


RESEARCH ARTICLE  

Judges Behaving Badly: Judicial Misconduct and a Threat to Rights

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Abstract

Unethical behavior among US judges, including sexual misconduct and other forms of discriminatory behavior, is becoming increasingly publicized. These controversies are particularly concerning given the important role judges play in shaping policy pertaining to individual rights. We argue that types of misconduct serve as a signal to the public about potential threats judges may pose to people, particularly groups of people who are marginalized. We use a survey experiment that introduces a judge who has engaged in misconduct to measure if the type of misconduct will influence attitudes on whether the judge poses a threat to the rights of women, racial minorities, and ethnic minorities. Interestingly, we find that judges accused of discriminatory misconduct toward one group are viewed as a threat to rights across the board and are seen as less able to rule fairly on matters pertaining to marginalized people more generally.

Keywords: misconduct; rights; public opinion; judicial politics; ethics; discrimination

Egregious and unethical behavior from judges in the American judiciary is becoming increasingly publicized to the point the United States Senate is debating a Supreme Court ethics bill. Lower court examples of ethical misconduct include Michelle Odinet, a city court judge in Louisiana, and Randy Jinks, an Alabama probate judge, making racist remarks. More publicized are notable instances of misconduct in Supreme Court confirmation hearings where Supreme Court Justices Clarence Thomas and Brett Kavanaugh were confirmed to the US Supreme Court despite facing accusations of sexual misconduct that swept headlines. During the second day of the confirmation hearing for Brett Kavanaugh, Hillary Clinton posted on Twitter, “If Brett Kavanaugh becomes a Supreme Court justice, will he help gut or overturn *Roe v. Wade*, which legalized abortion in America? Yes, of course he

  This article has earned badges for transparent research practices: Open Data and Open Materials. For details see the [Data Availability Statement](#).

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will.”¹ Additionally, *The New York Times* published an article discussing what the sexual assault allegations against Kavanaugh mean for abortion rights.² *The Guardian* explicitly stated that the pick of Kavanaugh, accused of sexual assault, is “all about extending male power over female bodies – our anger will not subside.”³

This public discourse suggests a view that because Kavanaugh has engaged in unethical behavior toward women outside of the courtroom, he will be a threat to women’s rights inside of the courtroom. We seek to address this by examining whether people view a judge accused of discriminatory misconduct outside of the courtroom as a threat inside of the courtroom to the rights of the group they target (e.g., women, racial minorities, or ethnic minorities). We find that a judge accused of discriminatory misconduct is not only viewed as a threat to the rights of the group they target but to other marginalized groups as well and is viewed as less able to rule fairly on matters pertaining to said groups.

Judicial impartiality

Given legitimacy is of the utmost importance for courts, scholars have dedicated much attention to the factors that can taint public perceptions of impartiality. Campaign contributions can harm perceptions of institutional legitimacy (Gibson 2009) and fairness (Gibson and Caldeira 2013), as can politicized campaign ads (Gibson et al. 2011). More recently, Ono and Zilis (2022) found that female and Hispanic judges are stereotyped to be biased in favor of their ingroup and thus less able to rule fairly in immigration and abortion cases. Badas and Justus (2023) find that respondents who believed there to be more millionaire justices on the Supreme Court were more inclined to state the Court was less legitimate and biased in favor of the wealthy. Scholars have also addressed the ways in which judicial scandal can shape perceptions of legitimacy. For instance, it has been demonstrated that such scandals can harm specific support for the Court, but not diffuse support (Boston et al. 2023). Our project contributes to this literature by demonstrating the ways in which judicial misconduct, especially that which is discriminatory in nature, can shape perceptions of impartiality.

Public expectations of judges and the implications of misconduct

In theorizing about expectations pertaining to impartiality, we start by assuming the US public has expectations for judges both in terms of how they should conduct themselves and how they should go about making decisions. Article III, Section 1 of the US Constitution states, “judges of both the supreme and inferior courts, shall hold their offices during good behavior.” While what constitutes good behavior is open for debate, it suggests there is some expectation or ethical standard for how

¹John Bowden, “Hillary Clinton: ‘Of course’ Kavanaugh will vote to overturn Roe v. Wade,” *The Hill*, <<https://thehill.com/blogs/blog-briefing-room/news/405159-clinton-of-course-kavanaugh-will-vote-to-overturn-roe-v-wade/>>

²Ross Douthat, “The Kavanaugh Accusation Is Dangerous for the Pro-Life Movement,” *The New York Times*, <<https://www.nytimes.com/2018/09/19/opinion/christine-blasey-ford-kavanaugh-senate-hearing.html>>

³Suzanne Moore, “If Brett Kavanaugh makes it through, women’s anger will be unstoppable,” *The Guardian*, <<https://www.theguardian.com/commentisfree/2018/oct/05/trump-assault-abortion-kavanaugh-women-voices-bodies>>

judges are to conduct themselves. Other institutional features of the judiciary ensure independent decision-making. Judges are expected to act as unbiased, neutral decision-makers who are impartial in their rulings. A primary component of procedural justice theory is “neutrality in the process,” meaning the public values fair decision-making that is not dominated by one particular interest (Gangl 2003). Research has demonstrated that the public is more supportive of judicial decision-making that is unbiased and grounded in the law (Baird 2001; Scheb and Lyons 2000; Tyler and Rasinski 1991) and void of partisanship (Hibbing and Theiss-Morse 1995). For example, the public expects judges to be guided more by legal justifications (Farganis 2012), precedent (Zink, Spriggs, and Scott 2009), and intent of the Founders (Scheb and Lyons 2001) and less influenced by ideology or partisanship when making decisions. In other words, the public generally expects judges to refrain from letting their own biases determine how they will decide cases. It also appears that the public is willing to reward or punish lawmakers based on their judicial confirmation votes (Badas and Simas 2022).

Not only does the public expect this type of ethical, impartial behavior from judges, but the Code of Conduct for United States Judges requires it both in and out of the courtroom. Canon 2A explicitly states, “Public confidence in the judiciary is eroded by irresponsible or improper conduct by judges, including harassment and other inappropriate workplace behavior. A judge must avoid all impropriety and appearance of impropriety. This prohibition applies to both professional and personal conduct.”⁴ This includes how they conduct themselves on social media as well. State supreme courts are increasingly updating their codes of conduct to include statements on social media use. For example, the Illinois Supreme Court’s Code of Judicial Conduct states, “Judges must carefully monitor their social media accounts to ensure that no communication can be reasonably interpreted as suggesting a bias or prejudice . . .”⁵ We also observe instances of judges being reprimanded for inappropriate behavior online. For example, the Texas State Commission on Judicial Conduct reprimanded a judge who posted discriminatory comments on social media.⁶

Further, judges and justices themselves want to be viewed as impartial and aim to promote the legitimacy of the judiciary (Epstein and Knight 1998; Epstein, Landes, and Posner 2013; Posner 2010; Glennon and Strother 2019). Evidence suggests that judges (Burke and Leben 2007) and judicial councils (Vickrey, Denton, Jefferson 2012), at least at the lower levels, are aware of the importance of procedural fairness in shaping public perceptions of the courts and that they strive to achieve this standard. Judges, like other public officials, are concerned with their personal

⁴The code of conduct can be found here: <<https://www.uscourts.gov/judges-judgeships/code-conduct-united-states-judges#c>>

⁵The Supreme Court of the State of Illinois’ Code of Judicial Conduct can be found here <<https://ilcourtsaudio.blob.core.windows.net/antilles-resources/resources/57ea945a-7c76-4c12-bc26-d18155e21312/070122.pdf>>

⁶The National Center for State Courts recently published a “Social Media and Judicial Ethics Up-date” that includes instances where state courts changed their codes of conduct to include statements on social media as well as a plethora of examples of judges who were disciplined for inappropriate behavior on social media. It can be found here <https://www.ncsc.org/__data/assets/pdf_file/0036/87498/Social-Media-Update-Jan-23.pdf>

reputation as well. They consider how a wide range of audiences such as their colleagues on the bench, other branches of government, social groups, professional groups such as bar associations, and the public perceive them and therefore work to preserve their personal image and reputation (Baum 2006). Baum (2006) suggests judges are concerned with their “self-presentation” and desire to be liked and respected by those in their social community.

Allegations of harassment and discrimination can be deleterious to the legitimacy of the accused, such as a judge, as the behavior itself is outside of the expectations set for judges and because it expresses the potential for biased decision-making. It is not surprising that making racist or sexist comments is indicative of broader attitudes toward the targeted group and would lead people to view the judge as being biased toward said group. This extends to behaviors as well. For example, engaging in sexual harassment can be indicative of broader attitudes toward women. Hostile sexism (Diehl et al. 2018; Krings and Facchin 2009; Masser et al. 2006; Russell and Trigg 2004) and authoritarian attitudes (Begany and Milburn 2002) predict the proclivity to engage in sexual misconduct. Thus, sexual misconduct indicates more hostile attitudes toward women. Individuals holding such attitudes are likely to engage in biased decision-making, especially as it pertains to the rights of women.

Judges play an important role in deciding civil rights cases and often hear cases pertaining to the rights of women and racial and ethnic minorities. As such, we expect to find that judges accused of discriminatory behavior will be viewed as a threat to the rights of the group they target (H1). In other words, we expect judges who engage in discriminatory behavior toward women, racial minorities, and ethnic minorities to be viewed as a threat to those groups. We also expect to find that judges accused of discriminatory behavior will be viewed as less likely to rule fairly on cases involving the affected group (H2).

Research design

We implemented a survey experiment with 2,536 respondents⁷ on the CloudResearch Connect platform in May 2023 to test our hypotheses. Respondents were randomly assigned to one of ten conditions where we manipulated who was targeted (a woman, a racial minority, or an ethnic minority), the type of misconduct, and whether it was physical or nonphysical in nature. The control conditions include misconduct that does not target a specific person or group of people. We include forms of threat that are physical in nature alongside comparable forms of misconduct that are not physical in nature, as people react differently to physical threat versus nonphysical threat (e.g., social threat) (Goldin et al. 2009; Landmann et al. 2019). For example, people show a higher emotional reactivity to nonphysical threat (e.g., social threat) as opposed to physical threat (Goldin et al. 2009). Since emotions are tied to political attitudes, we expect the distinction between physical threat and nonphysical threat to be important. Table 1 below shows the main vignette as well as the treatment and control conditions.

After reading the vignette, respondents were presented with a series of questions asking about their perceptions of the judge; here we are specifically interested in

⁷One individual was dropped for entering an invalid response on the age category.

Table 1. Treatment and control conditions

<p>Judge Michael Smith holds a JD degree from Drake University and is currently a sitting lower court judge. He enjoys going to the movies and reading and is an avid runner. He is also active in several civic organizations.</p> <p>Judge Smith is among a list of people being considered to fill a vacancy at his state's high court. If selected for this position, he would preside over a wide range of important cases.</p> <p>Judge Smith has been in the news recently because of this potential appointment and because he [INSERT ONE BELOW]</p>	
Control (not physical)	used his status to get out of a traffic ticket.
Control (physical)	caused a car accident while driving under the influence.
Ethnicity (not physical)	"liked" a social media post stating immigrants should "go home."
Ethnicity (physical)	was accused of calling immigration authorities on a Hispanic individual speaking in their native language.
Gender DV (not physical)	"liked" a social media post claiming domestic violence is acceptable if a woman "deserves it."
Gender DV (physical)	was accused of domestic violence against his wife.
Gender SH (not physical)	"liked" a social media post claiming women who are sexually harassed are partially to blame for such actions.
Gender SH (physical)	was accused of sexually harassing a woman at a social event.
Race (not physical)	"liked" a social media post supporting racial segregation.
Race (physical)	was accused of calling the police on a Black individual who was walking through a public park.

whether they felt the judge was a threat to the rights of women, racial minorities, and ethnic minorities⁸ and whether they were perceived as able to rule fairly on matters related to these groups.⁹ We also asked several demographic questions such as gender, age, race and ethnicity, income, ideology, party identification, political knowledge, and interest and included questions to measure sexist attitudes (Glick and Fiske 1996; Swim et al. 1995) and racial and ethnic resentment (Kinder and Sanders 1996).¹⁰

To test our first hypothesis, that judges accused of discriminatory behavior will be viewed as a threat to those they target, we run an ordinary least squares regression. The dependent variables measure the extent to which the respondent agreed with the statement "the judge is a threat to the rights of [women, racial

⁸We ask all respondents to evaluate threat to all three disadvantaged groups (women, racial minorities, and ethnic minorities) because it could be the case that if a judge does something potentially threatening to one disadvantaged group, people view them as a threat to any disadvantaged person, regardless of the group. We measure attitudes about all three groups to better understand this.

⁹The survey included question batteries about whether the judge was viewed as a threat to rights, how the judge would rule on various cases, and the judges' ability to rule fairly, trust in government, and court legitimacy.

¹⁰Question wording and coding located in section A of the supplementary materials.

minorities, ethnic minorities].” These were coded on a 1–6 scale from strongly disagree to strongly agree so an increase means an increase in perceived threat.¹¹ The independent variables were the treatment and control conditions. The nonphysical control condition was used as the baseline. The model includes control variables for respondent gender, party identification, conservatism, race (white), income, racial resentment, ethnic resentment, and sexism, which are not reported for simplicity.

The results are in Figure 1 below. Note that the coefficients for the physical control condition (i.e., a judge who caused a car accident while driving under the influence) are not statistically significant ($p = .79$, $p = .61$, and $p = .53$ in the models, respectively), suggesting that relative to a judge who engages in nonphysical, nondiscriminatory misconduct (i.e., using his status to get out of a ticket), there is no difference in perceptions of whether the judge is viewed as a threat to rights. Importantly, Figure 1 demonstrates that judges accused of discriminatory misconduct are viewed as a threat to the rights of the group that they target, as hypothesized. Interestingly, we also find that such judges are also viewed as a threat to other minoritized groups as well. For example, a judge who is accused of discriminatory misconduct towards a woman is also viewed as a threat to the rights of racial and ethnic minorities. One notable distinction is the effect sizes between treatment groups.¹² For example, in the nonphysical sexual harassment condition, where a woman was the target of the misconduct, there was a 1.89-point increase in stating the judge was a threat to the rights of women, relative to the control ($p < .001$). However, there were only a .757 and .718-point increases in stating the judge was a threat to the rights of racial and ethnic minorities, respectively, relative to the control ($p < .001$ and $p < .001$, respectively). That is over a 1-point difference between agreement with the judge being a threat to the rights of women and the judge being a threat to the rights of racial and ethnic minorities. This extends to the treatment conditions where the judge targeted racial and ethnic minorities as well. For example, in the physical ethnic discrimination condition where the judge called immigration authorities on a Hispanic individual speaking in their native language, there was a 1.90-point increase in believing that the judge was a threat to the rights of ethnic minorities ($p < .001$) and 1.86-point increase in believing that the judge was a threat to the rights of racial minorities ($p < .001$), relative to the control, but only a .432 point increase in believing the judge was a threat to the rights of women ($p < .001$). Thus, while respondents view judges accused of discriminatory behavior toward one group as a threat to the rights of others as well, they are more likely to say the judge is a threat to the specific group targeted.

Next, we test hypothesis 2, that judges accused of misconduct toward a particular group will be viewed as less able to rule fairly in cases pertaining to said group. We use the same methods stated above; only the dependent variables measure agreement with the statement “this judge will rule fairly on matters related to the rights of [women, racial minorities, ethnic minorities].” This is measured on a 6-point scale of strongly disagree to strongly agree. As such, we expect the

¹¹The n and means for each condition located in sections B and C of the supplementary materials. Full models with coefficients for respondent demographics in section E.

¹²These differences are statistically significant. See section F of the supplementary materials.

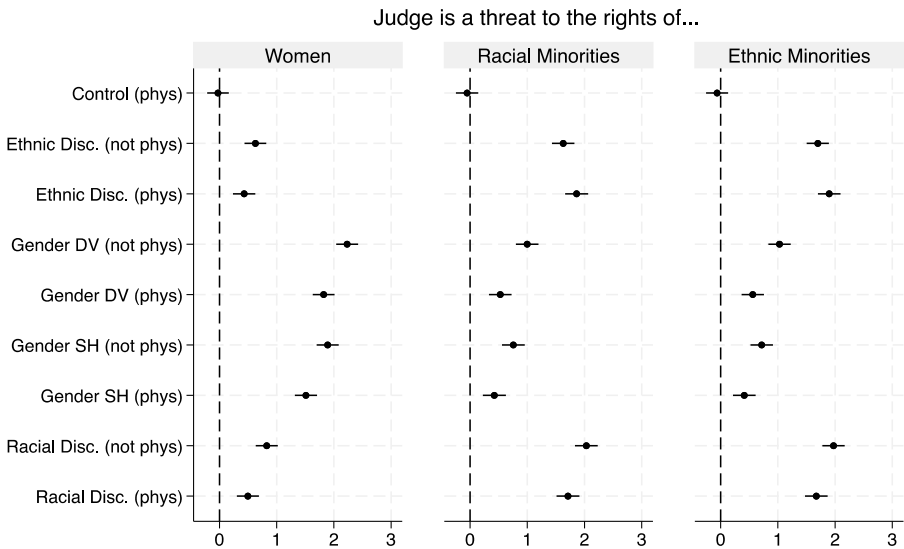


Figure 1. Judge is a threat to the rights of

coefficients to be in the opposite direction so that misconduct leads to a decrease in the perception that the judge will rule fairly. As done above, the full model includes control variables for respondent gender, party identification, conservatism, race (white), income, racial resentment, ethnic resentment, and sexism which are not reported for simplicity.

Similar to our findings above, Figure 2 below demonstrates that judges who are accused of misconduct are viewed as less able to rule fairly on matters related to the groups they target, relative to the control of nondiscriminatory misconduct. In addition, they are also viewed as less able to rule fairly on matters related to other minoritized groups. Note that the effect sizes are much larger based on the treatment condition, as before. Those who were in the conditions where the judge was accused of discriminatory misconduct toward a racial or ethnic minority saw larger decreases in the belief that the judge was able to rule fairly on matters pertaining to said groups, relative to the control. These effect sizes were smaller, though still statistically significant, for women, relative to the control.

Our findings have important implications for how the public views judges and their ability to act impartially and suggests that misconduct outside of the courtroom can influence how people perceive the judge inside of the courtroom. Specifically, judges who engage in discriminatory misconduct are viewed as a threat to the rights of marginalized groups more generally, not just the specific group their behavior targeted. They are also viewed as less able to rule fairly on matters pertaining to said groups.

Conclusion

In a time marked by the United States Senate debate on judicial ethics, we sought to better understand how unethical behavior outside of the courtroom influences

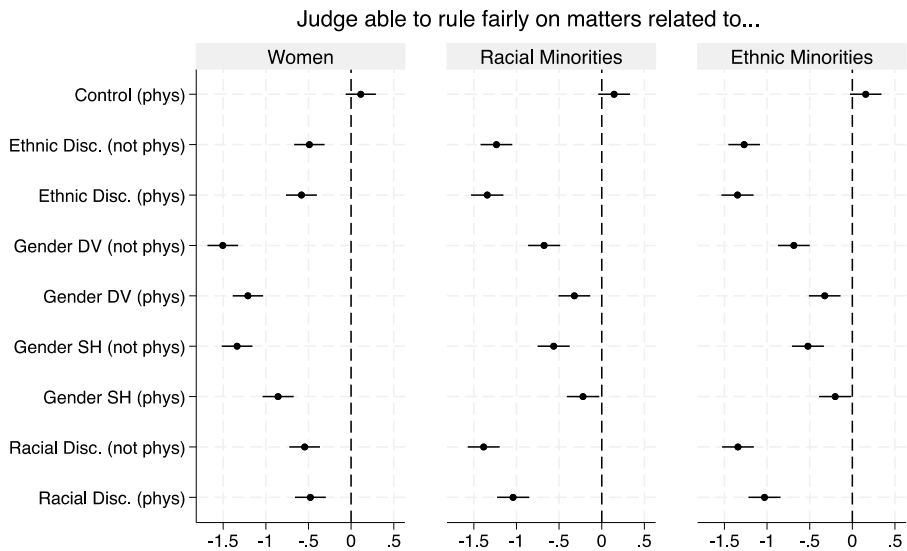


Figure 2. Judge able to rule fairly on matters related to

public opinion. More specifically, in this paper, we examine whether judges accused of discriminatory behavior outside of the courtroom are viewed as a threat inside of the courtroom to the rights of the group they target. To assess this, we implemented a survey experiment that manipulated who was targeted (a woman, a racial minority, or an ethnic minority), the type of misconduct, and whether it was physical or nonphysical in nature. We found that compared with judges accused of misconduct that is not discriminatory in nature (i.e., using status to get out of a traffic ticket), judges who are accused of discriminatory misconduct are viewed not only as a threat to the rights of the group their behavior targeted but to the rights of marginalized groups (e.g., women, racial, and ethnic minorities) across the board. Respondents also stated the judge was less likely to rule fairly on matters that pertained to these groups. Our findings show that a judge's unethical behavior outside of the courtroom has important consequences for how the public views the judge's ability to perform his job inside of the courtroom both in terms of the judge's ability to rule fairly and the threat he poses to rights.

Future research may wish to expand on the effects of physical versus nonphysical threats, as the literature suggests there might be differences in intensity of attitudes. We find that both types of misconduct shape perceptions of the judge as a threat to the rights of minoritized groups. Another fruitful area to extend this research is examining the effects of unethical behavior of different types of political actors. Prior work has found that accusations of sexual misconduct can diminish the popularity of a president (Klar and McCoy 2022) and shift public opinion on party issue ownership (Holman and Kalmoe 2024); the next step in this research is to look at the effects of ethical wrongdoings of various types of political actors on the threat to individual rights. A limitation of our work is that we focus specifically on a white, male judge. Given existing work demonstrates racial differences in cue-taking from

elite messaging (Kuklinski and Hurley 1994) and public opinion differences in response to questionable statements between male and female political candidates (Simas and Murdoch 2020), future work should focus on intersecting identities and vary the demographic and political identities of the judge. Relatedly, future work should examine whether perceptions of the judge's characteristics vary based on the intersecting identities of the respondents.

Supplementary material. The supplementary material for this article can be found at <https://doi.org/10.1017/XPS.2024.8>.

Data availability. The data, code, and any additional materials required to replicate all analyses in this article are available at the *Journal of Experimental Political Science* Dataverse within the Harvard Dataverse Network, at: <https://doi.org/10.7910/DVN/1FBS1Y>.

Competing interests. The authors declare none.

Ethics statement. This study received Institutional Review Board approval (protocol #:2023-0121).

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