racialized context, White respondents do not view Black and White judges differently in their capacity to be fair. Therefore, similar to our findings in the non-racialized context, we find no support for Bell's proposition that White Americans view Black judges more negatively than they view White judges in racialized cases.

Our findings show a clear difference in how Black respondents view Black judges compared to White respondents. Figure 3 shows a statistically significant difference between these treatment groups for Black Americans. For Black respondents receiving the Black judge treatment, the mean level of unfairness is 2.34, and for those who received the White judge treatment, the level of unfairness is 2.87. The difference is statistically significant using a two-sample T-test ($t(109) = 2.5287, p < 0.006$). Thus, Black Americans view Black judges more positively (i.e., as less likely to be unfair) than White judges.

The coefficient plots in Figure 4 authenticate these findings using linear regression analysis. The regression result is also reported in Appendix A.²⁰ The triangle symbol (and its corresponding 95% confidence interval) represents the point estimate for the models featuring White and Black respondents' perceptions of the unfairness of Black judges compared to White judges in a *non-racialized* case. The square symbol indicates the point estimate for White and Black respondents' perception of Black judges compared to White judges in a *racialized* case.

For White respondents, the estimates are not statistically significant in either model since the confidence interval crosses the dotted line, indicating that we cannot conclude that White Americans perceive Black judges as more or less likely to be unfair as

¹⁹The result for this two-sample T-test is $t(560) = -0.9646, p < 0.33$.

²⁰All appendixes are available online via the *Journal of Law and Courts* website.

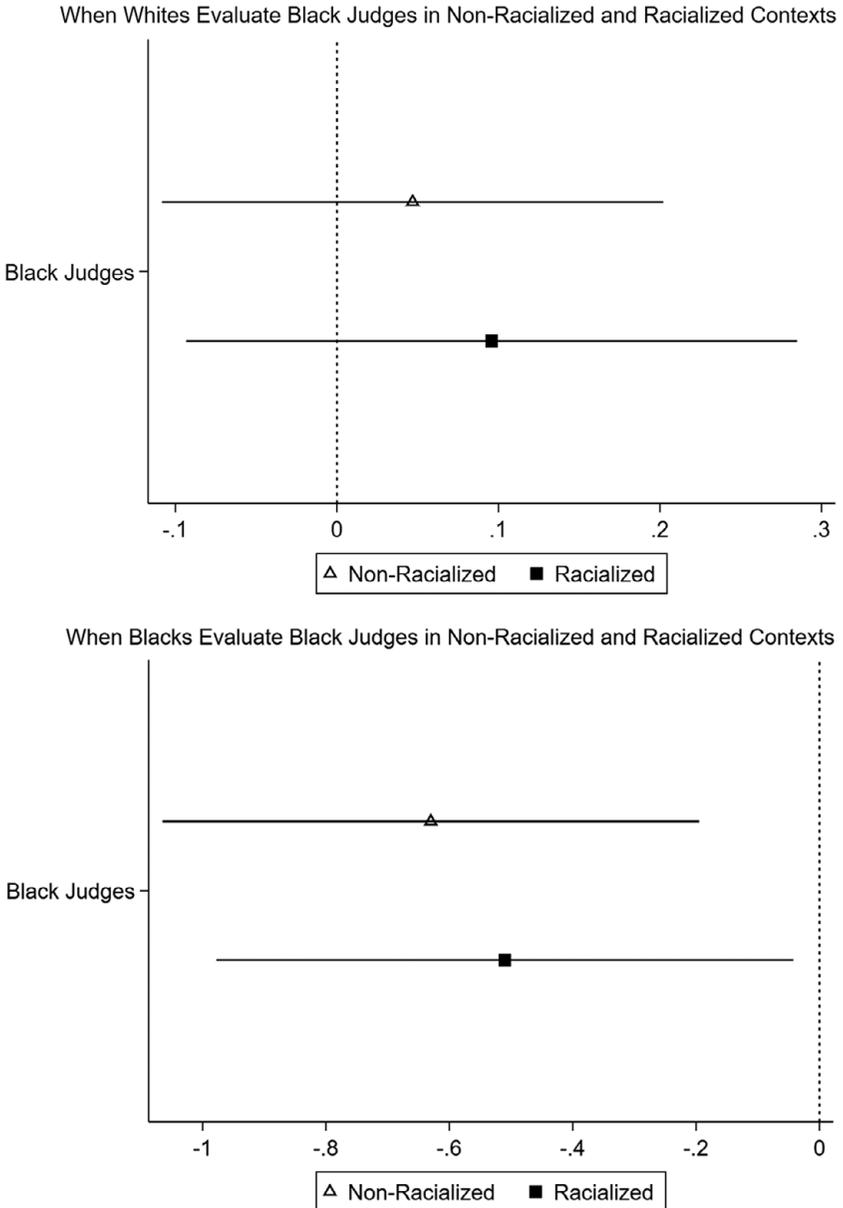


Figure 4. When White and Black Respondents Evaluate Black and White Judges in Non-Racialized and Racialized Contexts.

compared to White judges when deciding either racialized or non-racialized cases. Thus, we find no support for H_1 . For Black American respondents, however, the outcome is different. Their disposition toward Black judges is clearly positive and significant. In both racialized *and* non-racialized contexts, Black Americans perceive Black judges as less likely to be unfair relative to White judges. Thus, we find support for H_3 .

Thus far, the analysis suggests two noteworthy inferences. First, as we hypothesized, Black judges are viewed more positively than White judges by Black Americans in both non-racialized and racialized conflicts. We can conclude that for Black Americans, *race matters all the time* in the evaluation of judges regardless of the nature of the conflict. Second, contrary to Bell's proposition and our first hypothesis, the experimental data does not indicate that White respondents, as a group, view Black judges more negatively than they view White judges, even in cases that tap salient cultural identities of race.

Above and beyond our experimental design, we take advantage of the demographic features of the dataset and subject our analysis to more rigorous methodological scrutiny that accounts for multiple control variables. We estimated various regression models for White and Black respondents, controlling for several independent conditions, including respondents' age, educational attainment, gender, political ideology, racial resentment, and group consciousness. Figure 5 addresses Black respondents' perception of the unfairness of White and Black judges in non-racialized and racialized contexts. The top panel shows estimates evaluating perceptions of unfairness of White and Black judges in non-racialized cases, while the bottom panel shows the same for racialized cases.

Earlier, we reported that Black Americans evaluated Black judges as less likely to be unfair than White judges. Scherer and Curry (2010) have demonstrated that ideology influences public perceptions of judges. Building on their work, we consider the ideological orientation of the respondents in our study. For Black liberals, ideology does not affect their evaluation of White and Black judges, regardless of whether the case is non-racialized or racialized. For Black conservatives, however, there is a difference in their evaluation of White and Black judges. Black conservatives evaluate Black judges favorably in non-racialized cases, believing that Black judges are less likely to be unfair in these types of cases, all else equal. In racialized cases, however, Black conservatives think that White judges are more likely to be unfair. The magnitude of the effect is also very large, indicating their strong sentiment against the potential unfairness of White judges.

In Figure 6, we focus on White respondents and their perception of the potential unfairness of White and Black judges. Once again, we are particularly interested in the estimates for ideology and racial resentment. We find that for White respondents, even after controlling for several demographics, ideology has no statistically significant effect on their evaluation of the potential unfairness of White and Black judges regardless of whether the case is non-racialized or racialized. However, as hypothesized (H_2), we find significant racial resentment effects for Whites.

Racially resentful White respondents are more likely to perceive Black judges as unfair in non-racialized cases. Conversely, racially resentful White respondents are more likely to perceive White Judges as unfair in racialized cases. This finding is surprising and potentially consistent with the pressure of social desirability, which Kuklinski, Cobb, and Gilens (1997) have reported tends to "contaminate" evaluative judgments toward public officials. For racially resentful Whites, their evaluation of White judges presiding over cases where race is a salient feature is potentially sensitized by the forces of social desirability and strategic maneuvering.

Figure 7 reports the predictive margins for racial resentment of White respondents in their evaluation of Black judges in non-racialized and racialized cases. This analysis shows that as White racial resentment grows, there is a corresponding increase in the probability that White respondents will find Black judges incapable of deciding cases

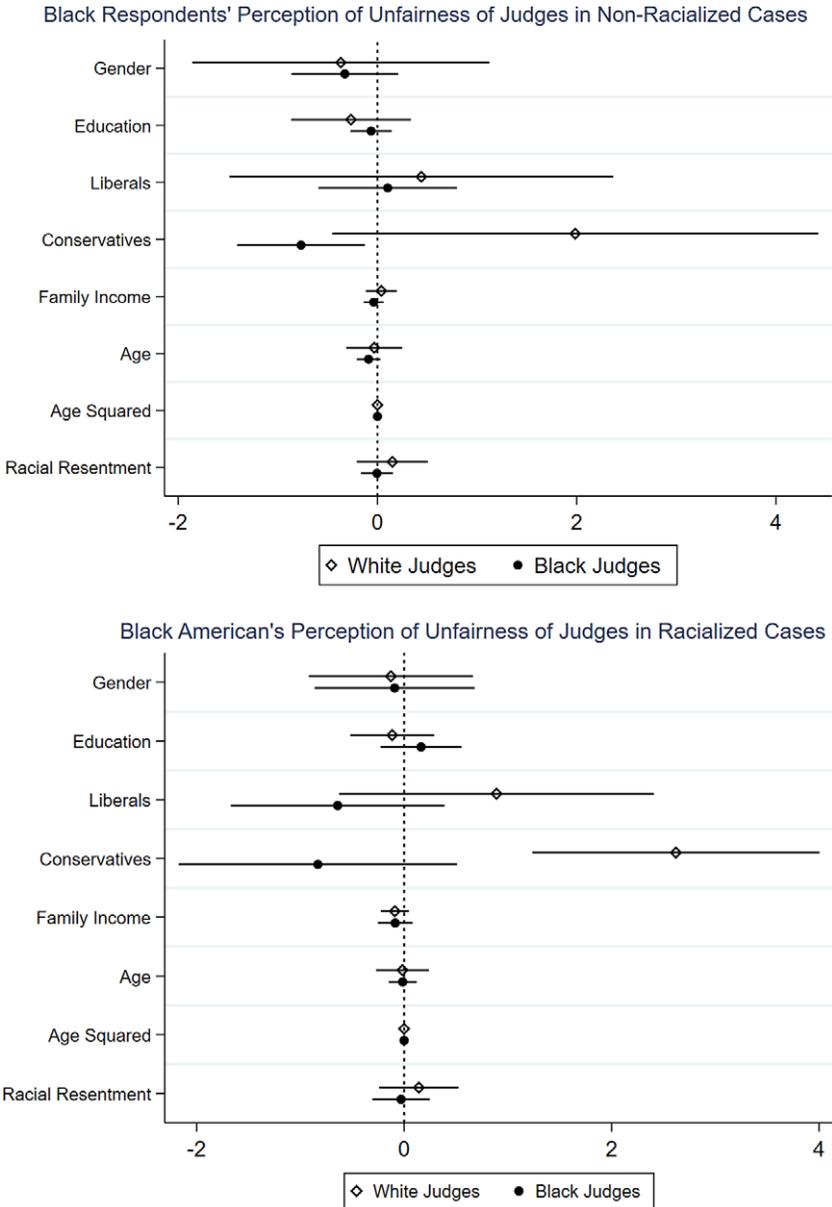


Figure 5. Black Respondents' Perceptions of Unfairness of Judges in Non-Racialized and Racialized Cases.²¹

fairly. At zero racial resentment, Whites are 1.9 times more likely to perceive Black judges as unfair in non-racialized cases. However, at a racial resentment score of

²¹As we theorized previously, racial resentment is a fundamental emotional trigger for the negative evaluation of individuals outside of one's race or ethnicity (Kinder and Sears 1981; Kinder and Sanders 1996).

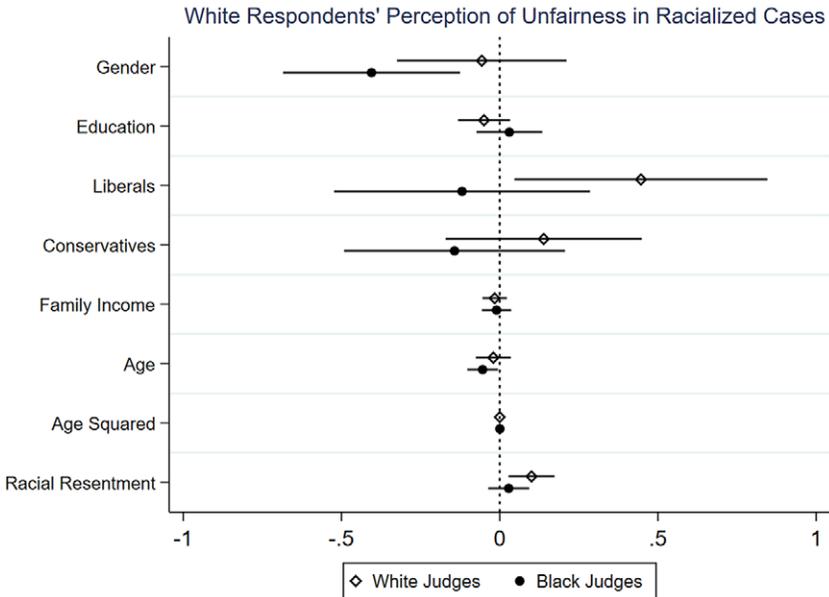
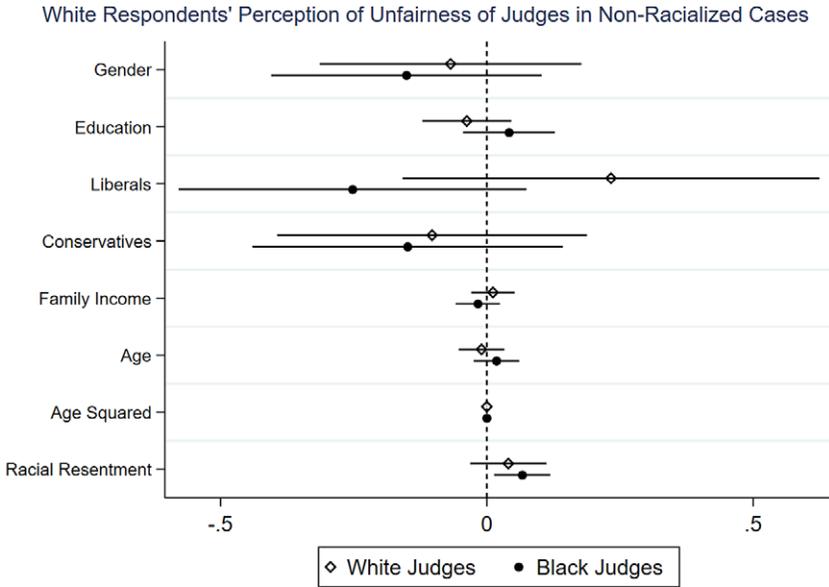


Figure 6. White Respondents' Perceptions of Unfairness of Judges in Non-Racialized and Racialized Cases.

Due to its theoretical relevance for understanding the behavior of White respondents in our experimental design, we examine the effect of racial resentment on White Americans' perceptions of judges as they hold the levers of power in American politics and law. But in addition, we assess the effect of racial resentment on Black Americans' perceptions of judges. As indicated in Figure 4, racial resentment has no effect on how Black Americans evaluate the potential unfairness of Black and White judges.

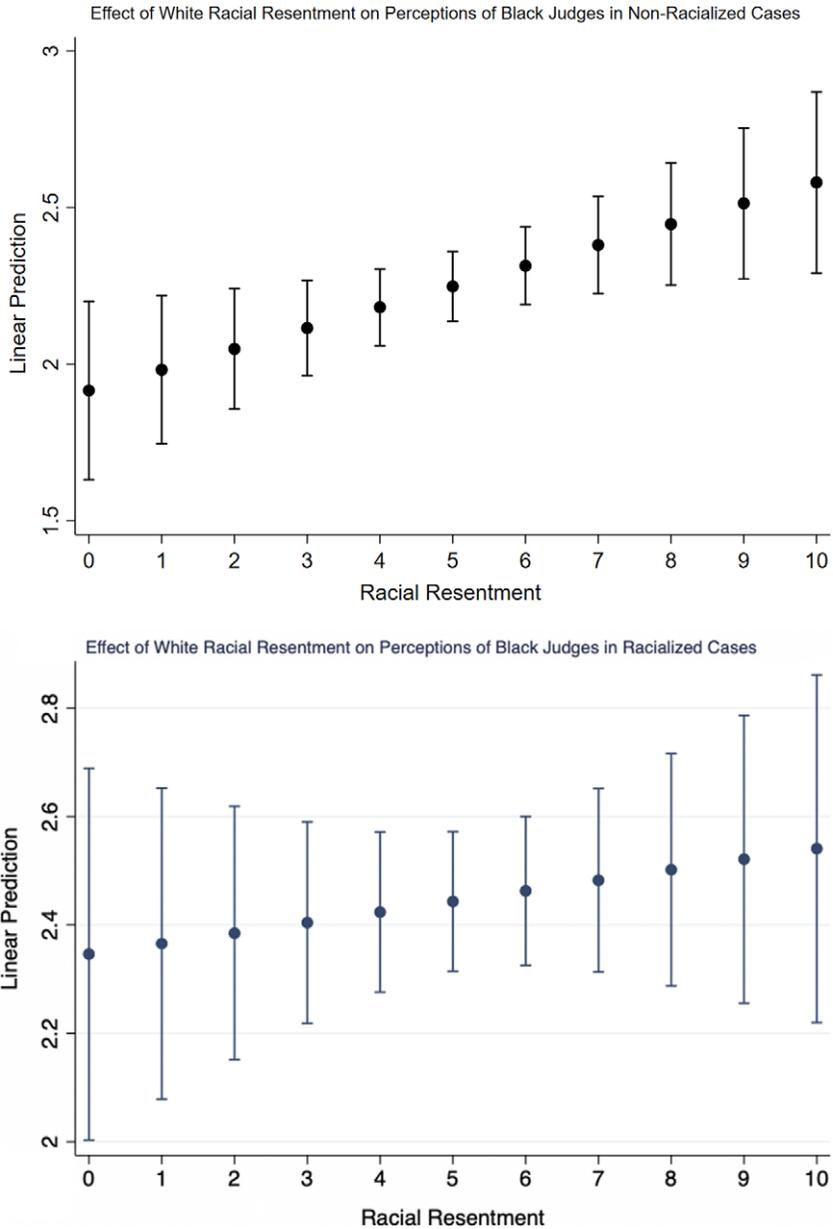


Figure 7. The Effects of Racial Resentment on White Respondents’ Perceptions of Unfairness of Black Judges in Non-Racialized and Racialized Cases.

10, the magnitude of the effect increases to 2.7 times more likely that Black judges will be perceived by Whites as unfair in their decision-making, a 42% change. In racialized cases, however, the effects of White racial resentment are increased slightly, but statistically insignificant, as indicated in the large confidence intervals. Once again,

we attribute this finding to the impact of social desirability, which we suspect was primed by the context of the racialized case.

From Figure 7, we can conclude that in non-racialized cases, the race of the judge is a more salient feature of White respondents' perceptions. As such, the credentials and qualifications of the Black judge fail to disrupt individualistic racist narratives that resentful Whites use when judging Black judges. In racialized cases, however, emphasis is placed more on the racial aspects of the case itself, rather than on the judge as a Black person. In this case, social desirability disrupts individualistic racist narratives as the basis of perceptions of racially resentful Whites.

Whereas racial resentment has been shown to influence White Americans' perceptions of Black politicians and Black candidates for office, scholars have shown Black group consciousness to influence Black Americans' political attitudes, behaviors, and perceptions of Black political elites (McClain et al. 2009). We hypothesized (H₄) that Black Americans who possess high levels of Black consciousness perceive Black judges as less likely to be unfair in their decision-making than White judges. Figure 8 reports the predictive margins for group consciousness of Black respondents in their evaluation of Black judges in both non-racialized and racialized cases. Our analysis shows that as Black group consciousness increases, the probability that Black respondents will find Black judges capable of deciding cases unfairly decreases. Using Black people's approval of President Obama as a proxy for group consciousness, we find that Black Americans who *disapprove* of President Obama are significantly more likely to view Black judges as unfair, as compared to Black Americans who either somewhat or strongly approve of President Obama. We conclude that there is a relationship between Black group consciousness and perceptions of Black judges in racialized and non-racialized cases.

Discussion and conclusion

Our research was partly motivated by Derrick Bell's (1999) claim that Black judges are viewed as incapable of deciding cases fairly when race is involved. This belief has precipitated numerous recusal requests targeting Black judges in cases where race is materially salient (Ifill 1997; Means 2022). We examined the extent to which ordinary citizens share in this sentiment. Racialized disqualification requests across the American legal system suggest that Bell (1999) is not alone in this belief. Our analysis interrogates Bell's (1999) claim empirically and theoretically while improving our understanding of how Americans view Black and White judges' fairness.

Are Black judges *viewed* by the public as antithetical to the canons of fairness and impartiality in contemporary judicial decision-making, especially in cases involving race? Moreover, do Black and White Americans view Black judges similarly? Based on our analysis, the emphatic answer to this question is no! Whereas numerous scholars have documented that some legal practitioners, district attorneys, and other officers of the court are motivated by bias against Black judges and view them negatively (Sen 2014), the evidence we present does not support this sentiment for the general public.

We hasten to add that our study does not exonerate the mass public from charges of racism because an experiment does not fully reflect real-world scenarios. Therefore, we are cautious when interpreting the findings and drawing inferences in terms of public perceptions of Black and White judges' judicial decision-making. It may be the case that, in the real world, Black and White voters hold negative feelings and punish Black

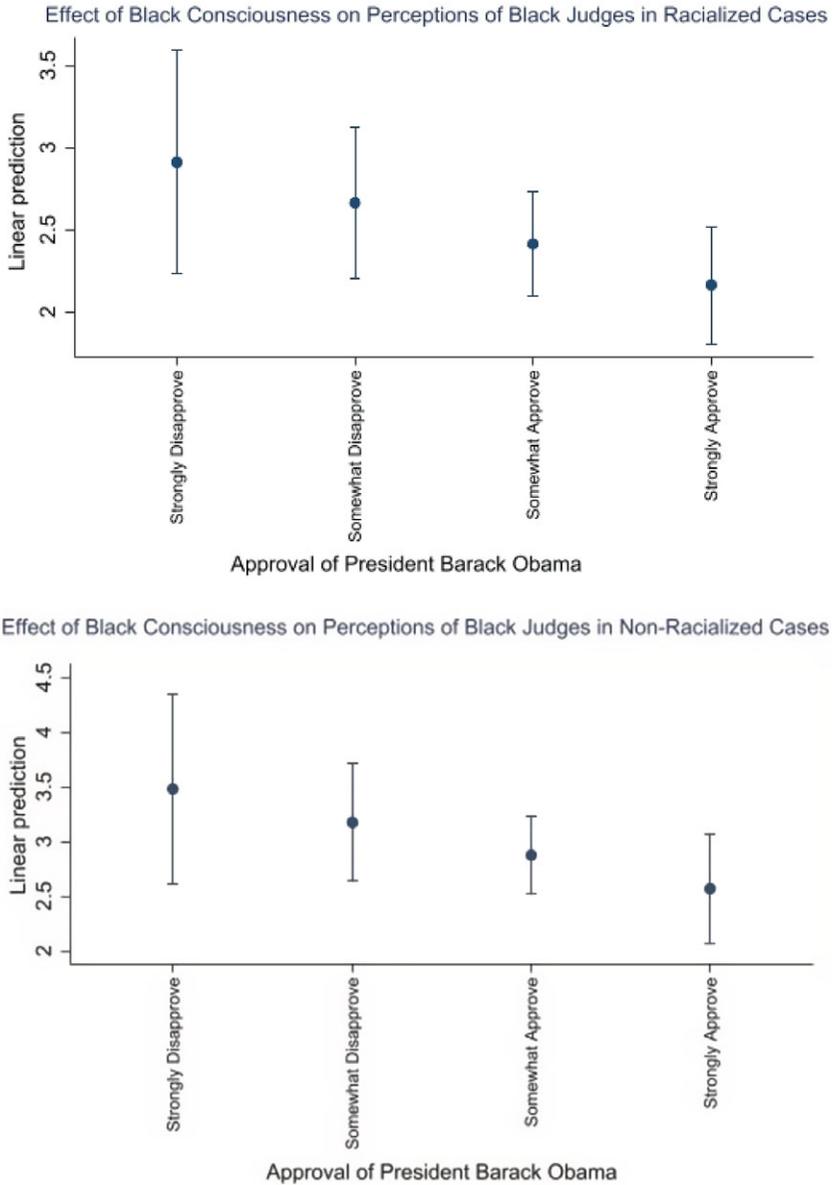


Figure 8. The Effects of Black Consciousness on Black Respondents' Perceptions of Unfairness of Black Judges in Non-Racialized and Racialized Cases.

Americans running for judgeships (Engstrom 1989). Here, we simply note that our study does not support the claim raised by Bell (1999) that the public widely views Black judges as incapable of deciding cases fairly, especially racialized cases.

The empirical analysis reveals that race matters all the time for Black Americans but only sometimes for White Americans in their evaluation of Black and White judges. White Americans (save for racially resentful Whites) do not evaluate and perceive Black judges any more negatively than their White counterparts, at least

about rendering fair decisions in court, even in racialized cases. We suspect that how White Americans view judges, in general, to be indistinguishable, irrespective of race, because of their similar professional backgrounds, training, and socialization, and White Americans' view of the criminal legal system as colorblind, fair, and legitimate (Peffley and Hurwitz 2010). Thus, contrary to our suspicion that White Americans would generally feel threatened by the presence of Black judges, our results show a general level of tolerance exhibited by White Americans toward Black judges.

However, as expected based on race and ethnicity scholarship, Black Americans evaluate and perceive Black judges much more favorably than they do White judges. Black Americans see Black judges as less likely to be unfair regardless of whether the case is non-racialized or racialized. Conversely, they see White judges as more likely to be unfair in general, and, especially, in racialized cases.

This study analyzes only Black and White Americans' perceptions of Black and White judges. We recognize that in a multiracial and multiethnic pluralistic society like the United States, other racial groups are represented on the American bench. Future research should examine perceptions of Asian American, Native American, and Latino/a judges. Understanding how Americans perceive the decision-making of all US judges is increasingly important as the legal system continues to diversify along racial lines (George and Yoon 2017).

Our findings raise significant implications for the legitimacy of our justice system. First, because Black respondents viewed Black judges as more likely than White judges to make fair decisions, we anticipate that Black Americans' institutional trust in the legal system will increase with greater racial diversity on the bench. This implication is consistent with powerful insights that others have documented, including Scherer and Curry (2010).

Finally, our study reveals an example of increasingly liberalizing attitudes among White Americans, at least about perceptions of Black judges. There is hope that positive perceptions of Black and White judges will lead to increased support among White Americans for Black judicial candidates and for their retention, which will, in turn, lead to increased racial diversity at the state court level, especially given the fact that the majority of state court judges reach the bench via competitive elections (Bonneau and Hall 2016). This finding, while unexpected, is consistent with some recent scholarship in political science that shows increased support among White Americans for Black candidates for political office (Highton 2004). Additionally, our analysis supports Matland and Shepherd (2004), who found that, when given a significant amount of information on judges, such as the biography our subjects were provided, race does not dramatically affect how much electoral support Black judges receive. This finding suggests that Black Americans running for judicial office should strive to provide a significant amount of information for voters in general, but White voters especially, because it can moderate any negative race effect. Having found Black judges are not widely perceived as more likely to be unfair in their decision-making by the public, descriptive representation in the judiciary seems to be one way of preserving or growing the public esteem and reservoir of goodwill that the judicial branch enjoys, especially among marginalized communities that have long distrusted the judicial system.

Supplementary material. The supplementary material for this article can be found at <http://doi.org/10.1017/jlc.2025.2>.

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